

# SHIP ARREST IN TUNISIA



By Dr. Brahim LATRECH\*  
Brahim LATRECH LAW Office  
latrechbrahim@yahoo.fr  
www.cabinetavocat-bl.com  
26 rue d'Égypte LAFAYETTE, 1002 Tunis.  
Tel.: 00 21 624 292 700  
Fax: 00 21 671 891 827

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

In Tunisia the Code of Maritime Commerce (Code de Commerce Maritime) and the provisions of the Code of Civil procedure remain the major source of ship arrest.

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

No international convention applies in Tunisia. Tunisia has not ratified any of the International Conventions related to Ship Arrests.

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

There are some other ways to arrest ship in Tunisian ports

- Arrest in accordance with court or arbitration award
- Arrest of ship under a criminal matter
- Arrest of ship under a safety matter, pollution, clandestine immigration.

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

These measures are similar to saisie conservatoire or freezing order.

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

Maritime claims mentioned in article 71 of the Tunisian Code of Maritime Commerce (Code de Commerce Maritime)

- (a) The legal costs payable to the State and the expense incurred in the common interest of creditors, to preserve the vessel or to procure the sale and distribution of the prize.
- (b) Tonnage or harbour dues or expenses incurred by the administration to move the ship.
- (c) Creditors arising from the employment contract of the captain and crew
- (d) Remuneration for rescue and assistance
- (e) Compensation for collision, bodily injury to passengers or crew, cargo or baggage loss.
- (f) Claims arising from contracts awarded by the captain for operations to preserve the vessel.

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

In Tunisia the mere presence of any vessel at Tunisian waters gives the court jurisdiction in rem over the vessel and in personam over the owners, operators and charterers.

Tunisia does not recognize governmental immunity for state owned commercial trading vessels.

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

In Tunisia, the claims subject to Tunisian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Tunisian Law anyone with authority binds the vessel in rem, if the supplier is not timely notified otherwise. The ship can be arrested even if the owner of the ship is not the debtor of the maritime claim. The owner of the ship, in order to have his ship released from arrest, has to give a guarantee for the payment of the claim of the author of the arrest.

This means that the owner of the ship will have to guarantee the payment of the claim, even if a

third person (charterer, issuer of the Bill of Lading) is the debtor toward the arresting party.

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

Sister-ship arrests may be effected in Tunisia in limited cases . Exp the same owner ship

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

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

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

Tunisian law practice does not impose on the claimant the deposit of a counter-security to cover costs, charges, damages, fees or other expenses deriving from a potential wrongful arrest But under the provisions of Article 104 of the Code of Maritime Commerce (Code de Commerce Maritime) , the seizure may be subject to the condition that a bond or guarantee is validated from Applicant

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

There is no substantial difference between arresting a ship for a maritime claim and a maritime lien.

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

Tunisia recognizes maritime liens under the dispositions of the Code of Maritime Commerce (Code de Commerce Maritime) , not under any Convention.

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

Usually two working day is enough for our law office to arrest a ship.

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

No power of Attorney is requested.

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

According to Tunisian Law, the arrest of a vessel is made through an order on request. For this purpose, all documents proving the debt and the expenses are required (please note here that all the documents to be presented to the judge must be translated into Arabic language). Documents filed electronically are accepted.

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

Tunisian Courts will accept jurisdiction over the substantive claim once a vessel has been arrested within Tunisian territorial waters.

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

We must introduce a case validation within a period of one month if the arrest is lifted once this period surpassed.

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

In an only case if the claimant knew it had no maritime lien or right of arrest and nonetheless proceeded with the arrest and with the intention to cause damage to the defendant.

The burden of proof in relation to these matters rests on the Defendant who claims damages for wrongful arrest.

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

The Tunisian courts are not generally inclined to lift the veil of corporate personality.

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

In Tunisia, Seizure execution immobilize the ship, by result, the procedure of sale of the ship arrested is made through a public auction and it generally takes three to six months.



*\* Brahim Latrech, born in 1965, has a Master Degree in Law from the University of Perpignan (France) and holds the title of Docteur d'Etat en Droit .*

*In 2002 he set up the Brahim Latrech Law Firm, specialised in maritime law.*

*Brahim Latrech is member of the Association Française du Droit Maritime, of the Association Tunisienne du Droit Maritime and founder of the Revue du Droit Maritime Tunisien.*