

SHIP ARREST IN ARUBA

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

The procedure for a conservatory arrest (before an enforceable judgment or arbitral award is obtained) of a ship in Aruba is fairly simple. A ship can be arrested after leave has been obtained from the Court of First Instance of Aruba, which leave can be requested ahead of the expected arrival of the ship in Aruba. The request for leave should, in principle, be submitted with the Court in writing and should set out claimant's claim, its basis as well as any further relevant information. Although not required, it is advisable to substantiate the claim with supporting documentation or other evidence supporting the claim. The request should also contain a description of the ship (i.e. its name, IMO-number, flag etc.). Typically, the principal amount of the claim is increased with 30% to cover any interest that accrues on the claim as well as costs in connection with the arrest and subsequent proceedings.

The leave is typically granted (or denied) within 24 hours upon submission of the request, and is handed over by the Court directly to a court appointed bailiff that will place the arrest by going onboard of the ship and draw up a writ of arrest. As a measure to prevent the ship from leaving the bailiff typically obtains the ship's original documentation and informs the local authorities about the arrest. Depending on the hour of the day, the location of the ship and the availability of transportation for the bailiff (for which we usually offer a helping hand to arrange this), the arrest procedure generally takes two (2) business days from the moment our firm receives instructions and all necessary information and documentation up until the moment that the arrest is actually placed, although this process may be expedited depending on the circumstances. If, after the arrest is placed, the parties reach a settlement, the arrest can typically be lifted within a couple of hours.

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

The International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Ships (Brussels 1926, the "Brussels 1926 Convention") and the supplementary protocol thereto and the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (Brussels 1952, the "Brussels 1952 Convention") have been ratified by Aruba. Furthermore, Aruba has ratified the International Convention Relating to the Liability of Owners of Seagoing Ships (Brussels 1957) as well as the Convention on Jurisdiction and Unification and the Enforcement of Judgments in Civil and Commercial Matters (Brussels 1968), which may be relevant in the context of a ship arrest.

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

If the arrestor has obtained a title that is enforceable in Aruba (e.g. a judgment, arbitral award or deed of mortgage), then the arrestor is able to have an executory arrest placed on the ship.

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

The available alternatives to arrest a ship in Aruba are described above under 1. and 3.

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

Any claim on the owner of the ship can, in principle, serve as the basis for a conservatory arrest of the ship. The respective claim does not necessarily have to be a maritime claim. However, if the debtor and owner of the ship is a state, then the ship may only be arrested for commercial claims, as provided in the 1926 Brussels Convention that Aruba ratified.

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

If the ship is flying the flag of a contracting state under the Brussels 1952 Convention then a conservatory arrest is only allowed on the basis of the maritime claims that are listed in Article 1 thereof.

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

Aruban law provides, in principle, that a claim can be recovered from all assets of the debtor. Therefore, the starting point is that, if the debtor is the owner of the ship, then the ship can be arrested. As a consequence, in principle, a ship can only be arrested on the basis of a claim against its owner.

There are exceptions though, as Aruban law provides that certain maritime claims are attached to the ship. As a result thereof those claims can be enforced on the ship irrespective of the owner or (bareboat) charterer of the ship.

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

A sister ship of the ship in respect of which a claim against a debtor has arisen can, in principle, only be arrested if that debtor is (also) the owner of the sister ship. Only under exceptional circumstances will an arrest of a sister ship, that is not owned by the debtor of the claim, be allowed when invoking the doctrine of piercing the corporate veil. To do so successfully, it will need to be argued, and proven, that the corporate shield of the owner of the sister ship is legally abused.

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

A claim against a debtor that is the bareboat (demise) and/or time-charterer of a ship can only serve as a basis for an arrest of that ship if a maritime claim is concerned (see answer 7 above).

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

That is possible under Aruban law, but not typically ordered by the Court (the leave for the arrest is granted ex-parte, so the debtor is typically not in a position to demand counter-security at that stage).

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

Under Aruban law there is no clear distinction between these two concepts, although the term 'maritime claim' is used in the 1952 Brussels Convention to describe claims (in Dutch: zeerechtelijke vordering) for which a ship that carries the flag of a contracting party can be arrested and maritime liens seems to refer to a type of maritime claims (in Dutch: scheepsvoorrechten) that are attached to a ship irrespective of its owner. For both claims, a ship can be arrested in Aruba.

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

Yes, under Aruban law maritime liens (in Dutch: scheepsvoorrechten) are recognized, but Aruba is not a party to any international convention in that respect.

When assessing the existence and validity of any claim, including a maritime lien, the Aruban Court will do so on the basis of the law governing the claim. When presented with a foreign maritime

claim or lien, the Aruban Court will assess whether it can be ‘assimilated’ into Aruban law, for which purpose it will be compared with existing legal concepts under Aruban law (such as maritime liens).

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

In urgent situations, depending on the Court’s and the bailiff’s availability, a ship that is within Aruban territorial waters could be arrested the same day or the day after our firm has been instructed to arrange for the arrest.

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

No, it is not necessary to file a power of attorney or other documents with the Aruban Court when the request for arrest is filed, although it is recommended to provide documentation to substantiate 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?

For a conservatory arrest, the claim only needs to be stated in the request. No evidence is required to be produced. Still, it is recommended to substantiate the request for leave to place a conservatory arrest (to be submitted at the same time the request is filed) with documentation in support of the claim e.g. the ship’s ownership etc. This documentation, in the arrest-phase, can be provided to our firm electronically and does not yet require notarisation and/or apostille at this juncture.

For the preparation of the request, we typically include the following information:

- details of the claimant and debtor (and registered owner of the ship, if this not the same party as the debtor in which event a substantiation should be provided for the basis of the claim since the debtor is not the owner of the ship);
- a description of the claim and the outstanding amount due by debtor;
- details of the ship (name, IMO-number etc.) and its location at the time the request is filed.

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

Yes, if there is no other way to obtain an enforceable title in Aruba, then the main proceedings can be commenced with the Aruban Court (forum arresti-principle). This only applies in the event that the debtor is located in a country with which Aruba has no treaty for the recognition and enforcement of judgments.

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

The arrest can be released by the arrestor without involvement of the Court if sufficient security is provided by or on behalf of the debtor. If the arrestor does not cooperate with the lifting of the arrest then the debtor or another interested party may commence summary proceedings with the Court in which the lifting of the arrest is requested on the basis that statutory requirements were not complied with for the arrest, the claim that is the basis for the arrest is unfounded or the arrest is unnecessary, if sufficient security is provided or on the basis of assessing each party’s interests. Other reasons to lift the arrest can also be provided.

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

Aruban law provides that sufficient security should be offered. The type may differ depending on the circumstances, but typically it will involve a bank guarantee (or P&I LOU).

19. Does security need to cover interest and costs?

In principle, the amount of the security should be equal to the amount for which leave for the arrest was granted by the Court. If the Court orders the release of the arrest in lifting proceedings against security, then it will be up to the Court to determine the amount (and type of) security to be provided.

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

Depending on the circumstances, these may be accepted.

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

(i) As soon as an agreement is reached with the arrestor, in which event the arrestor shall inform the bailiff that the arrest is lifted and the bailiff returns the ship's documentation and informs the relevant local authorities of the lifting of the arrest. Depending on the circumstances this may take a couple of hours.

(ii) Through summary proceedings to lift the arrest: depending on the urgency of the matter these proceedings from the moment an application is filed until judgment is rendered take one to three weeks in general.

22. Is there a procedure to contest the arrest?

Yes, see above under 17 and 21.

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

When granting leave to place the conservatory arrest on the vessel the Aruban Court also provides the timeframe within which the arrestor should commence main proceedings in order to obtain an enforceable title for its purported claim. The standard time period granted for this is 28 calendar days, although this period is (easily) extended if requested and sufficient reasons are given for the requested extension (e.g. proceedings need to be commenced abroad and require more time for preparation).

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

Yes, under certain circumstances, an arrest could be deemed to have been placed wrongfully (e.g. the claim was unfounded, the ship was not owned by the claim's debtor). As a result, the arrestor may be liable for damages consisting of, amongst others, the costs and damages resulting from the arrest.

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

The doctrine of piercing/lifting of the corporate veil is not easily acknowledged by the Aruban Courts, but it is possible under certain circumstances if the protection offered by the corporate veil is (clearly) abused.

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

In general, a sale of the ship is only permitted by the Aruban Court after the claimant has obtained an enforceable judgment on the merits (or an *exequatur* has been obtained in respect of a foreign deed of mortgage, judgment or arbitral award). Notwithstanding the foregoing, it is possible to obtain a Court order through summary proceedings – which typically take between three to six weeks instead of the one to a year and half for proceedings on the merits or the approximately six months to obtain an *exequatur* – as a result of which the ship can be sold by means of a public sale. Typically, a mortgagee, whose claim is not disputed by the debtor, is able to easily obtain the afore

described summary judgment and is then able to proceed with the public sale in a relatively short timeframe after the arrest.

**Dirk Ormel is an attorney at law based in Aruba and admitted to the bar for all six islands that make up the Dutch Caribbean (Aruba, Curaçao, Bonaire, St. Maarten, St. Eustatius and Saba). He works with the Aruban law firm De Cuba Wever Attorneys at Law (link to our website). He has been practicing law since 2012. On a regular basis, he is involved in maritime matters, mostly in connection with arrests of vessels and related matters in Aruba.*