

SHIP ARREST IN SENEGAL

By Philippe Pruvot
3A AFRIQUE DAKAR
legal@group3a.com
Route de l'aéroport Leopold Sedar Senghor, Foire Quest
BP 25897 Dakar Fann
Tel: +221 8 2546 0770



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

With a maritime claim, the Judge can allow you to arrest a ship, referring to the 1952 Brussel Convention, related to ship arrests. Most of the time, a security must be provided in order to obtain the release of the vessel. Sometimes, a Judge has to intervene, especially when there is an alleged case of a wrongful arrest. Within a month, after enforcement of the arrest order, the claimant must go to Court and apply for a Judgement on the merits.

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

The Applicable International Convention for the unification of certain rules applying to the arrest of sea-going ships, is the one adopted in Brussels, on 10 May 1952.

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

“Saisie conservatoire” is the most common way to arrest a ship. But, sometimes, the Administration is entitled to notify the vessel a prohibition to sail, which is another form of an arrest order. When you also have a final Judgement, you do not need an order from a Judge. You can directly arrest the ship, when of course, there is a link between your claim and the vessel.

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

See response given in Number 3.

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

Under Brussels Convention, 1952, it must be a maritime claim.

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

Yes, the flag does not matter.

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

If you have a maritime claim, you can arrest the ship in relation with such a claim.

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

You must have a maritime claim, and be able to show evidence between the ship related to your claim and the sister ship, and that both belong to the same owner.

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

What was said in number 8 is the most significant point when it comes to Time-Chartered vessels. To arrest the ship, we do not look over the C/P, but just the Bill of Lading.

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

A counter-security is not required before an arrest.

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

What is required to arrest the ship is a maritime claim. The maritime lien matters when you have many different claimants or when there is a change in the ownership of the vessel.

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

Our applicable maritime rules are mostly national, because our country is not a part of any international Conventions on Maritime liens.

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

Between two to three days.

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

A POA is not needed. Relevant documents related to the claim including invoices, bills of lading, sometimes preliminary surveys and others must be transmitted, even electronically.

Documents must be translated in French.

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

See response given under Number 14.

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

In most cases, yes.

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

Arrest can be released without an order from the Judge, when parties agreed on the type of security to be provided.

When such agreement does not exist, a party can refer to a Judge, to obtain the release of the ship.

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

Usually claimants require a Bank guarantee, but sometimes, Letters of Understanding can also be issued, if parties agree on it.

19. Does security need to cover interest and costs?

Yes, claimants include costs and interest in the amount of the security to be given by owners or P. and I. Clubs.

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

See responses given under 17 and 18.

21. How long does it take to release the ship?

When the parties agree on it, the release can be done the same day. It is the same, when the release is ordered by a Judge.

22. Is there a procedure to contest the arrest?

Yes, of course owners or Clubs can contest the arrest, by submitting a request to the Judge who ordered the arrest. In such case, the Judge organizes a contradictory hearing, before giving his decision.

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

One month after the arrest order.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, as already mentioned in Question Number One.

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

From our experience, that question would be easier to address during proceedings on the merits, not at the stage of arrests.

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

We cannot respond to this question by a simple "Yes" or "No". It will also take too long if we want to be both specific and exhaustive.

To summarize, two major issues should be considered. First, is the claimant willing to sell the ship involved on the pending lawsuit? If parties to the lawsuit amicably agree to the selling, such agreement could be binding to Court, and the pending lawsuit will not prevent the sale from happening.

Second situation to consider, the claimant willing to sell is not involved in pending lawsuit. The question would be: on which basis? If he had obtained an enforceable judgment before the starting of judicial sale proceedings, his action could prevail.