

SHIP ARREST IN SUDAN

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

A plaintiff seeking arrest of a ship has to raise a suit before Port Sudan civil court specifying the statement of claim. An arrest order shall be issued by Port Sudan civil court showing the plaintiff, name of the vessel, owners, and the amount claimed. It also states that release of the ship shall be made, provided however, that a duly cheque having the amount claimed is presented, or a valid bank guarantee or London P& I Club LOU is provided to the court to ensure that the plaintiffs rights are guaranteed. The purpose of the action in rem against the ship is to persuade the concerned party to appear and provide security.

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

Sudan is not party to the Convention Relating to Arrest of Seagoing Ships Brussel 1952 though it has made accessible in a great number of countries the provisional remedy of arrest or attachment of a vessel in order to reassure maritime lien-ors an proficient means of enforcement of their claims. However, Sudan is a party to the 1999 Convention on Arrest of Ships. It is a party to the International Convention on Maritime Liens 1993 Geneva. It regulates the circumstances under which ships may be arrested or released from arrest. Again, it addresses liability for wrongful arrest, and clearly addresses the jurisdiction on the merits of a claim. The said convention has entered into force on 14th September 2011.

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

No.

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

No.

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

A ship may be arrested for any of the maritime claims as prescribed under Article 45(2) Chapter 9 of Sea Transport Act 2010 as a pre-judgment in order to provide the plaintiff the right to arrest a ship for a maritime claim for the purpose of providing the requisite security for the alleged claim.

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

Yes, however, warships and non-commercial state owned ships shall not be arrested on the ground of sovereign immunity justifications.

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

Yes, except a vessel owned by a state for sovereign immunity considerations.

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

Sister ships are two ships owned by the same person whether an individual or corporate entity. In such a case, it is legally permissible to undertake the called for arrest.

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

It is not possible to arrest a vessel that is under a time charterer. A time charterer is not liable for any alleged claim, however, bareboat charterer (or demise charterer) are deemed to be proprietors that is to say owners of the vessel for the reason of enforcing an arrest in rem.

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

Yes. In practice, it is highly practical to request such a counter-security to ensure that the claim is genuine

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

There is no difference as regards the used procedure for arresting a ship in respect of maritime claim and a maritime lien.

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

Yes, Sudan is party to the International Convention on Maritime Liens and Mortgages 1993 Geneva.

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

In the event all the necessary documents are available, an arrest can be done in the same day an application is submitted before the competent court and all the requirements are satisfied including payment of prescribed court dues.

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

A POA or any other document is not required.

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

Documents in support of the alleged claim must be submitted before the court so as to provide cogent grounds for issuing the arrest order.

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

Yes.

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

An application to the court accompanied by the requisite defense in the form of security to quash the court order on the basis of which the ship arrest has been made.

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

An arrest order shall be issued by the competent civil court showing the plaintiffs, name of the vessel, owner, and the amount claimed. It also states that release of the ship shall be made, provided however, that a duly cheque is presented, or a valid bank guarantee or London P & Club LOU is provided to the court to ensure that plaintiffs rights are guaranteed.

19. Does security need to cover interest and costs?

The security shall embrace all costs, however, interest shall not be covered on the ground that interest is riba (usury) which is forbidden under the Islamic financial doctrine.

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

Yes. Security shall be asked for losses actually ensued and not merely anticipatory. The LOU should include indication to predetermined amount, all-encompassing of costs. Also, the LOU language must specify that the trigger for reimbursement under LOU is ready when the member's legal liability has been recognized. The wording must as well cap payment either in conformity with an agreement made by the parties or subsequent to a definitive final decision by an arbitral tribunal or the courts. The function of the local correspondent can be helpful, as the club will often rely intensely upon him for advice as regards the provision of security. In Republic of Sudan jurisdiction, a correspondent's LOU, counter secured by the club, is the only type of security other than a bank guarantee that will be satisfactory to the claimant

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

The time span required to release a ship depends on the financial standing of the ship owner as regards the owner's ability to furnish the requisite security to release the ship and hence pursue other legal methods to resolve any disputes as regard claims.

22. Is there a procedure to contest the arrest?

The prevailing Court's Civil Procedure must be employed to contest the arrest on the merits.

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

The claimants may take legal proceedings and furnish their claims at any time they deem fit, insofar, as the alleged claims are legal and based on a cogent factual background.

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

Yes, if the statement of claim is not supported by factual and legal background, that is to say fictitious claims.

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?

In the event an arrested ship entails cost of preserving arrest that exceeds the value of the amount claimed to the effect of lessening or highly reducing the value of the claimant security, then there are plausible legal grounds for sale *pendente lite*. A mortgagee arrests a ship; however, the cost of continuing the arrest awaiting judgment shall go above the value of the amount declared to the effect of diminishing the value of the claimant security. If such an event takes place there is an appropriate legal ground for a petition to court for sale *pendente lite*. This right may occur where the owners defend the mortgagee's claim but fall short to offer a substitute security such as a bank guarantee. The mortgagee is obliged to ascertain that the ship is a wasting asset suffering costs and that postponement of the sale of the ship while the case is being heard will weaken the mortgagee's capability to recoup the amount of the claim from the sale of the ship. The span required to consummate the process may not be possible to estimate with accuracy as it depends on the merits of each case. However, in our jurisdiction it is likely to be a bit long.

***Dr. Adam & Associates**, Commercial Law Group, is a full service business and commercial law firm situated in the city of Khartoum. The firm offers a full range of legal services to meet the diverse and rapidly evolving needs of our clients of national and international standing. We provide quality services to a diverse clientele in commercial law, maritime law, production and distribution services worldwide in a cost effective and timely manner. We are well conversant of financial devices and guarantees employed in international finance, international trade, construction and engineering contracts.

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