

SHIP ARREST IN DENMARK (Questions 1 to 9)



By Henrik Kleis*
DELACOUR LAW FIRM
hk@delacourdanialaw.com
www.Delacourdanialaw.com
Aaboulevarden 11
8000 Aarhus C, Denmark
Tel: +45 7011 1122
Fax: +457011 1133

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

Arrest of vessels in Denmark can be made very fast and on an informal basis, i.e. without POA, original invoices and notarized and authenticated documents. The rules are quite flexible and the Danish court system works efficiently. The costs of an arrest in Denmark are low.

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

Denmark is party to the 1952 Arrest Convention and the provisions of this convention have been implemented in Chapter 4 of the Danish Merchant Shipping Act. The Danish law on arrest of vessels thus to a high extent reflects the provisions of the Arrest Convention.

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

Yes. An arrest according to the Danish Administration of Justice Act prevents the owner from transferring title to the vessel or issuing new mortgages when the arrest is registered in a Ship Register but the vessel is not detained in a port or otherwise prevented from operating. Therefore, an arrest of a vessel according to the Administration of Justice Act is often of no interest; however, it may be applied when there is no maritime claim or when an arrest is made in cargo, freight, or bunkers etc.

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

No. The only alternative is an arrest according to the Danish Administration of Justice Act which the courts only grant in rare circumstances.

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

Maritime claims are the basis for arrests according to the Merchant Shipping Act and are defined in accordance with the Arrest Convention. For a list of the individual maritime claims reference is made to Arrest Convention art. 1.

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

Yes.

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

Contrary to the Arrest Convention and the laws of some other countries, arrest in Denmark requires that execution of the claim can be levied against the owner of the vessel, meaning that the registered owner of the vessel must be liable for the claim/the debtor of the claim, unless the claim is secured by a maritime lien. Consequently, claims for which a charterer of the vessel is liable, do not form basis for arrest of the vessel as the owner of the vessel is not liable and no execution of the claim against the owner is possible. However, assets owned by the charterer, e.g. bunkers, may be arrested in accordance with the Administration of Justice Act.

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

Sister ship arrest is possible, i.e. vessels that are owned by the same legal entity. Arrest of vessels in associated ownership is not possible as the vessel is not owned by the same legal entities.

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

Arrest of a vessel under a bareboat or time charter party is not possible as the registered owner is not liable for the claim/the debtor of claim. Only in case the owner is found to be the debtor of the claim an arrest is possible.



** Henrik Kleis is head of DELACOUR DANIA's department specialising in Transport and Trade which consists of 10 attorneys. What is distinctive about the department's size and the scope of tasks is that DELACOUR DANIA to a larger extent than other Danish law firms represents all imaginable businesses within transport and shipping.*

Henrik primarily deals with transport and shipping and international commerce, and is engaged in conventional transport law cases. Hence, he represents a large number of shipping agents, freight forwarding companies, ship brokers and road carriers. Furthermore, Henrik Kleis represents most of the Danish ports and handles a long line of varied cases for the ports. The Danish association Danish Ports has thus appointed Henrik Kleis as their representative in ESPO - European Seaports Organisation - Legal Committee.

As Henrik deals with matters of the business world, he therefore holds positions in a number of boards home and abroad. Moreover, he is Honorary British Consul.

SHIP ARREST IN DENMARK (Questions 10 to 20)



By Peter Schaumburg-Muller*
HAFNIA LAW FIRM
psm@hafnialaw.com
www.hafnialaw.com
Nyhavn 69,
1051 Copenhagen K, Denmark
Tel: +45 33 34 39 00
Fax: +45 33 36 39 20

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

The courts have a discretionary right to demand counter security. Pursuant to the MSA such security should not exceed the equivalent of 5 days charter hire for the vessel in question. The courts invariably demand counter security equivalent to 5 days charter hire. In order to determine the relevant daily hire a shipbroker should be requested to provide an estimate. In this regard it is sufficient to provide an exchange of emails with a shipbroker.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien? The formal requirements are the same but as mentioned above arrest for a maritime lien can be made irrespective of the owner of the vessel.

12. Does your country recognise maritime liens? Under which International Convention, if any? Danish law recognises maritime liens. The rules regulating maritime liens are found in the MSA and are based on the 1967 Brussels Lien Convention. In order to determine whether a claim creates maritime lien it may not be sufficient to resort to Danish law. The maritime liens may be determined according to the law of the flag of the relevant vessel. Scandinavian case law supports that the law of the flag is relevant in this regard although the issue is untested under Danish law.

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 can typically be obtained within a day. Certain local courts may need further time and may not be available for an arrest during the weekend or nights.

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

No POA is required. In order to establish the claim only copies of the pertinent documentation is required.

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

No original documents are required nor apostille. Documents can be faxed to the courts.

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

The courts will accept jurisdiction over the merits. However, if the underlying agreement supporting the claim is subject to arbitration or litigation in a foreign forum the courts will not assume jurisdiction. In such case validation proceedings must nonetheless be commenced as a formal requirement but they will immediately be postponed pending the outcome of the arbitration or foreign litigation. Arbitration or foreign litigation must be pursued without unreasonable delay.

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

Validation proceedings must be commenced within one week from the date on which the arrest has been granted.

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

Yes. The arrestor is liable for wrongful arrest on a strict liability basis for any loss caused by the arrest. There is no relevant case law regarding liability but it cannot be ruled out that the right to compensation is influenced by the fact that the owner can avoid the effects of an arrest by providing a guarantee for the amount in dispute.

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

The notion of piercing the corporate veil exists under Danish law but is limited to very special circumstances where there has been e.g. a mix of funds between the companies or where business has been otherwise conducted as if two companies were one.

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

If the claim is not paid and no security is lodged for the claim the arrestor may ultimately sell the vessel by way of forced sales proceedings. It is a prerequisite for an auction that the arrestor has obtained an attachment against the vessel. Such attachment can only be obtained once the validation proceedings (whether litigation or arbitration) have been completed. Arrest based on a mortgage does not require validation proceedings and an attachment can be obtained immediately. Depending on the case load of the relevant local court it may take from 3 months up to 1 year until forced sales proceedings have been carried out. Certain notification requirements exist in respect of auction of foreign vessels (notification to the flag state and advertisement in the flag state).



** Peter Schaumburg-Müller is a partner with HAFNIA LAW FIRM. Peter was born in 1950 and obtained his law degree from the University of Copenhagen in 1976. Additionally, Peter has studied maritime law with the Scandinavian Institute of Maritime Law in Oslo and studied international law at the University of Aix en Provence.*

Throughout his career Peter has been specialised in shipping related matters. Peter has worked with Skuld P&I Club. In 1981 Peter established the law firm of Schaumburg-Müller & Co. – the predecessor of HAFNIA LAW FIRM. Peter is a member of the board of Danish shipping companies including suppliers, ship owners and operators and he has an extensive network in the Danish shipping industry.

Hafnia Law Firm is a boutique law firm dedicated to shipping law. The firm acts in all types of disputes and transactions within the field of shipping and transportation.