

SHIP ARREST IN NORWAY (Questions 10 to 20)



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

Section 33-3 of the Dispute Act provides that the court can require the claimant to deposit securities as a condition for the implementation of the arrest. The security is fixed at the courts discretion.

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

Section 92 (2)(q) of the Maritime Code exempts maritime liens from the definition of a maritime claim. However, as a general rule, a maritime lien will fall within the other categories of the definition in section 92 (2). Consequently, there is usually no difference in respect to arresting a ship for a maritime claim and a maritime lien.

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

Yes, maritime liens are recognized under Norwegian law. The provisions on maritime liens are found in the Maritime Code section 51. However, the 1967 Maritime Lien Convention is not effective in Norway.

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

Kluge law firm recognize the need for swift action in cases regarding arrest of ships, and we will normally be able to arrange for arrest of a vessel in any Norwegian port within 24 hours after receiving necessary documentation.

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

No. It is advisable and sometimes even required that the claimant appoints legal counsel to represent him with the claim. According to the law, an application for an arrest can be submitted orally to the courts, but this is more theoretical than practical and it is normal procedure to issue a written petition signed by either the claimant or his legal counsel.

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

There are no formal requirements as to what documents can be presented to the courts. However, it is advisable to submit any documentation relevant to the substantive claim together with the petition. This increases the chance of a successful arrest, as in most cases the claimant must prove the substantive claim on a balance of probabilities.

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

Yes. Subject to any agreements on venue or arbitration, legal proceedings regarding the substantive claim can be instituted in the courts of the judicial district where the ship has been arrested.

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

The defendant can request the courts to fix a time-limit by which the claimant must institute legal proceedings. If no such time-limit has been fixed by the court, the period will be one year from the issue of the arrest order. If proceedings are not instituted within the time-limit, the arrest order will

be quashed. The courts can, at their own discretion, extend the one-year time limit if a request is submitted within the time-limit.

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

Yes. Section 32-11 of the Dispute Act imposes on the claimant a wide-ranging duty to indemnify the defendant for any economic loss he has suffered if the claim did not exist at the time of the arrest. The same applies if the claimant by negligence or intent has given wrongful or misleading information regarding the "ground for arrest".

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

As a general rule, the shareholders of a company with limited liability will not be personally liable for the obligations of the company.

However, the courts will make an overall evaluation and, in exceptional circumstances, the possibility of piercing and lifting the corporate veil cannot be ruled out. Important factors in the overall evaluation will be whether it would be unreasonable towards the creditor to uphold the corporate veil in the particular situation, or whether the companies have been mixed in such a way that the upholding of the corporate veil does not deserve preservation from the courts.

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

When a ship has been arrested, the effect of the arrest is that the owner loses his complete control over the ship. This means that the owner cannot decide to sell the ship as long as the arrest is upheld.

An arrest does not give the claimant the right to a compulsory fulfilment. Such sale would require an enforcement ground. The claim is considered to be *pendente lite* until a legally binding judgement has been delivered by the courts. As a consequence, the claimant cannot demand that the ship is sold *pendente lite*. However, the courts can permit this if the arrest holder requests it, and it is necessary to avoid substantial decrease in value.

