

SHIP ARREST IN FAROES

By Annfinn V. Hansen*
LAWFIRM HANSEN | THOMASSEN | VINTHER
advokat@advokat.fo
www.advokat.fo
Undir Bryggjubakka 21, P.O. Box 106,
FO-110 Torshavn
Tel: +298 359595
Fax: +298 359596



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

Arresting a ship can be done fast and very effectively under the law of the Faroe Islands. Often the arrest can be done within few hours from launching the application to the Court. The rules are quite flexible and the Court does not demand notarised and authenticated documents. The most time-consuming element is the obtaining of the acquired counter-guarantee through the banks.

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

The Faroes Islands, as a part of the Kingdom of Denmark, is a party to the 1952 Arrest Convention and also the 1967 Brussels Lien Convention, and the provisions of these Conventions have been implemented in the Faroese Merchants Shipping Act. However, there are no specific provisions for arrest of ships, and arrest follows the ordinary provisions for arrest of properties, covered by the Law of Court Procedure.

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

A vessel can be arrested without being detained in a port, where the arrest instead will be registered as an encumbrance in the Ship Registry. This is a normal procedure against vessels under the Faroese flag and prevents a sale of the vessel.

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

No.

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

A ship may be arrested for any claim against the registered owner of the vessel and claims, which are secured by maritime liens.

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, unless the claim is secured by a maritime lien.

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

It is possible to arrest sister ships if the vessels are owned by the same legal entity.

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

It is not possible, except for maritime lien, to arrest a vessel under Bareboat or Time-chartered party, if the registered owner is not the debtor of the claim. However, there can be made an arrest in assets owned by the charterer e.g. the bunkers onboard the vessel.

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

Yes. Counter-security by way of a bank guarantee issued by a bank in the Kingdom of Denmark will be needed.

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

No, except as mentioned above, that an arrest for a maritime lien can be made irrespective of the owner of the vessel.

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

Yes. The 1967 International Convention of Maritime Liens and Ship Mortgages.

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

An arrest can typically be obtained within a day. However, sometimes the Court will not be available for an arrest during the weekends or nights.

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

No POA is required - only copy of relevant documentation for the 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?

Only the application itself should be in original. Documents can be faxed or e-mailed to the Court.

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

Yes. However, if the underlying agreement supporting the claim is subjected to arbitration or litigation in a foreign forum, the Court will not assume jurisdiction.

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

In order to release the vessel, there must be placed a security at the court.

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

The security must be placed in the form of a bank guarantee.

19. Does security need to cover interest and costs?

The size of the security must be exactly the same as the amount set up in the arrest. Usually, the amount set up in the arrest covers costs and interests as well.

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

No.

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

Usually the same day as the court receives the security.

22. Is there a procedure to contest the arrest?

Yes. The party, which demands the arrest, must issue a summons regarding the legitimacy of the arrest, and in this connection it is possible to contest 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?

Legal action on the merits must be commenced within one week of the arrest date.

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

Yes. The arrestor is liable for wrongful arrest and is liable for any loss caused by the arrest. The counter-guarantee provided by the applicant claimants is supposed to cover such damages.

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

No.

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

If the ship-owner does not pay or put up a counter-guarantee for the claim in order to release the ship, the claimants will have to pursue the case in the merits in order to obtain a judgement. Based on this judgement the vessel can be sold on a forced auction. The forced auction procedure normally takes between 3 or 6 months.

**Mr. Annfinn V. Hansen is partner with Hansen I Thomassen I Vinther Law Firm. He is born in 1963 and obtained his degree as Master of Law from the University of Copenhagen in 1989. Except for a short period as a judge in the Danish Eastern High Court, he has been working as an advocate with focus on business.*

Annfinn V. Hansen has represented a large number of shipping companies, brokers and assurance companies as well as banks. Annfinn V. Hansen has for many years been the chairman of the Faroese Merchant Vessels Association and holds positions in a number of boards. Furthermore he is Honorary Consul for Germany.