

SHIP ARREST IN SOUTH AFRICA

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

South Africa has the widest possible jurisdiction to adjudicate upon maritime claims and has a number of benefits, in that, once arrested property falls out of liquidation. Associate ships may be arrested as well. Arrests include claims against demise charterers and effectively making the real owner responsible for the demise charterers' obligations. The applicable law is in respect of maritime liens, are the laws of United Kingdom as they were in 1896. In the case of all other claims, Roman-Dutch law is applied but a lot of reliance is made on English law.

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

There is no arrest that South Africa has adhered to and has regulated its own Admiralty practice in terms of the Admiralty Jurisdiction Regulation Act 105 of 1983.

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

There are two types of arrests in South Africa, one is a direct arrest in rem, which is dependent on either having a maritime lien over the property to be arrested or alternatively having a personal claim against the owner of the property. There is also a further arrest known as a Section 5 (3) security arrest, allowing the arrest of any property owned by a Defendant as security for a claim for litigation that may be contemplated or already commenced.

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

Other than the above arrest/s there are no freezing orders, but orders compelling the production of documents prior to litigation can be made in certain circumstances.

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

One can arrest all types of maritime claims and can arrest associate ships as well.

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

Yes.

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

Yes.

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

As stated, sister ships and associate ships directly or indirectly owned by the same party are susceptible to arrests in this jurisdiction, irrespective of where the cause of action arose, where the vessel is registered or where the parties reside.

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

Owners are liable for the debts of the demise charterers and in some instances, time charterers.

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

No counter security is required at the initial arrest.

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

There is no major distinction between a maritime lien and a maritime claim.

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

Yes, we do recognize maritime liens, the traditional ones being Seamans Wages, Respondentia and Bottomery bonds, collisions and salvage.

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

For a direct arrest in rem, we require between 4 to 5 hours. For a security arrest, we require approximately a day to 2 days.

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

We do not require a 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?

Invariably the invoices are all that is required, no notarization or apostille is required for the documentation nor is a POA required. Hearsay is applicable in South Africa.

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

Our courts will only accept jurisdiction if the matter has not already been commenced in another jurisdiction. Accordingly, the matter will invariably be dealt with here.

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

Release procedure – a simple Warrant of Release is released by either the arresting attorney or the court. The release can be done within an hour or two.

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

The security that is required is invariably a letter of undertaking, P&I Club letter which requires interest invariably on the amount of 10.5% of the principle claim plus the appropriate costs for a calculated for a period of two years.

19. Does security need to cover interest and costs?

Interest and costs can be recovered.

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

P&I LOU's are accepted and are sufficient to uplift the arrest.

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

The release can be done within the hour as sheriffs accept the arresting attorney's release.

22. Is there a procedure to contest the arrest?

There are procedures to contest the arrest on various grounds.

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

The answer to this question depends on the merits of the claim.

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

Our courts may acknowledge a wrongful arrest. The act it provides for liability for the arresting party who without the good cause or reason arrest property.

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

Our courts do recognize the piercing and lifting of the corporate veil.

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

This is dependent on the circumstances of the particular matter.

**Dave Dickinson has been involved in large and varied number of maritime cases over the past forty three years.*