SHIP ARREST IN *ITALY* (QUESTIONS 1 TO 9)

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(QUESTIONS 10 TO 26)

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1. Please give an overview of ship arrest practice in your country.

Italy is a party to the 1952 Arrest Convention, ratified in 1979. Moreover the Italian Code of Navigation provides a set of domestic rules applicable when the Convention does not apply in whole or in part. Arrest is possible in Italian Ports also where there is no jurisdiction on the merits. The procedure is fairly quick and informal. No counter security is required. Appeal is possible and usually heard and decided in few weeks. P&I Clubs Letters of Guarantee are widely accepted if issued by one of the IG Pool. Alternatively bank guarantees or cash deposit are available to release the vessel.

2. Which International Convention applies to arrest of ships in your country?

The 1952 Brussels Convention on Arrest of Sea Going Ships has been ratified on 9.11.1979 in Italy and applies to all vessels flying the flag of one Contracting State. It will also apply, pursuant to article 8, to those vessels flying the flag of a non-Contracting State in respect of any claim for which the law of the Contracting State seized with the case permits arrest. In addition our Code of Navigation provides subsidiary rules applicable when the Convention cannot be applied in whole or in part or to arrest issues not ruled by the Convention (articles 643-686).

3. Is there any other way to arrest a ship in your jurisdiction?

A Vessel may be detained pursuant to an arrest order issued within a criminal proceeding by a Prosecuting Judge (i.e. when the Vessel can be considered as corpus delicti) or pursuant to an administrative detention order of a Public Authority (i.e. the Harbour master Office in case of damage to public properties like a berth, a quay, a light buoyancy).

4. Are there alternatives e.g. saisie conservatoire or freezing order?

In respect of the same claim usually arrest orders are alternatives and not cumulative. It is anyway possible that under special circumstances, where different interests are involved, a single event generates more detention orders (i.e. in a pollution case arising out of collision the interest of the State and those of cargo owners, the colliding vessel, the salvors, the victims). From a strict procedural profile an arrest order under the 1952 Arrest Convention for a particular maritime claim is always alternative to any likewise detention order to secure the same claim.

5. For which types of claims can you arrest a ship?

A Vessel can be arrested in Italy for any maritime claim among those listed under art. 1(1) of the 1952 Arrest Convention. For Vessels flying the flag of a non-Contracting State an arrest is possible also in respect of any other claim for which the law of the court seized with case permits arrest. This in Italy includes any debt of a contractual or non contractual nature but in this case the arrest can only be obtained if the Vessel is owned by the debtor.

6. Can you arrest a ship irrespective of her flag?

A ship can be arrested irrespective of her flag.

7. Can you arrest a ship irrespective of the debtor?

A ship can be arrest irrespective of the debtor but, if the debtor is a State or other Public body, then the ship might be regarded as immune from arrest. Whether and to what extent immunity may be invoked is left to the law of the forum arresti. Immunity is related to the ownership or operation of the ship, not to the nature of employment. For example the fact that a privately owned ship is employed on a liner service which is of public interest should not justify immunity from arrest.

8. What is the position as regards sister ships and ships in associated ownership?

Sister-ships, meaning ships owned by the same Company owning the particular ship in respect of which the maritime claim arose, can be arrested under art. 3 (1) of the Arrest Convention. A similar principle is provided at Italian domestic law (art. 2740 Italian Civil Code). Ships in associated ownership (or management) cannot be arrested unless the Claimant can pierce the corporate veil. This is not impossible in Italy but is certainly a difficult exercise, which implies a rigorous burden of proof on identity of shareholders and management of the two companies.

9. What is the position as regards Bareboat and Time-Chartered vessels?

In cases where the bareboat charterer is liable in respect of a maritime claim and not the registered owner, the situation is different if the Arrest Convention applies or not. If the Convention applies, art. 3 (4) enable arrest of such ship or any other ship in the ownership of the bareboat charterer, but no other ship in the ownership of the registered owner. The last sentence of Article 3, para. 4 seems to extend the rule to any case in which a person other than the registered owner of the ship is liable (i.e. the time charterer, the ship manager, etc.). This is anyway in conflict both with the literal meaning of the provision and with the travaux preparatoires of the Convention. When Italian domestic law applies arrest of a ship under bareboat charter to secure a claim against the bareboat charterer, the time charterer or the ship manager is not possible unless the Claimant has a maritime lien assisting his claim. The main reason for this is that a creditor cannot arrest a ship to secure a claim if he can never be authorised to enforce the final judgment on the merit against the registered owner and auction the vessel. This is the worldwide unsolved problem of the Arrest Convention and Italy is no exception. Only maritime liens give right to enforce a claim against the vessel, even if she is property of someone different than the liable party. Not all maritime claims under the Arrest Convention are maritime liens under the different national domestic law systems. Not the 1926 Liens and Mortgages Convention enjoyed a wide acceptance around the world. The Lisbon Draft attempted to clear things as well as the 1999 Arrest Convention, not yet in force.

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10. Do your Courts require counter-security in order to arrest a ship?

There is no need for the applicant to provide security in order to have the *ex-parte* arrest application examined by the court.
However, the judge dealing with the matter may make the arrest conditional upon the applicant providing counter-security to cover any potential loss suffered by the respondent.
If the applicant fails to provide such security within the time limit set by the judge (usually a few days), the ship arrest then ceases to have effect pursuant to Article 669-novies, paragraph 3, of the Italian Code of Civil Procedure.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The difference is substantial and arises when for instance the arresting vessel has in the meantime changed her ownership with the result that the action can be addressed against a party other than the applicant's debtor. By implication of law the maritime lien attaches to the vessel from the moment a cause of action arises and it is extinguished only with the fulfilment of the underlying claim or as a result of the statutory time bar.
Besides, according to the majority of domestic case law and scholars, only the existence of a maritime lien consents the application of article 3(4) of the international convention relating to the arrest of sea-going ships (Brussels 1952) in respect of claims vs. charterers basically on the grounds that article 9 of said convention does not create maritime liens.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Pursuant to Article 552 of the Italian Code of Navigation, Italy recognizes maritime liens. The categories of claims benefiting from a maritime lien substantially correspond to those contemplated by the international Convention for the Unification of Certain Rules relating to Mortgages and Liens (Brussels 1926), to which Italy is a party, and include in particular:

- judicial costs incurred by the State or expenses made in the interest of all creditors for arresting or preserving the vessel; anchorage, lighthouse and harbour dues; pilotage fees; costs for preserving the ship in the last port of call;
- crew's and master's wages;
- amounts advanced by the State for the victualling and repatriating the crew as well as credits for compulsory social security contributions;
- salvage rewards and sums due by the vessel as a contribution to a general average;
- sums due in respect of collisions, hits and other casualties occurring in the course of navigation; damage caused to ports, yards and navigable waterways; indemnities due to passengers and crew for death or personal injuries; loss or damage to cargo and baggage;
- claims resulting from contracts entered into by the master within the scope of his authority for preserving the vessel or continuing the voyage.

Pursuant to article 575 of the Italian Code of Navigation maritime liens always rank in priority over ship mortgages. However, the law of the flag of the vessel governs the determination of the existence of a maritime lien and the criteria for the ranking of competing claims.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

A notice of 24 hours is generally sufficient to prepare the arrest application and to file it electronically together with relevant exhibits with the competent Court for the judge's immediate review (Italy has now adopted and implemented an online civil trial system: see § 15 below).
This is in an ideal environment.
Supporting documentation is often drafted in a foreign language and must therefore be translated into Italian. However, this activity can be arranged promptly by our law firm's staff. Another factor that may delay the filing of the application with the Court is the need to obtain the Power of Attorney from the foreign arresting party (see § 14 below).
It should also be noted that the Italian Courts are only open on weekdays. Accordingly, an application filed on Friday afternoon will be examined by a judge only on following Monday morning.

14. Do you need to provide a POA or any other documents of the claim to the Court?

The response is affirmative.

No Italian lawyer can appear and act before a Court without a written Power of Attorney (PoA) duly executed by the client.
Where the PoA is issued abroad, it must be notarised and legalised by apostille as per the Convention abolishing the Requirement of Legalisation for Foreign Public Documents (Hague 1961) unless the document in question is issued in certain EU Member States (i.e., Belgium, Denmark, Estonia, France, Ireland, and Latvia) where the apostille requirement has been fully abolished on the basis of the 1987 Brussels Convention. The same exception applies to documents issued in Germany pursuant to the bilateral convention signed in Rome on 7 June 1969, and to documents issued in Austria pursuant to the agreement supplementing the 1954 Hague Convention relating to the law on civil procedure and signed in Vienna on 30 June 1975.
In urgent matters, when there is not enough time to get a duly authenticated PoA (in original or at least in digital form) from abroad, an expedient is often the appointment of a domestic agent who may, in turn, appoint the Italian lawyer pursuant to article 77 of Italian Code of Civil Procedure. Since the appointment is made by an an entity (whether a corporation or an individual) domiciled in Italy, the legalisation of the agent's signature can be arranged by the retained lawyer.
The arrest application must be accompanied by supporting documentation that establishes *prima facie* evidence of the claim for which the security (ship arrest) is sought. As indicated in § 13 above, translations of documents drafted in a foreign language should be enclosed with the application for the judge's benefit.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

In 2003, the IT Department of the Italian Ministry of Justice launched a project to implement the online civil trial system, which today enables electronic seamless interaction between lawyers and judges through the court registries. The reform introduced mandatory electronic transmissions of all communications (digitally signed to ensure authenticity, non-repudiation and integrity) between lawyers and judges in first-instance and appellate proceedings as well as in proceedings before the Supreme Court as from February 2016.
At present, Italian lawyers have full online access to up-to-date information managed within the Court Management System as well as to legal acts and documents stored in the electronic file system. Therefore, they are able to file all the documents electronically with the undoubted advantage that original documents (with the exception of domestic powers of attorney issued and authenticated in Italy) no longer need to be physically in lawyer's hands when the case is filed in Court. Only in the event of specific objections as to authenticity, the judge may order the arresting party to disclose the original of any document whose copy has been challenged.
Apostille formalities apply only to powers of attorney issued abroad in states that are parties to the Hague 1961 (see § 14 above).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The mere presence of the vessel in Italian territorial waters confers competence on the Court within whose district the relevant port of call is located. It is not necessary for that Court (or any other domestic Court) to have jurisdiction over the merit of the dispute. However, substantive proceedings on the merits must be commenced before the competent state court or arbitral tribunal within a maximum period of 60 days (see § 23 below).
The adjudicatory jurisdiction on the merit of the case is determined in accordance with the applicable rules of private international law governing dispute resolution and, where applicable, article 7 of the 1952 Brussels Convention on the Arrest of Sea-Going Ships.

17. What is the procedure to release a ship from arrest?

The party against whom the ship arrest has been granted may challenge the relevant order before the court by appointing a lawyer. The lawyer may file defensive submissions setting out the legal grounds on which the arrest is alleged to be inadmissible, unlawful or excessive (*e.g*., where the amount of security indicated in the order should be reduced).
The judge will schedule a hearing for oral argument and/or grant certain number of days for the exchange of written submissions. Then, with the final ruling, the judge will either uphold the *ex-parte* order (setting the time limit by which the arresting party must commence the substantive proceedings on the merits) or revoke it, ruling also on legal fees and costs to be reimbursed by the arresting party (article 669*sexies*, paragraph 2, of the Italian Code of Civil Procedure). Alternatively, the court may amend its previous ruling, for example by adjusting the amount up to which the arrest is granted or by ordering the provisions of bail to secure potential damages for wrongful arrest.

18. What type of security needs to be placed for the release?

The arrested party always has the right to request the substitution of the ship with an alternative security in the form of a bank deposit, which shall remain frozen until the court has ruled on the lawfulness of the arrest (in the meantime the vessel is permitted to leave Italian territorial waters).
This right is recognised both under Italian civil procedure (article 684 of the Italian Code of Civil Procedure) and under the 1952 Brussels convention (article 3(3)).
The parties may alternatively agree on a bank guarantee or a P&I letter of undertaking (“LOU”), However, in such cases, the ship arrest proceedings are discontinued, and the file is closed. By contrast, the provision of a cash security, though potentially more time-consuming, enables the arrested party to continue challenging the opponent’s application and to recover the security in the event of a successful challenge.

19. Does security need to cover interest and costs?

As with the arrest order (which is commonly granted for the principal amount plus an additional 15-20% to cover default interests and legal costs), the cash security provided to obtain the release of the vessel likewise takes into account interests and legal costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, provided that the arresting party is consenting.
Only the provision of cash security dispenses the need for such consent.

21. How long does it take to release the ship?

It is a matter of a few hours.
Where the ship arrest order includes a provision authorising the arrestor’s counsel to notify the Harbour Master directly of the waiver of the ship arrest (for instance, following the conclusion of an agreement with the arrested party and its lawyer), the procedure of release is significantly expedited.

22. Is there a procedure to contest the arrest?

The arrested party has the right to challenge the ex-parte arrest order in order to prevent its subsequent confirmation and even after, once it has been confirmed, by filing an appeal before the court in full sittings within 15 calendar days (article 669terdecies of the Italian Code of Civil Procedure).

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Once the arrest order has been definitively granted, substantive action on the merits must be instituted in Court or, where applicable, in arbitration within a maximum period of 60 calendar days

from the date on which the order was issued (article 669octies of the Italian Code of Civil Procedure). Failing this, the order may be revoked upon a specific motion from the arrested party.
It should also be noted that the arrested party may seek the release of the vessel where the substantive proceedings are subsequently discontinued for any reason, or where the claim in respect of which security was initially obtained is ultimately not upheld notwithstanding that the proceedings weretimely instituted (article 669novies of the Italian Code of Civil Procedure).

24. Do the Courts of your country acknowledge wrongful arrest?

If the claim, in respect of which a vessel has been arrested, is subsequently dismissed by the court or arbitrator hearing the case on the merits, the arresting party may be held liable for the damages suffered by the opponent as a result of the arrest. However, the mere dismissal of the claim does not suffice as the party seeking damages must prove that the arresting party acted with gross negligence or bad faith (article 96 of the Italian Code of Civil Procedure).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The exercise in question is particularly complex, as Italian Courts are generally reluctant to pierce the corporate veil unless the party seeking such a finding is able to adduce conclusive and unequivocal evidence of impropriety, consisting in the use of the corporate structure to evade or conceal a liability
Accordingly, the corporate veil in Italy is pierced only in exceptional circumstances due to the stringent burden of proof and the multiplicity of requirements that must be satisfied.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Only in very few cases Italian courts have authorised the judicial sale of an arrested vessel pendente lite.
In those precedents, the vessel was in very poor condition and there was a serious risk of her sinking.
In any event, the judicial sale of the ship by public auction is, in practise, a regrettably time-consuming process.

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