



A quick Guide to the arrest and release of a vessel in Philippine Territorial waters.

arrest of vessels in the Philippines.

There is actually no specific procedure under the Rules of Court of the Philippines that governs “*arrests of vessels*”. The procedure that is actually resorted to in detaining vessels is the procedure referred to as “attachment” under **Rule 57 of the Rules of Court**. Nonetheless, the term “arrest of vessels” is used in maritime practice and even mentioned in many substantive laws dealing with vessels and maritime commerce.

The procedure for attachment is not complex, indeed it is rather worrying how simple it is to affect as the *Writ of Attachment* itself is not difficult to obtain from the courts.

The rules require the filing of a complaint with a prayer (legal argument) for the issuance of a *Writ of Attachment*, which is an ancillary remedy to the main complaint. The complaint has to be duly signed and verified by someone who is knowledgeable about the claim. It should be supported by an affidavit establishing the basis or justification for attaching the vessel. An attachment bond has to be posted by the plaintiff in the amount equivalent to the claim, or as may be determined and fixed by the court.

Securing a writ of attachment from the court may take three (3) or more days after the complaint is filed. To expedite action on the complaint for attachment, the plaintiff may request for a special raffle of the case and its assignment to a court for an immediate action and issuance of a writ of attachment to prevent the vessel from leaving the jurisdiction of the court.

To release the vessel from attachment or custodia legis, the owner of the vessel has to file a motion to discharge the attachment. The said motion has to be set for hearing and sufficient notice being given to the adverse party of such motion and hearing date. The vessel owner/agent has to put up a counterbond in the amount sufficient to answer for all claims of the plaintiff in order to justify the release of the vessel from detention. Sometimes, the release of the vessel is delayed because of the need for the hearing and opportunity to the attaching creditor to be afforded time to comment or oppose the motion to quash the writ of attachment. Often the creditor puts pressure on the vessel by a strong opposition to the motion to discharge attachment, or even the validity of the counter-bond. Foreign owners often request the P and I Club to issue a letter of guarantee or letter of undertaking to indemnify the local insurance which issues the surety bond, as counter-bond for the release of the vessel.



For the actual procedure, we quote hereunder sections 3 and 4, Rule 57 of the Rules of Court, which provide as follows:

Sec. 3. Affidavit and bond required. – *An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.*

Sec. 4. Condition of applicant's bond. – *The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.*

The grounds for attaching a vessel or any property of a defendant for that matter are stated in the Rules,:

“Section 1. Grounds upon which attachment may issue. — *At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:*

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication. (1a)

“Section 2. Issuance and contents of order. — *An order of attachment may be issued either ex parte or upon motion with notice and hearing by the court in which the action is pending, or by the Court of Appeals or the Supreme Court, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand*



or the value of the property to be attached as stated by the applicant, exclusive of costs. Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions. (2a)”

Aside from the Rules of Court, our substantive law recognizes the right of a creditor to attach a vessel. Under the Code of Commerce, it is thus states as follows:

“Art. 584. The vessels subject to the liability for the credits mentioned in Art. 580 may be attached and judicially sold in the manner prescribed in Article 579, in the port in which they are , at the instance of any of the creditors; but if they should be freighted and ready to sail, the attachment cannot take place except for debts contracted for the preparation and provisioning of the vessel for the same voyage, and even then the attachment shall be dissolved if any person in her sailing should give bond for the return of the vessel within the period fixed in the certificate of navigation, and binding himself to pay the debt in so far as it may be legal, should the vessel be delayed in her return even if it were caused by some fortuitous event.”

The right to attach a vessel, even a foreign registered one, in the port where she may be found has been recognized in very early decisions of the Supreme Court (***Ivancich v, Oldin, 1 Phil.284; Heath v. Steamer "San Nicolas", 7 Phil 532***).

In the attachment of foreign vessels, the usual grounds invoked by attaching creditor are those stated in Sections 1 (a), (d), (e) and (f) of Rule 57, where it is alleged in the complaint that the vessel is movable which is about to be removed or taken out of the jurisdiction of the court, in which event the removal could result in defrauding the creditor or that it will render the proceedings in the Philippines futile or moot, or that the obligation was contracted through fraud, or that the defendant is about to depart from the Philippines with intent to defraud creditors.

Simplified process;

To effect the arrest of a property, in this instance a vessel, a complaint has to be filed in court and a Writ Of Attachment must be filed for therein, the normal procedure for attachment is as follows.

- Ⓜ A complaint with a prayer for issuance of writ of attachment is filed in the Regional Trial Court (RTC)
- Ⓜ The complaint is raffled by the executive judge to a specific branch. 3The RTC branch issues summons against the defendant and provides the same with a copy of complaint, where applicable, setting Moto Propio, the date for the hearing of the prayer for writ of attachment (Hearing is normally 3 days after receipt of notice).
- Ⓜ Hearing is conducted and writ is issued if all found in order.
- Ⓜ Writ is enforced by sheriff and vessel is attached.

In serving a Writ Of Attachment it is served on five parties

- Ⓜ Port Authority
- Ⓜ Coast Guard
- Ⓜ Ships Agent
- Ⓜ Customs
- Ⓜ Ships Master



In the event that the writ is served on a Friday afternoon, there is nothing that can be done by the defendants until Monday, when they can start working for the release of the vessel or property attached.

The procedure in the release of the vessel is more exhaustive and enumerate here under the normal steps it follows.

- ➔ A motion to set a counter bond and motion to lift attachment is filed with the court with 3 days notice at least for the hearing.
- ➔ Then, motion is heard and, if no adverse reaction from the plaintiff, bond is set and approved and having placed in court, the writ is lifted.

The lifting of the Writ can be swift if the claimant's lawyers join the appointed lawyers on behalf of the ship owner in a Joint Motion To Dismiss in which it is manifested that they recognize the counter security being issued and join the owner in requesting the release of the vessel.

However, in the event that the plaintiff decides to make life difficult for the defendant, plaintiff can use the rules of court to the limit invoking set periods of time between hearings, at which time, the whole process can take at least 15 to 20 days before the vessel is released.

Once an order Lifting the Writ Of Attachment is obtained from the court it must be served on the five parties it was initially served upon and signatures of all the parties obtained before the vessel is allowed to leave.

The action of the complaint filed in court and the attachment can be considered as separate. The mechanics of the case in regards to the complaint will progress whether or not the issue of attachment is addressed; a vessel can remain detained or be released with counter security independent from the ongoing action. The situation as you may have realized allows in the first instance much more control by the arresting party and to place pressure on the parties who have been arrested. The court does have the mechanics to seek damages but cases can drag on as the courts are overloaded and a cargo case can take from 5 to 10 years.

To perfect the writ of attachment and arrest a vessel an "Attachment Bond" must be secured by the complainant. The attachment bond does not need to be equivalent to the amount being claimed in the filed case, however in order to release the vessel the defendant must secure a "Counter Attachment Bond" equal to the Attachment Bond.

The only way the vessel can be released is by the owner securing a Counter Attachment Bond and filing a "motion to release in court. In regards to security I am sure that this raises some questions by the owner which we cover in detail here. Strictly under the law of the Philippines the security for a Counter Attachment Bond should be either cash or collateral such as property. As it is doubtful that the owner has property in the Philippines then the usual option is cash. However such a large amount of cash is required that this is not always convenient for the owner or difficult from a practical point of view to remit at such short notice. A cash bond is obtained through a Surety Bond from a bonding company, the cash is not placed with the court as there would be no control over the money. If the cash option is the only choice then the money transferred is placed in a time deposit, must be a bank within the Philippines (earning interest for the owner) and the bank issues a standby letter of credit in favour of the Bonding Company who then issue the Counter Attachment Bond.



The money in the time deposit has a specific lien on it in regards to the filed case and can not be touched until the case is ruled with finality.

a) Club Letter Of Guarantee (CLOG) to complainant

Very seldom accepted by complainants locally as they do not understand what a Club letter is. On rare occasions complainants lawyers have accepted a Club letter they need to file a motion in court stating that they are satisfied with the CLOG. The Court will respect the claimant's request to recognize the CLOG. This would be the best scenario and it would be worth trying to approach claimants counsel in this respect.

b) Counter Attachment Bond Secured by cash

This is the quickest way to release a vessel. Normally it can take several days to secure the paper work, however we have built up over many years a relationship with Visayan Surety and they will perfect a bond within several hours. As described the money is required to be remitted to the Philippines. There are delays if (foreign currency laws) money is remitted from a non correspondent bank. For all transfers we use Barclays Bank in the Isle Of Man, Barclays is the reciprocal bank of the largest Philippine Bank, the Rizal Commercial Banking Corporation (RCBC) and the money can be drawn down immediately. Under Philippine law a bond must have a face value of Philippine Peso, however it is inadvisable to convert the USD to PHP as this can result in large losses later in rates of exchange. To protect owners interests the amount is kept in USD in the time deposit and the standby letter of credit issued to the Bonding Company, who then issue the equivalent amount in a Peso Counter Attachment Bond. Visayan are a Blue Chip bonding company and the veracity of there bonds are without question and will be accepted by the court. The bond is filed in the court with a motion to "lift the writ of attachment" Given the quantum would suggest this it not an option.

c) Counter Attachment Bond secured by a Club Letter Of Guarantee (CLOG)

There is only one company in the Philippines who will do this, although subject to review by their legal division. We have built up a good relationship with them and to date have never been refused. The bonding company is Pioneer Insurance, however the Club Letter Of Guarantee must be the standard format as used by Pioneer and for the Club kindly reading in copy I attach a blank format for review by underwriters. For the Clubs guidance the wording required by Pioneer has been accepted by the International Group of P&I Clubs and we have used it on many occasions. The advantage of this option is that we can also secure this type of bond within one day. Due to the level of trust Pioneer/Pandiman, Pioneer will accept a faxed/email copy of CLOG and release the bond immediately, the original to be couriered and submitted directly to Pioneer upon receipt. Again the bond is filed in the court with a motion to "lift the writ of attachment". The advantage of this bond is that it does not tie-up collateral of the ship owner.

d) Back to Back Offshore Standby Letter of Credit.

The problem with back-to-back bank guarantees is the time involved for the bank abroad and the corresponding bank here in the Philippines to agree on the wording of the documents. We have seen this take anywhere from 3 weeks to several months. One problem is that banks abroad are not always too keen on the wording required by the local bank which under the law here requires that the undertaking is automatically renewed every anniversary until the case is concluded having gone through all legal remedies and discharged with prejudice. The time involved in establishing the back to back guarantee is usually not acceptable to the owner as he can not afford the ship to remain arrested for the many weeks it takes to establish the guarantee.

Once the guarantee is established then the bank will issue a standby letter of credit to the bonding company who will issue the Counter Attachment Bond. An additional problem is that the premiums are very expensive.

Would respectfully suggest if security is required then option C is the most suitable,



Before going into specific recommendations a brief outline as to options for the owner in order to release the vessel. The ship has been "attached" through a court order known as a "Writ Of Attachment". To perfect the writ of attachment and arrest a vessel an "Attachment Bond" must be secured by the complainant. The attachment bond does not need to be equivalent to the amount being claimed in the filed case, however in order to release the vessel the defendant must secure a "Counter Attachment Bond" equal to the Attachment Bond. In this instance Artemis Salt Corporation have secured an Attachment bond of PHP 10,000,000.00 (approx USD 192,310,00.00)

The total claim by Artemis being approx USD 221,154.

The only way the vessel can be released is by the owner securing a Counter Attachment Bond and filing a "motion to release in court.

In regards to security I am sure that this raises some questions by the owner which we cover in detail here. Strictly under the law of the Philippines the security for a Counter Attachment Bond should be either cash or collateral such as property. As it is doubtful that the owner has property in the Philippines then the usual option is cash. However such a large amount of cash is required that this is not always convenient for the owner or difficult from a practical point of view to remit at such short notice. A cash bond is obtained through a Surety Bond from a bonding company, the cash is not placed with the court as there would be no control over the money. If the cash option is the only choice then the money transferred is placed in a time deposit, must be a bank within the Philippines (earning interest for the owner) and the bank issues a standby letter of credit in favour of the Bonding Company who then issue the Counter Attachment Bond. The money in the time deposit has a specific lien on it in regards to the filed case and can not be touched until the case is ruled with finality.

a) Club Letter Of Guarantee (CLOG) to complainant

Very seldom accepted by complainants locally as they do not understand what a Club letter is. On rare occasions complainants lawyers have accepted a Club letter they need to file a motion in court stating that they are satisfied with the CLOG. The Court will respect the claimant's request to recognize the CLOG. This would be the best scenario and it would be worth trying to approach claimants counsel in this respect.

b) Counter Attachment Bond Secured by cash

This is the quickest way to release a vessel. Normally it can take several days to secure the paper work, however we have built up over many years a relationship with Visayan Surety and they will perfect a bond within several hours. As described the money is required to be remitted to the Philippines. There are delays if (foreign currency laws) money is remitted from a non correspondent bank. For all transfers we use Barclays Bank in the Isle Of Man, Barclays is the reciprocal bank of the largest Philippine Bank, the Rizal Commercial Banking Corporation (RCBC) and the money can be drawn down immediately. Under Philippine law a bond must have a face value of Philippine Peso, however it is inadvisable to convert the USD to PHP as this can result in large losses later in rates of exchange. To protect owners interests the amount is kept in USD in the time deposit and the standby letter of credit issued to the Bonding Company, who then issue the equivalent amount in a Peso Counter Attachment Bond. Visayan are a Blue Chip bonding company and the veracity of there bonds are without question and will be accepted by the court. The bond is filed in the court with a motion to "lift the writ of attachment"

c) Counter Attachment Bond secured by a Club Letter Of Guarantee (CLOG)

There is only one company in the Philippines who will do this, although subject to review by their legal division. We have built up a good relationship with them and to date have never been refused. The bonding company is Pioneer Insurance, however the Club Letter Of Guarantee must be the standard format as used by Pioneer and for the Club kindly reading in copy I attach a blank format for review by underwriters. For the Clubs guidance the wording required by Pioneer has been accepted by the International Group of P&I Clubs and we have used it on many occasions. The advantage of this option is that we can also secure this type



of bond within one day. Due to the level of trust Pioneer/Pandiman, Pioneer will accept a faxed/email copy of CLOG and release the bond immediately, the original to be couriered and submitted directly to Pioneer upon receipt. Again the bond is filed in the court with a motion to "lift the writ of attachment". The advantage of this bond is that it does not tie-up collateral of the ship owner.

d) Back to Back Offshore Standby Letter of Credit.

The problem with back-to-back bank guarantees is the time involved for the bank abroad and the corresponding bank here in the Philippines to agree on the wording of the documents. We have seen this take anywhere from 3 weeks to several months. One problem is that banks abroad are not always too keen on the wording required by the local bank which under the law here requires that the undertaking is automatically renewed every anniversary until the case is concluded having gone through all legal remedies and discharged with prejudice. The time involved in establishing the back to back guarantee is usually not acceptable to the owner as he can not afford the ship to remain arrested for the many weeks it takes to establish the guarantee. Once the guarantee is established then the bank will issue a standby letter of credit to the bonding company who will issue the Counter Attachment Bond. An additional problem is that the premiums are very expensive.

Pandiman Philippines
Manila
<http://www.pandiman.com>