

# SHIP ARREST IN ANGOLA

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

Angola has inherited the long Portuguese maritime tradition. The main reason that Portuguese is the official language of Angola is due to the maritime adventures to India when Europeans discovered the gorgeous, wealthy continent to which Angola is part of. Then with the formation of African Unity and then Union, many agreements were signed dealing with pertinent issues of law of the sea and Maritime boundaries that has since affected the development of the maritime industry in Africa and particularly in Angola. Until 2017, Angola lived mostly from oil & gas exports and imported everything else from consumable goods, automobiles to basic products which arrive through containers and tankers. This is comprehensively explained in my books “Quasi bandeiras de conveniência” and “The West Africa Maritime Boundaries”.

Moving to the non-commercial industry, the Angolan Maritime Authority (composed of various institutions including the Fiscal Police and the Navy Marine), have been patrolling the area with the assistance of the Ministry of National Defense, Vigilance Cabinet, making the coast very safe against piracy, illegal fishing, run-away arrestees, and avoiding illegal dumping, among others.

Apart from being an active member at the Organization of the African Union, Angola is also a member-state of SADC due to its location in the southern part of the African continent, also a member of ECCAS due to its location at the central part of the Continent and, a member of the Gulf of Guinea Commission due to its location as a coastal state at the Gulf of Guinea, herein for the latter acting as the host country. Angola is also a member of the Community of the Great Lakes.

In 2013, as per activities of three subregional organizations such as ECCAS, ECOWAS and GGC was formed the Yaounde Architecture to tackle maritime crimes and for navy and policing exercises the West African seas was redivided in zones composed of many states and so arrests of ships is currently under re-development and adjustment.

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

All conventions ratified by Angola have been well incorporated in national legislation. For arrests, together with the inherited Portuguese Civil Code, New Commercial Code, Code of Civil Procedure, UNCLOS – United Nations Convention for the Law of the Sea have been well applied by judges to justify arrest and release of ships. For ships that have committed infractions against the state or that are under suspicion of practicing or having practiced acts of Piracy or Armed Robbery, unlicensed broadcast among other criminal Activities, applies the Angola Criminal Code, the Angolan Code of Criminal Procedure, the Yaounde Code of Conduct, the Declaration of Heads of States and Memorandum of Understanding between ECCAS, ECOWAS and GGC.

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

The current Civil Code, Code for the Civil Procedure and the Commercial Code have provisions supporting injunctions and estoppels. The mentioned law can also be used to argue in favor of the release of a ship where the obligation demanded to be fulfilled in the injunction of general Claim has been met/fulfilled by the ship. Angola is a monist country and UNCLOS is well accepted in courts.

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

Most of the time, the process starts with a pre-arrest. The pre-arrest allows the timing needed to fully process the provisions of the Code of Civil Procedure and later maintain arrest. Even though reality has showed injunctions to arrest in order to secure a claim, where it reasonably applies, a freezing order is allowed by law when justified.

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

Ships are arrested in a form of an injunction to secure a claim. In Portuguese, “Providência Cautelar” means injunction to which after the limit of 30 days, unless otherwise instructed by current proceedings, the main action is to be brought in the national court or abroad, depending of what has been previously agreed upon by the parties or a new agreement.

Ships can also be arrested for the suspicion of participation in a criminal activity, well in accordance with UNCLOS.

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

Yes. There is no discrimination regarding the flag. However rules of hot pursuit applies differently for a foreign flag. The concept of Foreign flag is also under re-development under Yaounde Architecture.

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

All commercial ships can be arrested irrespective of the debtor.

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

To the best of my knowledge, we have not yet arrested any sister ships for the debt of another, but this procedure is possible where it can be proved that they are “in fact” sister ships. This concept is quite new to shipping as it was imported from company law. In Angola it is no different, it can be applied with the same reasoning done around company law.

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

All debts lawfully incurred to the benefit of the ship and or in the name of the ship are of the responsibility of the ship. However, it is highly advisable that claims in bareboat are initiated though the life of the the contractual relationship of the parties.

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

No, but initial court fees must be paid to commence procedure.

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

No difference generally, however, the real difference is seen in the particulars of each case.

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

These issues are well legislated by national law. However UNCLOS is herein applied.

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

We normally require two days, but most of the time we do it within two business hours if PoA is sent signed and stamped by email, then in the next day translations or remaining documents are added to the process file. It then depends if process reaches the court in its first hours or by the end of their business hours.

Please note that court closes at 15:00, and a court fee must be paid in the bank to initiate the order of arrest. When proof of payment of the fees is sent, we normally pay the court fees in favor of the client to enable time to play in our favor.

One advice that many clients do not seem to understand is that “timing is gold” and definitive to find the ship at the port.

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

We always need a PoA to start the process. It can be signed by procurator or manager and stamped by company and sent by email. We also need company documents and proof that procurator has in fact power to empower lawyers, and confirmation of the identity of procurator ID card or passport. Any document supporting the existence of the claim should be attached.

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

All documents can be sent electronically for the pre-arrest. Then the original PoA is required to be notarized and sent by courier. In our experience, whenever the original PoA arrived the case was already closed and so we keep in archive for the next arrest, among other needs of the client in Angola.

However, it is advisable that a hand sign is sent followed by a notarized PoA sent initially by e-mail but curried in the same day

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

Yes.

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

After payment of the debt, the Lawyer of the claimant is required as a courtesy to the counter party, to confirm that all matters have been set and ship can be released. In case the first option does not happen, as is merely a moral obligation of Claimants lawyer to facilitate the workload of the judge/court/fellow colleague. When that is done, Port fees and court fees must be paid in order for the judge to confirm release to the Port Authority.

The defendant lawyer must request the release of the ship by proving settlement to the judge, or if not, use his option to pay the bond to the court account of the value of the claim, and request the release.

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

Defendant must liquidate the debt or pay a bond to court's bank account in the same value of the amount of the claim, plus court fees. ]

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

According to the civil code, the losing party always covers the reasonable costs, agreed interest, etc. In case of contractual absence, the interest as calculated by the National Bank of Angola.

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

Not to this day, unless a local financial institution has undersigned this procedure. Please see answers 17 and 18.

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

The release is done immediately after debt is settled and confirmed by claimant lawyers, or as soon as bond is paid. However, by law, it can take up to 10 days.

You can arrest in both situations. However, if debt is not paid voluntarily, an action must be brought against the ship within 30 days. That being done, with no evidence to contrary or payment of court bond, the ship stays at the port, under the vigilance of the Port Authority, where vigilance fee and Port tax is issued daily to the shipowner.

22. Is there a procedure to contest the arrest?

There are always procedures to contest the arrest, but release of the ship is done only after the payment of the debt or of a bond to court.

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

The period granted by law is of “within 30 days”, however if the ship is pre-arrested the judge always schedules the hearing for no later than two working days.

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

Wrongful arrests, in general, are recognized and well legislated by definition and procedure in the Civil Code and Civil Procedure Code. There are also dispositions of criminal law that can be applied in limited cases.

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

The commercial and civil code have very clear dispositions specifying the situations in which it may be done.

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

In accordance to Civil Code and Code of Civil Procedure, depending on the outcome, the ship can be sold as any other property under arrest order, when the defendant/owner fails to pay or nominate other property for the sale.

However, by exception, that request can be granted when the parties agree before court, when the defendant has been notified by court but objects to the sale on the established date, or when it is ruled to be abandoned.

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