

# SHIP ARREST IN FRANCE



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

During the years following the adoption of the 1952 Brussels Convention, France was held to be a ship arrest haven. Indeed, as a response to the abusive expansion of single ship companies, French judges resorted to an extensive interpretation of article 3.2 of the Brussels Convention, granting orders of arrest against any ship apparently owned by “the same beneficial or associated owner”, such concept including a company which shares are owned by an entity holding also shares in the capital of the debtor. This movement, which led to various conflicting judgments, subsided in the mid nineties. The French courts back-pedaled to a more conservative view, whereby the piercing of the corporate veil must reveal the fictitious character of the company owning the ship (see parag.19 below).? France remains however an interesting forum for arrest insofar as the domestic legislation allows, under certain conditions, the arrest of a ship for any claim against the owner, were it not maritime, and as the procedure is relatively not costly and can be implemented rapidly.

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

France ratified the Brussels Convention on the Arrest of Sea-Going Ships of 10 May 1952 and incorporated it through the Decree no.58-14 of 4 January 1958.

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

Yes. Under the domestic regime established by the Law no. 67-5 of 3 January 1967 on the status of ships and the Decree no. 67-967 of 27 October 1967, as amended, completed by the general rules set by the Law no. 91-650 of 9 July 1991 on the reform of the civil procedures of execution and the Decree no. 92-7555 of 31 July 1992.

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

As a matter of principle, a freezing injunction may be issued under the provisions of the Code of Civil Procedure, in case of urgency whenever the claim is not seriously disputable, otherwise when it aims at preventing an imminent damage or at stopping a disturbance obviously illegal. In practice, it is rarely ordered against a ship.

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

Under the Brussels Convention, ships may be arrested for any of the “maritime claims” identified in article 1 of the Convention.

Under the domestic legislation, ships can be arrested for any claim that the petitioner may have against the owner of the ship, provided it is proven that this claim is “grounded in principle”.

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

Yes. All ships calling at a French port may be arrested – save warships and state-owned ships employed in a public non-commercial service or ships proven to be necessary for the personal exercise of a professional activity (eg. fishing boats).

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

Subject to the case of a maritime claim as identified in the Brussels Convention and to the situations described below, (parag. 8 and 11) French judges have regularly dismissed any petition for the arrest of a ship not owned by the debtor.

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

Under French law, any ship belonging to the debtor may be arrested even where the claim is not related directly to the ship. The Brussels Convention permits such arrest provided the claim is not in connection with the title to or ownership of a particular ship or with disputes between co-owners or the mortgage or hypothecation of this ship.

A ship owned by an associated company of the debtor may be arrested only if the company is proven to be fictitious (see parag.19 below), otherwise whenever the associated company is deemed to be jointly responsible for the claim.

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

Under the Brussels Convention, the holder of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the said ship or any other ship in the ownership of the charterer. The French domestic regime allows such arrest only if the claimant has a maritime lien on the ship or has reasonable grounds to believe that the underlying obligation was concluded on behalf of the actual owner of the ship.

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

It is not common practice that French courts require counter-security as a prerequisite for the arrest of a ship. However, as a matter of principle, judges have the discretion to decide otherwise.

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

There is no difference in the procedure of arrest. However, a maritime lien would allow the arrest of the ship irrespective of the identity of its owner ("into whatever hands it may pass" – article 8 of the Brussels Convention; article 39 of the Law of 3 January 1967).

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

Yes. France ratified the Brussels Convention on Maritime Liens and Mortgages dated 10 April 1926, incorporated into French domestic law through articles 31 to 41 of the Law of 3 January 1967, bearing in mind that an additional maritime lien is provided under article 12 of the Law no. 69-8 of 3 January 1969 ("the shipping agent's claim for disbursements paid outside the port of registry of the vessel").

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

If all the necessary documents are provided in due time, the arrest can be made within the same day in case of urgency.

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

There is no need to provide a POA. Obviously, the petition must be substantiated with any document evidencing the existence and the cogency of the claim. When the petition is grounded on the Brussels Convention, the documents must also show the maritime character of the claim.

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

In practice, no original or notarized documents are required. The documents supporting the petition must be handed to the ruling judge.

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

Save when the Brussels Convention applies (art.7), French judges may not rule on the merits of the claim, on the sole ground that the ship was arrested within their area of jurisdiction (Forum Arresti). The criteria and conditions set under the international rules of conflict, as per the applicable International Conventions and EC Regulations, must be met.

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

The claimant must institute legal proceedings on the merits within one (1) month after the arrest is performed, otherwise the arrest will automatically be held cancelled.

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

French judges are reluctant to accept a claim for compensatory damages for wrongful arrest, unless the bad faith or malice of the arrestor is clearly established.

19. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes. In this respect, French judges have been relying on the concept of "Fiction" instead of the theory of "Appearance", i.e. one must establish that the company owning the ship is fictitious. To this end, various elements must be gathered: eg. same beneficial or associated owner, want of employees, concurrency of assets and/or debts, unity of management, lack of participation to the profits and/or debts of the company, unequal distribution of the dividends, existence of a subordination bond between the existing entities, etc.

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

Yes. The judicial sale of the arrested ship is possible when the petitioner holds an enforceable deed or judgement. In practice, the procedure of judicial sale lasts around three to six months.



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