

# SHIP ARREST IN NORWAY (Questions 1 to 9)



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

Arresting a ship is relatively straight forward matter under Norwegian law, and can be arranged quickly at a reasonable cost. Advokatfirmaet Simonsen Vogt Wiig AS law firm can act in arrest cases in all Norwegian Courts/ports. The claimant must submit an application for arrest to the District Court where the ship is located or is expected to arrive, alternatively to the District Court in the judicial district where the debtor (the owner of the vessel) resides, if the ship owner is Norwegian. The application has to specify the claim, the size of the claim, the arrest ground and provide an outline of the allegations of the applicant. Documentation supporting the allegations is not mandatory, but should be provided. A well presented case with supporting evidence increases the probability of obtaining an arrest award ex parte. The Courts will however normally accept documentation in English.

The applicant must further prove upon a balance of probability that he has a maritime claim, that an "arrest ground" is present and that the averments for arrest are fulfilled. This is a requirement that is not found in the Arrest Convention and it is imposed in addition to the rules of the Arrest Convention.

What constitutes an arrest ground is set out in the Norwegian Dispute Act section 33-2(1) which reads: "*Arrest of assets of economic value can be decreed when the behavior of the debtor gives reason to fear that the enforcement of the claim otherwise will either be made impossible or made substantially more difficult, or has to take place outside the Kingdom*". In short this means that the Norwegian Courts is provided with the discretion as regards whether or not an arrest shall be granted.

If arrest is granted, the Courts issue an arrest decree which states the name of the parties, the claim, the maximum amount the claim shall be secured for and the arrest ground. The Courts notifies the enforcement authorities, which ensure that the ship does not leave the harbor and reports the arrest to the ship register.

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

The 1952 Arrest Convention applies. The convention is incorporated in the Norwegian Maritime Code, the Enforcement of Claims Act and the Dispute Act. Norway has also signed the 1999 Arrest Convention, which came into force 14 September 2011 when finally ratified by the requisite ten countries. Norway has so far not taken any steps towards ratification of the 1999 Arrest Convention, leaving the 1952 Arrest Convention as the foundation for Norwegian law with respect to ship arrests.

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

If a vessel is flying Norwegian flag, it may be arrested by way of so called "register arrest". This is practical if the claim is not a maritime claim, as this is not an arrest of the vessel as such, and section 92 of the Maritime Code is not applicable. A register arrest means that instead of physically seizing the vessel, the arrest is registered as an encumbrance in the ship register. If a creditor fears that the vessel may be sold, and thereby he loses the only object that may provide security for the claim, this can be an effective alternative to arresting the vessel. A register arrest prevents a sale of the Wessel but may not provide an offer of immediate security.

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

In addition to the rules of arrest, there are two other important sets of rules under which a vessel may become legal security for a claim. Firstly, there are the ordinary rules on liens and mortga

ges. Under these rules a claim is secured by a right in the ship. Such security can have its legal basis in contract, a decision by the enforcement authorities or statute. Secondly, there are rules that may give a creditor a right of retention, e.g. a yard retain a vessel until the bill is paid. The right of retention may be based in contract or law.

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

All maritime claims as listed in article 1(1) of the Arrest Convention, with the addition of compensation for wreck removal, may be the basis for an arrest of the ship. These different maritime claims are listed in section 92 of the Norwegian Maritime Code.

However, a register arrest (see section 3 above) and arrest of other assets than the vessel, e.g. bunkers and insurance proceeds, may be granted for any type of monetary claims.

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

Yes.

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

No, the debtor has to be the owner of the vessel that is being arrested, cf. the Maritime Code section 93(4). Norwegian legislators have deviated from the Arrest Convention on this point, as claims against bareboat charterers may not give raise to arrest of the vessel itself as per article 3(4) of the Arrest Convention. However, as mentioned in section 9 below, claims against the bareboat charterer and the time charterer may give raise to arrest of other assets, e.g. the bunkers onboard the vessel.

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

In principle, the only ship that may be arrested is the one out of which the claim arises. However, in accordance with the Arrest Convention, Norwegian law recognizes the right of sister ship arrest. If vessel A and B are owned by the same legal entity, and this legal entity is the debtor for the claim, either of the vessels may be arrested, even if the claim only arises out of vessel A. It should be noted that both the vessels in principle must be owned by the same legal entity in order to enable an arrest of the sister ship. If the ownership of vessels is organized with a holding company and single purpose companies as the registered owner of each vessel, arrest of a sister ship will in principle not be possible under Norwegian law.

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

As mentioned above, claims against time- or bareboat charterers do not give the right of arresting the vessel, as the vessel is not owned by the charterers. The legal principle that the debtor has to be the owner of the ship is set out in section 93 (4) of the Maritime Code: *"Arrest can only be effected if the ship can serve as an object for the enforcement of a claim according to the general provisions of the Enforcement of Claims Act."* Turning to the Enforcement of Claims Act, section 11-4 and 7-1, it is clearly said that the debtor must be the legal owner of the asset that is being arrested. This means that an arrest of the vessel is not a remedy at hand where the Claimant has a Claim against the bareboat charterer or the time charterer of the vessel. However, on bareboat chartered vessels, the bunkers onboard are normally owned by the charterer. This is often also the case under a time charter, and arresting the bunkers onboard may be an effective remedy where the claim is not against the owner of the Wessel.

*\*Ingar Fuglevåg was born in 1970, and has been with Advokatfirmaet Simonsen Vogt Wiig AS since 1999, a firm which is constantly ranked in the 1st category of shipping lawyers in Norway in the Legal 500. He became a partner of the firm in 2005. Ingar is one of the partners of the shipping department of Advokatfirmaet Simonsen Vogt Wiig, and specialises in shipping/admiralty law and insurance law. Ingar litigates insurance disputes, casualty disputes, including P&I and cargo disputes both in arbitration proceedings and before the Courts in Norway.*

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# SHIP ARREST IN NORWAY (Questions 10 to 26)



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

The court can require the claimant to deposit security as a condition for the arrest. The security is fixed at the court's discretion based on the potential liability of the claimant in case of wrongful arrest.

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

Arrest in ships can only secure maritime claims and the Maritime Code exempts maritime liens from the definition of a maritime claim. The claims giving ground for a maritime lien will however normally fall within the other categories of the definition of a maritime claim.

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

Norwegian law recognizes maritime liens. The Norwegian regulations are based on the 1967 Convention and include a relatively small group of claims.

Norwegian courts will also recognize maritime liens legally established under the laws of the country of registration, however so that maritime liens pursuant to the national statute, registered mortgages and execution liens shall rank higher than such foreign 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?

Kluge's lawyers 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 POA is required. A statement from the legal counsel that he/she has been duly appointed by the claimant will suffice.

Although there are no formal requirements as to what documents should accompany the arrest petition, it is advisable to submit copies of any documentation relevant to the substantive claim.

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

Except for the arrest petition which has to be in original and signed by the claimant or its legal counsel, all documents relevant to the substantive claim may be submitted as copies. Notarisation and/or apostille are not required. In some cases documents may be filed electronically by legal counsel. In any circumstance Kluge's lawyers can print and attach hard copies to the arrest petition upon receipt of documents by e-mail.

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

Subject to any possible valid agreement between the parties with respect to legal venue or arbitration, the Norwegian arrest court may take jurisdiction over the substantive claim.

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

The defendant may have the arrest discharged and the ship released by submitting a petition with evidence proving that the substantive claim does not exist or the ground for securing the claim does not exist. The defendant may also have the ship released by providing security for the claimants claim.

Furthermore, the arrest may lapse and this will cause the release of the vessel. Lapse of the arrest will happen without further procedure, *inter alia*, when the claim is secured by a lien over the arrested vessel and when the claimant has obtained a judgement for payment of its claim and has not secured this claim by a lien within 1 month after the date of the relevant judgment.

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

Cash deposit in a Norwegian bank and/or an unconditional guarantee from a Norwegian bank issued to the competent authority will be sufficient to have the vessel released. In case of cash deposit the relevant bank must issue a declaration that the debtor can not dispose over the cash deposit without the bailiff's consent. The declaration must set out the size of the cash deposit.

#### 19. Does security need to cover interests and cost?

If the claimant has claimed interests and costs covered by the defendant, the security will also have to cover interests and costs in addition to the claim.

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

No, in Norway only cash deposit in a Norwegian bank and an unconditional guarantee from a Norwegian bank will suffice as security in order to lift the arrest. The claimant may however accept a LOU from a reputable P&I Club as part of a commercial agreement, and on that basis abandon his right in the arrest.

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

The ship is released within 24 hours from the time any of the options in question 17 materialize. The fastest way to have a ship released is by providing security. If the defendant does not provide security and the claimant files a lawsuit regarding the substantive claim, the ship will at the earliest be released after 7 months from its arrest. If the district court's ruling is appealed, it may take years before the ship is released.

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

Yes, the defendant may demand a hearing in which he may contest the claimant's grounds for arrest. The hearing will be held shortly after the arrest. The hearing is conducted in accordance with the ordinary procedural rules for a civil court hearing.

#### 23. 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 to avoid the arrest order being quashed. If no such time limit has been fixed, the period will be one year from the issue of the arrest order, cf the Dispute Act Section 33-10.

The claimant may also take legal action of the merits after the arrest order has been quashed pursuant to the said rules. In such case the writ of claims must be filed to prevent the statute of limitations from running. The general limitation on claims under Norwegian law is three years.

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

Yes. If the claim did not exist at the time of the arrest or if the claimant by negligence or intent has given wrongful or misleading information regarding the ground for arrest, the claimant can be held liable for any economic loss the defendant has suffered as a consequence of the wrongful arrest and non-economic loss.

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

As a general rule, the shareholders of a limited liability company will not be personally responsible for the obligations of the company. The courts will however make an overall assessment and, in exceptional circumstances, the possibility of piercing the corporate veil cannot be ruled out.

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

When a ship has been arrested, the owner has lost his control over the ship, including the possibility to sell the ship.

On the claimant's side, the arrest does not give him/her/it any right to compulsory fulfilment. The courts can, however, permit a pendent lite sale if the claimant requests it and it is necessary to avoid substantial decrease in the ship's value.

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*Through its offices in Stavanger, Oslo and Bergen, Kluge's lawyers provide a wide range of national and international clients with first class advice and assistance with ship registrations, ship financing and securing claims including ship arrest.*