



DEBTS REPAYMENT, ARRESTS & YACHTS

Nowadays considering the crisis we are living it is very important to manage in the most efficient way debts reclaim. In this sense it is basic to obtain a guarantee that we will get a debt payment sooner or later.

In Spain the only way to get the non-voluntary payment of a debt is by enforcing a judgment or arbitral awards, but even having obtained this support, the material enforcement can be difficult or impossible if the debtor doesn't have enough goods.

In this sense it is very interesting to use all the mechanisms that the Spanish legal system provide to manage debts reclaim.

In this newsletter we analyzed different paths to obtain the payment of a debt in Spain

Preferential credits

There are certain types of debts that the creditor has priority to be repaid. These debts are in many cases connected to the good where they come from. In the Spanish legal system, this priority is established basically in the Civil Code. However it is very important to take attention to some special laws that might affect these general rules.

With regards yachts it is especially important the rules established in the Civil Code, which gives priority to those who put labour or materials in a yacht refit. In this sense the Civil Code guarantees the repayment of those works up to the value of the yacht. In other words, independently of the owner, the boat is herself a collateral for the works made on her.

It is very important to note that in the Spanish law, the term to claim for debts for yachts refits or construction, expire in one year.

In other way, a International rule that provides a privilege in terms of getting the payment of a debt connected to a boat is the International Convention on Maritime Liens and mortgages from 1993. This regulation is applied independently of the boat's pavilion. According to this convention crew salaries, rescue rewards or harbour fees have priority to be paid. These debts have priority even on any other debt

guaranteed by the internal legal system (i.e. Spanish Civil Code).

The right to claim these debts appealing the Convention expires in one year time.

Yacht arrest and lien

The yacht arrest intends to ensure the future payment of a debt by guarantying the availability of a debtor's asset.

It can be applied previously or simultaneously to a judicial claim, in order to get the debt recognition.

When the arrest of a boat located in Spain is applied, the regulation applicable is different depending on whether all the parts are Spanish or someone of them is foreigner.

If all the parts involved are Spanish i.e. debtor, creditor and yacht, the procedure to apply is the one established by the Ley de Enjuiciamiento Civil; hereafter LEC. The LEC establishes the possibility that as a precautionary measure and before starting a judicial claim, the arrest of a boat (or other goods) can be claimed. As long as the judge considers that the debt supporting the claim, in appearance (*fumus boni iuris*), is real, and that if no action is taken (*periculum in mora*), the debt payment might be impossible in the future, the arrest is arranged.

In the LEC, together with the arrest application, the claimant must provide a guaranty to compensate the debtor in case the debt claimed wouldn't be recognized and the yacht retention might have involved damage for the defendant.

The principal complaint must be submitted no later than 20 days after the arrest claim. Debtor can oppose to the precautionary measure by submitting a formal written answer in the courts stating the reasons why he thinks that attachment shouldn't be applied. Court fees will be payable by the loser side.

When **one of the parts is not established in Spain**, it is applicable the International Convention on the Arrest of Ships issued in 1999.



In the Convention, the arrest application must be submitted in the competent court of the place where the boat is located. The application must assert that the object of the claim is a maritime credit. Among these we can consider: crew salaries, repairs and supplies, purchase contract, port rights, construction debts, salvage operations, etc.

It is not necessary to provide a guaranty to compensate, if is the case, debtor damage, unless the judge considers it necessary.

The principal action must be submitted during the period established by the judge. In some cases, the complaint can be resolved in a different court than the one where the arrest application was submitted.

In Spain, in both cases the arrest application must be signed by a lawyer. At any stage the debtor can release the boat by guarantying the debt in the courts.

The payment of the debt is in any case 100% ensured up to the yacht auction price

Finally, In the Spanish law, lien is applicable when the creditor poses the boat origin of the claim. The most typical case is a shipyard with the boat in it facilities. In this case there is no doubt at all about the boat's possession. Port fees could be claimed too. It is important to remark the special situation that happens in Catalonia, whose legal system establishes in some cases that the creditor has the right to sell the boat in order to get the debt payment.

Summary:

- 1) The maritime law establishes certain types of rules where creditor has priority to get payment. The right to claim these debts expires in one year time.
- 2) The boat itself is a guaranty for the liens, even if there is a change of owner.
- 3) The boat is collateral for debts regarding refits, supplies or works done on her.
- 4) The creditor has the right to retain the boat as a guarantee for its credit payment.

5) In the Spanish law, the right to claim the debts connected with repairs or refits expires in one year time. After this period it is not possible to claim them again.

6) Before the judicial claim it is possible to arrest a boat as a guarantee of the debt.

7) In Spain, when one of the parts is not established in Spain, it is easier and cheaper to apply and obtain the attachment. There is no guarantee necessity.

8) When all parts are Spanish (creditor, debtor and yacht) to arrest a yacht is necessary to argue *bonus fidei* and *periculum in mora*.

8) Being one part not Spanish, the international law allows the development of a process in Spain which makes it easier and cheaper for Spanish companies arrest yachts, than the national law.

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