

HILL DICKINSON

ARREST REGIMES

**Comparing English law, and
the position under the Arrest
Convention 1952 and the Arrest
Convention 1999**



Shipping 'at a glance' guide 10

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	English law Supreme Court Act 1981 ("SCA 1981") Civil Procedure Rules Part 49 Admiralty Court Practice Direction	Arrest Convention 1952 (International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships)	Arrest Convention 1999 (International Convention on Arrest of Ships 1999)
1. Who can arrest?	Any person with a claim listed in 2 below.	Claimant "who alleges that a maritime claim exists in his favour". See 2 below.	Claimant "means a person asserting a maritime claim". See 2 below.
2. For what claims can an arrest be made?	<p>Claims include:-</p> <p>(a) any claim to the possession or ownership of a ship or share in a ship;</p> <p>(b) dispute between co-owners of a ship as to e.g. her employment;</p> <p>(c) claim "in respect of mortgaged ship";</p> <p>(d) any claim for damage suffered or done by a ship;</p> <p>(e) claims for death, or personal injury, caused by defect in ship or negligence of owners, charterers or persons in possession of ship;</p> <p>(f) claim for loss or damage to goods carried;</p> <p>(g) claim for breach of contract of carriage, e.g. charterparty, bill of lading (but must relate to carriage in a specific vessel, <i>The Lloyd Pacifico</i> [1995] 1 Lloyd's Rep. 54);</p> <p>(h) "claim in the nature of salvage";</p> <p>(i) "claim in the nature of towage";</p> <p>(j) "claim in the nature of pilotage";</p> <p>(k) goods or materials supplied to a ship for "her operation or maintenance";</p> <p>(l) construction, repair, of ship's equipment;</p> <p>(m) dock charges, or dues;</p> <p>(n) master or crew wages;</p> <p>(o) disbursements made on behalf of the ship;</p> <p>(p) general average act;</p> <p>(q) bottomry;</p> <p>(r) collision liabilities; or</p> <p>(s) oil pollution liabilities; SCA 1981, ss20(1)-(6).</p>	<p>"Maritime claims" which "arise out of":-</p> <p>(a) damage caused by a ship e.g. collision;</p> <p>(b) death or personal injury caused by ship or operation of ship;</p> <p>(c) salvage;</p> <p>(d) agreement for use or hire of ship e.g. charterparty;</p> <p>(e) agreement relating to carriage of goods e.g. bill of lading;</p> <p>(f) loss or damage to goods (inc. luggage);</p> <p>(g) general average;</p> <p>(h) bottomry;</p> <p>(i) towage;</p> <p>(j) pilotage;</p> <p>(k) goods, materials supplied for ship's maintenance or operation;</p> <p>(l) construction, repair of equipment or dock charges or dues;</p> <p>(m) wages of master, officers and crew;</p> <p>(n) master's, agent's, shipper's disbursements made on behalf of vessel;</p> <p>(o) disputes as to ownership of ship;</p> <p>(p) disputes between co-owners of a ship as to e.g. employment; or</p> <p>(q) mortgage or hypothecation of any ship.</p>	<p>"Maritime claims" which "arise out of" :-</p> <p>(a) loss or damage caused by the operation of the ship e.g. collision;</p> <p>(b) death or personal injury, whether on land or on water, in direct connection with the operation of the vessel;</p> <p>(c) salvage;</p> <p>(d) damage or threat of damage to the environment, clean up costs and reasonable steps taken to avoid environmental damage;</p> <p>(e) wreck removal;</p> <p>(f) agreement for use or hire of ship (e.g. charterparty);</p> <p>(g) agreement relating to carriage of goods (e.g. bill of lading) or passengers;</p> <p>(h) loss or damage to or in connection with goods (inc. luggage);</p> <p>(i) general average;</p> <p>(j) towage;</p> <p>(k) pilotage;</p> <p>(l) goods, materials, provisions, bunkers, equipment (including containers) or services supplied for ship's operation or maintenance;</p> <p>(m) construction, repair, converting, or equipment;</p> <p>(n) port, canal and pilotage dues;</p> <p>(o) wages and other sums due to master, officers, and crew for employment inc. "costs of repatriation and social insurance contributions";</p> <p>(p) master's, agent's, shipper's disbursements made on behalf of the vessel;</p> <p>(q) insurance premiums (including P&I calls) "payable on behalf of the shipowners or demise charterer";</p> <p>(r) commissions, brokerages, agency fees payable in respect of the ship;</p> <p>(s) disputes as to ownership or possession of ship;</p> <p>(t) disputes between co-owners of a ship as to e.g. employment;</p> <p>(u) mortgage or hypothecation or any charge of the same nature of any ship; or</p> <p>(v) dispute arising from contract for sale of ship Article 1.</p>

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3. Arrest for maritime lien in addition to claims in 2 above?	Yes. SCA 1981, s21(3). See <i>Maritime Liens at a Glance</i> .	Yes. See <i>Maritime Liens at a Glance</i> .	See <i>Maritime Liens at a Glance</i> .
4. Arrest for MOA or other ship sale claim?	No. Freezing injunction may be available preventing sailing of the vessel.	No.	Yes. Article 1(v), "dispute arising from contract for sale of ship ".
5. Arrest for unpaid insurance premiums?	No. (The Sea Friends [1991] 2 Lloyd's Rep. 322. The Sandrina [1985] 1 Lloyd's Rep. 181).	Not recognised as a specific claim.	Yes. Article 1(q), "insurance premium payable on behalf of the shipowners or demise charterer".
6. Arrest for security?	Yes. Traditionally arrest under English law is a substantive step. Proceedings may continue after arrest. Proceedings may then be stayed if foreign court or arbitration proceedings have been commenced. As a condition of the stay the court may order security. English courts may be asked to order arrest where proceedings have been commenced in a party to the Brussels or Lugano Conventions (Civil Jurisdiction and Judgments Act 1982, s.26). In practice security will normally be posted on behalf of owners to enable vessel to sail.	Yes. Articles 2, 4, 5 & 7.	Yes. Article 2.3.
7. Arrest to found jurisdiction?	Yes. See 6 above. Jurisdiction of English court can be challenged on basis that there is a more convenient forum. If proceedings on the merits of the claim are maintained outside of England in breach of an English jurisdiction/arbitration clause, the defendant may be entitled to an injunction restraining the claimant from proceeding further before the foreign court (see The Maciej Rataj [1995] 2 Lloyd's Rep. 302. The Anna H [1995] 1 Lloyd's Rep. 11, for the relationship between arrest and the Civil Jurisdiction and Judgments Conventions which apply where the defendant is domiciled in the EU, Switzerland or Norway).	Yes. Convention does not create substantive rights (Art 9). However, if- (a) Claimant is resident in arresting state; or (b) claim arose in arresting state; or (c) claim concerns voyage during which arrest made; or (d) certain collision liabilities are concerned; or (e) case concerns salvage; or (f) mortgage claim; or (g) domestic law otherwise gives the court jurisdiction; then case may proceed on its merits in arresting state. Art 7.	Yes. Unless parties "validly agree or have agreed to submit the dispute to" another court or arbitration. Article 7.
8. Arrest for arbitration claim?	Indirectly, yes. As in 7 above, proceedings will continue before the English court until a successful application is made to the court to "stay" proceedings. The court may direct as a condition of the stay that security be provided for the arbitration claim (or that the vessel remains under arrest). Arbitration	No specific provision. Question for court in which the arrest sought as to whether will stay proceedings in favour of arbitration and order substitute security.	Yes for security (Article 2.3). Question for court where arrest sought as to whether will stay proceedings in favour of arbitration.

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9. Arrest to enforce judgment or arbitration award?	Not a maritime claim (<i>The Bumbesti</i> , The Times 22 July 1999, cf. <i>The Despina GK</i> [1982] 2 Lloyd's Rep. 555, <i>The Alletta</i> [1974] 1 Lloyd's Rep. 40). See 21 below for arrest after judgment when existing security proves inadequate.	Not covered specifically. Arbitration award not maritime claim in its own right.	Arrest "does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument". Article 1.2.
10. Arrest of vessel?	Yes. If- (a) claim against vessel under 2 above; and (b) the defendant was when the cause of action arose the owner, charterer, or in possession or control, of the vessel; and (c) at time action is commenced, defendant is owner of the vessel in connection with which the claim arose or its bareboat charterer (prevents e.g. arrest by bunker supplier of vessel on time charter, <i>The Yuta Bondarovskaya</i> [1982] 2 Lloyd's Rep. 357). SCA 1981, s21.	Yes. If flying flag of party to Convention.	Yes. Whether or not flying Convention flag.
11. Arrest of bareboat/demise chartered vessel for claim against demise charterer?	Yes. Provided vessel to be arrested is the one in respect of which claim arises (or can arrest another vessel owned by bareboat charterer). SCA1981, s21, Admiralty Practice Direction para 6.2(4).	Yes. Provided that vessel arrested is that in connection with which claim arose (or other vessel owned by demise charterer). Article 3.4.	Yes. Provided that vessel arrested is that in connection with which claim arose (or other vessel owned by demise charterer). Art 3(1).
12. Arrest of time or voyage chartered vessel for claim against charterer?	No. However vessel owned by that charterer is vulnerable to arrest (<i>The Span Terza</i> [1982] 2 Lloyd's Rep. 532, <i>The Sextum</i> [1982] 2 Lloyd's Rep. 532).	No specific right but Convention is ambiguous. Article 3 can be interpreted as permitting arrest in some jurisdictions (see discussion in <i>The Spirit of Independence</i> [1999] 1 Lloyd's Rep. 43).	No.
13. Arrest for claim against manager or operator?	No (unless manager acted as agent of the shipowner or demise charterer in which case claim is really against the owner).	No specific right but see 12 above.	Permitted for claim which "is secured by a maritime lien" recognised by court of place of arrest. Article 3.1(e).
14. Sister-ship arrest (for claim against owner)?	Yes. If defendant "beneficial owner of all the shares" in the sistership. SCA 1981, s. 21(1)(4). (<i>The Eppo Agnic</i> [1988] 2 Lloyd's Rep. 411, <i>The Nazym Khikmet</i> [1996] 2 Lloyd's Rep. 362).	Yes. Sister-ship "deemed to be in same ownership when all shares owned by the same person or persons". Article 3.2.	Yes. Provided sister-ship owned by person against whom claim is maintained. Article 3.2.

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15. Must vessel fly flag of party to Arrest Convention?	No.	Article 2 suggests that such a limitation may apply but local law commonly extends the scope of application.	No. Article 8.1.
16. Associated ship arrest?	No	No. Local law may permit it.	No. Local law may permit it.
17. Arrest of cargo and/or freight?	Proceedings possible against freight by service of <i>in rem</i> Claim Form on cargo. Freezing injunction may also be available.	No provision in Convention. Matter for local courts.	No provision in Convention. Matter for local courts.
18. Arrest of bunkers?	No. Freezing injunction may be available.	No provision in Convention. Matter for local courts.	No provision in Convention. Matter for local courts.
19. Caveat against arrest?	Yes. Shipowner must be prepared to post security and may submit to the jurisdiction of the English Courts. Admiralty Practice Direction, para 6.3(1).	No provision in Convention. Matter for local courts.	No provision in Convention. Matter for local courts.
20. Caveat against release of vessel from arrest?	Yes. Claimant obtaining caveat against the release of a vessel already arrested will receive warning of any application made to the court. Admiralty Practice Direction, para 6.5(2).	No provision in Convention. Matter for local courts.	No provision in Convention. Matter for local courts.
21. Subsequent arrest for same claim (e.g. for top-up security)?	Not prohibited as such (<i>The Alletta</i> [1974] Lloyd's Rep. 40 suggests arrest possible before judgment but not for top-up security afterwards). However, following <i>The Tjaskmolen</i> (No. 2) [1997] 2 Lloyd's Rep. 476 where security is provided for release, re-arrest is unlikely to be possible. If a letter of undertaking has been given by a P&I Club, it will usually prohibit re-arrest for the same claim.	Not permitted to re-arrest for same claim against a party to the Convention, where security provided for release from arrest. Article 3 (3).	Only permitted if:- (a) security first obtained inadequate, or (b) provider of security unlikely to fulfil his obligations; or (c) vessel improperly released from arrest. Article 5.
22. Amount of security.	Sufficient security for "reasonably best argued case" (<i>The Moscanthy</i> [1971] 1 Lloyd's Rep. 37, Tribels [1985] Lloyd's Rep. 129). Amount of security should be limited to the value of the ship.	"Sufficient bail or other security". Maximum amount should be limited to ship's value. Article 5.	"Sufficient security in satisfactory form". Maximum amount should be limited to ship's value. Article 4.2.
23. Review of amount of security?	Yes. Review by application to court possible. Plaintiff demanding additional security can be penalised in costs (<i>The Polo II</i> [1977] 2 Lloyd's Rep. 115).	Local law may provide relief. Article 5 provides that "in default of agreement between the sufficiency of the bail or other security the court shall determine the nature and amount thereof".	Yes. Owner may apply at any time to local court to have security "reduced, modified or cancelled". Article 6.5.

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24. Has the provider of security a right to seek a review of the security provided?	A P&I Club or other insurer providing an LoU will not be a party to the claim giving rise to the claim which resulted in arrest or threatened arrest. The LoU is a contract however and the provider may have a right to seek a remedy where e.g. the LoU was obtained on the basis of misrepresentation.	Local law may provide a remedy by e.g. interpreting Article 5 broadly.	Yes. Provider of security may apply to the court "at any time... to have the security reduced, modified or cancelled". Article 6.5.
25. Form of security prescribed?	Bail or payment into court. P&I Club letters of undertaking are commonly accepted by claimants but a claimant can (probably) insist on bail (<i>The Saudi Star</i> (unreported)).	Bail or "other security". Article 5. See 21 above.	Security in "satisfactory form". Article 4.1.
26. Is Counter security required?	No (but in <i>The Tjaskmolen</i> (No. 2) [1997] 2 Lloyd's Rep. 476 security was allowed to remain in place on condition that counter security was provided). If a freezing injunction is used to "arrest" e.g. bunkers an undertaking in damages is likely to be required.	Not specifically covered. Local law will govern the question.	Article 6 allows the court to order security.
27. Claim for wrongful arrest?	Yes but difficult to establish. Claim for wrongful arrest usually requires bad faith.	Not specifically covered. Local law will govern the question.	Article 6 allows the court to award damages where the arrest is wrongful or excessive security has been demanded.

Countries which apply the Arrest Convention 1952

Country	Country
Algeria	Grenada
Anguilla	Guyana
Antigua and Barbuda	Guinea
Bahamas	Haiti
Belgium	Holy See (Vatican)
Belize	Irish Republic
Benin	Italy
Bermuda	Ivory Coast
British Virgin Islands	Kampuchea (Cambodia)
Burkina Faso	Kiribati
Cameroon	Latvia
Cayman Islands	Luxembourg
Central Africa Republic	Malaysia
Chad	Montserrat
Comoros	Morocco
Congo	Mauritania
Costa Rica	Mauritius
Croatia	Netherlands
Cuba	Niger
Denmark	Nigeria
Djibouti	Norway
Dominican Republic	Paraguay
Egypt	Poland
Falkland Islands and dependencies	Portugal
Fiji	Sarawak
France	Senegal
French Overseas Territories	Seychelles
Gabon	Slovenia
Germany	Solomon Islands
Gibraltar	Spain
Greece	St Helena

(cont'd...)

Country (...cont'd)

St Kitts and Nevis

St Lucia

St Vincent and the Grenadines

Sudan

Sweden

Switzerland

Syrian Arabic Republic

Togo

Turks and Caicos

Tuvalu

United Kingdom of Great Britain and Northern Ireland
(and including Channel Islands)

United Kingdom (Overseas Territories)

Zaire

Note On the Arrest Convention 1999

At the time of this Edition, the 1999 Convention is not yet in force and looks unlikely to come into force for some time.

The Convention will come into force 6 months after 10 states have expressed their consent to be bound by it. At present, we understand that only 5 have done so (Bulgaria, Estonia, Latvia, Spain and the Syrian Arab Republic).

Notes

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Hill Dickinson's marine expertise is internationally renowned. The firm is also a major force in insurance and is well respected in the company and commercial arena. It has an award-winning property practice and is widely regarded as a leader in the fields of commercial litigation, employment, intellectual property, NHS clinical/health-related litigation and private client.

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