

SHIP ARREST IN INDIA

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

- (i) The Admiralty jurisdiction is exercised by the Coastal States in India under the Colonial Courts of Admiralty (India) Act, 1891. The Arrest Convention, 1952 as well as Arrest Convention, 1999 would be considered for the purpose of ascertaining whether a particular claim is a maritime claim.
- (ii) Application for arrest of the ship is made ex-parte unless a third party has filed a Caveat against the arrest. If a prima facie is made out, the court would order the ship to be arrested. Generally, the quantum of security required for the release of the arrested ship would be based on the best arguable case of the Claimant.
- (iii) The ship would be released from arrest when security in the form of Bank Guarantee or cash deposit is made with the Registry. Ship could also be released from arrest if, on an application made on behalf of the ship, the Court holds that the arrest is not maintainable.
- (iv) If security is not furnished, the Claimant is entitled to take steps to sell the ship. The Court would order the sale of the vessel through public auction after the ship is valued by a professional surveyor. Once the ship is sold, the sale proceeds are deposited in Court. If the sale proceeds are insufficient to satisfy the claim of all the Claimants, the Court would decide the priorities in which the sale proceeds would be distributed. The Statutory dues would have the first priority followed by Wages of the crew and Master, Salvage, Mortgage and all other claims would thereafter rank *pari passu*.

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

International Convention relating to Arrest of Seagoing Ships, 1952, and International Convention of Arrest of Ships, 1999 would be considered by the Courts.

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

The Claimant could seek arrest of a ship in execution of decree passed by any Superior Court of any reciprocating territory of a foreign country against the Owner of the ship, subject however to the condition that the original claim was a maritime claim.

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

There is no separate freezing order other than arrest of a ship.

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

A ship could be arrested for the following claims:

- a. Loss or damage caused by the operation of the ship;
- b. Loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship;
- c. Any claim towards salvage;
- d. Damage or threat of damage caused by the ship to the environment, coastline, measures taken to prevent, minimize, or remove such damage including compensation for such damage;
- e. Costs or expenses relating to the raising, removal, recovery, destruction of a ship which is sunk, wrecked, stranded or abandoned;
- f. Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- g. Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- h. Loss or damage to or in connection with goods (including luggage) carried on board the ship;
- i. General Average;
- j. Towage;
- k. Pilotage;
- l. Goods or materials, provisions, bunkers, equipment (including containers) supplied or services

- rendered to the ship for its operation, management, preservation or maintenance;
- m. Construction, reconstruction, repair, converting or equipping of the ship;
- n. Port, canal, dock, harbour and other waterway dues and charges;
- o. Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- p. Disbursements incurred on behalf of the ship or its owners;
- q. Insurance premiums (including mutual insurance calls) in respect of the ship payable by or on behalf of the shipowner or demise charterer;
- r. Any commissions, brokerage or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- s. Any dispute as to ownership or possession of the ship;
- t. Any dispute between co-owners of the ship as to the employment or earnings of the ship;
- u. A mortgage or a "hypothèque" or a charge of the same nature on the ship;
- v. Any dispute arising out of a contract for the sale of the ship;

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

Yes.

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

As long as the maritime claim arises from commercial dealings between the parties, the ship could be arrested even if it belongs to the Government or a Foreign State.

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

A sister ship (i.e. any ship owned by the owner of the ship with which the maritime claim arises in connection) could be arrested. Ships in associated ownership cannot be arrested.

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

If the ship is on bareboat charter and if the Claimant asserts a maritime claim against the disponent owner, the ship could be arrested nevertheless to enforce the maritime claim. Further, if the Claimant asserts a maritime claim against the registered owner, the ship could be arrested even if it is on time charter.

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

Countersecurity is not required to be furnished at the time when the Court orders the arrest of a ship. However, when an application is filed by the shipowner claiming that the arrest is wrongful and that the owner is in a position to establish prime facie that as a result of the order of arrest the owner has suffered monetary loss the Court in its discretion may direct the Claimant to furnish countersecurity.

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

Yes. Maritime liens survive transfers of ownership of a ship while a maritime claim does not.

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

There is no domestic statute dealing with the concept of maritime lien. However, judicially it has been held that the maritime liens extend only to the following five heads of claim.

- a. Damage done by a ship;
- b. Salvage;
- c. Seamen's wages;
- d. Master's wages and disbursements; and
- e. Bottomry and Respondentia.

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

Upon receipt of all documents (which includes the agreement/contract, all correspondence, invoices, etc.), the draft of the proposed Plaint to be filed would be sent by e-mail within 24 hours. The Plaint has to be signed and verified by the person who is personally acquainted with the facts of the case which need to be attested to before the Indian Consulate.

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

POA, Plaintiff, all documents in support of the claim, affidavit in support of the arrest and affidavit of undertaking to pay damages, have to be filed in the Court.

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

POA in original, Plaintiff and all original documents in support of the claim or photocopies (if originals are not in the possession of the clients) would have to be filed in the Court. Along with the Plaintiff a list of all documents and photocopies of all documents irrespective of whether the same is in support of or adverse to the Claimants case would also have to be filed.

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

Once the Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim unless the order of arrest itself is vacated upon the Court being satisfied on an application made on behalf of the owner of the ship that the arrest is not maintainable. The Court would stay the suit if there exists a valid arbitration agreement between the parties in which event the security may or may not be retained.

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

Security in the form of Bank Guarantee or cash deposit needs to be made and the order for release from the Court needs to be obtained thereafter. The original order of the Court releasing the ship needs to be served upon the Port and Customs authorities.

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

Bank Guarantee or Pay Order issued by a nationalized bank in favour of the Registry or cash deposit.

19. Does security need to cover interest and costs?

Yes, if the order so directs.

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

P&I LOUs are not accepted except with the Claimant's consent.

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

Once security is furnished, an order for release of the ship could be obtained during Court working hours.

22. Is there a procedure to contest the arrest?

An order of arrest could be contested by filing a written application supported by an affidavit stating the grounds for such contest.

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

It could take anywhere between two to four years to adjudicate a dispute on its merits.

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

Yes. If the arrest is found to be wrongful, the Claimant would be held liable for damages.

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

Yes. In order to pierce corporate veil, one needs to establish that the shipowner has created multiple entities for the sole purpose of avoiding legal liabilities.

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

Ships can be sold pendente lite. The process of sale could be completed within 3 to 6 months from the date of the order of arrest. It could take a longer period if either the order of arrest or the order of sale is contested before the same Court or Superior Court.

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