

SHIP ARREST IN SENEGAL

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

The procedure of arrest enables a natural or legal person who has a maritime claim relating to a ship to detain her it when there is not any enforcement title and obtain a Bank guarantee. This Bank guarantee enables the creditors to recover their debt after having obtained an enforceable decision against the ship/her Master/her Owner or after having obtained an enforceable decision to sell the ship. The arrest order issued by the President of the Court is notified to the ship, to the Port Harbour Master and to some other Competent Port Authorities.

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

Senegal did not ratify the Brussels International Convention dated 10th May 1952 but accepted to apply it after having accessed independence.

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

The answer is no. There is however a difference between “saisie conservatoire” and “saisie exécutoire de navire”.

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

These alternatives are “saisie conservatoire” which means “arrest” and not freezing orders.

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

In such procedure, when the Brussels Convention applies, the arrest must be justified by a maritime claim as defined by the article 1 § 1 of the Brussels Convention. Usually, the Courts easily issue easily an arrest order when the claim appears to be justified.

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

The answer is yes because, as per the Article 8 § 2 of the Brussels Convention “A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest”.

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

The debtor is usually either the owner or the charterer of the ship. The quality of the debtor is however not so important given that the debt is “in rem”.

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

The article 3 §2 of the Brussels Convention provides that “Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons”. Consequently, the ship which is directly linked with the maritime claim or which is owned by the same owner or associated owner can be arrested by the creditor.

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

The article 3 §4 of the Brussels Convention provides that “When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case

in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship”.

The international Convention points out the cause of the debt, i.e. a maritime claim relating to the ship.

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

The answer is no. It is sufficient to evidence that the claim is a maritime claim and relates to the ship.

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

The procedure is exactly the same, i.e. obtain an arrest order from the Court by evidencing the reality of the maritime claim relating to the ship.

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

Senegal recognizes Maritime Liens and Mortgages but does not apply any International Convention but local Laws.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

If the file is complete, the arrest could be obtained within the same day of reception of the file.

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

The commercial invoices, the Bills of Lading, the preliminary survey report if any would be required. However, there is no need to submit any power of attorney.

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

It is usually better to submit original documents. If it is impossible however, copies of the documents sustaining the claim can be transmitted by e-mail or fax. The Documents in English Language must be translated into French.

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

In principle, once the vessel is arrested in Senegal, the Courts accept jurisdiction.

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

If the claim is not denied, the best procedure is to negotiate with claimants so that they accept a security. If the claim is denied, then it is possible to proceed under short notice before a judge who would be able to examine the request and order the release when arguments to do so are consistent.

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

The best security would be to offer a bank guarantee so as to obtain the ship release.

19. Does security need to cover interest and costs?

It could be required by claimants that the security covers interest and costs.

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

Yes, P&I LOUs are accepted sometimes, but no one can force a claimant to do so. When it comes to procedure to lift the arrest before the judge, the LOU can only prevail when claimants agree to accept it.

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

The procedure to get a Court order can take two to three days. But once there is an agreement between parties, the release is effective the same day.

22. Is there a procedure to contest the arrest?

Yes. Such a procedure exists under Senegalese law.

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

Once the vessel is arrested, the claimant must take legal action on the merits within one (1) month.

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

Senegal recognizes wrongful arrest if evidence show that an arrest is abusive and the claimant can be condemned to pay damages. However, this situation is rare because when the Judge considers that the claim is not justified, he rejects the motion for the arrest.

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

The answer is yes.

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

It is not possible to sell a ship pendente lite. A ship can be sold by Court decision to do so and supposes that the debtor has kept low profile during the procedure.