

SHIP ARREST IN CAMEROON



By Henry Feh Baaboh*
HENRY, SAMUELSON & CO
feh_law@yahoo.com
www.henrysamuelson.com

Immeuble Ndeke & Fils, Apt. 109, 158 Rue des Manguiers, Bali,
P.O. Box 15805 Akwa, Douala-Cameroon
Tel: (237) 33 43 87 63 / (237) 99 93 34 47
Fax: (237) 3343-87-91

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 sea ports (Douala, Limbe and Kribi). To these must be added the Tiko and Idenau sea ports 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 (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 there alternatives e.g. saisie conservatoire or freezing order?

Article 114-126 of the code prescribes the modalities for "saisie conservatoire".

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

Article 119 of the code provides that a maritime debt which may give rise to ship arrest are those circumstances which in accordance with the terms of the International Convention of 12th March 1999 relating to conservatory arrest of ships, arise from any or all of the following causes, viz;

1. Material or corporal damage, including loss of human life, on-shore or off-shore, caused by a ship or due to its exploitation;
 2. Assistance or rescue;
 3. Chartering contracts or contracts on the use of a ship;
 4. Contracts on the transport of goods by a ship;
 5. Loss or damage to goods and luggages transported by a ship;
 6. General average;
 7. Towing or piloting of a ship;
 8. Supply of products, materials or services to a ship in view of its exploitation or its maintenances;
 9. Construction, repairs, equipment of a ship or ship yard costs;
 10. Salary of ship captain or crew;
 11. Pre-financed expenses of the captain, charterer, shipper or maritime agent made on behalf of the ship or its owner;
 12. Commission(s) of the agent(s) of the ship;
 13. Contested ownership of a ship;
 14. Rights of co-ownership of a ship or rights to exploitation of a ship, or the proceeds of exploitation of a ship under co-ownership;
 15. Allowance or any remuneration due on the basis of any measure or attempt aiming at preventing, avoiding or limiting a damage, attributable/imputable to a ship, including damage by pollution, by virtue (or not) of an International Convention, a legislative or regulatory text or a contract;
 16. Costs and expenses incurred in the course of removing the remains of a ship or its cargo;
 17. Any/all insurance premium(s) owing by a ship;
 18. Any litigation resulting from the contract of the sale of a ship.
- So far however, the following debt items, *inter alia*, have given rise to the arrest of ships in the Cameroonian jurisdiction; viz:
- a) Premiums owing as a result of insurance contracts of ships;
 - b) Supply of paint to ships;
 - c) Delivery of various products such as petroleum and food items to ships;
 - d) Supply of petrol, gas oil and advance payment to the owner of a ship;
 - e) Execution of a contract of representation and ship consignment;
 - f) Claim by the crew of a ship who prove they had been abandoned by the captain without any protection;
 - g) Damage caused to goods in transit, etc.

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 114 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 119 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 114 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 119(3) 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 bareboat 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 120 of the code. By necessary implication there is no requirement for counter security. It is rather the debtor who shall be required to provide security under article 116 & 117 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 119 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 73 of the code provides a list of maritime claims which 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 73 is good reason to arrest a ship here and the procedure is the same.

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

Cameroon recognizes maritime liens under article 73-86 of the code and she is a signatory to this code which is an International Convention signed on 3rd August 2001 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 120 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 to 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 be 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 vessels 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 125 of the code provides that the creditor must file a substantive matter within a limited period if the arrest order would stand.

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

Article 125 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.

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

Yes. Article 126 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.

19. Do the courts of your country acknowledge the piercing and lifting of the corporate veil?

Article 52-72 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.

20. 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.



** Born in Cameroon and admitted to the Cameroon Bar as Barrister & Solicitor of the Supreme Court of Cameroon, Feh Henry Baaboh holds an LLM Degree in Business Law (University of Douala) and LLB Degree in English Private Law (University of Yaoundé II, Soa). These only came later to add to the three other University Degrees (one Bachelors and two Masters) he had earned before in the old University of Yaoundé. Such educational career, with a broad base, has earned him the distinction of a sound and solid solicitor of international renown. He is quick to discern legal issues and seek practical solutions to them.*

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