

SHIP ARREST IN *LEBANON*

By Jean Baroudi (Managing Partner)*

BAROUDI & ASSOCIATES

jean.baroudi@baroudilegal.com

www.baroudilegal.com

Achrafieh 5585 Building, P. Gemayel Avenue, Beirut

Tel: + 961 1 428777/8

Fax: + 961 1 423582



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

Domestic legislation does not regulate the conservatory arrest of ships in specific. Ship arrest in Lebanese waters is regulated by the Code of Civil Procedure which grants any creditor the right to apply to the Judge of Execution Bureau for a conservatory seizure of his debtor's assets to obtain security for his claim (Article 866 of the Code of Civil Procedure). The Judge normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered *ex parte* on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things. The arrest order may be challenged within no later than five days from date of its service. The procedure of challenging the arrest order is usually complex and lengthy. Therefore, the quickest way to arrange for the lifting of a ship arrest is to put up a bank guarantee for the value of the arrest. The guarantee should be issued by a local bank. A Club Letter of Undertaking is not considered satisfactory security for the Judge to lift a vessel's arrest.

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

Lebanon is not a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999.

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

The ship could be arrested in the context of a procedure for enforcement commenced against her owner in accordance with the provisions of articles 73 and what follows of the Lebanese Merchant Shipping Law. The party applying for enforcement against the ship should hold a deed ascertaining his claim against the ship.

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

The *saisie-conservatoire* is the procedure described under question 1 above while the procedure of enforcement against a ship is described under 3 above. In certain matters of urgent character, the Judge of Urgent Matters may order the seizure of the vessel but usually for a specific period of time.

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

The law stipulates that, in general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and grounded. The Judge dealing with conservative attachments normally considers the application for arrest of a vessel on a prima facie basis only and the arrest order will be rendered *ex parte*.

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

Lebanese Law does not differentiate between vessels flying Lebanese and foreign flags. Therefore, a ship may be arrested by an unpaid creditor irrespective of the ship's flag.

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

In general, a ship can be arrested for any claim which the claimant has against her current owner provided the claim is proven, on the face of things, to be serious and grounded. However, where the

claim is secured by a maritime lien (See question no. 12) a recourse against the ship is accepted regardless of her owner's identity.

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

Under Lebanese Law, the application of arrest should be directed against the person or party responsible for the debt. With the exception of cases where the claimant has a maritime lien over the ship, it is not possible to apply for the arrest of the ship unless her owner is responsible for the claimed debt.

The arrest of a sister ship is generally possible providing that they are both owned by the same party who is a debtor of the arresting party. The arrest of associated ships may succeed (although chances of success are generally minimal) only if it is possible to prove the close links between the two entities while noting that (if the arrest succeeds) it is not certain that the Judge will maintain it in case of a challenge by the actual registered owner of the arrested vessel. Hence, there is a great degree of uncertainty when applying for the arrest of an associated vessel.

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

The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant the creditor a maritime lien as described in the Merchant Shipping Law (see response to question no. 12).

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

The Judge has by law discretion in making the issuance of the arrest order conditional upon the provision of a counter-security by the claimant. However, this discretion is rarely put in effect.

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

No. The arrest procedure is the same.

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

Yes. The Merchant Shipping Act defines and regulates maritime liens (Articles 48-61). Article 48 of the above-mentioned Act defines maritime liens as being a claim for:

- a. Legal costs and expenses incurred in the common interest of the creditors; port duties and taxes due on the ship;
- b. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;
- c. Remuneration for assistance and salvage and the vessel's contribution to general average;
- d. Indemnities for collision or other accident of navigation; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;
- e. Claims resulting from contracts entered into or acts done by the master outside the port of registry by virtue of his legal powers for the actual maintenance of the vessel or the continuance of the voyage;
- f. Damages due to charterers; and
- g. Insurance premiums for policies covering the hull, fittings and gear of a vessel due for the last voyage or the last insured period and up to a maximum period of one year.

Lebanon is party to the International Convention For the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages of 1926 and claims a, b, c, d and e are identical to those listed in Article 2 of the Convention.

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

2 days if all documentation is in order and documents issued in foreign language are translated.

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

A POA must be provided on submission of the application. The POA must be notarized and legalized by the Lebanese consulate at the place of issuance. The judge may in his discretion accept a POA that does not meet these requirements. The documents supporting the claim must be filed with the arrest application. If the documentation is in a foreign language, it is advisable to submit an Arabic translation thereof.

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

The law requires submission of the supporting documents in original copies. The judge however has discretion in waiving this requirement. The documents need not be notarized or apostilled (save the POA as highlighted above).

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

No. The substantive action should be brought before a Court/Arbitration Panel that is competent to deal with the merits of the claim. Such action must be commenced within no later than five days from the date of the arrest order.

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

The procedure entails submission of an application for the lifting of the arrest along with suitable security. The security is deposited with the judge who issued the arrest order (and not with the claimant).

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

Article 873 CCP provides that the Head of the Execution Bureau decides the type and amount of such security. But usually, such security is under the form of a bank guarantee issued by a local bank or cash deposit

19. Does security need to cover interest and costs?

Security should be for an amount equal to the arrest amount. This amount usually covers the principal amount of the claim plus 10% for costs.

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

P&I LOUs are not regarded sufficient by the judge dealing with the arrest.

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

Depending on the time it gets to arrange issuance of the security (normally, local banks need 2-3 days from the date of receipt of the instructions to issue the bank guarantee). The judge would usually issue the order lifting the arrest on the day of submission of the security or the next day.

22. Is there a procedure to contest the arrest?

Yes, the arrest may be contested within no later than 5 days from date of service of the arrest order. The success of the challenge is conditional upon a number of legal requirements.

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

The claimants must, within no later than five days from the date of the arrest order, take legal action on the merits. Failure to file such action will result in the cancellation of the arrest order.

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

There are no legal precedents on the liability for the wrongful arrest of a ship. However, under the general principles of civil law, a claim for wrongful arrest would succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest. The damages that could be awarded for a wrongful arrest would cover all direct losses sustained by the shipowner as a result of the arrest (e.g. port dues and associated costs, crew wages, etc...) and possible indirect losses (including profit loss).

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

Lebanese Judges tend not to allow the piercing of the corporate veil. Lebanese Courts have allowed this only in very rare instances where proof of the fictitious character of the company is provided by the arresting party.

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

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

**Jean Baroudi graduated from St. Joseph University Faculty of Law in 1992 and obtained a Masters Degree from Southampton University in 1994. He is currently the Managing Partner of Baroudi & Associates, one of the oldest and largest law practices in Lebanon founded in 1912. The firm is constantly recommended by international legal directories such as Chambers, Legal500 and IFLR1000 and specializes in various areas of law. The firm acts as Lebanon correspondent for most P&I Clubs. Jean Baroudi is a former adviser to the Lebanese Minister of Transport and is currently member of the Legislative Committee of the Lebanese Ministry of Transport and member of various committees of the Beirut Bar Association. He acts as adviser to the Syndicate of Lebanese Ship Agents and is an arbitrator at the Arbitration Chamber of Monaco.*