

Why it is easy to arrest ships in Hong Kong

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Hong Kong law is very similar (but not identical) to English law upon which it is closely modeled.

- A ship, or one of her sister ships, may be arrested where:
- i. Claimant's cause of action carries with it a right of arrest; and
 - ii. An in rem writ has been issued; and
 - iii. The ship, or one of her sister ships, is available in Hong Kong; and
 - iv. No caveat against arrest has been entered.

The claimant's solicitor will apply to issue a warrant of arrest, supported by an affidavit 'to lead warrant'.

The warrant once issued is filed with the bailiff, together with request to execute the warrant and an undertaking to pay the costs of arrest.

The affidavit consists of a written statement of facts and information and belief, with the sources and grounds thereof and made under oath. It constitutes the only evidential requirement for arrest.

There are no specific requirements in the form of claim documents, apart from such minimum copy documents to be exhibited to the affidavit to establish a prima facie right to arrest. The affidavit must state certain specified details such as the nature of the claim, details of the parties and the ship.

The purpose of an action in rem is to obtain **security** in respect of a judgment of the court in that action and the court should not exercise its **jurisdiction** to arrest ships or to keep ships under arrest for other purposes. However, it is possible to invoke the exercise of the court jurisdiction to secure claims in arbitration where the law of the place governing the arbitration permits this.

Arrest purely to force the party on the receiving end to agree a foreign **jurisdiction** is ultra vires, or outside, the purpose of an action in rem.

Additionally, where a plaintiff has already commenced action in a foreign jurisdiction for the claim, any duplicate action in rem commenced locally will be considered vexatious and be liable to be set aside.

The court will not insist on hearing an entire action commenced by the issuance of a writ followed by an arrest. It remains open to the parties to agree an alternative jurisdiction (indeed this frequently does happen in cases of collisions in international waters).

Normally an agreed form of contractual **security** (usually a P&I Club letter of undertaking) is provided without the need for application to court. Alternatively, a bail bond can be provided to the satisfaction of the court. The adequacy of security in support of a bail bond is a subject of court discretion and the court will usually order bank or corporate sureties or the defendant to pay cash into court in lieu.

No **counter security** is required from a claimant. Where the plaintiff is foreign, the defendant can apply to the court for an order to compel the plaintiff to give security for the defendant's litigation costs, subject to the discretion of the court.

Court fees only amount to about equivalent to US\$300.

Solicitors' fees depend on numerous factors such as the time spent, complexity of the case, documents to be perused. Estimates can usually be given by solicitors for specific cases.

Bailiff's expenses for maintaining the vessel under arrest include watchman's fees, launch hire, provision of crew, victualling, bunkers etc., if required. These can be expected to be around HK\$3,500 per day, depending upon the particular circumstances, including the size of vessel arrested. They are recovered as a high priority claim ahead of maritime lien and mortgage claims.

To **release**, the following need to be filed:

- i. Release together with Praecipe; and
- ii. Solicitor's undertaking to pay bailiff's fee.

It is also a prerequisite that the agreement of the plaintiff and all caveators be obtained. The bailiff then releases the vessel. A release can usually be obtained promptly, subject to the requirements being satisfied (especially, of course, the provision of satisfactory security).

Claim documents will normally need to be in English or Chinese (the official language of the court).

No power of attorney from the claimant is necessary, although written instructions are invariably insisted upon.

Arrest documents can normally be issued within a matter of hours. These may, subject to certain difficulties, be issued and executed on **emergency application** to a duty judge out of normal hours. This can usually be achieved on the basis of the claimant's solicitors undertaking to issue a writ and swear an affidavit in support of the warrant at the first available opportunity when the court has re-opened.

Where it is desired to arrest a foreign ship which belongs to a port of a state having a consulate in Hong Kong for possession of the ship or for outstanding crew wages, notice of action must be sent to the consul and a copy of the notice annexed to the affidavit to lead warrant of arrest.

This article serves as a general overview only and must not be relied upon as constituting advice in any specific case. Advice should always be sought before taking steps in proceedings.