

THE AMERICAN CLUB

SHIP ARREST IN POPULAR JURISDICTIONS

船舶扣押



SHIP ARREST - ADMIRALTY JURISDICTION

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船舶扣押：海事管辖权



- All maritime countries have a special admiralty court or special admiralty jurisdiction within their regular courts.
- 所有的海洋大国都有特别设立的海事法院或者其普通法院具有特殊海事管辖权
- Special jurisdiction means special rules. 特殊管辖权代表特别规定



船舶扣押：海事管辖权（续）



- English admiralty jurisdiction goes back to 1340s.
- 英国海事管辖权的历史可追溯到1340s.
- English system the basis for admiralty jurisdiction in Hong Kong, Singapore, Australia, and New Zealand.
- 香港，澳大利亚和新西兰的海事管辖权体系都基于英国体系
- Each now have evolved their own legislation.



现在每个都发展了自己的立法



SHIP ARREST - BASIC CONCEPTS 船舶扣押：基本概念 4



- Ship arrest in common law systems is only possible *in rem* (against the thing) proceedings.
 - 英美法系统下船舶扣押只适用于对物诉讼程序
 - I.E. A maritime lien or statutory right to proceed *in rem*
 - 例如：船舶优先权或法定权利进行对物诉讼
- It does not matter where in the world the claim arises.
索赔纠纷在哪里发生没有很大影响

SHIP ARREST - MARITIME LIENS

船舶扣押：海事优先权



- Maritime liens for salvage, crew wages, damage done by a ship.
- 海事优先权适用于对船舶施行的救助，船员工资和船舶造成的损坏
- A maritime liens claimant can sue the ship *in rem* even if the ship has been sold to an innocent third party.
- 即使船舶被卖给无辜第三方，有海事优先权的索赔人也可对船诉讼
- In the USA, all maritime claims give rise to a maritime liens.

在美国，所有海事索赔均具有海事优先权



SHIP ARREST - STATUTORY RIGHTS

船舶扣押：法定权利



- Arrest Convention 1952, Article 1 is the basis for the statutory list in a number of jurisdictions:
- 1952年扣船公约的第一条 是很多管辖权下的法定清单的基础
 - Possession, ownership, or mortgage;
占有，所有权或抵押
 - Damage done by a ship;
船舶造成的损坏
 - Agreement for the carriage of goods by sea or for the use or hire of a ship. 海上货物运输合同约定或船舶的使用或租金的收取
 - Goods or materials supplied to a ship.
向船上供应的物品和物料
 - Salvage.
救助

SHIP ARREST - STATUTORY RIGHTS

船舶扣押：法定权利



- If the ship is sold between the time the claim arises and when the action is brought, no action *in rem* is possible.
- 从索赔提起之后到执行之前的时间段内，如果船舶被转卖，对物诉讼不可行
- If the real defendant is the time charterer, no action *in rem* is possible.
- 如果事实上的被告是租船承租人，对物诉讼不可行

SHIP ARREST - GENERAL PROCEDURE

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船舶扣押：一般程序



- The ship MUST be in the territorial waters of the arresting jurisdiction. 船舶必须在扣押管辖区域的领海以内
- Usually, but not always in port. 通常，但并不要求在港
- “Right of innocent passage” means no arrest unless claim arises in that jurisdiction. “无害通过权”表示除非该管辖区内有诉讼被提起，否则不被扣押
- If the vessel has stopped or anchored, she is no longer on “innocent passage”. 如果船舶停车或锚泊，该船不再享有“无害通过”



- Release by giving of security. 担保后给予释放
- Bail bonds, P&I Club undertakings etc. 保释金，协会担保等等
- Not all jurisdictions accept LoUs.
- 并不是所有的管辖权内都接受 Letter of Undertaking
- Counter-Security? E.G. China: 30% of claim or 30 days' hire, whichever lower.
- 担保的计算：例如 中国：30%的索赔额或30天租金，取数额较低
- Wrongful arrest difficult to establish.
错误扣船难以界定



- “True” sisters are under the same registered ownership.
- 真正意义上的姐妹船舶具有相同的注册船东
- Different registered ownership but deemed sister ships by piercing the corporate veil or treating the sale as a sham.
- 通过厘清公司关系或者虚假销售的情况下即使注册船东不同也可被视为姐妹船
- Ships owned by a charterer, may be deemed to be sister ships of a ship which an owner has chartered to the charterer.
- 承租人所有的船舶，可被视为另一船东租给该租家船舶的姐妹船
- “Associated” ownership in South Africa – no requirement to pierce the veil, just a common control test (proof of same group or “ultimate beneficial ownership”).
- 南非界定“关联船”-无需揭开面纱，只需常用控制测试即可（证明属于同一集团或者有“终极受益所有权”即可）

SHIP ARREST - SISTER SHIPS 船舶扣押：姐妹船舶

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- Fraud required in England to pierce the corporate veil.
- 在英格兰要证明欺诈需要揭开公司的面纱
- Easier in France, Italy, Spain but arrests still not commonly granted and frequently successfully challenged.
- 在法国，意大利和西班牙较为容易，扣押申请并不总是被批准而且经常成功地被质疑
- Lower test also in the USA – the defendant “so dominates and disregards” the corporate veil.
- 美国检验标准也较低- 被告因此把持且无视公司的面纱

SHIP ARREST - CHEAT SHEET 船舶扣押：备忘录

	Convention	Formalities	Speed	Security	Sister Ships	C-Sec	Wrongful Arrest
Aus	None	No PoA	1-24 hrs	Cash, LoU, Bank Gu'ee	Surrogate	No	"unjustified arrest"
PRC	1999	PoA	1-2 days	Cash, PRC LoU or Bank Gu'ee	Yes, w/ restrictions	Yes	Factual test
E&W	1952	No PoA	U 24 hrs	Subject to negotiations	Beneficial ownership	No	Bad faith or gross negligence
Hong Kong	1952	No PoA	Few hrs	Subject to negotiations or Bail Bond	Yes, but not associated	No	Malice or gross negligence
Sing	None	Warrant to Act	Few hrs	Bank Gu'ee or Club LoU	Ltd	No	Bad faith or gross negligence
SA	None	No PoA	1-2 hrs	SA Bank Gu'ee or Club LoU	Associated	No	"w/o reasonable and probable cause"
USA	None	No PoA	Few hrs	Bond	No but Rule B	No	Bad faith



- Uncertain markets means arrest is always a topical issue.
- 市场不定的情况下，船舶扣押始终是个重要问题
- Many advantageous jurisdictions. 很多有利的司法管辖
- Very powerful tool: can arrest a very expensive asset for a very small claim.
- 非常有力的措施：可以为一项小额索赔扣押贵重资产
- Arrest can be straightforward and cost effective in established jurisdictions.
- 在已建立的司法管辖区下，扣船非常直接且节约成本
- Not always necessary to submit to the local jurisdiction for the substantive claim BUT check.
- 不总是必须向当地管辖权机构递交实质性索赔，但扣船前要再核实
- P&I Club letters may or may not be sufficient security.
- 协会书面担保可能不够

Sister ship arrests possible.

扣押姐妹船的可能性



