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Ship Arrest in China

The Maritime Procedure Law of the People's Republic of China, 1999 (hereinafter referred to as MPL) provides specific rules for the arrest of ships. The Maritime Court shall grant a ruling within forty-eight hours upon receipt of an application for ship arrest. In particular, the Chinese laws permit a movable arrest of a ship, i.e. a ship may, with the consent of the claimant, be allowed to resume operations subject to restrictions on disposing of the ship or creating a new mortgage on the ship.

China has not acceded to the Arrest Conventions.

There is no other way to arrest a ship with the purpose of security of the claim. However, a ship may also be arrested and sold for enforcement of a judgment, arbitration award or other enforceable legal document. Apart from arrest, no other alternatives such as saisie conservatoire or freezing order.

WHICH VESSEALS CAN BE ARRESTED

1. For which types of claims can you arrest a ship?
The following maritime claims give rise to a right of arrest of a ship:

1) property loss or damage caused by the operation of the ship;
2) loss of life or personal injury occurring in direct connection with the operation of the ship;
3) salvage operations;
4) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimise or emove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs or loss of a similar nature to those identified in this sub-paragraph;
5) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of her crew;
6) any agreement relating to the use or hire of the ship;

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7) any agreement relating to the carriage of goods or passengers on board the ship;
8) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
9) general average;
10) towage;
11) pilotage;
12) materials supplied or service rendered to the ship for its operation, management, preservation or maintenance;
13) construction, reconstruction, repair, converting or equipping of the ship;
14) port, canal, dock, harbour and other waterway dues and charges;
15) wages and other sums due to the crew including costs of repatriation and social insurance contributions payable on their behalf;
16) disbursements incurred on behalf of the ship or its owners;
17) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
18) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
19) any dispute as to ownership or possession of the ship;
20) any dispute between joint-owners of the ship as to the employment or earnings of the ship;
21) a mortgage or a charge of the same nature on the ship; or
22) any dispute arising out of a contract for the sale of the ship.

2. Can you arrest a ship irrespectively of her flag?

Yes. However, Chinese Courts recognize sovereign immunity for ships engaged in military or governmental services.

3. Can you arrest a ship irrespectively of the debtor?

No. An arrest will not be granted if the time charterer or voyage charterer is the debtor of the claim.

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

The claimant may apply to arrest a sister ship which, when the arrest is effected, is owned by the person who is liable for the maritime claim. However, basing upon the claims concerning ownership or possession of a ship, it is only the offending ship may be arrested. There is no express legal definition for “associated ownership” in Chinese law.

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

According to the MPL, the Maritime Court may arrest a bareboat chartered ship when the bareboat charterer of the ship is liable for the maritime claim and is the bareboat charterer or owner of the ship when the arrest is effected. And the arrested bareboat chartered ship also could be sold by the court with the application of the claimant. A time chartered ship may not be arrested for a claim against the time charterer.

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ARREST PROCEDURE

1. **Do Courts in China require counter-security in order to arrest a ship?**
   In principle, the maritime court, having entertained an application for ship arrest, may require the claimant to provide counter-security. The form and amount of counter-security are determined by the maritime court. However, if the shipowner proves that the amount of counter-security is obviously low, they may apply the court for increasing it. In practice, such counter-security can be made in form of cash, negotiable instruments or a guaranty letter from a Chinese bank or other Chinese financial institution. However, in some circumstances the maritime courts do not require the claimant to provide counter-security, e.g. in the case of a crew wages claim or a personal injury claim.

2. **Does China recognise maritime liens? Under which International Convention, if any?**
   Yes. There are five types of maritime claims for which maritime liens can be exercised:

1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members;
2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;
3) Payment claims for ship's tonnage dues, pilotage dues, harbor dues and other port charges;
4) Payment claims for salvage payment;
5) Compensation claims for loss of or damage to property resulting from tortious act in the course of the operation of the ship.

   China is not a party to any conventions on maritime liens.

3. **Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien**
   Yes. There is a clear difference between claims which give rise to a maritime lien and other types of claim. The distinction is: With regard to the claim with maritime lien, the arrest shall be allowed provided that it is against the ship giving rise to the maritime line. As far as other types of claim are concerned, because there is not a concept of “action in rem” but “action in personam” in the Chinese legislation, the ship may not be arrested unless it is the property of the liable person.

4. **What lapse of time is required in order to arrest a ship since the moment the file arrives to the law firm?**
   It depends on how fast the claimant may arrange for a required counter-security. If we are provided with all the documents evidencing the debt or claim, an arrest may be done within 48 hours. Usually, an application for arrest of a ship should be presented to the court within its normal working hours. However, in urgent cases the court may, at its discretion, decide and execute the arrest after normal working hours.

5. **Do you need to provide a POA, or any other documents of the claim to the Court?**
   Yes, the following documents should be submitted to the maritime court:

1) A written application signed and affixed with a company stamp.

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2) Preliminary and basic supporting evidence.
3) Counter security. This is what the maritime court gives the most weight to. In most cases the amount of the counter security should be equal to the hire or loss of earning of the ship on a one month basis. The maritime court usually only accept the letter of guarantee issued by a Chinese bank or insurance company or P&I club rather than that of a foreign party.
4) Power of attorney.
5) Certificate of identity of legal representative.

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

The maritime court will require the original application, POA and Certificate of identity of legal representative to be submitted. In the urgent circumstances, the court may be persuaded to accept a faxed application followed by the original. Power of attorney and Certificate of identity of legal representative forwarded from outside the territory of China should be notarized by the notary public of the country of origin and the legalized by the Chinese embassy or consulate general in that country. However, our experience is in an urgent case, we may try to persuade the court to accept the original Power of attorney and Certificate of identity of legal representative first and then those in notarized and legalized form after the arrest has been done.

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

Yes. The claimant may bring an action in respect of the maritime claim in the maritime court ordering arrest, unless the jurisdiction agreement or arbitration agreement between the parties provides otherwise.

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

A time of 30 days will be granted by the Courts. Where the claimants bring an action or applies for arbitration within 30 days, or where the claimants apply for arrest of a ship during legal proceedings or arbitral proceedings, the arrest of the ship is not subject to 30 days time limit.

9. Do the Courts of China acknowledge wrongful arrest?

Yes. However, there is no definition for wrongful arrest or unjustified arrest under Chinese laws, but it may include a situation, where, although the arrest is reasonable at the time of arrest, it later proves to be unjustified because the claims fail ultimately on their merits. Under Chinese judicial practice, a wrongful arrest exists where: (a) the applicant has no maritime claim for arrest; or (b) the owners of the ship arrest are not liable for the claim; or (c) security demanded by the applicant is unreasonably high. If the claimants' claim ultimately fails and constitute a wrongful arrest, the shipowner can bring a claim against the claimant for wrongful arrest and losses caused thereof, which can be secured by the counter-security provided by the claimant.

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10. Do the Courts of China acknowledge the piercing and lifting of the corporate veil?

In principle, the piercing of the corporate veil is recognized at Chinese judicial practice. However, at Chinese laws, there is no specific provision for the concept of piercing of the corporate. The Chinese Company Law provides that where any of the shareholders of a company evades the payment of its debts by abusing the independent status of legal person or the shareholder's limited liabilities, if it seriously injures the interests of any creditor, it shall bear several and joint liabilities for the debts of the company. Under Chinese judicial practice, some courts have introduced the concept of piercing of the corporate to their cases from the angle of jurisprudence. However, it varies from court to court and from judge to judge how to determine the issue. Most courts commonly rely on the facts of mixture of assets between the shareholders and the corporation. For your information, we have successful experience in dealing with such issues in Chinese Maritime Courts.

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

Where the respondent fails to provide security within one month, and it is not appropriate to keep the ship under arrest, the claimants, having brought an action or applied for arbitration, may file an application for sale of a ship pendente lite with the maritime court. The maritime court shall, after the receipt of a written application for sale of a ship, examine the application and make an order to allow or disallow the sale. Usually, it will take about two months for a forced sale of the ship.

Source of Information: Ship Arrested.com

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