SHIP ARREST IN *THE NETHERLANDS*

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

The Netherlands remain a convenient jurisdiction for ship arrests. The procedure for obtaining leave for arrest starts with submitting an arrest petition to the court in whose jurisdiction the ship is located or is expected to arrive shortly. Since 2017, parties can alternatively choose to submit their arrest petition to the court of Rotterdam, even if the ship is located or expected to arrive in a port other than Rotterdam. For some shipping claims, the court of Rotterdam even has exclusive jurisdiction to rule on the case, due to the special expertise of the Rotterdam Maritime Chamber. These arrest proceedings are *ex parte*. The petition can be filed after office hours or on weekends.
The arrest petition should contain *inter alia* the full style of the claimant and debtor, the grounds for the arrest, the nature and amount of claim, details of the ship, but also whether the claim is contested by the (alleged) debtor and if so, on what grounds. To be attached are supporting documentation (such as underlying contract, invoices, an overview of outstanding invoices, summoning letters).
The bailiff enforces the arrest by serving the court order to the master and notifying the port authority. The port authority will not allow the ship to order for a pilot without which the ship can/may not leave the port. The claim amount for which the arrest is permitted is raised with a certain percentage along a gliding scale between 10 and 30% over the capital claim amount to cover future interest and costs while proceedings are pending.
A time limit is set within which the claim must be filed in main proceedings before the competent court or arbitrators, which will usually be abroad, failing which the arrest will expire and the ship will be released from arrest.
The arrest must be lifted immediately once the claim is settled or in case sufficient alternative security is provided. This is usually done by providing a bank guarantee from a first class Dutch bank or a letter of undertaking by P&I Clubs of good standing. An arrest can then be lifted without the intervention of the court by a simple telephone call to the bailiff.
The ship owner may apply for an injunction ordering release. Such proceedings can take place on very short notice. A decision will follow shortly. The court decides whether the claim has sufficient merit to justify maintaining the arrest. In practice, it is an uphill battle to convince the court the claim is clearly without merit. Yet, this does not discharge the arresting party to make its claim plausible.
It should be noted, that the Court of Rotterdam is equipped with a highly specialized Maritime Chamber. This Chamber is exclusively competent to deal with most maritime cases. Due to the international character of these cases, parties even have the possibility to litigate in the English language. The abovementioned overarching competence of the Rotterdam court for ship arrests is also based on the expertise of this court in dealing with maritime cases.
Finally, a special “Netherlands Commercial Court” was created as of 1 January 2019. This Court, located in Amsterdam, can deal with complex international trade disputes in the English language, if the parties have agreed that this Court has jurisdiction to settle their dispute.

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

The Netherlands is a party to the 1952 Brussels Arrest Convention since 1983. The provisions of this Treaty are not incorporated into the Dutch Civil Code (like in some other countries), with the effect that the 1952 Brussels Arrest Convention only applies when the arrest is sought of a ship flying the flag of a country being a party to this convention.

Therefore, in cases where the 1952 Brussels Arrest Convention is not applicable, an arrest on a ship is allowed for any, i.e. also non-maritime, claims against the debtor on any vessel (or other asset for that matter) owned by him. In such case the vessel can be arrested more than once for the same claim (which is not allowed under the 1952 Brussels Arrest Convention).

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

A distinction must be made between conservatory and executory arrests on a ship. Executory arrests are a means of enforcing a judgment (or arbitral award). For such enforceable/executory arrest, the arrest is allowed based on a judgment rendered by a Dutch court. Express permission for such arrest is then not needed.

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

An executory arrest can be followed by public sale if the debtor is, despite the arrest, not willing or able to comply with the judgment or award (see further in answer to question 20).
A conservatory arrest is indeed possible in the Netherlands, as described under the overview above.

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

In case the Brussels Arrest Convention 1952 applies, the ship can only be arrested for maritime claims as defined in article 1 of the convention.If Dutch law applies and not the Brussels Convention, the ship can be arrested for any type of claim.

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

Yes, however if the ship is flying a flag of a Contracting State to the Brussels Arrest Convention of 1952, the ship can only be arrested for a maritime claim as defined in that treaty.

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

A ship may in principle be arrested only for a claim against the (legal) owner of the ship and not for claims against any other party involved in the operation of the ship.
However, there are various exceptions to this rule. Subject to certain requirements, such as claims against the bareboat charterer of the subject ship, cargo claims and also claims against the time-charterer for services rendered to the ship in order to keep into operation (such claims for unpaid bunkers, supplies).
Certain claims can attach to the ship for crew wages, salvage, general average, mortgage and the like. For these claims, the ship may be arrested, even if it was sold to another after the claim arose.
State-owned ships may enjoy immunity, provided such ships are not commercially used.
Where the claim is against debtors which cannot be considered as ‘owners’, like a time-charterer, an option could be an attachment on the ship’s bunkers/fuel reserve (rather than a ship’s arrest). This so-called ‘bunker-attachment’ can be a useful tool to enforce payment for delivered bunkers ordered, for example, by the time charterer of the ship. Under Dutch law, it is presumed bunkers are owned by the time-charterer.

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

As said, as any asset of a debtor may be arrested in order to obtain security (or for that matter in enforcement of a judgment or award), a sister ship may be arrested. Ships not owned by the debtor cannot be arrested, i.e. only under extra-ordinary circumstances whereby the court “pierces the corporate veil”. If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of these “associated” owners.
In an important decision rendered in 2014 the Supreme Court widely interpreted the sister ship / bare boat charterer - clause of Article 3(4) last paragraph Brussels Arrest Convention 1952 (*“a person other than the registered owner”*) in favour of the claimant seeking security. An arrest on a sister ship based on Article 3(4) need not necessarily be on a bare boat charter.

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

See the answer under question 7.

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

Dutch courts have discretionary power to demand counter security but in practice this rarely happens. However, courts nowadays tend to be more receptive for such requests.

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

The common law concept of "maritime lien" is unknown in Dutch law. However, if a maritime lien means that a certain claim is attached to the ship, i.e. even if the debtor is not the legal owner of the ship, a ship may be arrested for such claim/lien.

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

The Netherlands is not a party to any conventions on maritime liens. However, claims based on a maritime lien, having the legal status of being attached to the ship, may qualify for an arrest.

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

Generally between 3 and 8 hours depending on the complexity of the case. The petition will be dealt with by the court immediately. Once the arrest is permitted the bailiff, if put on stand-by beforehand, can then execute the arrest forthwith.

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

A Power of Attorney is not required when filing the arrest petition. An attorney-at-law is assumed by law to duly represent his client.

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 requirement of submitting original documents is under Dutch law very rare, i.e. only when the opposing party contests the authenticity of the document. As original documents are not required when applying for arrest permission, nor are notarisation and/or apostille. In case of utmost dispatch, an arrest petition can even be filed electronically.

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

The arrest creates jurisdiction unless international conventions to which the Netherlands is affiliated provide otherwise. If the parties had agreed on another jurisdiction or arbitration, Dutch courts must step aside.

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

By serving a writ of summons in summary proceedings on the arresting party, the ship owner can demand immediate release of the ship from arrest. The court (where the ship is located) will set a date for a hearing on very short notice. The more urgent, the quicker the hearing. At the hearing both parties' lawyers will plead the case orally. A decision will be issued within a few days, if not already immediately after the hearing (although that is rare). The court will lift or maintain the arrest by court order. The ship is then virtually released. To effectuate the court order, the arrestor's lawyer is supposed to instruct the bailiff to call the harbour authorities that the ship is free to go.

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

The type of security to be provided by the ship owner to the arresting party in release from arrest is up to the discretionary powers of the court. But in practice this varies from a (first class Dutch) bank

guarantee, a deposit on an escrow account or a letter of undertaking given by a reputable and financially strong P&I Club ("Club letter"). Standard forms are in use on the basis of which a bank guarantee or Club letter is given.

19. Does security need to cover interest and costs?

Yes, the arresting party may add 30% (the "raise") over the capital claim (which claim is not exceeding an amount of €300,000) for covering (future) interest and (procedural) costs. To claims exceeding €300,000 applies a gliding scale, i.e. the higher the amount the more limited the raise for covering interest and costs (still 20% for claims up to €1 mil).

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

Although case law is divided, technically, a court may reject a request for lifting an arrest despite of a P&I LOU put on the table by the ship owner if the arresting party refuses to accept the P&I LOU and demands a bank guarantee instead. However, in practice P&I LOUs are very often accepted by the arresting party in release from arrest, which means the court usually need not to decide whether P&I LOUs are considered sufficient alternative security. P&I LOUs are only acceptable when provided by a reputable and financially strong P&I Club.

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

If the court order lifting the arrest is in place or the parties have made an agreement (settlement or alternative security), the arrest can be lifted within 5 minutes. There is no need for the court's intervention, the lawyer acting for the arresting party simply calls the bailiff who enforced the arrest. The bailiff subsequently calls the harbour authorities that the ship is free to leave again.

22. Is there a procedure to contest the arrest?

The arrest can be contested/challenged in summary proceedings as described in question 17. Usually, the ship owner's lawyer holds the arresting party liable for wrongful arrest and demands immediate release and if refused the ship owner can turn to the court with the request to issue a court order to lift the arrest.

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

The time limit for filing suit after the arrest has been enforced must be at least eight (8) days after the arrest was enforced. Usually a time limit for filing suit of one to two months is granted when it concerns a foreign ship. Courts are free to determine this time frame.
In case the creditor needs more time for filing suit, or in case the parties are still negotiating a settlement, the creditor can submit a request for an extension of the initial time limit to the Court. The grounds for the extension of the time limit need to be mentioned in the request otherwise it will be rejected by the Court.

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

Yes. If the claim on which the arrest is based appears not to exist or appears to be unfounded (because it has been rejected later on in proceedings on the merits), the arrest is deemed to be wrongful. The arresting party will be strictly liable for all damages suffered by the ship owner due to the wrongful arrest.
This means the (wrongful) arrestor is by definition obliged to reimburse the ship owner for all his damages and losses, like port dues, but even consequential damages, such as loss of hire (all amounts to be increased with statutory interest). This is premised on the condition that the ship owner renders sufficient evidence of the damages and losses incurred. Furthermore, the ship owner has a duty to mitigate its damages.

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

Dutch law is rather strict in the definition of “ownership” and in acknowledging company structures. As a result, Dutch courts are not easily inclined to "pierce the corporate veil", i.e. treat companies as one in the sense that claims on the one can be recovered from the other company. Hence, courts do not quickly allow a ship arrest for a claim against a third party although having close links to the ship owner. If the corporate structure is used to actively mislead creditors in order to avoid payment however, the courts could under exceptional circumstances be inclined to rule differently. The corporate veil may also be pierced if (foreign) law applicable to the question of law provides grounds for piercing the corporate veil or for “identifying” two or more companies as one and the same company.

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

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.
Auctioning of a foreign seagoing vessel is subject to a detailed time frame and scheme of requirements to be fulfilled prior to the day on which the ship is actually auctioned. These procedural requirements and the bidding system aim at securing proper and fair auction proceedings with the purpose to obtain the highest price for the vessel to be auctioned.
The auction notice must be published in the newspapers as designated by the court at least thirty (30) days prior to the day of the auction. An auction can be organized between 30 and 40 days after the title is obtained in which the creditor’s claim was adjudicated.

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