

## SHIP ARREST IN *BENIN*

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

The procedure relating to the arrest of sea-going ships is made easy in Benin by the entry into force of a new law namely the Act No 2011-11 dated March 7, 2011 laying down the Maritime Code in the Republic of Benin. On the basis of that Code, all sea-going ships may be arrested; even ships already set to sail, unlike the previous act.

Among the provisions enabling an arrest of a ship, the condition relating to the claim is outstanding. The creditor must show evidence of a claim that is certain and maritime as well, with a connecting link with the implicated ship, or with the owner of the vessel to be arrested.

For the issuance of the arrest order, judges are very particular about the maritime nature of the claim, which must be part of the list of maritime claims provided by Article 156 of the Maritime Code. Upon reception of instructions, the order for arrest may be obtained within the next twenty-four (24) hours. Submitting original documents is not necessary unless questions arise on the lawfulness of the arrest, and more specifically on the ownership of the vessel. The release of an arrested ship may be obtained within a few hours after the issuance of a bank or P&I Club letter of guarantee accepted by the creditor. By the way, the judge may also allow the ship to leave upon deposit of moneys equal to the principal amount of the claim plus costs and incidental expenses. Withdrawal of the arrest order may be granted by the enforcement judge dealing with the case in summary proceeding.

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

Arrests of sea-going ships are subject to the May 10, 1952 Brussels Convention for the unification of certain rules relating to the arrest of Sea-Going Ships, signed by the Republic of Benin, and part of the legal instruments therein available.

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

No, the law only provides that way for the arrest of sea-going ships.

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

There are no alternatives to the arrest of ships. However a ship may be seized upon requisition of a CID police officer, when that ship is involved in any criminal facts or is carrying goods from criminal origin. This will be the case of a ship carrying goods acquired upon perpetrating an international piracy act. Such a vessel may be kept under the custody of port authorities to assist in the on-going investigation on the committed crime.

On another lane, in due enforcement of their police powers, the maritime authorities may confine a ship to port, should they notice any discrepancy in endorsements of documents on board, should these documents are lacking, or should they notice that the condition of the ship is a threat of pollution or might be the cause of marine casualties.

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

Claims allowing ship arrest must be certain and bear the characteristics of maritime claims. Maritime Claim shall mean a claim arising out of one or more of the following: -Damage caused by any ship either in collision or otherwise;

- Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;

- Salvage;
- Agreements relating to the use or hire of any ship whether by charter party or otherwise;
- Agreements relating to the carriage of goods in any ship whether by charter party, a Bill of Lading or otherwise;
- Loss of or damage to goods including baggage carried in any ship;
- General average;
- Towage;
- Pilotage;
- Goods or materials wherever supplied to a ship for her operation or maintenance;
- Construction, repair or equipment of any ship or dock charges and dues;
- Wages of Masters, Officers, or crew;
- Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- Operation or title to earnings of that ship;
- Any maritime mortgage or hypothecation of any ship or more generally any claim arising from any the causes allowing the application of the limitation of owners or charterers liability.

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

The Law provides for the arrest of any vessel irrespective of her flag. All it takes is that the claim must be connected with the concerned ship.

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

Arrest of a ship can be made irrespective of the debtor, whether the latter is the ship-owner or the charterer.

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

Benin case law does not make any distinction between sister ships and ships in associated ownership. Once the claim is sufficiently evidenced against a ship or her owner, that ship and all other ships of his (the owner) fleet can be arrested. The law provides that the creditor has a general possessory lien over all of the debtor's properties. It is then up to the creditor to seize any of the debtor's asset.

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

There is no implication as regards to Bareboat and Time-Chartered vessels as far as arrest of ships is concerned. Ships bareboat or time-chartered can be indiscriminately arrested for the same claim.

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

Counter-security is not required for the issuance of an arrest order of a ship.

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

There is no procedural difference.

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

The Benin Maritime Code caters for Liens in its Art 114 through 124. Liens are listed in Art 114 of the Code. This listing is inspired by the International Convention for the Unification of certain Rules relating to Maritime liens and mortgages.

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

Upon reception of the file (meaning instructions and documents), the order for arrest may be obtained within twenty-four (24) hours. The request may be lodged immediately and the judge may be involved to help having the order quickly signed. The arrest occurs after that with a bailiff serving the order and the immediate consequence is the confinement of the ship.

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

No POA is required, the counsel aptly standing for his client without the need to produce any proxy.

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

No original documents are required and no notarisation and/or apostille are necessary for documents. And all documents can be sent electronically for filing provided they are readable and such as to evidence the claim.

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

Once a vessel has been arrested, the Courts of Benin always accept jurisdiction to hear the withdrawal of the arrest order and/or its lawfulness.

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

An arrested ship may be released upon a release order from the Court or upon a Court decision allowing the ship to leave after depositing moneys with the Court registrar as security, the amount of which is set by the Judge according to Art 153 of the Benin Maritime Code. Release can also occur voluntarily after parties have reached an amicable settlement in terms of acceptance of a letter of guarantee by the creditor.

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

In most cases, a bank guarantee payable at first demand is preferred. However P&I LOUs are also accepted.

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

The security is placed as to cover the debt's principal amount, interests and costs. However, everything may be negotiated.

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

P&I LOUs are perfectly accepted as sufficient to lift the arrest.

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

There is no time necessarily taken to release the ship. It can occur immediately upon issuance of the release order from the Court or upon the agreement reached by the parties.

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

The arrest may be challenged by referring it to the enforcement judge.

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

The claimant has eight (8) days to refer the case to the Civil Tribunal of the place where the arrest occurred to have the arrest confirmed. Failing to do that results in the arrest voided.

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

The arrest may be declared wrongful when it has been conducted without any claim or when the provisional requirements for such an arrest were not met. In such circumstances, the arrestor incurs liability for costs and damages.

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

Considering Memoranda of Association and shares held by an individual in a Company presented as owning/operating a ship, the Courts may point out the actual owner of the ship, lift the corporate veil and authorise the arrest of that ship supposedly owned by a company other than the debtor of the claim. It only takes, apart from endorsements on the vessel ownership certificate, to clearly show the connection between the debtor and the concerned ship it is then possible to arrest any ship belonging to the owner once the link is sufficiently evidenced.

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

A ship under arrest may be sold *pendente lite*. Eight (8) days after the arrest, the arrestor may claim on the merits and apply for the sale of the ship. If the debtor does not pay his debt within ten (10) days, the Court may order the sale by auction of the vessel. The auction notices are posted and published in the official gazette for fifteen (15) days, and then the bids are brought to the Court. The successful bidder is compelled to pay the price within seventy-two (72) hours following the auction. Failing to honor his payment, the ship is reset for sale and auctioned (3) three days after a new notice of sale by auction.