

SHIP ARREST IN IVORY COAST

By Philippe Pruvot

3A ABIDJAN

legal@group3a.com

Avenue 2, Rue 9, 2eme etage, 1ere porte D 05 BP

1586 Abidjan 05 - Treichville

Tel: +221 8 2546 0770



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

The port of Abidjan is the main focus of maritime transportation. The port of San Pedro is mainly specialized in the export of wood even if it tends to diversify its activities (especially by the establishment of a container terminal assigned to MSC). Therefore, 99% of the arrests of ships' procedures are initiated at Abidjan so that the orders of arrests are delivered by the President of the Commercial court (or Tribunal of Commerce) of this city. Usually, it is quite easy to arrest a vessel at Abidjan; however, the President of the Court requires that all documents submitted to him must be translated into French, which is the official language in Ivory Coast. The translation requirement could sometimes be a disadvantage because it takes time and must be realized by a listed translator of the Court of Appeal. Moreover, the Courts being closed on Saturdays and Sundays, the authorizations to arrest a ship must be obtained no later than on Fridays. However, the arrest order is implemented via the services of the port Harbor Master who needs the arrest orders to be formally approved by the Legal Department of the port Harbor which closes at 16:00 hrs LT on Fridays.

Furthermore, the local regulation requires that the arrest request states several detailed information (regarding for instance the domiciliation of the creditor, the legal form of both the debtor and creditor); without those detailed information, the claimant's demand could not succeed.

If by chance an arrest order were issued, it could easily be cancelled later upon request. The said requirement has two (2) important consequences:

- 1) the creditor must provide complete information on himself, on the vessel and on the debtor;
- 2) A big part of the releases of ships are the result from the cancellation of arrest orders. In this case however, the Court's decision to issue the arrest order is not cancelled and the claimants can still ask the Court to issue a new arrest order and therefore oblige the ship owners to negotiate. To conclude, detaining a vessel is quite easy when the creditors' claim file is complete and transmitted rapidly to the Court.

Obtaining an arrest order supposes also that sufficient evidence of the claim has been provided when filing the demand e.g. B/L, Contract, Survey Report detailing the damage, unpaid invoices, etc.

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

Ivory Coast did not ratify the Brussels International Convention dated 10th May 1952 but accepted to apply it after having accessed independence by a special declaration on 17 March 1989.

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

The answer is yes, but depends on the purpose of the procedure of arrest:

3.1 The provisional arrest of a ship.

A distinction should be made between the international arrest and the national arrest.

- 1) International arrest: The article 8 §2 of The Brussels Convention concerns the arrests of ships flying a State flag which is not a contracting party of the International Convention. The creditor has therefore the choice to base his demand either on one of the maritime debts of the convention or on one of the debt foreseen by the local Laws.

- 2) National arrest: The article 8 §4 of The Brussels Convention provides that local Laws apply when the arrested ship flies Ivory Coast Flag and when the creditor's usual residence or principal place of business is in Ivory Coast. These local rules are contained in the new Ivorian Maritime Code adopted on 29 June 2017 (art.242 to 261).

3.2 The arrest of a ship with the view to sell it.

In such procedure, the creditor bases on Ivory Coast Laws. The creditor would be able to arrest the vessel after the notification of a commandment of an enforceable title noticing a liquid and due debt.

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

These alternatives are "saisie conservatoire" which means "arrest" and not freezing orders. However, the Government and/or the Port Authority can retain a vessel based on the Ivory Coast Public Law.

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

5.1 The provisional arrest of 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 said Convention. Usually, the Courts issue easily an arrest order when the claim appears justified. When the Ivory Coast Law applies, a maritime claim is also needed (new Maritime Code adopted on 29 June 2017).

5.2 The arrest of a ship with the view to sell it.

In such a procedure, the claim must be based on a liquid and due debt regardless of its nature.

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?

In principle, a vessel owned by a State cannot be arrested. However, this principle is limited to the vessels which have a governmental activity at the time of the birth of the debt. Consequently, the vessels owned by a State can be arrested when such vessels have a commercial activity at the time of the birth of the debt. Under Ivory Coast Law, the seizure of property is limited to the property owned by the debtor. Consequently, when Ivory Coast Law applies for the arrest of ships, the ship must be the property of the debtor except when the creditor has a maritime lien.

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

There are only a few decisions with regards to this question in Ivory Coast. 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". Sometimes, the Judges had accepted to ignore the autonomy of each property and the legal personality of societies when evidence showed that there was a link between societies and therefore an organized fraud in order to be insolvent. Jurisprudence resulting from the application of this provision is not well defined.

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. When the Ivory Coast Laws apply, a creditor may arrest a ship which is not the property of the debtor when the creditor has a maritime lien and/or a mortgage.

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

As per the article 4 of the Code of Civil Procedure, the defendant (or the debtor) may ask to obtain a guarantee to cover the payment of the costs, interests and damages for which may be condemned the plaintiff (or the creditor). The demand for guarantee is conditioned to the existence of an adversarial debate. The procedure of arrest is not subject to any adversarial debate. Consequently, the defendant (or the debtor) cannot ask for a counter guarantee.

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

A maritime Lien exists only because a maritime claim exists. It is therefore impossible to arrest a ship basing only on the existence of a maritime Lien. A maritime Lien gives a right of mortgage on a property even if property changes hands and a priority right to be paid before other creditors.

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

The application of the International Convention on Maritime mortgages and liens dated 10th April 1926 in Ivory Coast is not certain. That convention was ratified on 23 August 1935 by France and entered into force on 2 June 1931, while Ivory Coast was still a colony. Was such convention automatically applicable to the French colonies? The applicability of treaties in the former colonies is not an easy question. This question is solved under the view of international public law.

Ivorian Courts have not yet pronounced themselves about the question to know whether that convention applies or not in Ivory Coast because this question has not been raised by anybody before the courts.

But in any case, Ivory Coast recognizes maritime liens because the provisions of the International Convention on Maritime mortgages and liens dated 10th April 1926, related to this point, were integrated into the Code of Commerce on 19 February 1949. Moreover, the new Ivorian Maritime Code contains provisions about maritime liens.

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

If the file is complete and the documents translated in French by a listed translator of a Court of Appeal, the arrest could be obtained within the same day.

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

A special power of attorney would be required to recover the amount of money from the debtor who has been condemned by the Court, but not for obtaining the order of arrest.

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

The Court does not require originals except when a defendant alleges that a document is a forgery. Consequently, all documents can be filed electronically; there is not any requirement of notarization or apostille of the documents although it is better to legalize a special power of attorney.

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

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

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

- Negotiations for amicable settlement
- Proceedings before the Court for lifting the arrest

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

- P&I LOU
- Local bank guarantee
- Deposit escrowed before the CARPA (Local bank of lawyers)

19. Does security need to cover interest and costs?

According to article 5 of the Brussels Convention "The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished [...]". The security must cover only the amount of claim which is mentioned in the order of arrest.

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

If there is no real dispute on the debt, a P&I LOU can be provided and an amicable release is made without going before the Court. But the claimant is not obliged to accept a P&I LOU. He may prefer a bank guarantee. Furthermore, there are many chances for the Court to require a bank guarantee. The debtor can also make a deposit corresponding to the whole amount of claim before the CARPA (Local bank of lawyers) until the case is definitely resolved.

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

The time necessary to lift the arrest depends on several factors including:

- The time elapsed between the arrest of the ship and the appointment of the counsel;
- The duration of the proceedings before the court: the proceedings can take three days or more;
- The time necessary to place security;

So, it is not possible to determine exactly the time expected to release a ship. But once the judicial decision or amicable agreement is done, the vessel can be released in a few hours.

22. Is there a procedure to contest the arrest?

Yes. An urgent writ of summons for release of the ship will be filed before the Court which delivered the order of arrest. It can be made within two (02) or three (03) days (procedure of "référé").

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

The local Regulation, and not the Courts, imposes to the claimants to take legal action on the merits within one (1) month after the issuance of an arrest order. If the claimant does not respect this regulation the arrest becomes null and void; but it is not automatic. A demand should be filed for that. The Port Harbor Master would refuse to enable a vessel to sail without having received a withdrawal (or release order) from the Court.

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

Ivory Coast recognizes wrongful arrest if evidence shows that an arrest is abusive, especially when the debtor provides proofs showing that the debt has been paid.

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

As explained at point 8, it is possible to obtain such condemnation when the plaintiff (or creditor) shows strong evidence. Courts' decisions are rare, but exist.

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

A ship can be sold at the end of the procedure of arrest with the view to sell it; the creditor is supposed to have obtained an enforcement title from the Court. The procedure for sailing the vessel takes approximately two (2) months after the notification of a commandment to pay before execution.