

PEREZ CARRERA & CO
Attorney & Offshore Service.

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ARRESTING A VESSEL.

Article 164: The arrest decreed by the Maritime Court shall have as its purpose:

1. To assure that the proceedings will not have illusory effects, and to keep the defendant from transposing, dissipating, encumbering, alienating, or impairing properties susceptible of arrest.
2. To bring within the jurisdiction of the Panamanian Courts, cognizance of causes emerging within, or outside the national territory, as a result of facts, or acts related to navigation, when the defendant is outside its jurisdiction.
3. To physically seize property susceptible to arrest in order to make effective maritime liens over the same."

Article 166:

The petition for arrest which purpose is to acquire jurisdiction or to make effective maritime liens, must be filed together with security of US\$1,000.00 for the damages which the arrest may cause. Besides, the plaintiff must also consign additional security to the order of the Marshal of the Maritime Court in the amount of US\$2,500 as an advance for the expenses which may be brought about in the conservation and custody of the arrested vessel.

The amount of the security to be consigned for the damages that the arrest may cause in the case of petitions for arrest which purpose is to avoid that the owner disposes of his property in a way that no assets remain available to satisfy the plaintiff's claim, will be prudently fixed by the Maritime Judge, but in any case it shall not be less than twenty percent, nor more than thirty percent of the amount of the claim.

In cases where the arrest remains in effect for a long period of time, the Marshal may request the claimant to consign additional sums of money in order to cover the additional expenses incurred in the conservation, maintenance and custody of the vessel (if the deposit initially consigned is not sufficient).

Security may consist of: (Art. 100 Maritime Procedure Code)

1. Cash, which must be deposited by the interested party in the Banco Nacional de Panama, and obtain a certificate of guaranty.
2. Certified cheque, or cashier's cheque, drawn on banks duly licensed to operate in the Republic of Panama.
3. Surety bonds, issued by companies in the Republic of Panama authorized to engage in such transactions.
4. Any other guaranties agreed to by the parties.

To initiate the proceedings for the arrest of a vessel, the plaintiff must file an arrest petition together with the complaint against the vessel or its owner depending on whether he has an *in rem* or *in personam* action. The arrest petition must be accompanied by prima facie evidence proving the legitimacy of the claimant's rights.

Under normal circumstances, the plaintiff must provide a Power of Attorney to start the proceedings on his behalf.

The Power of Attorney and the certificate evidencing the legal existence of the plaintiff must be notarized and legalized by a Panamanian Consul.

If time is of the essence and we need to proceed immediately, the petition as a third party acting on plaintiff's behalf for which we would have to consign a bond as per the schedule previously established.

The Power of Attorney and the certificate of the legal existence of the plaintiff must be filed with the Court within the following two months.

The petition for the arrest must contain all the information relating to the date and time in which the arrest may be affected.

Forced sale in the arrest procedure:

The Marshal of the Maritime Court may order the sale of the vessel or of any other arrested property at a public auction if the property arrested is perishable or may suffer serious deterioration or decay due to the arrest.

In order to sale the vessel at public auction the Marshal must obtain authorization from the Court for which a hearing with the parties will have to be held.

The proceeds of the sale will be deposited with Banco Nacional de Panama until the case is decided.

Suspension and lifting the arrest

The arrest shall be suspended when the defendant puts up security to cover the amount claimed and the cost assessed by the Court.

The arrest may be lifted in the following cases:

1. When the defendant consigns security, guaranteeing the amount claimed in the complaint and the cost assessed by the Court;
2. When the plaintiff requests that the arrest is lifted;
3. On petition by the Marshall and after a hearing where the plaintiff, his representative or attorney has been notified in writing by the Marshall of the need to supply additional funds in order to meet the expenditures brought about in keeping the vessel in custody, and the plaintiff does not do so within three days after the request.

Security may consist of: (Art. 100 Maritime Procedure Code)

1. Cash, which must be deposited by the interested party in the Banco Nacional de Panama, and obtain a certificate of guaranty.
2. Certified cheque, or cashier's cheque, drawn on banks duly licensed to operate in the Republic of Panama.
3. Surety bonds, issued by companies in the Republic of Panama authorized to engage in such transactions.
4. Any other guaranties agreed to by the parties.

The parties may agree the amount, the nature and the conditions of the bond which will be substituted for the arrested vessel, and must jointly petition the Judge the lifting of the arrest, consigning at the same time the agreed bond.

If the parties do not reach an agreement as to the bond to be consigned, the Court, on motion by the defendant or a third party interested in the lifting of the arrest, shall set the amount of the security so that it covers the amount claimed in the complaint plus interest, costs and expenses. This amount shall not exceed the market value of the property.

Motion for Dismissal (ad instanter)

The law concedes to the owner of the attachment vessel or asset the possibility of a motion of dismissal (ad instanter),

exclusively under any one of the following circumstances:

- The attachment of an asset which does not belong to the defendant
- Violation of a previous and expressed agreement not to arrest or seize.
- Execution of an extinguished maritime.

Who server solicits dismissal must present attesting proof that the attachment is inadmissible. One the recourse has been accepted, the Court will summon the plaintiff to be appear in due course before a special hearing. At the hearing, the plaintiff must be proving that the attachment proceeds. Should the contrary be the case the Court will immediately order to Sheriff to lift the same.

LEGAL FEES

Legal fees are agreed by the lawyers and the client subject to the following conditions:

- a) The amount of the claim.
- b) The purpose of the claim.
- c) The complexity of the case.