

# VESSEL ARREST VERSUS P&I LETTERS OF UNDERTAKING

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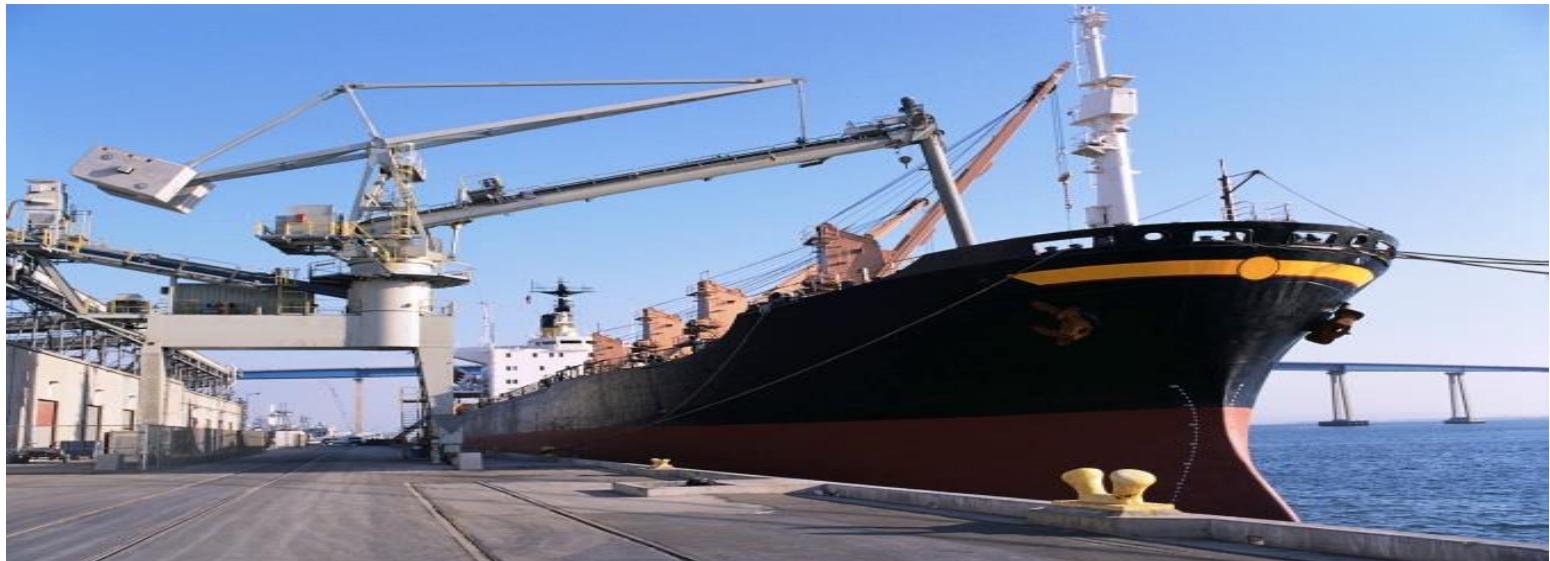
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# What is ship arrest?

- Detention / restriction on removal of a ship by order of a court to secure a Maritime Claim.
- It does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
- It is an ancient procedure that allows a creditor to arrest a vessel to satisfy unpaid debts – it was sometimes problematic to identify the person or company that owned the vessel so gradually the concept of claiming against the vessel herself was developed.



# Why arrest?

- Action *In Rem* i.e. against a thing.
- Arrest enables the creditor:
  - In theory, to target an asset against which to enforce (under arrest until security is provided);
  - To pressure the Owners to pay the amounts due and/or put up security to release the vessel (tactical move);
  - Brings jurisdiction to hear the underlying claim;
  - Apply for the judicial sale of the vessel (assuming creditor has a final substantive judgment in its favour).

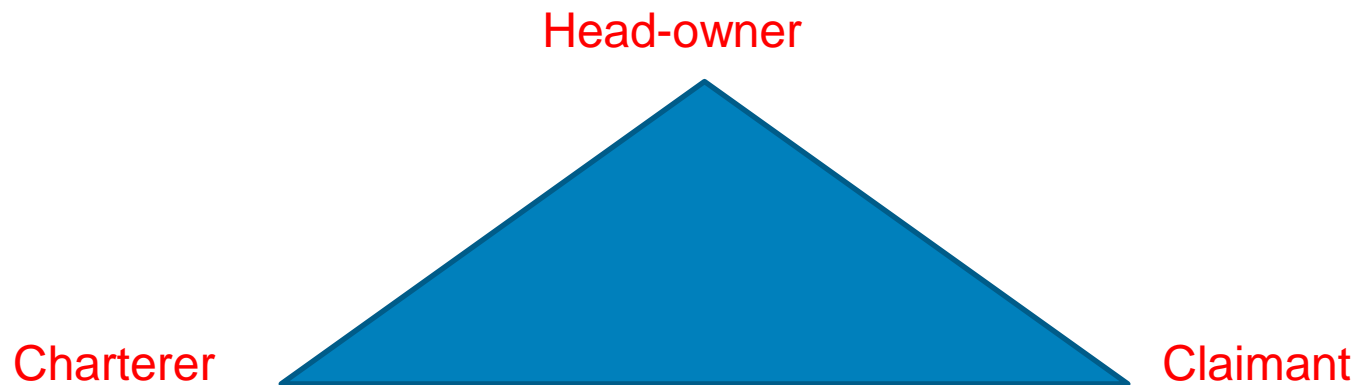


# Where does the right of Arrest come from?

- International Arrest Convention 1952. Widely adopted with over 70 ratifications. It unifies the rules on ship arrest.
- International Arrest Convention 1999 entered into force on 14 September 2014.
  - Only effective in the jurisdictions which have ratified it → relatively limited impact currently.
  - Significantly increases the categories of Maritime Claims (e.g. Insurance premiums and claims under MOAs).
  - Current signatories of the 1999 Convention are: Albania, Algeria, Benin, Bulgaria, Congo, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and Syria.
- National legislations – Lots of states enacted in whole or in part the provisions of either of the Arrest Conventions in their national laws.

- damage caused by any ship;
- loss of life or personal injury caused by any ship;
- salvage;
- agreement relating to the use or hire of any ship (e.g. Charterparty);
- agreement relating to the carriage of goods in any ship;
- loss of or damage to goods carried in any ship;
- general average;
- towage; pilotage;
- goods or materials wherever supplied to a ship for her operation or maintenance;
- construction, repair or equipment of any ship or dock charges and dues;
- wages of Masters, Officers, or crew;
- Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- disputes as to the title to or ownership of any ship;
- disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship; and
- the mortgage or hypothecation of any ship.

- Basic requirements usually include:
  - Having a maritime claim; and
  - the court having jurisdiction to arrest.
- Should the claim be against the owner of the vessel?
  - Under most Middle Eastern jurisdictions, maritime claims give right to arrest regardless of ownership.
  - There is still a debate if this gives the claimant a right to enforce against the vessel when the claim is made against non-owner.



- The court having jurisdiction to arrest:
  - is the court of the state where the arrest is made/where the vessel is located, irrespective of whether it has jurisdiction to decide on the merits of the case; or
  - is the court of the state having jurisdiction to hear the underlying claim.
- In most Middle Eastern jurisdictions, the location of the vessel will give jurisdiction to the local court to hear the arrest application.. These laws will require the claimant to file substantive proceedings within short time limits of the arrest order being issued.
- In certain circumstances, a successful arrest application will bring jurisdiction to the court to hear the underlying claim.



- Can you arrest other vessels not related to the claim?
  - The 1952 Convention provides that a claimant may arrest the ship in respect of which a maritime claim arose or any other ship owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship.
  - The following maritime claims are excluded usually from the right to sister ship arrest:
    - Disputes on title or co-ownership, possession, employment and earnings; and
    - Mortgage claims.
- The position is slightly different under some national laws. Sister-ships can be arrested only if owned by the same “*debtor*”.

- The General rule is that a vessel may be released:
  - Upon the underlying claim being settled; or
  - When sufficient security has been provided in a satisfactory form. In the absence of agreement between the parties as to the sufficiency and form of the security, the court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.
  
- The need for security is not required when a ship has been arrested in respect of claims arising out of any dispute as to ownership or possession of the ship.
  
- Types of security include:
  - Cash deposit;
  - Bank guarantee; and
  - P&I Club LoU.

- The Theory (Kuwait, UAE, Bahrain, Qatar and Oman)
  - National laws include provisions regulating ship arrest.
  - A vessel can be arrested for a “*maritime claim*”
  - Maritime claims are defined as per the Arrest Convention 1952.
  - Vessel being in the country will give jurisdiction to arrest.
  - Very powerful tool - Vessel can only be released by a: (i) Bank Guarantee or Cash Deposit; (ii) Security accepted by the claimant (LOU); or (iii) successful objection/grievance.
- Jordan, Iraq and Lebanon
  - National legislations do not regulate ship arrest.
  - Possible to *attach* but requires; (i) quantified , (ii) *prima facie* and (iii) due claim. Alternatively, the existence of a risk over the collateral of the debt/claim.
- In practice, ship arrest:
  - Possible and very common in UAE, Bahrain and India.
  - Possible but not friendly in Oman ,Jordan, Iraq and Lebanon.
  - Not possible in Kuwait and Qatar (currently).

- Possible for maritime claims; e.g. Collisions, damage to property, insurance premium ?
- Practical issues: POA, translation of documents, fees and counter-security...etc
- Application to the Urgent Matters Judge
- Application heard ex parte (without notice)
- Counter-security? Depends where.
- Exposure to maintaining the vessel while under arrest - depends where!
- Substantive proceedings to:
  - (a) validate and maintain the arrest order
  - (b) make a claim on merits in the appropriate forum / jurisdiction

- Unregulated by the Arrest Conventions. Varies from one State to another.
- Whether counter-security is required is entirely at the discretion of national courts.
- The courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including in consequence of:
  - the arrest having been wrongful or unjustified; or
  - excessive security having been demanded and provided.

- P&I Clubs letters of Undertaking
  - An undertaking to pay subject to certain conditions.
  - Not recognised by most local courts in the region.
  - Secured when issued by an IG P&I Club or other club supported by fix premium insurer – strong financial position .
- What to look for in an LOU?
  - Conditions to pay – final judgment, arbitration award or settlement.
  - Jurisdiction of the judgment / award triggering payment .
  - Term of payment.
  - Law & Jurisdiction of the LOU.
  - Undertaking to appoint lawyers to accept service.
- Bank Guarantees
  - Challenging to arrange in a timely manner
  - Costly



Any questions?



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