

SHIP ARREST IN CAMEROON

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1. Please give an overview of ship arrest practice in your country.

In Cameroon, ship arrest as a conservatory measure is to ensure the satisfaction of a final judgment in a future action. Cameroon has 3 (three) major seaports (Douala, Limbe and Kribi). To these must be added the Tiko and Idenau seaports and Garoua river port.

The competent authority to order ship arrest is the petition judge (see article 15(2) of Law n° 2006/015 of 29/12/2006 on Judicial Organisation of Cameroon) who happens to be the President of the Court of First Instance. But in practice the President of the High Court in the English Common Law jurisdiction also entertains motions ex-parte. Ship arrest could arise from several reasons to be enumerated in question 5 below. Ship arrest is commenced by a motion ex-parte after having sought the consultative opinion of the Department of Merchant shipping and Inland Waterways. The justifying documents are usually the bill of lading and maritime survey report or any other document(s) justifying the maritime claim. Before this petition may be granted, the creditor must first satisfy the court that a notice to pay had been served on the debtor to no avail. Applications in view of ship arrest are filed on business days (Mondays - Fridays) during working hour (7.30 am -3.30 pm). Once the judge is of the opinion that the maritime debt is justified (if only in principle), s/he grants the application. Ship arrest in Cameroon is effected in the hands of the captain via the services of a sheriff/bailiff who prepares a report thereof, a copy of which is addressed to the commander of the port, the competent maritime authority as well as the consul of the country of the flag of the ship.

2. Which International Convention applies to arrest of ships in your country?

The law governing ship arrest in Cameroon is the regional CEMAC Merchant Shipping Community Code of 3rd August 2001 as amended on 22nd August 2012 (the code), which had its inspiration predominantly from the International Convention of 1999 on the Arrest of Ships and the Brussels Convention of 1952 on the Unification of Certain Rules on the Arrest of Ships.

3. Is there any other way to arrest a ship in your jurisdiction?

The code being a law of special application prevails over other laws on the attachment of personal and real property in Cameroon. Although the code is the only law governing ship arrest in Cameroon, it however makes reference to the OHADA Uniform Act relating to Simplified Recovery Procedure and Means of Enforcement of Judgments relating to the procedure for the forceful sale of ships.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

Article 144-156 of the code prescribes the modalities for "saisie conservatoire".

5. For which types of claims can you arrest a ship?

Article 149 of the code provides that the maritime debts which may give rise to ship arrest are those which result from one or more of the following causes, provided that claims which are only partially maritime are assimilated to maritime claims:

- a) Loss or damages caused by exploitation of the vessel;
- b) Death or corporal injuries arising, onshore or offshore, in direct relation with the exploitation of the ship;
- c) Operations of rescue or assistance, as well as all contracts of rescue or assistance, including, as the case may be, for special indemnity concerning operations of rescue or assistance to a ship which, by itself or by its cargo, was running the risk of causing damage to the environment;
- d) Damages caused or likely to be caused by the ship to the environment, to the coast or to connected interests; measures taken to prevent, reduce or eliminate the damages; indemnity for these damages; cost of reasonable measures to repair which was effectively taken or to be taken;

- losses suffered or likely to be suffered by third parties in relation to these damages; and damages, costs or losses of a similar nature to those which are indicated in this item d);
- e) Costs and expenses related to the retrieving, removing, recovery, destruction or neutralization of a sunk, wrecked, grounded or abandoned ship, including all what is found or was found on board the ship, and costs and expenses related to the conservation of an abandoned ship and the up keep of its crew;
- f) Every contract related to the use or hire of a ship by chartering or otherwise;
- g) Every contract related to the transportation of goods or passengers by ship, by chartering or otherwise;
- h) Losses or damages suffered by, or in relation to, goods, including luggages transported by the ship;
- i) General average;
- j) Towing or piloting of a ship;
- k) Goods, materials, supplies, oil-fuel tank, equipments, including containers supplied or services rendered to the ship for its exploitation, its management, its conservation or its maintenance;
- l) Construction, reconstruction, repairs, transformation or equipment of a ship;
- m) Port, canal, dock (dry-dock), anchoring and inland waterways duties and fees;
- n) Wages and other sums of money payable to the captain, naval officers and other crew members, by virtue of their engagement on the ship, including repatriation fees and social insurance contributions payable on their behalf;
- o) Payments made on behalf of the ship or its owners;
- p) Insurance premiums, including annual insurance contributions, in relation to the ship, payable by the owner of the ship or by the charterer by devolution or on their behalf;
- q) Agency fees or brokerage commissions or other in relation to the ship, payable by the owner of the ship or by the charterer by devolution or on their behalf;
- r) Every dispute arising from the ownership or possession of a ship;
- s) Every dispute between the co-owners of a ship in relation to its exploitation or the right to the proceeds of exploitation of the ship;
- t) Mortgage or rights of a similar nature over a ship;
- u) Every dispute arising from a contract of sale of a ship.

6. Can you arrest a ship irrespectively of her flag?

Article 1 of the code has broadened its scope of application to include the arrest of any ship irrespectively of her flag, provided such a ship is found within the CEMAC territorial waters. The only exception provided by article 144(2) refers to a ship belonging to a state or exploited by a state, which was doing exclusively a government (and not commercial) service at the time the maritime claim arose.

7. Can you arrest a ship irrespectively of the debtor?

Article 149 of the code prescribes different circumstances whereby a ship can be arrested. This contemplates a situation where a ship can be arrested irrespectively of the debtor. That he is a national or foreigner is of no moment. He could also be a physical or moral person.

8. What is the position as regards sister ships and ships in associated ownership?

According to article 144(1) of the code, the ship which caused the maritime claim to arise or a sister ship, meaning any other ship belonging to the person who was owner of the ship which caused the maritime claim to arise, may be arrested as a conservatory measure. However, the code is silent on ships in associated ownership.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The code, in its article 149(f) provides for the arrest of a ship as a conservatory measure, if the maritime claim arose from a chartering contract or contract on the use of a ship. Along the same lines, article 2(2) seems to have given a broader definition to chartering a ship to include bare boat and time chartered vessels. In effect, a ship can be arrested in Cameroon if the maritime claim arose from bareboat or time chartered vessel.

10. Do your Courts require counter-security in order to arrest a ship?

As soon as a maritime debt appears justified (if only in principle) a ruling may be granted for the arrest of ship as per article 150(2) of the code. Accordingly there is no requirement for counter security. It is rather the debtor who shall be required to provide security under article 146 & 147 of the code if s/he desires to make one or two quick voyages for emergency purposes.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Article 149 provides a list of maritime claims for which a ship may be arrested. Arguably a lien may be given to secure the claim. In addition, article 75 of the code provides a list of maritime claims that are privileged. If the maritime lien provides enough security, an arrest may not be necessary. Yet a maritime lien arising from a privileged maritime claim under article 75 is good reason to arrest a ship here and the procedure is the same.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Cameroon recognizes maritime liens under article 75-88(not) of the code and she is a signatory to this code which is an International Convention signed on 22th July 2012 by the CEMAC member states.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

An arrest order can be obtained within the same day of filing the requisite court processes if pressure is put. So if the applicant through counsel, sees the private secretary or registrar-in-chief (and talk convincingly), the application could be put on top for the urgent attention of the President of the court who may also be interested in such a file.

14. Do you need to provide a POA or any other documents of the claim to the Court?

There is no requirement to provide a POA. Article 150(2) of the code is to the effect that the claimant must produce justifying documents relating to the maritime claim to the competent court before such petition can be granted. These justifying documents would include the bill of lading, maritime survey report assessing the claim and a notice to pay addressed by the claimant to the debtor, which notice was either simply ignored, or, the claimant was not satisfied with any reaction the debtor might have shown.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille and when are they needed?

The code is silent as to whether originals of justifying documents should be filed, or whether they may be filed electronically, or whether any document need notarisation. However, practice and procedure in the Cameroonian courts require an applicant to either make and file certified true copies of justifying documents or produce and file the originals depending on the circumstances of each case. Yet in the English Common Law jurisdiction, mere photocopies are accepted. Whether they are originals, certified copies, or photocopies, justifying documents are required at the moment of filing the motion.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Pursuant to article 7 of the Brussels Convention of 1952, Cameroon courts will assume jurisdiction over the substantive claim once a vessel has been arrested within its territorial waters. Indeed article 155(1) of the code provides that the creditor must file a substantive matter within a limited period if the arrest order would stand.

17. What is the procedure to release a ship from arrest?

a) By the debtor: He shall, within one month of the arrest, file a motion on notice before the same court for the discharge of the arrest order. If successful, the release order is served on the creditor (who has the right to appeal) and the Maritime Authority (who issues an authorization to sail in the absence of an appeal) and the Port Authority.

b) By the creditor: Once he has received payment or sufficient guarantee, he shall immediately file a motion *exparte* before the same court for the release of the ship or simply instruct the sheriff/bailiff to release same. Either way, he shall serve the Maritime Authority (who shall issue an authorization to sail) and the Port Authority.

c) Temporary release upon emergency: Upon the application of the debtor, the court may order a temporary release of the vessel (carrying perishable goods...) for a specific voyage (or voyages) upon deposit of sufficient guarantee.

18. What type of security needs to be placed for the release?

In the case of a) above, no security is required. In the case of b) above, a Letter of Understanding issued by the P&I Club or endorsed by the P&I Club is sufficient. In the case of c) above, the law talks of sufficient guarantee, which we interpret to mean, funds enough to cover the debt.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release a Ship?

If the application for release is initiated by the debtor in a disputed case it may take from one month to two years or more depending upon whether there are appeals or not. If on the other hand the application for release is initiated by the creditor, it may take between a couple of hours to couple of days. In the case of temporary release it takes a couple of hours.

22. Is a procedure to contest the arrest?

Yes. The debtor may, within one month of the arrest, file a motion on notice before the same court contesting the arrest. If he succeeds he may claim damages for unjustified arrest.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Article 155(1) of the code is unambiguous that under pain of forfeiture, the claimant(s) have a statutory period of 01 (one) month to institute legal action or file the necessary court processes leading toward obtaining an executory formulae.

24. Do the courts of your country recognize wrongful arrest?

Yes. Article 156 of the code gives its blessings to a ship owner whose ship was wrongfully arrested and he obtained a release order thereafter. Thus the ship owner is entitled to sue for damages if he has suffered loss as a result of immobilization of the ship.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Article 54-74 of the code provide for co-ownership of a ship, meaning the ship could be owned by a corporation. The OHADA Uniform Act provides for the piercing and lifting of the corporate veil and the courts here do enforce it.

26. It is possible to have a ship sold pendente lite; if so, how long does it take?

It is logically unwarranted to sell a ship, the object of litigation, pendente lite. If that were to be the case, the litigation would commit abortion instantly after such a premature sale. However under some special circumstances yet to be contemplated by our legislations and practice and procedures, a ship may arguably be sold pendente lite.

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He gave up teaching in the University of Douala where he lectured law of Torts and civil procedure to concentrate on legal practice where he specializes in International Commercial and Corporate Law besides his day-to-day General Practice. The firm's clients say he is reliable. As a Maritime Lawyer, he arrests up to 20 ships per year.