

Circular Ref: 2023/0004**Date: 3 March 2023**

SHIP ARREST IN *ITALY*

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.

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?

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 *Ship Arrests in Practice, 13th Edition* 203 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?

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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. 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.

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

There is no need for the applicant to put up a security in order to have the *ex-parte* arrest application examined by the Court. It is nevertheless open to the dealing Judge to possibly make the effects of the ship arrest subject to a counter-security on the part of the applicant in order to restore possible damages of the respondent. If the applicant fails to put up such security within the period of time set by the Judge

(usually a few days), the ship arrest then loses all its binding effects (article 669*novies*, para. 3, of the Italian Civil Procedure Code).

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.

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

According to those listed in article 552 of the Italian navigation code, Italy recognizes maritime liens, which are mainly the same considered by the international Convention for the Unification of Certain Rules relating to Mortgages and Liens (Brussels 1926) which Italy is party to.

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

An advance of 24 hours is usually enough to prepare and draft the arrest application and have it despatched, along with relative exhibits, electronically (Italy has now adopted and implemented on-line civil trial system) to the competent Courthouse for immediate scrutiny from a judge.

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 plea in Court without a written Power of Attorney (PoA) duly executed by the client.

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

Presently, Italian lawyers have now full online access to up-to-date information handled in the Court Management System and to legal acts and documents stored in the File System. Therefore, they are enabled to file all the papers electronically with the undoubted advantage that original documents. Only in face of specific objections the judge may order the arresting party to disclose the original of the document whose copy has been challenged in terms of authenticity.

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

The mere presence of the vessel in the national waters makes the Courthouse, whose district encompasses the port of call, competent for the examination of the arrest application. It is not necessary that the said Court (or any other domestic Court) has jurisdiction over the merit of the case. However, it must be brought to the attention of the competent state Court or arbitral Tribunal within a maximum of 60 days. The adjudicatory jurisdiction for the merit of the case is ruled in compliance with the

relevant international private law aspects governing dispute settlements or article 7 of the Brussels 1952.

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

The party who has been affected by a ship arrest can challenge the relative order in the court by appointing a lawyer. The lawyer can present defence submissions and explains the legal grounds on which the arrest is inadmissible, unlawful, or excessive.

The judge will set a hearing for oral discussion and/or grant a certain number of days for exchanging written pleadings. Then, with the final ruling, the judge will either confirm the *ex-parte* order (setting the period of time within which the arrestor must commence the substantive proceedings) or revoke it ruling on the legal fees and costs to be reimbursed by the arresting party (article 669sexies, para. 2, of the Italian Civil Procedure Code). Another possible option open to the court is the modification of its previous ruling. For instance, regarding the amount up to which the arrest is granted or the placement of bail to cover potential damages for wrongful arrest.

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

The arrested party always has the faculty to ask for the replacement of the ship with cash funds in the form of bank deposits, which remain frozen until the judge has ruled over the legitimacy of the arrest (in the meantime the vessel is allowed to leave national waters). The litigants can alternatively agree on a bank guarantee or a P&I LOU, but in such cases, the ship arrest proceedings are discontinued, and the case is closed.

19. Does security need to cover interest and costs?

Like the arrest order (which is commonly granted for the principal amount plus an extra 15-20% to cover late interests and legal costs), the security provided in cash to lift the ship arrest also considers the interests and legal costs into account.

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

Yes, provided that the arrestor is consenting. Only cash in the form of bank deposit makes such consent instead no longer needed.

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

It is a matter of a few hours.

22. Is there a procedure to contest the arrest?

The arrested party has the right to challenge the arrest order granted *ex-parte* to avoid its subsequent confirmation and even after, once this has been confirmed, by presenting an appeal before the Court in

full sittings within 15 calendar days (article 669^{terdecies} Italian Civil Procedure Code).

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 is (conclusively) granted, the substantive action has to be instituted in the Court or, wherever applicable, in arbitration within a maximum period of 60 calendar days from the date on which the order has been granted.

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

If the claim, for which a vessel has been arrested, has subsequently been rejected by the court or arbitrator hearing the case on merit, the arrestor could be held liable in terms of damages suffered by the opponent. However, the mere rejection of the claim does not suffice as the party claiming damages must prove gross negligence or bad faith from the arrestor's side.

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

The exercise in question is quite hard as our domestic Courts are reluctant to pierce the corporate veil unless the party interested in the assessment can offer conclusive and unequivocal evidence of impropriety linked to avoidance or concealment of a liability through the use of the company structure. Therefore, the corporate veil in Italy is pierced very rarely due to the severity of the onus of proof and the number of tests to be met.

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

In very few cases, our Courts have authorised the sale of the arrested vessel *pendente lite*. In those precedents the physical conditions of the ship were very poor, and there was a serious risk of her sinking. The ship auction procedure may be regrettably time consuming.

Source of Information: shiparrested.com

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