

SHIP ARREST IN LIBYA

Taher Shtewi
Shtewi Legal & PandI Services
207 Amhamed El Magrif Street
Tripoli, Libya
Mobile: + 218 91 2141080
Tel: + 218 21 3341588
Fax: + 218 21 3341589

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

Arresting ships in Libya is done in accordance with the Libyan Procedures Law and Libyan Marine Law articles which provide that anybody owed a debt by the ship or her owners may lodge an application to the court. In this application, the creditor should indicate the merits of the case with all supported documents attached and translated into Arabic.

A legalized power of attorney by the Libyan Embassy must be prepared by the party who is applying for an arrest court order.

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

Libya did not ratify any International Convention, and only local laws will apply to the arresting of ships.

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

The Libyan government has the authority to arrest, by an administrative order, any ship that did not settle her debts and prevent the ship from sailing until the debts have been paid.

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

No, the option will just assist these government authorities to collect what is owed without involving the courts, which may take a prolonged amount of time.

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

The ship can be arrested against any marine debt incurred for the same ship or for another ship under the same ownership.

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

The arrest procedures are applicable irrespective of the flag of the ship.

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

The arrest procedures are applicable irrespective of the Debtor's residency or nationality. However, article (3) of Libyan Procedures law which provides the following:

Libyan courts will have jurisdiction in cases against foreign citizens in the following circumstances:

1. If he is resident in Libya, or has acquired an agent who is authorized to represent him in front of the courts, or he accepts the Libyan jurisdiction.
2. If the case is concerning assets in Libya, the inheritance of a Libyan citizen, a legacy commenced in Libya, a liquidation announced in Libya, or the case arises from a contract performed on Libya or executed in Libya or stipulated to be executed in Libya or due to action happened in Libya.
3. If the case is for security procedures to be executed in Libya, or has a connection with a current case pending in Libyan courts or with things concerning the Libyan jurisdiction.
4. All cases where foreign courts have jurisdiction in cases taken against Libyan citizens, using the doctrine of the same treatment.

Due to above provision, we have found that it will be very difficult to persuade a Libyan judge to issue an arrest order for a debit arisen outside Libyan between two foreigners. Should the judge agree to issue an arrest order, he will then set a hearing to determine whether the arrest was proper and to prove the debt. The hearing would be held in accordance with Libyan law.

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

The legal procedures mentioned above will apply also the sister-ship and a ship associated with the same ship-owners.

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

These arrest procedures are only apply to the owners of the vessel as per article No. 516 of Libyan procedures law (providing that the creditor arrange the security arrest on the debtor's assets).

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

No counter security required.

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

There is no difference between the maritime claim and the maritime lien in respect to arresting a ship. Both are subject to the same procedures.

12. Does your country recognize maritime liens?

Libya recognizes maritime liens, as per articles 196 & 197 of the Libyan Marine Law.

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

The required time to arrest a ship starting from the moment of the referred documents arrival to our law firm is two days to prepare the application and the supporting documents. The judge may issue the arrest order in two days, but this can take up to seven days.

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

A legalized power of attorney by Libyan Embassy is very essential to the acceptance of the application by the court.

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

The required documents will be the power of the attorney; the claim's supporting documents translated into Arabic Language and if the supporting documents were issued outside Libya then these documents should be legalized by Libyan Embassy.

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

The Libyan courts accept jurisdiction over the substantive claim once the vessel has been arrested.

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

The release of a ship from arrest may be done by any of the following:

- An application of release of a ship from arrest, submitted by the defendant to the Head of the Court, where an amicable settlement has been reached.
- A cash deposit to the court cashier, submitted by the owners of the arrested ship.
- A bank guarantee, submitted to the Claimants or the Judge of the head court.
- A repudiation of the arrest order by court judgement.

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

- Cash payment to court cashier in the claim amount estimated by the judge in the arrest order.
- Bank guarantee or club letter of undertaking.

19. Does security need to cover interest and costs?

The security must cover the estimated debit stated by the judge when he issued the arrest order.

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

P&I LOUs are not acceptable at all, unless claimants will accept them in writing in front of the court.

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

It usually takes about one to two days to release a ship from arrest, starting from the date of submitting the application of release to the judge who issued the arrest order.

22. Is there a procedure to contest the arrest?

The owners of the arrested ship can appeal the arrest order within three days from the date of notification. The judgment of the Appeal court will be final and cannot be appealable to the High Court.

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

The Libyan law gives the claimant 8 days to notify the arrest order and send a writ of summons to the owners of arrested ship indicating the date of the court hearing.

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

The claim for wrongful arrest is allowed as a counter claim in the same case of the arrest or to commence a separate claim.

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

Courts will look to the company's constitution to see whether the shareholders will be responsible personally or whether the claimant is limited to the company's capital.

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

Owners are not able to sell the ship while it is still under arrest unless the court gives permission or the claimants reach an agreement with owners, with approval from the court.