

# SHIP ARREST IN DOMINICAN REPUBLIC



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

The Dominican Republic (DR), 2/3rds of “Hispaniola” Island, surrounded by sea but at West, does not have Maritime Law (ML) tradition. Most ML issues are ruled by DR Commerce Code, the same 1804 Napoleon Code, which DR adopted since 1845, revised (1882), and few other especial laws. The Arrest of Ships (AOS) = “Embargo de Naves” in Spanish, is regulated on Title II, Second Book, Articles 197-215, DR Commerce Code, but since vessels are assets (“bona mobilia”), they are also subject to other type of arrests: “Executory Arrest” (“*saisie-exécution*”) and “Conservatory Arrest” (“*saisie conservatoire*”) regulated by DR Civil Procedure Code (CPC), which is same 1806 Napoleon CPC, with few adaptations (1884 translation) and some modifications by laws non-related to AOS. To perform the latter, authorization from judge must be obtained. Hence, the AOS in the DR is ruled by over 200 year old laws, unmodified, except by Law No. 845 of 15th July 1978, on “Conservatory Arrest”. Moreover, Decree-Law No. 222-92 (7.Jul.1992) establishes, to perform a temporary arrest (“Conservatory Arrest”), that “if the vessel is loading cargoes or is already loaded with transit shipments or other cargoes destined to other ports, the Dominican Port Authority (DPA) will require the arresting party to provide, at its cost and expense, the necessary funds for the transshipment and transportation of said cargoes on board another vessel, ensuring that said shipments continue, without any delays, towards their intended destination, and the international maritime commerce is not interrupted”. Therefore, this makes the arrest of a loading or loaded vessel economically unfeasible. Hence, one must ensure the vessel is not loading, is completely unloaded or laden without cargo on board or must provide sufficient funds as stated above. While two new DR Commerce Code Projects have been proposed, none has been yet approved. Nevertheless, a strong initiative for DR Maritime Code is being considered and seems might be approved in the near future. If positive, it will change AOS in DR.

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

None.

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

Not under DR Commercial and Civil Law, but there some other non-orthodox manners to detain a ship, influenced by circumstances surrounding the case, the arresting party/its lawyer(s) and their relationship with DR port and naval authorities. Some “Opposition or Embargo Retentivo” (an embargo of assets, documentation or cash owned by the debtors in hands of third parties, normally used to freeze bank accounts) per DR CPC, Articles 557-582, have succeeded in withholding sailing permits at DPA or Harbourmaster, not passed unto vessel’s Master, impeding sailing of vessel. An Executory Title, from a Notary Public or private, or Judge Order must be obtained.

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

Yes, as explained above (1 and 3).

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

Any maritime debts (privileged or not), ship’s mortgage, true commercial or civil credits due by debtors may entitle creditors to arrest a ship. However, non-judged claims, as cargo claims where shipowners’/vessels’ liability is to be determined very seldom give grounds to judges to grant order to AOS, vis-à-vis a Conservatory or Retentive Embargo. Nevertheless, should a ship be illegally held or withheld by a non-owner, a “Recovery Embargo”, “Embargo en Reivindicación” in Spanish (“*saisie-revendication*”) under Judge Order, may be performed.

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

Certainly, any ship of any flag can be indeed subject to DR AOS.

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

Yes.

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

The DR laws are mute in respect to sister ships. However, if creditors can establish that another ship is indeed a sister ship or in associated ownership of debtor; judge may authorize AOS. Even with different official registered owners, from our experience, the judges have maintained/confirmed/ordered AOS when the connection has been properly proven.

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

AOS can be performed for debts incurred by owners or charterers. Should AOS is for debts of shipowners, charterers would have a hard time releasing same, unless settling shipowners' debts or reaching amicable agreement with arresting party.

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

Article 48 of DR CPC, provides that judge may or may not require arresting party to present proof of sufficient solvency, guarantor or bond. Counter-security may also be requested by the defendant. Same seldom exceeds the amount being claimed, and can be a bond purchased from a local bonding company for a premium. However, local bonding companies always require counter guarantee or security from local representatives/agents of claimants (i. e., local lawfirm, ships' local agents or alike). Sometimes, when knowledgeable, judges may accept L. O. G./L. O. U. from IG P & I Clubs. Moreover, DR Civil Code, Article 16, establishes the "ludicatum Solvi" bond/counter-security for non-local residents, guaranteeing legal/procedural costs and eventual counter lawsuits for damages which could rise from original lawsuit/ship arrest, when the plaintiffs/arresting parties do not own any properties ("*bonna inmobilia*") within DR territory, which value guarantees payment of eventual judgments against the foreign arresting party. Nevertheless, this is a general provision, not applicable to commercial matters and never granted when a foreigner is filing suit/arresting a ship of another foreigner. Also, same cannot be granted by judges unless requested by defendants/debtors, and recent DR Supreme Court of Justice rulings have decided that same is not justifiable when becoming an obstacle for a plaintiff to exercise its/his/her rights on same basis as a local one.

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

Yes, there is. While maritime claims for debts are recognized causes of arrest, most maritime liens contemplated in Anglo-Saxon laws are not admitted by DR laws. The exact legal figure of "lien" does not exist in DR Law. Nevertheless, from a procedural point of view, there are no differences.

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

As stated above, most maritime liens on vessels are not recognized by DR laws. Hence, said liens must be analyzed on a "case to case basis" to determine whether or not they may give grounds to AOS in DR jurisdiction. Should such lien correspond to a local legally recognized maritime or commercial privileged credit, the AOS would be achievable. The DR is not signatory to 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?

The time frame is undefined, cannot be accurately foreseen or determined. It would depend on the following factors:

- a) Nature and circumstances of each case.
- b) Quantity of documentary proof, evidence documents provided by the arresting party and the skills of the local Judicial Interpreter, since all documents must be in Spanish, official language of DR, translated by such local Interpreter, if not originally in Spanish, in order to be accepted by DR courts.
- c) Nature or type of arrest, whether Executory, Retentive, Conservatory or Revindicatory (Revindication).
- d) Ability of the arresting party's lawyer to convince the judge of the urgency in collecting the subject credit, in the cases where the type of arrest requires a prior Order from judge.

Nevertheless, from our praxis and experience, one may advise that it could take any time between 5 days to 2 months, and earlier results would be very difficult indeed and extremely fortunate for any arresting party. Therefore, is sound advice to request creditors to contact their DR law firm or

lawyer(s) as early as possible and provide them with all necessary documentary evidence so they may submit the arrest application soonest, prior to the arrival of the subject vessel, especially when her schedule/DR port of call is known.

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

Yes. A proper Power of Attorney (POA), either in Spanish language or duly translated into Spanish by a DR Judicial Interpreter must be furnished. While the judge may or may not require the same, if the AOS is contested by the defendants, upon their request, judge will require same. Then, if not presented, judge may decide that the acting lawyer has not established his/her legal capacity as to act on behalf of the AOS party. The said POA must be "apostilled" as per the XII International Convention of The Hague (5.Oct.1961) or if issued at a non-signatory country, notarized by the nearest DR Consul.

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

All the documentary evidence proving the debt should be furnished as originals or certified/notarized copies of same, duly apostilled as above mentioned (same as the POA). All e-mail exchanges between creditors and debtors are very useful and filed as "Original print-outs or printed versions of e-mails exchanges", a great support to the original or notarized copies of the other documents proving the debt.

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

Yes. In fact, except the Executory Arrest, all the other types of embargoes/arrests must be followed by a "Lawsuit in Validation" of the said arrests, with judge knowing the merits of the substantive claim/debts. Same DR court/judge ordering the AOS must know the merits of the claim, meaning that these temporary or preventive ship arrests must be followed by lawsuits for collection of monies (debts) towards foreclosure.

#### 17. What is the procedure to release a ship from arrest?

As per DR CPC, pending on the type of arrest performed, the defendant can request the overturning or cancellation of the AOS before same judge that ordered same or before the Judge of the "referimientos" ("*referee*", in French), which is the judge of an especial expedited procedure. However, the judge of the referimientos only knows these urgent cases once or twice a week (i. e.: Tuesdays and Thursdays, or just Fridays); thus requiring a few days, even up to a week to obtain the first hearing under referimientos. Said first hearing is of a complete preliminary nature, the judge ordering both parties (plaintiffs and defendants) to communicate (exchange) their respective documents (like a discovery phase), via depositing at the Court Secretary's Office, which both parties must visit within the time frame ordered by the judge, who also grants time to both parties to review same, normally running jointly (i. e.: two (2) days to both to deposit and review said documentation). Therefore, withholding the vessel at port is inevitable, causing losses to the debtors. DR Laws also provide for the presentation of a bond, guarantor or counter-security to the judge that ordered the AOS, which –if accepted by the judge– would order the release of same, but its issuance does not automatically release the vessel. Once said overturning or reversing the AOS order is obtained, same has to be served through Bailiff's Act to the counter-party and others involved, such as Vessel's Master, DPA, Harbourmaster and alike.

#### 18. What type of security needs to be placed for the release?

A cash deposit, bond from a local bonding company, bank/bankers' guarantee, sworn statement (Affidavit) from local guarantor or similar security, such as a P & I LOU or LOG must be presented. It is always advisable to obtain the previous agreement from the debtor concerning said counter-security, so it is not refused or contested by the creditor at the hearing to reverse the AOS. If an amicable agreement has been reached between the parties, it can be presented before the judge and same will authorize the release of the vessel. The arresting party can also voluntarily withdraw the AOS by simply notifying same through Bailiff's Act to a. m. parties, without the intervention of any judge.

#### 19. Does security need to cover interest and costs?

Since usually the orders for AOS are granted for up to double the amount of the debt/claim (to guarantee all procedural costs, legal fees and expenses), if requested by the applicant, the security would need to cover the same amount, unless a lower amount has been already agreed with the creditor.

## 20. Are P&I LOUs accepted as sufficient to lift the arrest?

As stated in above 1., DR does not have a ML tradition neither has Maritime Courts. Thus, all ML matters are known by Commercial & Civil Law Judges. Therefore, most judges ignore what a P & I Club is. Hence, P&I LOUs or LOGs are usually not accepted, especially if rejected by debtors. Hence, same might not be sufficient to lift the AOS in the DR.

## 21. How long does it take to release the ship?

It is much easier and faster to arrest a vessel than to release same. Subject to acceptance by the creditor of the provided security, it may take between two (2) to five (5) days if no objection is presented; and over a month if the security is not accepted by the judge or the release is harshly legally contested and opposed by the creditor.

## 22. Is there a procedure to contest the arrest?

Absolutely, as previously indicated, through the procedure of *referimientos* ("referee"), the defendant/debtor, may obtain the overturning of the arrest or its Order.

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

It depends on the time frame requested by the applicant of the AOS Order, but usually the judges grant thirty (30) days. In any event, such time period is clearly stated in the Order of Arrest itself.

## 24. Do the Courts of your country acknowledge wrongful arrest?

We do not really understand this question as posted, but would reply as follows:

a) If referring to whether a judge may or not grant an order to wrongfully arrest a ship, it is possible. Judges could be tricked, especially because they are not too knowledgeable of Maritime matters. However, they are very cautious to order AOS.

b) If regarding whether or not DR courts will acknowledge counter-claims or lawsuits from debtors for wrongful arrests, they would indeed, based upon the "*actur sequitur forum rei*" Roman Law principle, since the place of the arrest was the DR and the damages caused to the debtors by the wrongful arrest were generated and caused to the same in DR. Thus, there would be strong grounds for DR jurisdiction.

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

Very rarely. Nevertheless, should one be able to proof the financial or corporate nexus, which nowadays can be sometimes be as easy as to entering into a website and printing the information contained therein, such as a common management of sister ships' owning corporations and alike, it can happen.

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

No, it is not possible.

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