

ARREST OF CARGO, BUNKER AND FREIGHT UNDER ITALIAN LAW

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London, 1st October 2009*

Arrest of Bunker: requirements

- Competent Court;
- Prima facie evidence of the claim;
- Periculum in mora;

Arrest of Bunker: procedure

- Assistance of the Court's bailiffs;
- Declaration of the Master;
- Transfer and deposit of the bunker;

Arrest of bunker: practical problems

- Costs;
- Transfer;
- Place;
- Safety of the vessel.

Arrest of cargo

- I solution: Lien on cargo - direct sale of goods
- art. 437 of the Code of Navigation provides that: *“in the case of non payment of the freight, the Master can obtain the authorization from the judicial authority of the place of unloading to deposit or, if necessary, to sell so a part of the goods loaded sufficient to cover freight and demurrage, unless the receiver deposits an amount equivalent to the carrier’s credit”*.
- When the Owners can sell the cargo?
- Procedure to sell the cargo

Arrest of cargo

- II solution: deposit of cargo
art. 450 of Code of navigation provides that: *“if the consignee is untraceable or refuses to accept the cargo, or several consignees present themselves, or if opposition is made for the delivery, the carrier must immediately ask the shipper for instructions. The latter can dispose of the cargo according to art. 1865 civil code, but the carrier has the option to deposit or to sell the goods in the cases foreseen by art. 1690 civil code. If the consignee, after having acquired the rights arising from the contract, delays to withdraw the cargo or if a dispute arises with regard of to the carrying out of the delivery, the carrier can deposit the goods with a third person according to the art. 1514 civil code. In case of goods subject to rapid deterioration, the carrier can sell same for account of the consignee according to art 1515 civil code, by giving notice to the consignee”*

Arrest of cargo

- Procedure under art. 450 Code of Navigation:
 - deposit of the goods in a public place or in a place appointed by the court (on behalf and in charge of the buyer);
 - give notice to the buyer;
 - if the buyer fails to pay, the carrier can sell immediately the goods on behalf of the buyer by commission agent or with the assistance of the court bailiff

Arrest of cargo

- III solution: Judicial lien on cargo (art. 561 code of navigation) - lack of “ius sequelae”.

Arrest of cargo

- IV solution: the contractual lien on goods
- B/L lien clause