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# **Ship Arrest in China and Other Interim Remedies**

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# Arrest in China



## International Conventions

- Special Maritime Procedure Law of the PRC (implemented on 1 July 2000) (“MPL”)
- Supreme Court’s Interpretation of Certain Problems concerning the Application of the Maritime Special Procedure Code of the PRC (implemented on 1 February 2003)
- Civil Procedure Law of the PRC (latest version implemented in 2008)
- Maritime Code of the PRC (implemented 1 July 1993)

# Jurisdiction of arrest

- Arrest applications should be filed with the court that has jurisdiction over the place where the vessel is located, regardless of any jurisdiction or arbitration agreement.
- The arresting court generally retains jurisdiction over the substantive claim unless there is a jurisdiction or arbitration agreement.
- Generally courts should apply the law of the agreed seat of arbitration to determine effectiveness of the arbitration clause.

# Preconditions to arrest

## Circumstances permitting arrest

- Pre-judgment (Art 23 MPL)
  - A maritime claim against an owner or demise charterer
  - A maritime claim giving rise to a ship mortgage
  - A maritime claim related to ownership or possession of a ship
  - A maritime claim that gives rise to a maritime lien

# Preconditions to arrest

## Circumstances permitting arrest

- Post-judgment (Art. 22 MPL)
  - enforcement of a court judgment, arbitral award or other court order
- Arrest of sister ships is possible (but not for claims relating to ownership or possession of a ship)

# Preconditions to arrest

- **Maritime Claims (Art 21 MPL) include:**
  - loss of or damage to property caused by ship operation;
  - salvage and general average
  - towage
  - claims arising from a contract for sale of a ship
  - claims for insurance premiums and P & I Club calls

# Preconditions to arrest

## Maritime Liens (Maritime Code, Art 22):

- (1) claims by the Master or crew members for wages, crew repatriation, etc;
- (2) claims for loss of life or personal injury incurred during the operation of the vessel;
- (3) claims for the vessel's tonnage dues, pilotage dues, harbour dues and other port charges;
- (4) claims for salvage remuneration; and
- (5) claims for property loss or damage resulting from tortious acts committed in the course of the vessel's operation.

# Arrest procedure

## Arrest application

- Claimant submits a written application to the court.
- Power of Attorney, Certificate of Legal Representative and Certificate of Incorporation.
- Chinese translations.
- Notarisation and legalisation.
- Court fees - 0.51% to 1% of claim amount (capped at RMB 5,000)

# Arrest Procedure

## Counter Security

- May be demanded at court's discretion but in practice it is always required.
- Type: Bank guarantees, LOUs or cash deposits.
- Amount:
  - usually in line with the losses the shipowner may suffer as a consequence of the arrest.
  - “30 days hire” formula

# Arrest Procedure

- Arrest order is granted by court within 48 hours of receipt of arrest application and then served on the vessel
- Security negotiated or determined by the court
  - Must not exceed the value of the vessel or be so excessive as to cause loss to the respondent
- Proceedings must be commenced within 30 days

# Wrongful arrest

- A dissatisfied party may apply for a review of the arrest order within 5 days of receipt of the Order.
- If there is wrongful arrest, claimant will have to indemnify shipowner for its losses.
- No specific rules in relation to the test for wrongful arrest, leaving the courts with a wide discretion.
- Courts normally adopt the “bad faith” test.

# Auction sale

- If security is not provided within 30 days, Claimant may apply to court for vessel to be auctioned
- Court announces auction.
- Auction conducted by auction committee.
- Vessel delivered.
- Release order.
- Court announces sale.



# Priorities

- The priority of claims is as follows:
  - (1) legal costs;
  - (2) maritime liens;
  - (3) possessory liens;
  - (4) registered ship mortgages;
  - (5) other unsecured maritime claims.

# Evidence Preservation Orders

## Conditions:

- (1) The claimant is the party to the maritime claim;
- (2) The evidence to be preserved provides evidence in relation to the maritime claim;
- (3) The opponent party has a connection to the evidence to be preserved; and
- (4) Failure to impose evidence preservation immediately will result in loss or difficulty in obtaining evidence for the maritime claim.

# Evidence Preservation Orders

## Procedure:

- Written application
- Guarantee may be required
- Application accepted
- Order made within 48 hours
- Immediate execution
- Evidence taken and sealed

# Evidence Preservation Orders

## Objections:

- Objection to be made within 5 days.
- Court will reconsider within 5 days of objection.
- Execution of the order will continue but the evidence will be returned if the objection is accepted.

Penalty for wrongful application

# Maritime Injunctions

## Conditions:

- (1) The claimant has a specific maritime claim;
- (2) There has been a breach of legal or contractual provisions by the opponent party that needs to be redressed; and
- (3) In an emergency situation, failure to impose a maritime injunction immediately will cause, or increase, damage.

# Maritime Injunctions

## Procedure:

- Written application
- Guarantee may be required
- Application accepted
- Order made within 48 hours
- Immediate execution
- Period of detention - 15 days maximum

# Maritime Injunctions

- Objections:
  - Objection to be made within 5 days.
  - Court will reconsider within 5 days of objection.
  - Execution of the order will continue but the injunction will be cancelled if the objection is accepted.
- Penalties for failure to comply
- Penalties for wrongful application



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