

Panama

Jorge Loaiza III

Part I. Arrest of Vessels

*The chapter has been reviewed by the Author
and is up-to-date as of March 2026*

LOAIZA

PANAMA

*Jorge Loaiza III*¹

Jorge Loaiza III studied at Universidad Santa Maria La Antigua, Panama (Degree in Law and Political Science, 1988) and Southern Methodist University, Dallas (LLM in International and Comparative Law, 1989). He was admitted to the Bar of the Republic of Panama (1988). He worked as a foreign associate with Kelley Drye & Warren in Washington D.C. in 1989. He joined the Panamanian law firm Arias, Fabrega & Fabrega in 1990. He speaks Spanish and English and practices corporate law and, primarily, maritime law, including maritime litigation as Partner.

¹ The author wishes to acknowledge the contribution of Rogelio de la Guardia, who untimely passed away on 23 Jun. 2009, who authored the prior versions of this chapter.

LOAIZA

Table of Contents

List of Abbreviations	vii
Part I. Arrest of Vessels	1
INTRODUCTORY NOTE	1
CHAPTER 1. Sources of Local Law	1
CHAPTER 2. International Conventions	2
2.1. Multilateral conventions	2
2.2. Bilateral conventions	2
CHAPTER 3. Competence of Courts or Other Authority	2
3.1. Territorial extent of the jurisdiction of the maritime courts	2
3.2. Arbitration as an alternative source of solving disputes	3
3.3. Forum <i>non conveniens</i> and jurisdiction clauses	4
CHAPTER 4. Immunity of State-Owned Vessels	4
CHAPTER 5. Types of Claims for which Attachment or Arrest May Be Requested	5
CHAPTER 6. Other Specific Preconditions to an Attachment or Arrest	6
CHAPTER 7. Definition of ‘Vessel’	6
CHAPTER 8. Evidence Required to Support an Attachment or Arrest Application	7
CHAPTER 9. Sister Ships	8
CHAPTER 10. Demise-Chartered or Time-Chartered Vessels	8
CHAPTER 11. Timing and Form of Petition for Attachment or Arrest	8

LOAIZA

CHAPTER 12. Security	9
CHAPTER 13. Representation by Lawyers: Powers of Attorney	10
CHAPTER 14. Granting of the Attachment or Arrest	10
CHAPTER 15. Provision of Bail	11
CHAPTER 16. Proceedings for Maintaining an Attachment or Arrest	11
CHAPTER 17. Costs and Advances for Court Proceedings and Custody	11
CHAPTER 18. Enforcement of the Order of Attachment or Arrest	12
CHAPTER 19. Service of the Order of Attachment or Arrest	12
CHAPTER 20. Time Element	13
CHAPTER 21. Motion for Wrongful Arrest by Defendant or a Third Party	13
CHAPTER 22. Forced Sale in the Attachment or Arrest Procedure: Priority of Claims In rem	14
22.1. Sale <i>pendente lite</i>	14
22.2. Sale upon judgment	14
22.3. Special proceedings for enforcement of naval mortgages	15
22.4. The sale procedure	16
22.5. Priority of claims <i>in rem</i>	16
CHAPTER 23. Claims for Damages by the Owner of the Attached or Arrested Vessel	17

List of Abbreviations

APADEMAR	The Panama Maritime Lawyers Association.
The Code	Law 8 of 30 March 1982, as amended by Law 11 of 23 May 1986, Law 23 of 1 June 2001 and Law 12 of 23 January 2009. Under Official Gazette No. 26322 of 13 July 2009, a unified text was adopted and is currently used as the Code of Maritime Procedure ('Law 8' of the 'Code'). The Code of Civil Procedure is supplementary to Law 8, adopted by Ley 402 of 9 October 2023, under Official Gazette No. 29887-A of 11 October 2023, and in force since 11 October 2025, previously covered by the Judicial Code.
The Maritime Chamber	The Maritime Chamber of Panama.
The Treaty	The Panama Canal Treaty, 1977.

LOAIZA

Part I. Arrest of Vessels

INTRODUCTORY NOTE

Prior to the enactment of the Panama Canal Treaty of 1977 (the ‘Treaty’), the admiralty jurisdiction in the Panama Canal and the terminal ports of the Republic of Panama was exercised by the United States Government through a Federal Court. Given the elimination of that Court upon the enactment of the Treaty, the Republic of Panama adopted Law 8 of 30 March 1982, which created the Maritime Court and regulated the maritime procedure (the ‘Code’) in order to adopt up-to-date legislation. The Code departs somewhat from the traditional civil law codes of procedure as it was inspired by the more flexible Federal Rules of Civil Procedure of the United States of America and the Argentine Code of Maritime Procedure. After its first few years of application, the Code was amended by Law 11 of 23 May 1986 in order to introduce some technical corrections and improvements. It was subsequently amended with the same purpose by Law 23 of 1 June 2001 (which created the Second Maritime Court) and by Law 12 of 23 January 2009 (which introduced a number of amendments aimed at modernizing the maritime procedure in general) and subsequently the Maritime Court of Appeals was instated as a second tier court on rulings from the First and Second Maritime Courts.

1. SOURCES OF LOCAL LAW

The general rules regarding arrest and attachment of vessels are contained in Chapter VI of the Code.

There are no other statutes dealing with the arrest and attachment of vessels. The Code provides that the provisions of the Code of Civil Procedure shall apply in subject matters not specifically regulated by the Code.

Case law or precedents have, in theory, little bearing in Panama since Panama is a civil law country and does not follow precedents. In practice, however, rulings from the Supreme Court on appeals taken from decisions of the Maritime Courts, as well as those which have been subject to rulings by the Maritime Court of Appeals are often cited as guidelines and precedents to be followed by litigants in their arguments and by the Maritime Courts in their decisions.

2. INTERNATIONAL CONVENTIONS

2.1. *Multilateral conventions*

The Republic of Panama is not a party to the Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Ships, Brussels, 1926 or to the Convention Relating to the Arrest of Seagoing Ships, Brussels, 1952. However, provisions similar to those of these conventions have been incorporated into domestic law by the Code.

2.2. *Bilateral conventions*

The Treaty states that the Republic of Panama shall ensure the free transit of vessels through the Panama Canal. Based on this principle, in the case of the arrest of vessels transiting the Panama Canal, the Maritime Courts of Panama have developed the practice of allowing such vessels, subject to the authorization of the plaintiff, to complete their transit under arrest custody of the Court Marshal. Once the transit through the Canal has been concluded (upon the departure of the Panama Canal pilot), the vessel remains under arrest.

3. COMPETENCE OF COURTS OR OTHER AUTHORITY

The attachment or arrest of vessels in the Republic of Panama is within the exclusive jurisdiction of the Maritime Courts of Panama. If any other Panamanian court, whether Civil or Labour, receives a request to attach or arrest a vessel, even though the nature of the action may be within its competency, it would have to apply to the Maritime Courts to carry out the attachment or arrest.

Although labour claims, in general, must be tried before Labour Courts, the Code provides that claims for compensation of damages caused to seafarers are within the jurisdiction of the Maritime Courts.

3.1. *Territorial extent of the jurisdiction of the maritime courts*

At present, there are two Maritime Courts and the Maritime Court of Appeals in the Republic of Panama, all situated in the Ancon neighbourhood of the capital city of Panama. Prior to the establishment of the Maritime Court of Appeals, appeals from decisions of the Maritime Courts were reviewed by the Civil Chamber of the Supreme Court.

PANAMA

The Maritime Courts have jurisdiction over:

- all the territory of the Republic of Panama;
- its territorial waters which extend twelve nautical miles from the baseline of the coast;
- its navigable waters;
- rivers;
- lakes and the waters of the Panama Canal; and
- including claims against the Panama Canal Authority for loss or damage resulting from the actions of Panama Canal Pilots.

The Maritime Courts also have jurisdiction over lawsuits arising from maritime commerce and maritime trade occurring outside the above-mentioned areas in the following instances:

- (a) when the lawsuit is directed against a vessel or her owner and the vessel is attached or arrested within the jurisdiction of the Republic of Panama as a result of the said lawsuit;
- (b) when the Maritime Court has attached or arrested other property belonging to a defendant even if he is not domiciled in Panama;
- (c) when the defendant is found within the jurisdiction of the Republic of Panama and has been personally served with notice of any lawsuit filed in the Maritime Courts;
- (d) when one of the vessels involved flies the Panamanian flag, or Panamanian substantive law is deemed applicable by virtue of the contract or by operation of law, or the parties expressly or tacitly agree to submit themselves to the jurisdiction of the Maritime Courts of Panama.

3.2. Arbitration as an alternative source of solving disputes

The Code recognizes that claims arising from maritime commerce may be tried by Arbitral Tribunals within the Republic of Panama, as long as the parties to the underlying dispute have so agreed in writing. Panama has adopted a Law of Arbitration, Mediation and Conciliation, Law 31 of 31 December 2013. There is also a specialized Center for Conciliation, Mediation and Maritime Arbitration (Centro de Conciliación Mediación y Arbitraje Marítimo de Panamá – CECOMAP), created on February 2007, by a joint initiative of the Maritime Chamber (Cámara Marítima de Panamá) and APADEMAR (the Panama Maritime Law Association – Asociación Panameña de Derecho Marítimo).

CECOMAP's regulations were passed in August 2011 and updated in August 2013.

3.3. *Forum non conveniens and jurisdiction clauses*

Likewise, with respect to lawsuits which originate outside the territorial jurisdiction of the Maritime Court of Panama, any party to the proceedings may request the Maritime Court to decline jurisdiction and/or stay an action already commenced, in the following cases:

- (a) if resolution of the action would require the giving of oral evidence by witnesses who are resident outside Panama and whose attendance in Panama would be too expensive or onerous to obtain;
- (b) if a judicial inspection is necessary and the same must be performed abroad;
- (c) if the parties have agreed in writing to submit the dispute to arbitration or a foreign court after the conflict has arisen; and
- (d) if the action is already the subject of proceedings pending before an arbitration tribunal or foreign court.

As a condition for declining jurisdiction in favour of a foreign court or for granting a stay, the Maritime Court may require the defendant shipowner to take certain steps, such as providing alternative security, submitting to the jurisdiction of a foreign court, or waiving the right to seek dismissal of the action before such a foreign court on the basis that it is time-barred by the statute of limitations, if the action has been timely filed before the Maritime Court. If the Maritime Court has attached or arrested property in the Republic of Panama and the defendant is unable to provide security in the foreign jurisdiction, the Maritime Court may stay its own proceedings but maintain the attachment or arrest or bond pending a final decision by the foreign court or arbitration panel.

4. IMMUNITY OF STATE-OWNED VESSELS

Panama law does not distinguish between domestic and foreign vessels for determining immunity from attachment or arrest.

Under Article 180 of the Code, the following vessels may not be attached or arrested:

- (a) foreign or domestic warships or vessels under construction destined to be incorporated into the military forces of a State;
- (b) any vessel under service of a State except if same performs activities involving maritime commerce.

The foregoing provision incorporates into our domestic law the principles of the International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels, Brussels, 1926.

PANAMA

5. TYPES OF CLAIMS FOR WHICH ATTACHMENT OR ARREST MAY BE REQUESTED

The types of claims falling within the jurisdiction of the Maritime Courts, as described in section 3 above, are those arising out of maritime commerce and maritime trade.

Article 166 of the Code provides that the attachment or arrest of a vessel may be ordered in the following cases:

- (a) To prevent the proceedings from being rendered useless and to prevent the defendant from transferring, dissipating, encumbering, alienating or impairing such assets as are susceptible to attachment [or arrest] procedures.
- (b) To make it possible to enforce maritime claims before the Maritime Court in Panama against defendants which are not deemed found within the jurisdiction in respect to causes of action arising inside or outside Panama.
- (c) To effect physical seizure of property susceptible to attachment (or arrest) in order to enforce maritime liens over the same.

Under Panama law, a vessel may be attached or arrested for any type of claim, provided that the claim either lies against the owner of the vessel (*in personam*) or against the vessel (*in rem*) subject to the substantive laws which would apply on the subject matter.

As a matter of local substantive law, the claims which give rise to privileges (maritime liens) over vessels and their order of priority are set out in Article 244 of Law 55 of 6 August 2008, as follows:

Article 244. The following maritime credits shall enjoy a lien on the vessel and shall concur in respect to its price in the order of preference expressed in this article, to wit:

- (a) judicial costs incurred in the common interest of maritime creditors;
- (b) expenses, indemnities and wages for aid and salvage;
- (c) wages, compensations and indemnities due to the master and crew members;
- (d) the naval mortgage;
- (e) amounts due to the Panamanian Government for annual taxes and duties of the vessel;
- (f) wages and stipends due to stevedores and other longshoremen engaged directly by the owner, operator or master of the vessel for the loading and unloading of the vessel;
- (g) compensation for damages caused by fault or negligence;
- (h) contributions to general average;

LOAIZA

- (i) amounts due on obligations incurred for the necessities and supplies of the vessel;
- (j) amounts taken in bottomry over the hull of the vessel and its apparel for supplies, equipment and tackle if the contract had been entered into and executed prior to departure of the vessel from the port where such obligations were contracted; and the insurance premiums;
- (k) wages of pilots and watchmen and expenses of conservation and custody of the vessel, its apparel and supplies;
- (l) indemnities due to shippers and passengers for failure to deliver the cargo or effects stowed on board or for damage thereto, attributable to the master or crew; and
- (m) the price of the last acquisition of the vessel and interest due.

The Maritime Courts have allowed claims that arise under the laws which are deemed applicable to a particular contract to determine, even if it is not the law of the registry of the vessel, whether the underlying claim can be enforced as a maritime lien against the vessel.

6. OTHER SPECIFIC PRECONDITIONS TO AN ATTACHMENT OR ARREST

The right to attach or arrest a vessel in Panama is subject to no special preconditions, other than those referred to in section 8 below.

Any claim in personam against the shipowner or in rem against the vessel may give rise to the attachment or arrest of a vessel.

7. DEFINITION OF 'VESSEL'

The definition of vessel is found in Law 57 of 6 August 2008, enacted as the General Law of the Panamanian Merchant Marine, which regulates the registration of vessels under the Panamanian flag, as follows:

Vessel. Any ship intended for the transportation of cargo or passengers, pontoons, dredges, floating docks, drilling platforms or any other hull intended or that may be intended for the maritime service, as well as any other structure that the Panama Maritime Authority considers to be a vessel.

In practice, the policy of the Republic of Panama in respect of vessel registration has been quite flexible and, therefore, all sorts of floating structures dedicated to commercial, recreational, educational or scientific activities, whether self-propelled or not, including barges, oil rigs and platforms of all types, submarines, and so on, are deemed to fall within the foregoing definition and may accordingly be registered.

PANAMA

8. EVIDENCE REQUIRED TO SUPPORT AN ATTACHMENT OR ARREST APPLICATION

Any plaintiff who applies for the attachment or arrest of a vessel, whether in order to obtain Panamanian jurisdiction or to enforce a maritime lien, must submit to the Maritime Judge *prima facie* evidence of his claim. In case of maritime liens, the Judge would also need to assert if pursuant to the substantive law alleged in the complaint, the relevant claims enjoy the rank of a maritime lien.

Although the Code does not regulate this matter in detail, the Maritime Courts tend to be quite flexible in respect to the formal requirements of the documents submitted; for example, copies of relevant documents remitted by the interested party by electronic means, whilst formalities such as notarization and legalization of certain documents such as legal opinions from foreign lawyers, may be complied with and the submission of originals may effect at a later stage. Also, the Code provides that the judges must have knowledge of the English language, which also allows the parties to submit evidence without the required translations into Spanish.

In this order of ideas, the complaint must be filed prior to, or together with, the petition for attachment or arrest of the vessel. Therefore, it is advisable to provide local counsel with as much information and documentation as possible prior to the actual attachment or arrest of the vessel so that the complaint may be prepared with sufficient elements in order for the Judge to admit both the complaint and arrest petition.

The complaint may be amended at a later stage, whereby it is also possible to add to the original claim or include other defendants.

In addition, it is possible to add evidence relevant to the case through the various phases of the proceedings.

Pursuant to the Code, the complaint must contain the following information:

- (a) The names and domiciles of the parties and their representatives. If the address of the defendant is not known, that fact must be stated under oath in the complaint, and a request made that the defendant be given notice of the proceedings by means of advertisement.
- (b) The object of the complaint must be expressed with clarity and precision and, if a money judgment is sought, the amount of the claim must be given.
- (c) The facts giving rise to the cause of action.
- (d) The legal provisions on which the complaint is based.
- (e) A plaintiff has a choice whether to submit evidence with the complaint or not. If he elects to do so, he has the right to supplement such evidence later on in the proceedings. However, when it comes to the arrest petition, as mentioned above, *prima facie* evidence of the claim.

The complaint should also be accompanied by evidence or information as to the place of incorporation and existence and the identity of the legal

LOAIZA

representative or agent for service of process, if the defendant is a legal entity. If such evidence or information is not known to the plaintiff, it shall be so stated under oath.

9. SISTER SHIPS

The concept of sister ships does not exist in Panamanian law.

A vessel is considered as an entity with its own limited obligations relating to the payment of the debts of its owner, whether common or privileged.

Proceedings *in rem* may be brought against a vessel only by those claimants who have maritime liens or similar *in rem* rights over that particular vessel.

Proceedings *in personam* against a shipowner may, however, give rise to the arrest of any property of such a shipowner, including all the vessels registered in his name at the time when the action is commenced, whether such vessels are connected with the claim or not. Panamanian courts are reluctant to pierce the corporate veil of ship-owning companies.

It may be debated or argued, if under foreign law affecting a claim or vessel, if the sister-ship arrest is allowed, that the Panamanian Courts should so allow. However, it seems to us that in many instances the rules that allow such sister-ship arrest are procedural in nature, and in our opinion should not be considered for purposes of arrest petitions in Panama.

10. DEMISE-CHARTERED OR TIME-CHARTERED VESSELS

The fact that a vessel is on a demise- or time-charter does not prevent a maritime lien arising in respect of such vessel. Consequently, maritime lien claimants may attach or arrest the vessel in the usual way.

From Panama substantive law perspective, vessels operated under demise-charter or time-charter would still be subject to claims for maritime liens or similar rights of third parties, and the real owners would not be able to oppose the rights of such third-party claimants, whether privileged or not, except when such an operation is shown to have been incurred by an unauthorized person and that the creditor acted in bad faith.

11. TIMING AND FORM OF PETITION FOR ATTACHMENT OR ARREST

As discussed in section 5 above, the petition for attachment or arrest must be filed together with or subsequent to the complaint and, therefore, all of the information required in the complaint must be provided to local counsel prior to filing the petition for the attachment or arrest of the vessel.

Additionally, the petition for attachment or arrest should indicate all available information concerning the expected place, date and time of the

PANAMA

vessel in territorial waters of Panama so that the Marshall of the Court can coordinate at which point of its trajectory the attachment or arrest may be effected and so that appropriate arrangements may be made in advance, as possible. Therefore, whenever vessels are suspected to be scheduled for transit through the Panama Canal, whether northbound or southbound, it is advisable to notify the Court Marshal in as much detail as possible, in order that the Marshall may ascertain from the Maritime Traffic Comptroller's office of the Panama Canal Authority, whether the vessel in question has requested transit within the next few days so that the attachment or arrest may be coordinated in a timely and efficient manner, and avoid interrupting the transit even if the vessel is to remain arrested prior to or after the same.

The Maritime Courts would also require *prima facie* evidence of the claim which gives rise to the attachment or arrest, in order to establish the legitimacy of the claim and, where applicable, that the claim is to be considered as a maritime lien.

12. SECURITY

Together with the petition for attachment or arrest, security must be posted as follows:

- (a) USD 1,000 as security for the damages resulting from the attachment or arrest of a vessel for enforcing a maritime lien or to give the Court jurisdiction to try the subject claim, or from 20% to 30% of the amount of the complaint in the case of attachment or arrest for purposes of preventing the defendant from transferring, dissipating, encumbering, alienating or impairing its assets; plus
- (b) USD 2,500 as a minimum advance to cover the Court Marshal's anticipated expenses in connection with the attachment or arrest of the vessel and the eventual release therefrom. If deemed necessary, the Court Marshal may request at any time from the claimant additional sums to cover such expenses.

Bonds for attaching or arresting the vessel may be posted with the Maritime Court in any of the following ways:

- (a) by a certificate of warranty issued by the *Banco Nacional de Panama*;
- (b) by certified or cashier's check, drawn upon a bank licensed to operate in Panama;
- (c) by surety bonds issued by entities licensed for such transactions in the Republic of Panama; and
- (d) in any other manner that the parties may agree;
- (e) P&I Letters of Undertaking, would require the consent of the plaintiff; thus, under category (d) above.

13. REPRESENTATION BY LAWYERS: POWERS OF ATTORNEY

Pursuant to Panamanian law, judicial proceedings must be pursued to qualified lawyers, which include law firms. In this order of ideas, the lawyer requires a written power of attorney from his client, not only executed pursuant to the formalities which apply in the place of execution but also subject to formality requirements pursuant to Panamanian law; in particular, that the power of attorney be certified by notary public where signed and, executed abroad, then the same must thereafter be authenticated by a Panamanian Consul or pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (the 'Apostille Convention'). If a Panamanian Consul is not available or the Apostille Convention does not apply at the place of execution of the power of attorney, the authentication will have to be performed by a Consul of a state friendly to Panama. Additionally, if the plaintiff is a legal entity, the attorney shall submit evidence of the principal's organization and existence, corporate authority and identity of the party with the authority to represent the same, generally by means of a certificate of good standing and a certificate of incumbency or by means of a notarial certificate confirming, in addition to the authenticity of the signature of the grantor, that sufficient evidence has been produced to the notary that the legal entity exists and that the person executing the power of attorney in its name and behalf is duly authorized to do so. If the documents are issued outside of Panama, the same would have to be authenticated as stated above.

The Code of Civil Procedure provides, however, that, when necessary, the lawyer may file the complaint and petition for attachment or arrest without submitting the power of attorney in his favour or evidence of the existence of the plaintiff, if applicable, provided he lodges a bond equivalent to a percentage of the claim advanced in the action. Such a bond will be refunded in full to the plaintiff upon the filing of the power of attorney and, if applicable, the certificate of existence of the plaintiff with the Maritime Court. The Maritime Court would grant a two-month period for such purposes, upon admitting the intervention of the lawyer or law firm in lieu of a power of attorney.

14. GRANTING OF THE ATTACHMENT OR ARREST

The attachment or arrest is granted *ex parte* (i.e., without the presence or prior notice to the defendant) once the sufficiency of evidence has been verified and the security has been acknowledged by the Clerk of Court, and further constituted or offered, and the advance for expenditures of the Court Marshal has been received.

PANAMA

15. PROVISION OF BAIL

Except for vessels attached or arrested in connection with a dispute over ownership, possession or use, the attachment or arrest of a vessel must be lifted as soon as a release bond has been posted.

The Code provides that bond may be posted:

- (a) pursuant to a joint petition of the parties, in which the amount, type and conditions of the bond which is to substitute for the attached or arrested vessel are agreed upon and submitted to the Judge; or
- (b) unilaterally by the defendant, vessel owner or a third party, in which case the Judge will fix the amount of the bond to be the amount of the claim plus three years of interest, court costs and expenses. The amount of such a bond may not exceed the market value of the vessel (which value will be determined on the basis of an appraisal ordered by the Court). The need to appraise the vessel may be dispensed with if, instead, the petitioner agrees to post a bond in the amount that the Judge determines to cover the amount of the complaint, interest, court costs and expenses.

Bonds may be posted in any of the following ways:

- (a) a certificate of warranty issued by the *Banco Nacional de Panama*;
- (b) a certified or cashier's check drawn upon a bank licensed to operate in Panama;
- (c) surety bonds issued by entities licensed for such transactions in the Republic of Panama; and
- (d) any other means which the parties may agree.

16. PROCEEDINGS FOR MAINTAINING AN ATTACHMENT OR ARREST

As stated above, once the petition for attachment or arrest has been admitted, the same shall be carried out by the Court Marshal pursuant to a Court order and once served shall render the vessel subject to the jurisdiction of the Court. Apart from providing the Court Marshal with the necessary funds to cover the costs involved in the care and custody of the attached or arrested vessel as discussed in section 17 below, from time to time, there is no other action required from the plaintiff in order to maintain the attachment or arrest of the vessel.

17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

When the object of the attachment or arrest is a vessel, the plaintiff must provide the Court Marshal with an advance for his anticipated expenses in

connection with the attachment or arrest and custody of the vessel in the amount of USD 2,500. The Court Marshal may, however, at any time request from the attaching or arresting party additional funds in order to cover the expenses incurred in the conservation, maintenance and custody of the attached or arrested vessel if he deems it necessary. The Court Marshal is by law the depository of the vessel and entrusted with her protection and preservation. The Court Marshal may in some instances have among his duties the repatriation of crews and officers.

At the request of the Marshal, the Court may in some instances appoint a third party to act as depository of the vessel or to undertake her maintenance and upkeep.

The Court Marshal may apply for a hearing to lift the attachment or arrest if the plaintiff or his attorney has been requested in writing by the Court Marshal to supply additional funds for attachment or arrest expenses and the plaintiff refuses or fails to provide the same within five days of the date of the request.

The costs of attaching or arresting a vessel may be recovered from the defendant if the plaintiff is successful. In the case of judicial sale of a vessel, such costs shall be reimbursed to the plaintiff in priority to all other claims, except applicable court costs.

The amount of the costs involved in attaching or arresting a vessel in the Republic of Panama cannot be estimated in advance, as they will ultimately depend upon the specific circumstances of the vessel in question.

18. ENFORCEMENT OF THE ORDER OF ATTACHMENT OR ARREST

The order of attachment or arrest is issued *ex parte* by the Maritime Judge or in his absence by the Court Clerk. Provided that all requirements for the attachment or arrest as discussed in section 8 above have been complied with, the attachment or arrest is carried out by the Court Marshal without any further act on the part of the plaintiff. In carrying out the attachment or arrest, the Court Marshal may engage the services of public enforcement units in order to ensure attachment or arrest in an orderly manner, and he is entitled to use all means necessary in order to compel compliance with his orders.

19. SERVICE OF THE ORDER OF ATTACHMENT OR ARREST

The order of attachment or arrest in respect of a vessel is served on the person who is in charge and has custody of the vessel. The Code provides for the presumption that the master is in charge of the vessel.

In the case of the attachment or arrest of a vessel of Panamanian registry, orders (*oficios*) shall be issued to the Directorate General of the Merchant

PANAMA

Marine ('DGMM') and the Directorate General of the Public Registry of Property of Vessels ('PRV'), both within the Panama Maritime Authority ('PMA'), once the vessel has been physically seized, as to implement a restriction on the respective vessel's records, which would prevent any administrative acts involving the transfer in ownership, recordable encumbrances, including naval mortgages or the deletion of the vessel from the Panamanian registry.

The order of attachment or arrest shall also be communicated by electronic means allowing the transmission of documents to the administrator of the port where the vessel is set to dock, or where she has docked, when the attachment or arrest is not executed within the Court's domicile, and the administrator shall be constituted as temporary custodian until the Court Marshal takes possession of the vessel or assets.

In proceedings to enforce maritime liens, service of the order of attachment or arrest, as described above, is deemed to constitute personal service of process on the defendant (i.e., in rem on the vessel).

20. TIME ELEMENT

The Code contemplates the availability of the Maritime Courts on a 24/7 basis as to cover urgent matters and prevent possible damages and loss of opportunity, and it expressly contemplates the attachment or arrest of property under such category as to be dealt with promptly by the Court Marshal, who generally notifies either the Office of the Marine Traffic Comptroller of the Panama Canal Authority in order to prevent the vessel from going through the Panama Canal while the order of attachment or arrest is pending or the pertinent Panamanian Port Authority to prevent the vessel from sailing from our ports once the order of attachment or arrest has been issued.

In practice it is possible to obtain the attachment or arrest of a vessel within a few hours from the time of filing of the application and the lodging of security (*see* section 12), as the main terminal ports of Balboa and Cristobal, located at the Pacific and Atlantic ends of the Panama Canal, respectively, are only about 80 km apart.

21. MOTION FOR WRONGFUL ARREST BY DEFENDANT OR A THIRD PARTY

Because attachment or arrest orders are granted on an ex-parte application, the defendant has no opportunity to object to the making of the original order.

Therefore, as a means of allowing the defendant with a swift defense against the arrest under certain circumstances expressed in the law, it is possible for the defendant or any interested third party, such as the owner of the attached or arrested vessel or the person having custody thereof, to apply to the Maritime Court to have the order set aside on grounds of wrongful

arrest, when the same is deemed to have been requested in error, fault, negligence or bad faith, on the basis of any of the following circumstances:

- (a) that the property which has been attached or arrested does not belong to the defendant; or
- (b) that the attachment or arrest has been obtained in breach of a prior agreement between the parties not to arrest the vessel; or
- (c) in cases where the attachment or arrest has been obtained to enforce a maritime lien that such lien has been extinguished (inclusive of a time bar) or it is non-existent.

The motion for wrongful arrest must be accompanied with conclusive evidence to support the type of challenge which is alleged thereunder.

If the motion is admitted, the Judge shall call upon a hearing, in order for the plaintiff to show that the attachment or arrest should be maintained.

In case that the arrest is ruled to be wrongful, then the plaintiff shall be liable for damages which would be assessed by the same Judge and the arrest would be released immediately.

Even if the decision is appealed, the same would not suspend the release order.

22. FORCED SALE IN THE ATTACHMENT OR ARREST PROCEDURE: PRIORITY OF CLAIMS *IN REM*

22.1. *Sale pendente lite*

If the attached or arrested property is subject to perish, decay, shrinkage or otherwise deteriorate or after the vessel has been subject to arrest for thirty days or if the costs incurred by the Court Marshal exceed or are likely to exceed the proceeds from an eventual sale of the vessel, the Court may, after a hearing *inter partes*, order the Court Marshal to sell the vessel or other property at a public auction and to deposit the proceeds of the sale in an account at the *Banco Nacional de Panama*. The funds in said account shall earn interest at the rates paid by that bank on thirty-day renewable time deposits.

22.2. *Sale upon judgment*

If the defendant fails to satisfy the judgment, the Maritime Court will order the sale of the vessel. In the case of Panamanian registered vessels, the Maritime Court first obtains from the PRV details of all registered mortgages, encumbrances or attachments or arrests affecting the vessel, her cargo or freight, in order to determine whether the aggregate amount of such claims exceeds the value of the vessel.

In such a case, the Maritime Court shall order a *concurso* (meeting) of maritime claimants, cause the publication of notice of such a *concurso* (edict) for five days in a newspaper of national circulation and for ten days at the PRV, as well as in a visible place on the vessel or the cargo, as the case may be. After fifteen days from the last publication as aforesaid, then (unless any party successfully opposes the sale), the vessel may be sold and the proceeds will be deposited in the name of the Court in a non-interest-bearing account with the *Banco Nacional de Panama*.

We must point out that since the sale of the vessel after thirty days of being arrested alone was introduced by a change in the Code in 2009 by changing an ‘and’ for an ‘or’ on the possibilities described for the sale.

The costs to preserve the vessel shall be charged in principle to the plaintiff, but considered as judicial expenses in the interest of common creditors and paid with priority against the proceeds of the judicial sale.

22.3. *Special proceedings for enforcement of naval mortgages*

Article 552 of the Code contains special rules for the enforcement of naval mortgages.

As provided for other proceedings for enforcement of maritime liens, the complaint must be accompanied by *prima facie* evidence of the claim, and in particular by:

- (a) the registration of the vessel and the naval mortgage affecting it; and
- (b) the amount outstanding and the computation thereof.

Such evidence must be issued within the thirty days immediately preceding its submission to the Court.

Once the arrest of the vessel takes place with the consequent service of process, the complaint must be answered within the following thirty days. All defenses and exceptions must be asserted in the answer to the complaint.

After the answer to the complaint is submitted and admitted, the Judge shall call for a hearing to review the matter and render judgment. Such a hearing shall take place within the thirty days following the admission of the answer by the Court.

If the complaint is not answered, the Judge shall, upon plaintiff’s request, order the immediate sale of the vessel, without prejudice to the right of the defendant to appear in Court.

The sales procedure and possible intervention by third parties are described elsewhere in this section 22.

22.4. *The sale procedure*

The judicial sale of a vessel is carried out by the Court Marshal on the time and date fixed for such a purpose by the Maritime Court, which shall set three different dates for the public auction. Such dates shall not be less than five nor more than ten days apart from each other. Notice of the sale must be published in nationwide newspapers at least twice a week until the auction proceedings conclude and in such other specialized publications as the parties may request.

On the date when the vessel is first offered for sale, she may not be sold for less than three quarters (3/4) of her appraised value. If no adequate bid is received, then a new notice of sale is published and a further auction takes place at the scheduled date. At the second auction, the vessel may not be sold for less than half of her appraised value. If the second auction is unsuccessful, a third auction is held, at which the vessel is sold to the highest bidder, without reserve.

In order for a bid to be accepted, the bidder must first have deposited 5% of the appraised value of the property, except for the judgment creditor or creditors (in a case of *concurso*) who have levied execution, as they are entitled to bid against their credits.

The proceeds of a judicial sale of a vessel or other assets are paid over to the Maritime Court by the Court Marshal and are then deposited in a special account maintained at the *Banco Nacional de Panama* (earning interest at the rates paid by such bank on thirty-day renewable time deposits), to be applied by the Maritime Court in payment of judgment debts in accordance with the appropriate order of priority applicable to the various types of claims.

22.5. *Priority of claims in rem*

Under Panamanian law, the order of filing of petitions for attachment or arrest of a vessel has no bearing upon the priority of claims. The ranking of maritime liens over a vessel is determined by the law of the flag of the vessel and, in the case of Panamanian flag vessels, is laid down by Law 55 of 6 August 2008, as stated in section 5 above.

Registered mortgages over Panamanian flag vessels rank in the order of their registration at the PRV. Unregistered mortgages enjoy no priority and create no lien over the vessel under Panamanian law.

Mortgages over foreign flag vessels are given the priority provided for by the laws of the respective states of registry if litigation is brought before the Maritime Courts of Panama, since the Panamanian rules of conflict of laws provide that the rights and obligations of the parties in relation to maritime liens over and property rights in the vessel shall be determined by the laws of the country of registry of the vessel.

PANAMA

In cases where the proceeds of the judicial sale of the vessel are insufficient to cover the claims of all privileged creditors, the following amounts must be paid prior to the distribution of funds amongst the maritime claimants:

- (a) Costs and expenses incurred by the Court Marshal in connection with the maintenance and custody of the vessel or other attached or arrested property. These sums must first be approved by the Maritime Court at a hearing at which the main parties to the action may be represented.
- (b) Court costs.
- (c) Amounts advanced to the Court Marshal by the plaintiff who attached or arrested the vessel for the conservation, maintenance and custody of the attached or arrested vessel or property.

It is also relevant to note that in case of vessels of foreign registry, foreign law could or should apply as to determining the order of priority of liens and other maritime credits, pursuant to relevant conflict of law rules contained in the Code.

23. CLAIMS FOR DAMAGES BY THE OWNER OF THE ATTACHED OR ARRESTED VESSEL

Apart from the motion for wrongful arrest – *see* section 21 above – we would not discard that the owners may bring separate proceedings, especially if the arrest of the vessel is made under foreign proceedings.

However, the lack of intervention in the relevant proceedings, if tried in Panama and if the grounds for claiming such damages are those corresponding to the options for claiming wrongful arrest, it may be argued that the owner loses opportunity.

In any event, such claims should be reviewed on a case-by-case basis.

The Maritime Courts adjudicate upon any such claim for damage and assess both liability and *quantum* where appropriate.

LOAIZA