

SHIP ARREST IN MOROCCO

By Hakim Lahlou*
LAHLOU ZIOUI & ASSOCIÉS
lahlou.Zioui@gmail.com
www.lahlou-Zioui.com
7, Rue Bendahan 20080
Casablanca, Morocco
Tel: +212522260008
Fax: +212522266928



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

Legally speaking, Morocco is certainly one of the most attractive forums for vessel arrests:

- No P.O.A required,
- No original documents required
- Arrest order is granted on the sole basis of an ex-parte application
- No counter security is required
- Arrest order is most of time delivered within same day or the day after the application is filed
- An alleged maritime claim is sufficient; besides, the notion of maritime claim is interpreted widely,
- When the claim is related to a vessel, she can be arrested whoever is the debtor (even it is the time charterer)
- Sister ship arrests are admitted
- Associated ship arrest are also admitted on the sole basis of some relevant clues establishing a community of interests
- It is rather difficult to challenge an arrest order because Owners should go through an adversary procedure
- Bank guarantee or cash deposit is required to get the arrest lifted
- Arrest has no impact on jurisdiction (except for the exceptions provided in Brussels convention)
- There is almost no possibility to get remedies for wrongful arrest

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

1952 Brussels convention (for the unification of certain rules relating to the arrest of sea going ships) is applicable in Morocco. It was ratified on 11.07.1990.

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

Moroccan vessels and notably fishing boats, can be arrested by Moroccan creditors in application of the national law instead of Brussels Convention.

In the meantime, vessel detention can be carried out by port state control authorities or by Royal Navy in case of violation of administrative or criminal law; however this has nothing to do with an arrest under Brussels convention.

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

Under Moroccan law, arrest is a conservatory seizure aiming to secure a claim. It is called “saisie conservatoire”. “Saisie execution” requires an enforceable title and can lead to the judicial sale of the arrested vessel.

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

Vessels can be arrested as security for any maritime claim among those listed under article 1.1 of Brussels Convention.

On top of this, Moroccan courts accept, through an extensive interpretation of article 1.1, to grant arrest even in relation with claims arising out of provision of services (such as claims of ship classification companies...).

In any case, it is sufficient to prove an alleged maritime claim; it is not necessary to prove at the arrest stage that the arrestor has a valid claim which is bound to succeed on the substantives merits. It is sufficient to provide evidence of an alleged maritime claim. So a prima facie evidence of a claim is enough.

In the meantime, if both parties (applicant and owner of the vessel) are Moroccans, Moroccan law would be applicable. In that case that there is no restriction an per the nature of claims in relation of which arrest can be granted.

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

Yes. Ship can be arrested whatever the flag she is flying.

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

Yes. The ship in relation of which the maritime claim arose can be arrested whoever is the debtor and even if the claim is related to voyage or time charterers, bareboat charterers... Thus, vessel can be arrested even if :

- she is under charterparty whilst the debt is related to Owners or previous charterers
- she is operated by Owners whilst the debt is related to previous charterers

In any case, security has to be put up on behalf of Master of the vessel as representative of Owners and/or Charterers.

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

Claimants are entitled to arrest either the vessel in relation of which the maritime claim arose (who ever is the debtor) or any other vessel in the same ownership that the said vessel. Thus, it is possible to arrest sister ship vessels (i.e. owned by the same person who was the owner of the ship in connection with which the claim arises at the time the claim arose).

In the meantime, we should underline that in application of article 3.4 of Brussels convention, in case the claim arose whilst the ship was under charter by demise, claimant may arrest on top of the vessel in question, any other ship in the same ownership of the charterer by demise but no other ship in the same ownership of the registered owner. As per associated vessels, please see Q. 19 "lift of the corporate veil".

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

The vessel in respect of which the maritime claim arose can be arrested even though she was under bareboat charterparty or time-chartered. In the meantime, as per article 3.4 of Brussels convention, in case the debtor is the charterer, claimant can arrest either the vessel in respect of which the maritime claim arose or any other vessel owned by charterer but not other vessels owned by registered owners.

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

Even tough Moroccan law provides such a possibility, practically speaking, counter security s is never required.

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

No. From a procedural point of view, there is no difference.

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

Maritime liens are recognized by Moroccan law that provides a list of the privileged debt. Morocco has not ratified 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?

Upon receipt of instructions and relevant documents, arrest order can be carried out within the same day (during week days and court opening time).

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

No power of attorney is required under Moroccan procedure law. Arrest application should just be supported by relevant documents proving the alleged maritime claim and the relation with the vessel the arrest of which is sought.

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

At this arrest stage, no original documents are required. As a general rule, Casablanca court accept to

consider documents even if they are drafted in English. In the meantime, it remains preferable to provide at least a free translation of the most relevant part of same. However, other courts, such as Agadir and Tangiers, used to demand a sworn translation of all documents drafted in a foreign language.

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

Moroccan court would accept jurisdiction only in the cases listed in article 7 of Brussels convention or if parties agree to provide competence to Moroccan court.

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

A vessel under arrest can be released in three different situations:

- If the claim in respect of which the vessel was arrested is settled: If so, it is up to arrestors to grant a “mainlevée” on the basis of which owners have to seek before the court a release order which has to be served on port authorities.
- If security is posted: If a bank guarantee is issued, arrestors have to grant in consideration of same a “mainlevée” which enable arrestors to get a release order as described above. If a cash deposit is put at the court, owners seek a release order under the procedure as described in question 18.
- If the arrest is challenged before the court: In order to be in position to get a release order on the grounds that the arrest order was not founded, owners should establish that the conditions of the arrest as set out above are not met (if for instance there is no maritime claim or that the vessel is not concerned by the claim).

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

Security can be put up in two different ways:

- Bank Guarantee
In some cases, Arrestors accept P&I club LOU to be replaced by a bank guarantee within 8 days. However, as a general rule, they are reluctant to accept so.
- Cash deposit
The procedure is as follows:
 - File an application seeking authorization to put the amount of the security at the court,
 - Get the order giving such authorization
 - Put the money at the court (either certified check or lawyer check)
 - file proceedings seeking judicial release
 - get a hearing set by the court
 - notify to Opponents lawyer the convocation to the hearing
 - after the hearing court issue a release order
 - same has then to be served on port authorities by a bailiff

19. Does security need to cover interest and costs?

Security should cover the amount granted under the arrest order, which - in principle- does not cover interest and costs.

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

Only, if accepted by arrestors which is almost never the case in Morocco.

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

If payment is carried out or security posted, the vessel can be released within one or two days. If the arrest is challenged, it would take 3 to 4 days. However, this is mainly for Casablanca. Before other jurisdictions such as Agadir and Tangiers, it takes much more time.

22. Is there a procedure to contest the arrest?

Yes, as indicated in question 17.

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

There is no legal obligation for arrestor to start legal action on the merits within a specific time (in so far as time bar limits are respected).

For the sake of completeness, it should be specified that a couple of years ago Casablanca court was used to impose to arrestors the obligation to start legal action on the merits within 30 days from the date of the arrest order. However, court stooped to do so on the grounds that as per article 7.4 of Brussels Convention such an obligation can be imposed only in case the court in which the arrest was made has jurisdiction to decide the case on the merits.

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

A claim seeking remedies for wrongful arrest supposes that the arrest was made knowingly that it was unlawful. Thus, Moroccan courts are very reluctant to accept to grant remedies for wrongful arrest unless malice of arrestor is evidenced.

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

As principle, sole the vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested. However, given single ship company practice, Moroccan courts accept to pierce corporate veil considering vessels owned by distinctive company as being under the same ownership if applicant can prove that both vessels pertains in fact to the same economical entity (same addresses, same management, same shareholders...).

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

Conservatory arrest can be converted into an executory arrest in so far as arrestor gets an enforceable title (e.g. a definitive court condemnation on the merits). This procedure including judicial sale is rather long and complicated. It would take not less than a couple of months.

*Lawyer member of Paris Bar (2002) and Casablanca Bar (2006), Hakim LAHLOU is graduated in Master in law (2001) and holds two Postgraduate Diplomas (DESS and DEA) in insurance Law and Business Law (2002 and 2003) from the University of Paris 1 Panthéon SORBONNE. Since 2006, Hakim LAHLOU is partner of Lahlou – Zioui & Associés, a leading law firm in Casablanca Morocco. Hakim LAHLOU is in charge of the Shipping Department of LAHLOU – ZIOUI & Associés Law Firm, and as such, handles litigation and counsel cases in all shipping matters.