

Ship Arrest in Iran

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Until recently, Iran has not been considered as a potential jurisdiction for maritime arrests due to the applicability of the international sanctions and the complexities those sanctions entailed. Now that Iran is beginning to open up for international business, coupled with a sharp downturn in the regional shipping market, the ability to arrest ships to secure maritime claims is a frequent topic of enquiry in the shipping industry once again. This article gives an introductory overview of how a claimant can obtain a vessel arrest in Iran and the procedures to which it must adhere.

The Two Ways to Arrest a Ship in Iran

Surprisingly, Iran's Maritime Code does not contain any specific provisions governing the arrest of vessels to secure maritime claims. Furthermore, Iran is not a signatory to the International Convention Relating to the Arrest of Sea-Going Ships 1952 nor the International Convention on the Arrest of Ships 1999 (together the 'Arrest Conventions'), which offer a uniform set of laws and procedural rules on all aspects of ship arrests for contracting States. For example, the Arrest Conventions list the nature of debts which a vessel can be arrested against, referred to as 'maritime debts'.

Whilst Iran is a party to the International Convention for the Unification of Certain Rules of Law Relating to Maritime Lien and Mortgages, Brussels 1926, in practice, a legal framework for the enforcement of maritime liens has not been implemented in Iran.

In the absence of incorporated international law, and the omission from the Iranian Maritime Code of arrest provisions, the Iranian Courts will grant a claimant an arrest order pursuant to two civil law procedural applications, as follows.

The first method of making an arrest application in Iran is to issue a claim pursuant to Article 108 of the Iranian Civil Procedure Act, which reads as follows:

[In a civil action] the Claimant, either prior to the commencement of an action and the submission of a statement of claim, or at any time during the proceeding, but prior to a final judgment, may, on the satisfaction of the conditions below, ask the Court for security for judgment and the Court is obligated to order same;

a) The subject matter of the dispute is pursuant to an official document [dispute of title ownership of property where there is a title deed etc],

b) The Respondent may dilute or divert his assets,

c) In respect of commercial documents or such deed of commercial value against which the Court must issue an Order for security,

d) The Claimant must deposit with the Court an amount equal to an estimate of the damages that the Respondent may suffer.

The Court of competent jurisdiction will be responsible to determine the value of the estimate of damages referenced above.

At a high-level view, a claimant can petition the court at any time for an attachment order over a debtor's assets, including a vessel registered in the debtor's name, where the debtor owes a sum of money to the claimant. The nature of debt against which the vessel can be arrested is widely construed by the court to include any debt and is not limited to 'maritime debts'. Under Article 108, if an attachment order is granted by the judge, counter-security must be paid into the court, the sum of which shall be at least 10% of the claim value but determined by the judge in his discretion. The judge will then issue a letter to the relevant port authority where the vessel is located ordering its seizure. The claimant will then have 10 days from the service of the order on the vessel to file its substantive claim against the vessel owner.

Although under Article 108 the claimant can apply for an attachment order over the vessel during the course of the main claim itself, as per normal practice, the claimant will most likely seek to secure the attachment prior to filing the main claim.

The second manner in which an arrest can be obtained is pursuant to Article 310 & 316 of the Iranian Civil Procedure Code, set out below:

Section 310 – In circumstance where there is an urgency in rendering an expedited interim judgment, at the request of the interested party to the proceeding, the Court may issue an interim Order in an expedited manner.

Section 316 – The Interim Order pursuant to Section 310 can be made in respect of seizure of assets, order to undertake a deed or action, or against a deed or action.

This method involves an ex parte application to the court on an 'urgent' basis, which must evidence to the court that there is a risk that 1) the movable asset (vessel) will leave the jurisdiction and 2) there is no alternative asset available which can secure the claimant's claim. If convinced, the court will issue a provisional attachment order over the ship preventing it from leaving the jurisdiction. As with the Article 108 procedure outlined above, counter-security will be required. From the date of service of the arrest order, the claimant will have 20 days to file its substantive claim, failing which the arrest order will be lifted.

Other Considerations for Arresting Parties

Sister-ship arrests are possible under the Iranian legal system but only where the debtor is the legally registered owner of the sister-ship. The courts will not be prepared to lift the corporate veil and order the arrest of a vessel which is group owned, beneficially owned, chartered, managed or operated by the registered owner of the offending ship. For example, if Ship A has not paid for its bunkers and the registered owner is Owner A, the bunker supplier cannot arrest Ship B because it is beneficially owned by Owner A but the registered owner is a shell company called Owner B.

In a similar vein, a claimant cannot arrest a ship as security for charterer debts because the Iranian courts view the debt as a third party debt and will not permit attachment of property under the civil code if not owned by the debtor charterers.

Counter-security must be in the form of cash or an acceptable bank guarantee and will usually be in an amount ranging between 10-20% of the claimed sum. The court will not accept a Club Letter of Undertaking (LOU) although there is nothing preventing the claimant accepting a Club LOU and then requesting the court to release the vessel. The vessel can be released on the same day as the counter-security is deposited with the court.

If a claimant wishes to arrest a vessel in Iran, it should allow a few days for preparation of the documents. In theory, an arrest could be granted on the same day as the application but in practice it usually takes between 1-3 days before an arrest order is actually served on the vessel.

Restrictions and Risks

In both Article 108 and 310 actions, the claimant's claim must be equal to or greater than IR200,000 (approximately USD65,000) in order to obtain a provisional attachment.

In some instances, defendant ship owners are able to raise a wrongful arrest petition. Usually, the court deals with the merits of the wrongful arrest petition at the end of the case. Where the court dismisses the claimant's claim and the defendant ship owner can prove that damages arose from the arrest, the defendant ship owner shall be entitled to wrongful arrest compensation. Unlike neighbouring jurisdictions in the Gulf region, there is no requirement for the defendant ship owner to prove malicious intent on the part of the claimant. This represents quite a serious risk to claimants and means that they should be convinced of the validity of their claim before proceeding with an arrest application or otherwise risk having to pay wrongful arrest compensation.

Costs

Within a period of 10 days from obtaining an attachment order, the claimant must file its submissions on the merits of the claim and at such time a fixed fee of 3.5% of the claim amount is payable. There is no ceiling to the fee payable and it can, therefore, be quite high where large claims are concerned.

The successful party is able to recover the court filing fees and any expert fees incurred. There is, however, a general reluctance by the Iranian courts to allow recovery of professional legal fees.

Conclusion: Can you arrest?

Yes, it is possible to arrest a vessel in Iran to secure a claim against the vessel owners. Whilst there is no specific provision in the Iran Maritime Code, attachment of debtor property is routinely achieved to secure claims. These methods are extended to attachment of vessels to secure claims, regardless of whether such claims are 'maritime debts'. We believe that members of the shipping community will increasingly explore arresting vessels in Iran as trade opens up more with the country, particularly by those who supply services to vessels in the Gulf region. However, arresting parties should be confident that their claims are well supported and valid because of the increased risk of ship owners succeeding in wrongful arrest claims. This, in our view, is positive to the extent that it should filter out spurious claims.

Al Tamimi & Company partners with an experienced maritime organisation in Iran on arrest instructions and has exclusivity for Iran in the Shiparrested.com membership.