

SHIP ARREST IN TUNISIA



By Dr. Brahim LATRECH Law Firm*

contact@cabinetavocat-bl.com

www.cabinetavocat-bl.com

57 Avenue de la Liberté - Lafayette 1002

Tunis – Tunisia

Tel: 0021624292700- 002167183414

Fax: 002167183414

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

Through five trade ports, Tunisia is one of the best forums in the world for vessel arrests with simple and fast procedure. Not only can you sue the vessel here but you can also have it arrested and held under arrest until claim is settled. Tunisian Maritime Trade Law N° 13 /1962 and the Civil Procedure Code is the cornerstone of ship arrest and they remain the major source in Tunisia.

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

Tunisia has not ratified any of the International Conventions related to Ship Arrests but the Tunisian legislator was inspired by the International Convention Relating to the Arrest of Sea-Going Ships Brussels, May 10, 1952.

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

There are some others ways to arrest ship in Tunisian ports:

- Under procedures of execution
- Administrative arrest by Harbour Master
- Under Criminal matter
- Arrest in accordance with court or arbitration awards

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?

The types of claims which can lead to an ship arrest are covered by Tunisian Maritime Trade Law n° 13 /1962 identified in Article 101 CCM: disputes relating to ownership, damage to goods carried on a vessel, the costs of goods or materials supplied to a vessel, construction or repair of a vessel, and claims arising out of charter agreements. wages of Masters, Officers, or crew, towage, pilotage, construction, repair or equipment of any ship or dock charges and due,...

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

In Tunisia the 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. Any vessel capable of being used in navigation can be arrested therefore pleasure vessels can be arrested.

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 (in rem" actions, meaning that the action is against a thing, rather than against a person). The ship can be arrested even if the ship owner's is not the debtor of the maritime claim. In order to have his ship released from arrest, the ship owner's have to pay the claim or to give a Bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasure Department of Tunisia .The ship owner's 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. Generally, the vessel, itself, is responsible for payment of claims, liens, mortgages or any other maritime lien that may arise. When the

owner encumbers a vessel with a First Preferred Ship's Mortgage, it is the vessel that guarantees payment, rather than the owner. However, the owner may be personally liable if they signed a personal promise or guaranty to pay.

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

In the context of a legal claim against a particular ship, and in certain circumstances, Tunisian Maritime Trade Law allows the arrest of another ship belonging to the same owner.

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 Tunisian Maritime Trade Law n° 13 /1962 Article 104 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 or a maritime lien.

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

Tunisia recognizes maritime liens under the Tunisian Maritime Trade Law n° 13 /1962, not under any Convention but the Tunisian legislator was inspired by the International Convention Relating to the Arrest of Sea-Going Ships Brussels, May 10, 1952.

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 days 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.

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

There are two types of releases:

- By the Defendant: It is necessary to make an emergency action called "référé" before the competent court.

- By the Claimant: There is no need for the claimant to go to the court. The only requirement is a notification of the release by a bailiff following the payment of the claim by the Defendant or an agreement between the latter and the Claimant involving payment or the issuance of an acceptable bank guarantee or a cash deposit.

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

A bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasury Department of Tunisia.

19. Does security need to cover interest and costs?

In some cases, but it always depends on the judge's ordinance.

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

No, Club LOUs are not accepted in Tunisia.

21. How long does it take to release the ship?
Between 4 and 10 hours.

22. Is there a procedure to contest the arrest?
An emergency action called "référé" to be presented within 8 days from the date of notification of the arrest.

23. 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.

24. 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.

25. 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.

**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.