



Ship Arrest Laws and Practice In PRC Maritime Courts

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I. Ship arrest is for maritime claims

- Article 21 of PRC Maritime Procedure Laws (PRC MPL):

An application may be made for the arrest of a ship with respect to the following maritime claims:

- (1) loss of or damage to property caused by ship operation;
- (2) loss of life or personal injury in direct connection with ship operation;
- (3) salvage at sea;
- (4) damage or threat of damage caused by a ship to environment, coastline or interests of other parties; measures taken to prevent, minimize or remove such damage; compensation paid in respect of such damage; costs for reasonable measures taken or to be taken for reinstatement of the environment; 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 subparagraph; goods supplied or services rendered to a ship for its operation, management, preservation or maintenance;

to be continue...

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- Article 21 of PRC Maritime Procedure Laws (PRC MPL):
 - (5) 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 expenses relating to the preservation of an abandoned ship and maintenance of its crew;
 - (6) any agreement relating to the use or hire of a ship;
 - (7) any agreement relating to the carriage of goods or passengers;
 - (8) loss of or damage to or in connection with goods (including luggage) carried on board a ship;
 - (9) general average;
 - (10) towage;
 - (11) pilotage;
 - (12) construction, re-construction, repair, conversion or equipment of a ship;

to be continue...

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- Article 21 of PRC Maritime Procedure Laws (PRC MPL):
 - (13) dues and charges of port, canal, dock, harbour and other waterway;
 - (14) crew's wages and other moneys, including costs of repatriation and social insurance contributions payable on behalf of the crew;
 - (15) disbursements incurred on behalf of a ship or its ship-owner;
 - (16) insurance premiums (including mutual insurance calls) in respect of a ship, payable by or behalf of the ship-owner or demise charterer;
 - (17) any commissions, brokerages or agency fees payable in respect of a ship by or on behalf of the ship-owner or demise charterer;
 - (18) any dispute in connection with ownership or possession of a ship;
 - (19) any dispute between co-owners of a ship in connection with the employment or earnings of the ship;
 - (20) a ship mortgage or rights of the same nature; and
 - (21) any dispute arising out of a contract for sale of a ship.

II. When to apply for a Ship

- Before a lawsuit or an arbitration is commenced
 - Lawsuit or arbitration shall be commenced within 30 days since the ship arrest
 - Ship arrest is not an action *in rem* under PRC laws, but a measure to preserve the property of the responsible party for the claims
- After a lawsuit or an arbitration is commenced
- Ship arrest can be applied for lawsuits and arbitration commenced in foreign jurisdictions

III. Which ship can be arrested

- Arrest the subject ship (Article 23 of PRC MPL)
 - The maritime court may arrest the ship concerned in any of the following circumstances:
 - 1) the ship-owner is liable for the maritime claim and is the owner of the ship when the arrest is effected;
 - 2) the demise charterer of the ship is liable for the maritime claim and is the demise charterer or owner of the ship when arrest is effected;
 - 3) the maritime claim is based upon a ship mortgage or rights of the same nature;
 - 4) the maritime claim relates to ownership or possession of a ship; or
 - 5) the maritime claim is secured by a maritime lien.

III. Which ship can be arrested

- Arrest the non-subject ship (Article 23 of PRC MPL)
 - The maritime court may arrest other ship or ships which, when the arrest is effected, is or are owned by the ship-owner, demise charterer, time charterer or voyage charterer who is liable for the maritime claim, except for claims with respect to ownership or possession of a ship.

IV. The application of a ship arrest

- Ship arrest is only an interim actions taken by the court
- Documents to be submitted to the court
 - The application form
 - POA
 - Prima facie evidences
- The court is required to make the decision whether to arrest the ship within 48 hours
 - The 48 hours count from the time the applicant put the counter-security to the court

V. The provision of counter-security

- The form of counter-security that is acceptable to PRC maritime courts:
 - cash
 - guarantee issued by Chinese banks
 - guarantee issued by Chinese branches of foreign banks
 - guarantee issued by Chinese insurance company
- guarantee issued by foreign banks or international P&I club is NOT acceptable

V. The provision of counter-security

- How much is required for the counter-security
 - Normally, 30-day's hire or demurrage

- When the counter-security can be returned
 - Until the relevant principal dispute is solved by judgment or arbitration or amicable settlement;
or
 - The dispute regarding wrongful arrest is solved by judgment or arbitration or amicable settlement.

VI. The arrest of the ship

- Ship arrest decision and order will be served by the court to the ship to arrest her
- “Active arrest” of domestic trading vessels
 - The ship is not physically arrested, but only the transfer of the ownership and setting mortgage on the ship are prohibited during the period of arrest
 - PRC MPL provides that the period of “active arrest” could only be limited to allow the vessel to complete the current voyage;
 - However, PRC Civil Procedure has no limit of only one voyage
 - Advantage and disadvantage of the “active arrest”.

VI. The arrest of the ship

- What if more than one party applies for the arrest of the same ship
 - First come, first arrest
 - No right of privilege is obtained by arresting a vessel

VII. The objection against ship arrest

- Objection filed by the respondent of the ship arrest
 - Objection shall be filed by the respondent to the same court issuing the arrest order within 5 days since the ship arrest
 - The ship arrest will remain during the period of ship arrest
 - The court will not consider any substantive issues during the procedure of ship arrest
 - The court shall make their decision against the objection within 5 days

VII. The objection against ship arrest

- Objection filed by the interested parties
 - No time limit for the interest parties to file the objection, but shall be as soon as practically possible
 - Ship owner or the bareboat charterers are the interested parties to file objection to the ship arrest

VIII. Provision security to lift the ship arrest

- To file objection or to provide the security firstly?
- The provision of security by the respondent to lift the ship arrest
 - The form and the amount of the security can be negotiated between the applicant and the respondent
 - When no agreement on the form and/or the amount of the security can be reached, the respondent can be put the security to the court to lift the ship arrest

IX. Wrongful ship arrest

- What is a wrongful ship arrest?
 - According to PRC MPL, the ship arrest is wrong
 - The applicant lose the case against the respondent
- The compensation of the wrongful ship arrest
 - The earning loss of the ship during the period of the ship arrest
 - The obligation of the respondent to mitigate his damage



Thanks!

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