

SHIP ARREST IN MOROCCO



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

Legally speaking, Morocco is certainly one of the most attractive forums for vessel arrests:

- the procedure is simple, fast and flexible: no power of attorney required, application is heard under summary and non adversary procedure, no original documents required,
- an alleged maritime claim is sufficient,
- a vessel can be arrested whoever is the debtor (even if Owner is not the debtor),
- no counter security is required
- no preliminary claim on the merits required and no obligation to start legal procedure on the merits
- no impact on jurisdiction

In order to get the arrest lifted, Owners should either :

- put up security in a form of bank guarantee or cash deposit before the court; practically speaking, it is common to accept P&I club LOU to be replaced by a bank guarantee within 8 days, or
- seek a judicial release under an adversary and summary procedure : release order would be granted if Owners prove that there is no legal basis for the arrest (if for instance there is no maritime claim or that the vessel is not concerned by the claim)

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

1952 Brussels convention (for the unification of certain rules relating to the arrest of sea going ships) is applicable in Morocco. It was ratified on 11.07.1990.

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

Moroccan vessels and notably fishing boats, can be arrested by Moroccan creditors in application of the national law instead of Brussels Convention.

In the meantime, vessel detention can be carried out by port state control authorities or by Royal Navy in case of violation of administrative or criminal law; however this has nothing to do with an arrest under Brussels convention.

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

Under Moroccan law, arrest is a conservatory seizure aiming to secure a claim. It is called "saisie conservatoire". "Saisie execution" requires an enforceable title and can lead to the judicial sale of the arrested vessel.

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

Vessels can be arrested as security for any maritime claim among those listed under article 1.1 of Brussels Convention.

On top of this, Moroccan courts accept, through an extensive interpretation of article 1.1, to grant arrest even in relation with claims arising out of provision of services (such as claims of ship classification companies ...).

In any case, it is sufficient to prove an alleged maritime claim; it is not necessary to prove at the arrest stage that the arrestor has a valid claim which is bound to succeed on the substantives merits

- it is sufficient to provide evidence of an alleged maritime claim. So a prima facie evidence of a claim is enough.

In the meantime, if both parties (applicant and owner of the vessel) are Moroccans, Moroccan law would be applicable. In that case that there is no restriction as per the nature of claims in relation of which arrest can be granted.

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

Yes. Ship can be arrested whatever the flag she is flying.

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

Yes. The ship in relation of which the maritime claim arose can be arrested whoever is the debtor and even if the claim is related to voyage or time charterers, bareboat charterers...

Thus, vessel can be arrested even if :

- she is under charterparty whilst the debt is related to Owners or previous charterers
- she is operated by Owners whilst the debt is related to previous charterers

In any case, security has to be put up on behalf of Master of the vessel as representative of Owners and/or Charterers

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

Claimants are entitled to arrest either the vessel in relation of which the maritime claim arose (who ever is the debtor) or any other vessel in the same ownership that the said vessel.

Thus, it is possible to arrest sister ship vessels (i.e owned by the same person who was the owner of the ship in connection with which the claim arises at the time the claim arose).

In the meantime, we should underline that in application of article 3.4 of Brussels convention, in case the claim arose whilst the ship was under charter by demise, claimant may arrest on top of the vessel in question, any other ship in the same ownership of the charterer by demise but no other ship in the same ownership of the registered owner

As per associated vessels, please see Q. 19 "lift of the corporate veil".

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

The vessel in respect of which the maritime claim arose can be arrested even though she was under bareboat charterparty or time-chartered.

In the meantime, as per article 3.4 of Brussels convention, in case the debtor is the charterer, claimant can arrest either the vessel in respect of which the maritime claim arose or any other vessel owned by charterer but not other vessels owned by registered owners.

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

Even though Moroccan law provides such a possibility, practically speaking, counter security is never required.

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

No. From a procedural point of view, there is no difference.

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

Maritime liens are recognized by Moroccan law that provides a list of the privileged debt. Morocco has not ratified any international convention on maritime liens.

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

Upon receipt of instructions and relevant documents, arrest order can be carried out within the same day (during week days and court opening time).

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

No power of attorney is required under Moroccan procedure law.

Arrest application should just be supported by relevant documents proving the alleged maritime claim and the relation with the vessel the arrest of which is sought.

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

At this arrest stage, no original documents are required.

However, court is sometime reluctant to take into consideration documents printed from internet (such as equasis website ..); thus, it is preferable to disclose copy of original documents in whichever form of transmission they are obtained.

In the meantime, when documents are drafted in English, some judges familiar with English language - mainly at Casablanca- accept to consider same. However, it may be required to disclose translations into Arabic or French, especially if the application is filed out of Casablanca.

As per the procedure on the merits, court or Opponents are entitled to demand original documents or certified copies.

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

Moroccan court would accept jurisdiction only in the cases listed in article 7 of Brussels convention or if parties agree to provide competence to Moroccan court.

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

There is no legal obligation for arrestor to start legal action on the merits within a specific time (in so far as time bar limits are respected).

For the sake of completeness, it should be specified that a couple of years ago Casablanca court was used to impose to arrestors the obligation to start legal action on the merits within 30 days from the date of the arrest order. However, court stooped to do so on the grounds that as per article 7.4 of Brussels Convention such an obligation can be imposed only in case the court in which the arrest was made has jurisdiction to decide the case on the merits.

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

A claim seeking remedies for wrongful arrest supposes that the arrest was made knowingly that it was unlawful.

Thus, Moroccan courts are very reluctant to accept to grant remedies for wrongful arrest unless malice of arrestor is evidenced.

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

As principle, sole the vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested.

However, given single ship company practice, Moroccan courts accept to pierce corporate veil considering vessels owned by distinctive company as being under the same ownership if applicant can prove that both vessels pertains in fact to the same economical entity (same addresses, same management, same shareholders ...).

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

Conservatory arrest can be converted into an executory arrest in so far as arrestor gets an enforceable title (e.g a definitive court condemnation on the merits).

This procedure including judicial sale is rather long and complicated. It would take not less than a couple of months.



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