

SHIP ARREST IN MAURITIUS

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

Originally ship arrest practice in Mauritius springs from its former "Code de Commerce" which itself was out sourced from the Code Napoleon. In 1985 the relevant articles of the Code de Commerce were repealed and replaced by our local Law which is subject to the "Merchant Shipping Act".

However in case of contradiction between the two pieces of legislation, the "Merchant Shipping Act" shall prevail. These two pieces of legislation regulate seafaring and maritime trade.

Following the provisions of the said enactments there are two ways of proceeding. The "Saisie – execution" and the "saisie conservatoire". Both relate naturally to an executor title and to a claim which appears justified to the Judge. Whichever procedure is used the ship arrest can be served by the Port Master when the ship calls at the Port of the Country.

These provisions of the law which are incorporated in our "Code de Commerce" were inspired by the "Décret Français du 27 Octobre 1967" and were stated to follow the main lines of the "International Maritime Law".

It is relevant to note that the fact that the State of Mauritius has or has not subscribed to any International Convention is of no importance since our local Law follow their principles.

The procedural provisions for ship arrest exist.

In case the arrest proceeds from the Court Judgment, it has to be declared executory in the territory of the State of Mauritius. This Exequatur follow its own rules. The claim regarding wages and in some other instances directly relating to the ship including bunker and provisions can give rise to a "Saisie Conservatoire" without being the result of a judgment of a Court.

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

See answer above to question 1.

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

See answer above to question 1.

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

See answer above to question 1.

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

This answer can be related to the claims for which a Maritime lien can be raised – The details can be seen under the provisions of Art 35 of the "Merchant Shipping Act".

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

Yes, a ship can be arrested, irrespective of the flag but it will be at the risk and peril of the client requesting the arrest. The claim should relate to the ship or the owner.

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

Refer to answer 6 above.

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

As regards sister ships the claim and/or judgment should relate to the owner on the ship and ships in associated ownership. It will be more difficult in the sense that this issue will require an Executory

Judgment to proceed with a "Commandment" to pay followed by a "Saisie-Execution" – Arrest Procedure.

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

I have taken some time to answer this particular question because I wanted to find out if there was any particular disposition in law and in jurisprudence. I have not been able to find any particular case about this type of situation in Mauritius. As far as I have been able to verify in the law there is no particular rule about this. My opinion is that we can arrest the vessel on debts incurred by the vessel owner himself. I am also of the opinion that the vessel cannot be arrested for debts incurred by any type of charterer.

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

Counter security is not provided for in Mauritius except for costs, and this comes into play only where the other party moves for security.

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

Yes, there is a difference in respect to arresting a ship for a maritime claim, which calls for a "saisie conservatoire" and a maritime lien, which falls under "Merchant Shipping Act".

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

Yes. Maritime liens are recognised under the laws of the state, namely the "Merchant Shipping Act".

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

It is rather a question of immediate action. The arrest should be applied for and executed before the ship leaves port. The arrest can be made only while the ship is in Port.

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

Yes, a Power of Attorney is required. But an instructions paper with proper identification of the claimant can be sufficient.

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

Certified copies can be used in the application but to substantiate the claim originals should be eventually filed in fixed hearings for physical appearances. At start the certified copies can be filed electronically.

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

Given that the arrest will only be possible following the court's order, the answer is positive.

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

Release of the ship follows the same procedure as for the arrest.

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

The release will be upon the claimant's order if the claim is satisfied or else the claimant shall fix the amount of security for release.

19. Does security need to cover interest and costs?

As a rule the security should cover the total claim including interest and costs.

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

This would be something to be agreed upon by the parties and has no force of law save between the debtor and the creditor.

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

As a rule it is one normal working day, if all conditions are ready to be executed.

22. Is there a procedure to contest the arrest?

Yes, the arrest can be contested. But in practice this is not recommended as the ship cannot move until released with all that this entails as costs.

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

There is no prescribed delay under our laws, but usually the court will act diligently.

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

Yes.

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

Yes.

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

The ship will be sold before the Master's Bar at the Supreme Court if the judgment creditor has not been satisfied.

***Vijay Kumar Dwarka** has started his legal career since 1973, when he opened his own law chambers and has acquired extensive legal experience in a variety of sectors. He has nurtured strong professional relationships with other lawyers and solicitors around the world, hence expanding his horizons, with the ambition to offer excellent legal advice to his clients. Advises international counterparts on legal feasibility of projects within the Mauritian legal framework in the following areas: Export Processing Zone, Export Services Zone, Offshore Sector, Banking Sector, Bank of Baroda and previously for the State Bank of India (formerly IOIB), Employees Welfare Fund, Mauritius Housing Corporation, Government and Parastatal Bodies, Insurance Sector, Retail Sector, and Automotive Sector. Professionally Qualified Attorney at Law (Solicitor) of the Supreme Court of Mauritius (1973). He has been appointed Senior Attorney by the President of the Republic of Mauritius in June 2010.

Languages:

French: Fluent (written/spoken)

English: Fluent (written/spoken)

Hindi: Spoken