

## SHIP ARREST IN CURAÇAO

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

In Curacao, as in the other (is) lands of the Netherlands Caribbean and in the Netherlands, the procedure for arresting a vessel is straightforward and quick. When petitioning for an arrest a claimant can suffice with only a brief substantiation of its claim. Normally the Curacao Court will allow the arrest for the principal increased by 30% for interest and costs. The attachment is made on board the ship by the bailiff. Ships under arrest in the actual Port of Curacao will not be able to sail without the cooperation of local authorities (pilot service, towage etc.), which cooperation will not be given without confirmation from the arrestor that the arrest has been lifted.

A conservatory arrest is to be lifted against sufficient guarantee. In summary proceedings the arrestee may demand lifting of the arrest. In case of wrongful arrest the arrestor will be liable for damages. A conservatory arrest will establish local jurisdiction in case elsewhere a judgment executable in Curacao cannot be obtained.

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

Curacao is party to the 1952 Brussels Arrest Convention. The Convention is not incorporated in Curacao Law, and applies in accordance with article 8 of the Convention. It is thought that the provisions of the Convention do not apply as to conservatory arrest of ships flying the flag of a Non-Contracting State, at least in so far as they increase the protection of the owner of such vessel<sup>1</sup>.

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

Executory arrests are allowed with regards to judgments rendered within the Kingdom of the Netherlands or other judgments executable in Curacao.

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

No.

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

Conservatory arrest of ships flying the flag of a Contracting State, is only allowed for maritime claims as defined in the Convention. Ships flying the flag of a Non-Contracting State may be arrested for any type of claim.

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

Except for Russian State Owned vessels; yes.

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<sup>1</sup>Berlingieri on Arrest of Ships, ed. 4 (2006), no 52.850

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

In principle, according to Curacao Law, if according to applicable law a claim is recoverable on the ship, then an arrest is allowed. In certain cases recovery on a ship is possible for claims against others than the owner, for instance the bare boat or time charterer, or for claims that attach to the ship irrespective of the identity of the owners.

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

According to Curacao law in principle any asset of a debtor may be arrested in order to obtain security for a claim, and thus, according to Curacao law, a sister ship may be arrested. If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of the associated owners.

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

See answer to question 7.

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

The Curacao Court may require counter-security, in practice this rarely happens.

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

The common law concept of "maritime lien" is unknown in Curacao law. However, if a maritime lien means that according to the applicable law a certain claim attached to a vessel irrespective of the question in whose hands (under whose control) that ship may be, arrest for such claim is possible.

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

Curacao is not party to any convention on maritime liens. Claims having the legal status of being attached to the ship, may qualify for an arrest.

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

In straightforward matters it may take no more than one or two hours to have a ship arrested.

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

To petition for conservatory arrest, claims are only to be demonstrated summarily. POA is not required. In ensuing injunction proceedings further substantiation might be required.

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

In principle original or notarized documents are not required.

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

The arrest establishes local jurisdiction for the Curacao Court as forum arresti, which serves as a residual jurisdiction in case elsewhere a judgment that is executable in Curacao cannot be obtained.

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

The arrestor orders the bailiff to lift the arrest, the bailiff subsequently notifies the vessel as well as the harbour authorities.

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

Curacao procedural law only prescribes that the ship is to be released against "sufficient guarantee"

19. Does security need to cover interest and costs?

The security is to cover the amount estimated by the Judge who allowed the arrest. His estimate normally includes 30% of the principal amount for interest and costs.

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

Depending on circumstances.

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

1-2 hours during working hours.

22. Is there a procedure to contest the arrest?

Arrest can be contested in summary proceedings. A Judge in such summary proceedings will order the release of the vessel if nullifying forms have not been observed, if the arrestee summarily demonstrates that there is no merit what so ever to arrestors claim, or if sufficient guarantee is or has been provided.

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

Standard period is 4 weeks after the conservatory arrest is made, but normally longer or prolonged periods can be obtained without much difficulty.

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

Yes.

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

In very limited circumstances; yes

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

After in a procedure on the merits or in summary proceedings an executory title has been obtained, by operation of law a conservatory arrest will transform into an executory arrest, also pending continuation of the proceedings in for instance appeal. An executory arrest may lead to the ship being sold through public auction. Such sale normally takes several months to complete.

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