

## Arrest of ships in Italy

1. Italy is a party to the 1952 Brussels Convention on Arrest of Ships having ratified it by law no. 880 of 25.10.1977. The Convention entered into force in the Italian legal system on 9.5.1980.

If the Italian Courts have jurisdiction on the merits of the dispute the petition for arrest is to be filed before the Court having jurisdiction on the merits.

If the dispute is subject to a foreign jurisdiction (either ordinary Court or Arbitration Tribunal) the petition for arrest is to be filed with the Court within whose district the vessel to be arrested is.

In the latter case Italian jurisdiction can be seized if the vessel is within the district of the Court at least at the time when the grant of arrest is issued (and not just at the time it has been applied for).

2. Two pre-requisites must be satisfied by the claimant under our procedural rules in applying for arrest:

**2.1. *prima facie* evidence** of the claim (*fumus boni juris*): with the application for arrest containing claim submissions the claimant should produce evidence

of the claim showing that there are reasonable grounds to rule in the context of preliminary proceedings, such as arrest proceedings are, that the claim is likely founded;

**2.2. *periculum in mora*:** in the matter of arrest in general the claimant has the burden of giving also evidence of the poor financial standing of the defendant or in any event evidence that the claimant may lose any chance in the future of enforcing any favorable judgment in view of lack of sufficient assets of the debtor.

However, in the matter of arrest of ships Italian authorities rather unanimously suggested that under the 1952 Brussels Convention regime evidence of *periculum in mora* is not required and this principle has been uniformly accepted by our Courts.

3. The application for arrest must be filed with the competent Italian Court by a lawyer on behalf of the claimant being duly empowered through a Power of Attorney, which, if issued abroad, must be duly

notarized and, subject to certain exceptions, legalized.

4. Once the application for arrest and the supporting documents have been filed with Court and the President of the Court has appointed the Judge in charge of proceedings, this latter, even after having obtained any information which he may consider to be relevant, may decide either to grant the arrest *ex parte* whenever the time required for the defendant to appear may jeopardize the enforcement of any arrest, or to schedule a hearing so to hear the two parties' arguments before any decision on the arrest is taken.

5. If the arrest has been granted *ex parte* the Judge must in any event schedule a hearing for the defendant to appear and submit its defences.

At the hearing the Judge may even briefly examine witnesses or experts or in any event get information from the parties or even from a third party (i.e. Port Authority etc.).

Following this hearing the grant of arrest can either be confirmed, amended or set aside.

6. By the grant of arrest or even subsequently the Judge - having regard to all the circumstances of the case (i.e. if the application shows that the claim is to some extent doubtful and that the arrest may cause loss or damage to the respondent) - can order that the applicant deposits in Court within a certain time limit a counter-security to cover any claim of the respondent should at the end of the day the arrest prove to be wrongful.

Form and amount of the counter-security are in the discretion of the Judge. Bank guarantees from first class domestic banks are commonly accepted.

However, counter-security is ordered quite rarely by Italian Courts.

7. In the context of the decision of the Judge taken after having heard both parties (either at the hearing in contradictory or after the hearing following the *ex parte* grant of arrest), the Judge must also schedule a time-limit no longer than 60 days for the arresting party to start merits proceedings.

8. The order of arrest is served in the first instance from the Court's clerk onto the Harbour Master so that the vessel under arrest is prevented from sailing and clearance is denied. The grant of arrest should then be also served by the applicant to the Master and the Owners through Court bailiff.

9. The respondent can obtain the release of the vessel under arrest by filing a suitable security up to the amount for which the arrest has been granted. It is in the discretion of the Judge to decide what is a "suitable security".

In a matter of arrest of ships a first class P&I Club letter of undertaking is commonly accepted by claimants. However, should they not accept it, then the Judge is to decide if a bank guarantee (of an Italian bank), or another suitable form of security or cash deposit, is required having regard to the circumstances of the case.

10. The decision granting or denying the arrest can be appealed within fifteen days (starting to count from the date of the decision, if rendered at the hearing, or from the date of service of the said decision onto the parties' lawyers, if rendered out of the hearing) before a panel of three Judges sitting at same Court. The judge who rendered the appealed decision cannot sit within the panel.

The parties can file new factual circumstances and new submissions. The Court can obtain further information and documentation.

The Court hears the parties at a hearing scheduled at short notice in chambers and gives its decision within twenty days counting from the date of the deposit of the writ of appeal.

The decision on appeal cannot be further appealed.

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