**南京海事法院诉讼指南（诉前扣押船舶申请篇）**

**一、扣押船舶的申请条件有哪些？**

1、限定于海诉法第二十一条规定的22种海事请求，但为执行判决、仲裁裁定以及其他法律文书的除外。

2、因情况紧急，不立即申请保全将会使其合法权益受到难以弥补的损害的，可以向船舶所在地海事法院申请扣押船舶。

3、船舶的确切信息。

4、申请人提供的担保符合法律规定。

**二、海事请求保全扣押船舶的期限是多久？**

诉前申请扣船的，海事请求人应当在收到准许扣船裁定书的三十日内提起诉讼或者申请仲裁。

**三、申请扣船所需材料有什么？**

1、扣船申请书及证据

申请书应注明申请人名称、被申请人名称、扣押船舶的名称、靠泊地点、靠泊时间、申请扣船的事实和理由以及要求提供担保的数额，由申请人在申请书上签字盖章。证据内容应与申请书记载事项相关。

2、海事请求人提供担保

（1）申请人或第三人提供财产担保的，应当出具担保书（担保书应当载明担保人、担保方式、担保范围、担保财产及价值，担保责任承担等内容，并附相关证据材料）。

（2）保险人以其与申请人签订财产保全责任险合同的方式为财产保全提供担保的，保险人应当出具担保书（担保书载明担保人名称、被担保人名称、担保的案件、担保方式、担保范围及因申请财产保全错误，由保险人赔偿被保全人因保全所遭受的损失等内容），保险人还应当提供：营业执照（复印件）、经营许可证（复印件）、注册资本证明、法定代表人或者负责人身份证明、近五年内无违法犯罪记录且无拒不承担为财产保全申请人履行担保义务记录以及未被列入人民法院执行案件失信被执行人的书面声明；中国银保监会的批文（中国银保监会财产保险公司保险条款和保险费率备案表，加盖保险费率管理专用印章）。

（3）金融监管部门批准设立的金融机构以独立保函形式可以为财产保全提供担保。

申请人或担保人系社会公众普遍认知的特大型企业或者有足够资产的金融机构，经审查并认可后，该申请人或者担保人可以本企业的信用作担保。

担保人或者其分支机构系经本市金融管理机关批准、具有兼营诉讼保全担保业务资格、近五年内无严重不良记录的融资性担保公司，经审查认可后，该担保人可以本企业的信用作担保。

担保人或者其分支机构系依法设立注册在本市、具有诉讼保全担保业务资格、注册资本金在2亿元以上、近五年内无严重不良记录的非融资性担保公司的，经审查认可后，该担保人可以本企业的信用作担保。

信用担保应当提交的材料：由法定代表人签名并加盖企业法人公章的连带保证担保书；企业法人营业执照复印件、组织机构代码证复印件、法定代表人身份证明书、最近六个月的资产负债表、损益表及由其基本账户开户银行或者审计机构出具的资信证明以及《公司法》规定的相关文件材料；担保人已经提供诉讼保全担保情况的书面申报；近五年内担保人未被列入人民法院执行失信被执行人名单、担保人法定代表人未被列入限制高消费名单的书面声明；法院要求提交的其他材料。

（4）实物担保，应当提供担保实物清单、存放地点以及保管人员名单或者仓库等物权凭证。必要时还需提供评估机构对实物价值的评估报告。

（5）以已经登记的不动产、登记动产担保的，应当提供登记机关出具的他项权利登记信息和无司法限制等证明文件。

（6）以债券、存款单、提单、知识产权权益证书等权利凭证担保的，应当提供债券、存款单、提单、知识产权权益证书等权利凭证原件，由法院代位保管。

**3、申请人主体资格材料**

申请人是自然人的，提交身份证明复印件；申请人是法人或者非法人组织的，提交营业执照或者组织机构代码证复印件、法定代表人或者主要负责人身份证明书。

4、授权委托书

代理人是律师的，提交授权委托书及律所公函；代理人是公司员工的，提交员工身份证复印件、授权委托书及劳动合同复印件并由公司盖章。

5、法律文书送达地址确认书

**Application guide for arrest of a ship before trial**

**Ⅰ.What are conditions to be satisfied in order to arrest a ship?**

1. Constraint to the 22 maritime claims listed in Article 22 of Maritime Procedure Law, except to enforce a court judgment, arbitration judgment or other legal documents.

2. In case of an emergency, not to apply for an arrest of ship will cause huge damages that will not be made up afterwards, the applicant may deliver an application to the maritime court of where the ship is.

3. The details of the ship.

4. The applicant shall provide a guarantee in accordance with the law.

**Ⅱ.What is the period of application for arrest of a ship?**

To apply for arrest of a ship before trial, the applicant shall file a lawsuit or an arbitration in 30 days after the receipt of the order of admission of the aforesaid application.

**Ⅲ.What are materials to be delivered in such an application?**

1. Application and proof

The application shall list the name of the applicant, the name of the respondent, the name of the ship, the address of berthing, the time of berthing, the facts and causes of the action, the guarantee to be claimed etc., and the application shall be signed or sealed by the applicant. The proof shall be relevant to the application.

2. The guarantee to be provided by the applicant

(1) The applicant or the third party may provide a guarantee by delivering a guarantee statement (the name of guarantor, the pattern and scope of the guarantee, the value of the guaranty, the liability to be recorded in the statement, proof to be attached).

(2) Where the insurer guarantees for property preservation by signing a property preservation liability insurance contract with the applicant, the insurer shall issue a guarantee (which specifies the name of the guarantor, the name of the guaranteed, the case of guaranty, the method of guarantee, the scope of guarantee and the contents of the loss suffered by the insured due to the false application for property preservation to be undertaken by the insurer, etc.). The insurer shall also provide: the business license (photocopy), the business certificate (photocopy), the certificate of registered capital, the identity certificate of the legal representative or the person in charge, a written statement of no record of crime, refusal to bear the guarantee obligations for property preservation applicants and not being listed in the people’s court’s case of dishonesty in execution within the past five years, and an approval of the CBIRC (insurance clauses and premium rate record form of property insurance company of CBIRC, with special seal for premium rate management).

(3) Financial institutions approved by the financial regulatory authorities can provide guarantees for property preservation in the form of independent guarantees.

In the case that the applicant or guarantor is a very large enterprise generally recognized by the public or a financial institution with sufficient assets, after examination and approval, this applicant or guarantor can provide guarantee with the credit of the enterprise.

The credit of the guarantor can be used as a guarantee after reviewing and approval, when the guarantor or its branches are financing guarantee companies, approved by the financial administrative authorities of the city and qualified for concurrently operating guarantee of preservative measures in litigation with no serious negative records in the past five years.

The credit of the guarantor can be used as a guarantee after reviewing and approval, when the guarantor or its branches are non-financing guarantee companies legally registered in the city with more than 20 million RMB registered capital and qualified for the guarantee of preservative measures in litigation with no serious negative records in the past five years.

Documents to be submitted for credit guarantee:

The letter of joint liability guarantees under the signature of the legal representative stamped with the official seal;

The photocopy of the business licence of the enterprise legal person, the photocopy of organization code certificate, legal representative certificate, the balance sheet, the profit and loss account and capital credibility reports issued by its basic account opening bank or the auditor institute in latest six months, and other documents in accordance with the Company Law of China;

The written declaration that the guarantor has provided the proved guarantees for preservative measures in litigation;

The written statement that the guarantor is not included in the list of dishonest judgment debtors by the people’s court and the legal representative of the guarantor is not included in the list of limiting high consumption in the past five years;

Other documents required by the Court.

(4) In real security, the guarantor shall submit the list of security objects, the place of deposit, the list of custodians or warehouse, etc. An assessment report of the assessment institution on the value of guaranty is also required when necessary.

(5) Where the registered real estate or movable property is guaranteed, the registration information of other rights issued by the registration authority and the certification documents without judicial restrictions shall be provided.

(6) Where guaranteed by bonds, deposit slips, bills of lading, intellectual property rights certificates, etc., the originals shall be provided and kept by the courts in substitutes.

3. Documents for the applicant’s subject qualification

If the applicant is a natural person, submit the copy of identification card; if the applicant is a legal person or other organization, submit the copy of business license or organization code certificate and the identity certificate of the legal representative or the person chiefly in charge.

4. Power of attorney

If the agent ad litem is a lawyer, submit the power of attorney and the letter of law firm; if the agent ad litem is a company employee, submit the copy of the employee’s identification card, power of attorney, the copy of labor contract and the aforesaid documents should be affixed with the company’s stamp.

5. Confirmation of service address for legal documents