

# SHIP ARREST IN ANGOLA

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

Further to the enactment of the 2021 National Master Plan for the Transport Sector and Road Infrastructures (“Master Plan”), the Angolan government announced the implementation of several structural reforms to the transport sector. As to maritime and port activities, the Master Plan aims to:

- Modernise infrastructure for maritime and port activities.
- Promote national ports and adapt its activities to the requirements of the legal framework in place.
- Re-evaluate the model for port concessions.
- Establish new partnerships and international agreements in order to re-launch the international maritime transport in Angola.
- Strengthen the national capabilities in management and control of maritime traffic.
- Promote training to Angolan personnel specialised in hydrography, cartography, oceanography, navigation and nautical signage.

The Angolan government’s commitment to the Master Plan is evidenced in the projects that have been announced (some of which are under way) for the renovation of the national port infrastructures (the renovation of the Ports of Namibe and Luanda being an example) and the construction of a new oceanic terminal in Barra do Dande (North of Luanda). The Master Plan also contemplates the restructuring of the national maritime authorities (being an example the creation of the National maritime Agency (“AMN”), an agency that is the product of the merger between the Maritime and Port Institute of Angola (“IMPA”) and the Hydrographic and Maritime Signalling Institute of Angola (“IHSMA”), by means of Presidential Decree 292/21 of 8 December 2021). It is also worth noting the creation of the National Institute for Transport Accident Research and Prevention (“INIPAT”), upon the enactment of Presidential Decree 29/22 of 27 January 2022. This institute will be responsible for the investigation and response to any maritime casualty in Angola, in collaboration with AMN – a duty that previously fell solely under the responsibility of IMPA. As to the future, the Master Plan also shines some light on the new legislative endeavours that the Angolan government proposes to achieve, from which we highlight, inter alia, the (i) regulation of all international conventions of the International Maritime Organisation (“IMO”) to which Angola has acceded, (ii) regulation of the procedures and activities for the investigation of maritime accidents, (iii) regulation of the registration of ships and other marine engines, (iv) regulation of the maritime authority system, and (v) approval of a general regulation of captaincies. If enacted, all the above-mentioned legislative proposals would be a major step forward in the continuous work of consolidation of the national legal framework for the maritime sector in Angola, with inherent impact on the ship arrest practice.

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

Angola is a signatory of the 1952 International Convention Relating to the Arrest of Sea-Going Ships (the “Brussels Convention”).

The United Nations Convention for the Law of the Sea (“UNCLOS”) also applies in relation to vessels arrested for the suspicion of participation in criminal activity.

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

Outside the scope of the Brussels Convention, Angola's Civil Procedure Code and Commercial Code apply.

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

Apart from ship arrest, the claimant may seek to obtain security through the attachment of any other property owned by the debtor (other than vessels) and non-specified injunctions as per the Civil Procedure Code.

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

Maritime claims in respect of which a vessel may be arrested are those set forth in Article 1(1) of the Brussels Convention:

- a. damage caused by any ship either in collision or otherwise;
- b. loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
- c. salvage;
- d. agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- e. agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- f. loss of or damage to goods including baggage carried in any ship;
- g. general average;
- h. bottomry;
- i. towage;
- j. pilotage;
- k. goods or materials wherever supplied to a ship for her operation or maintenance;
- l. construction, repair or equipment of any ship or dock charges and dues;
- m. wages of Masters, Officers, or crew;
- n. Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- o. disputes as to the title to or ownership of any ship;
- p. disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
- q. the mortgage or hypothecation of any ship.

Ships may also be arrested when there is the suspicion of participation in criminal activity, before or after criminal proceedings are initiated, under the UNCLOS.

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

Yes. Under Article 2 of the Brussels Convention a ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim. However the Convention does not extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

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(1) (please refer to previous question 5.) or of any other claim for which the law of the Contracting State permits arrest.

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

It is not required that the owner be liable in persona for an arrest of a vessel to be accepted. Pursuant to Article 3(4) of the Brussels Convention, if the charterer (and not the registered owner) is liable (i.e., debtor) in respect of a maritime claim relating to a vessel, in the context of a charter by

demise of a vessel, the claimant may arrest such vessel or any other vessel in the ownership of the charterer by demise, even though no other vessel in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The above-mentioned regime shall apply to any case in which a person other than the registered owner is liable in respect of a maritime claim relating to that vessel.

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

A claimant may seek the arrest of either the vessel in respect of which the maritime claim arose or any other associated vessel as long as both vessels are owned by the same person(s). Associated ships may not be arrested in situations foreseen in article 1.1, (o), (p) or (q) of the Brussels Convention (please refer to question 5.).

Outside of the Brussels Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

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

Pursuant to paragraph (4) of article 3 of the Brussels Convention, in the case of a claim against a bareboat charterer, the claimant may seek the arrest of the bareboat (demise) chartered vessel or any other vessel in the ownership of the bareboat charterer, as the charterer and not the registered owner is liable in respect of such maritime claim relating to that vessel. However, no other vessel of the ownership of the registered owner may be arrested in respect of such maritime claim. The above mentioned legal regime also applies to any case where a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

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

As a matter of principle, no security is required. Still, the judge is free to decide otherwise and ask the applicant to provide security in an adequate amount and form. Unless otherwise determined by the judge, the amount of the security generally corresponds to the amount of the claim. The security can be posted in any form acceptable by the court, cash deposits and bank guarantees (in terms to be agreed) being the most usual forms.

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

Maritime claims are dependent upon the ownership of the ship. The ship can only be arrested provided that the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to file a claim and to arrest the ship despite a change of ownership. The arrest procedure is the same, though.

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

Although it is understood that the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages is not applicable in Angola, article 578 of the Angola Commercial Code specifies the following categories of claims which afford maritime liens:

- (1) court costs incurred in the common interest of the creditors;
- (2) remuneration for salvage;
- (3) pilotage and towage expenses;
- (4) tonnage, lights, anchorage, public health and other harbour dues;
- (5) expenses made in connection with a vessel's maintenance and storage of her appurtenances;
- (6) master and crew wages;
- (7) costs incurred in connection with the repair of the vessel, her appurtenances and equipment;
- (8) reimbursement of the price of the cargo that the master was forced to sell;
- (9) insurance premiums;
- (10) any unpaid portion of the price due in connection with the purchase of a vessel;

- (11) costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the past three years;
- (12) unpaid amounts arising from shipbuilding contracts;
- (13) outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances, not mentioned in (11); and
- (14) sums due to shippers in respect of loss or damage to cargo.

Claims mentioned in (1) to (9) refer to those incurred in the last voyage and as a cause of it.

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

Experience tells us that the issuance of an arrest order is likely to take between 24h to 72h to secure, counting as from completion of the relevant submissions. Sometimes, before the arrest is order granted, it is also possible to secure an “interim detention order” from the Court immediately following the initial submissions.

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

Yes, an original power of attorney must be provided to the court. Where issued abroad, and as a condition for their local acceptance and enforceability, powers of attorney must be previously notarised, legalised (before the Ministry of Foreign Affairs or equivalent body), translated into Portuguese language (by a sworn translator) and then consularized before the Angolan Embassy or Consulate with jurisdiction over the country of their issuance (Angola is not a party to the 1961 Hague Apostille Convention).

The original power of attorney must be attached to the arrest application at the time of its filling. When that is not possible, lawyers may ask the court to grant additional time for submitting the original (where the original power of attorney is not available, the arrest application must be submitted along with a scanned (coloured) copy of the original 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?

Although the submission of original documents is required, it is common practice to present scanned copies of the same, which in most cases is accepted. However, courts are always entitled to disregard copies or ask the parties to submit the relevant originals.

Documents submitted to the court must be written in Portuguese. When written in a different language, parties are required to submit the relevant originals along with their translation into the Portuguese language (the translation should be certified by a sworn translator).

Where, in view of the urgency, there is not sufficient time available to file the arrest application in compliance with all the required formalities, it is still possible to set the arrest procedure in motion while undertaking to the court to complete the formalities in a reasonable period of time (typically, no more than 10 calendar days).

Documents cannot be filed electronically.

There is no specific term for the preparation of an arrest application; this will typically depend on the urgency of the relevant arrest and on the complexity of the underlying claim.

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

Claims on the merits should be initiated before the court having jurisdiction for such by reference to the law governing the contract. The arrestor may, therefore, pursue the main claim on its merits with a foreign court. The claimant is required to file the initial claim for the main proceedings of which the arrest will form an integral part within 30 days of the arrest order. However, an extension of this 30-day deadline may be required considering the difficulties of commencing procedures before a foreign court.

In this regard, both under and outside the Brussels Convention, the vessel shall also be released in the event the main claim is not commenced within 30 days – or a different time period established by

the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered or has had no developments for a period of more than 30 days for reasons imputable to the creditor.

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

Pursuant to Article 5 of the Brussels Convention, the vessel shall be released upon sufficient bail or other security being furnished, save in arrests in respect of any of the maritime claims regarding disputes as to the title or ownership of the ship, or in disputes between co-owners of the ship as to the possession, employment or earnings of any vessel (foreseen in article 1.1, (o) and (p) of the Brussels Convention - please refer to question 5.). In such cases, the court may allow the person in possession of the vessel to continue trading it, upon such person furnishing sufficient bail or other security.

Outside the Brussels Convention, the vessel will also be released if security is provided in the form and amount deemed sufficient by the court.

The security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

Both under and outside the Brussels Convention, the vessel shall also be released:

- upon payment of the debt;
- in the event the main claim is not commenced within 30 days – or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered or has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- the main claim is definitively dismissed;
- if the main claim is upheld but the debt remains outstanding and the creditor does not initiate the enforcement proceedings within six months from the claim being definitively upheld or they have no development for a period of more than 30 days for reasons imputable to the creditor; or
- if the credit ceases to exist.

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

Security can be posted in any form acceptable by the court or by the arresting party (e.g., cash deposits, bank guarantees, P&I LOUs).

#### 19. Does security need to cover interest and costs?

Typically, the amount of the security corresponds to the amount of the claim (which usually includes interests). Nevertheless, the judge may end up reviewing it subsequently, namely where the amount being claimed does not reflect the amount being effectively disputed. The amount of the security is not likely to exceed the value of the ship.

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

Although not common, courts have already accepted P&I LOUs as security, dependant on the other party's agreement.

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

Once security has been posted the request for release can be lodged with the court immediately, but it will depend upon the availability of local court officials where the ship is located. Usually it takes between 24 and 36 hours.

#### 22. Is there a procedure to contest the arrest?

After examination of the evidence produced, the arrest may be ordered without hearing the arrested party, provided that the legal requirements have been met; however, where the arrest has been requested to cover more assets than the sufficient to secure the debt/obligation, the guarantee shall be reduced to the just limits. In the particular case of arrest of a ship or its cargo, the arrest will not

take place if the debtor immediately offers a guarantee that the creditor accepts or that the judge, within twenty-four hours, deems adequate.

Upon notification to the arrested party of the order granting the arrest, the latter may appeal against the order or lodge an opposition (“embargos”), or use both means of defence simultaneously.

The opposition shall be offered in duplicate within a period of eight days and shall be especially aimed at claiming facts that dismiss the grounds for the arrest or at requesting that the precautionary measure be reduced to its just limits where it has covered more property than necessary.

The arresting party is then notified to answer to the opposition; thereafter, without further pleadings, the terms of the summary proceedings shall follow.

Where the opposition is directed against the grounds of the arrest, the arrested party may claim that the arresting party or the witnesses knowingly failed to tell the truth and request that a fixed sum be fixed as compensation for the damage suffered; in such case, the witnesses shall be summoned to answer the opposition and, if the opposition is upheld, the arresting party and the witnesses in bad faith shall be jointly and severally liable for the compensation.

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

Please refer to question 16. above. The claimant is required to take action on the merits within 30 days of the arrest order, or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court.

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

Yes. In the event of wrongful arrest of a vessel or where the arrest is lifted for reasons imputable to the applicant, the latter is liable for the damages caused to the arrestee, provided that the applicant has not acted with normal prudence or due care, as set out by Article 621 of the Civil Code.

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

The courts will be prepared to accept the piercing and lifting of the corporate veil in very limited circumstances. Usually there must be an element of improper conduct with intent to defraud. The use of the corporate structure must have been established to evade liabilities imposed by the law.

The piercing and lifting of the corporate veil, or, in other words, the disregard of legal entity still does not have an unequivocal legal basis in Angola that may cover all types of commercial companies (namely, multi-person companies). However, the rationale of some rules is similar to the values and purposes inherent to the disregard of legal entity, showing that the Angolan legislator has addressed concrete situations in which it promoted the overcoming of corporate liability and the imputation of responsibility to their shareholders. Examples are some of the provisions of the Consumer Defence Law (Law 15/03, of 22 July) and the Single-Member Companies Law (Law 19/03, of 22 July).

Thus, it can be concluded that the Angolan legal system accepts the notion of disregard of legal personality as an instrumental criterion that can be resorted to in the concrete case to ensure a more efficient and broader protection of the company's creditors.

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

In principle, a judicial sale of a ship cannot take place during the arrest proceedings, and require the bringing of a subsequent enforcement proceedings, in which the arrest is converted into a seizure of the vessel, after the existence of the credit has been recognised by the competent court.

After an enforcement application is lodged, the court shall notify the debtor (owner or charterer and other interested parties) to settle the claim or oppose the enforcement and the seizure. If the debtor fails to pay or if no opposition is lodged within an appropriate period, the court will order the sale. To that end, the court will then decide on how the sale will take place (public auction, private negotiation, sealed bids) and will appoint an auctioneer who will be responsible for the relevant proceedings and arrangements (such as organising the tender and visits to the vessel, collecting the

bids, getting the proceeds of the sale and liaising with the court). The debtor will have the power to recover the vessel at any time before completion of the judicial sale, provided it deposits with the court the amount of the credit plus fees and expenses.

The proceeds arising from the sale of the vessel will be used to pay the claimant or other creditors with prevailing rights over the vessel that have claimed credits in the proceedings, the court costs and expenses (including auctioneer's fees) and other credits and expenses.

The judicial sale of a vessel can take several months to complete.

The judicial sale of a vessel in a foreign jurisdiction (as any other judgment awarded by a foreign court) will also be valid and enforceable in Angola provided that it is revised and confirmed by the Angolan Supreme Court.

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