

RICHEMONT  
DELVISIO

Paris - Marseille - Ajaccio - Douala



**STRANGE ARRESTS**

**THE PHANTOM ARREST IN FRANCE**





Gulf of Mexico

North Atlantic Ocean



Grand Cayman

Little Cayman

Cuba

Port au Prince

Haïti

Dominican Republic

Jamaica

Ile à Vache

Santo Domingo

Soana

Mona

San Juan

Porto Rico

Virgin Islands

Ste Croix

Montserrat

Guadeloupe

Les Saintes

Dominica

Martinique

Lesser Antilles

St Lucia

St Vincent

Barbados

Anguilla

St Martin

St Barthelemy

Barbuda

Antigua

Virgin Islands (British)

Virgin Islands (USA)

Marie Galante



# 1952 BRUSSELS CONVENTION

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## Article 2:

*"A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States **in respect of any maritime claim**, but in respect of no other claim; ..."*



# 1952 BRUSSELS CONVENTION

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## Article 1:

***“Maritime Claim” means a claim arising out of one or more of the following:***

- (a) damage caused by any ship either in collision or otherwise;*
- (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;*
- (c) salvage;*
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;*
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;*
- (f) loss of or damage to goods including baggage carried in any ship;*
- (g) general average;*
- (h) bottomry;*
- (i) towage;*
- (j) pilotage;*
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;*
- (l) construction, repair or equipment of any ship or dock charges and dues;*
- (m) wages of Masters, Officers, or crew;*
- (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;*
- (o) disputes as to the title to or ownership of any ship;***
- (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;***
- (q) the mortgage or hypothecation of any ship.*



## FRENCH CASELAW

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**Wide interpretation of the « maritime claim » defined in the 1952 Convention:**

**Court of Appeal of Aix-en-Provence:**

*« It is sufficient that the arrestor declares to hold a maritime claim. There is no obligation to establish that the claim is plausible or serious. »*

French version:

«Créance Maritime» signifie **allégation** d'un droit ou d'une créance ayant l'une des causes suivantes:

English version:

*"Maritime Claim" means a claim arising out of one or more of the following:*



# ARREST PROCEEDINGS IN FRANCE

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## Advantages for the arrestor:

- Speed (no POA, no official translation of documents);
- The application is pleaded *extra parte*;
- No counter-guarantee needs to be provided;
- There is no condemnation for damages in case of wrongful arrest.



## COMPETENT JURISDICTION

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### Civil claims:

**Judge of Execution** of the Judicial Court covering the port where the vessel is berthing

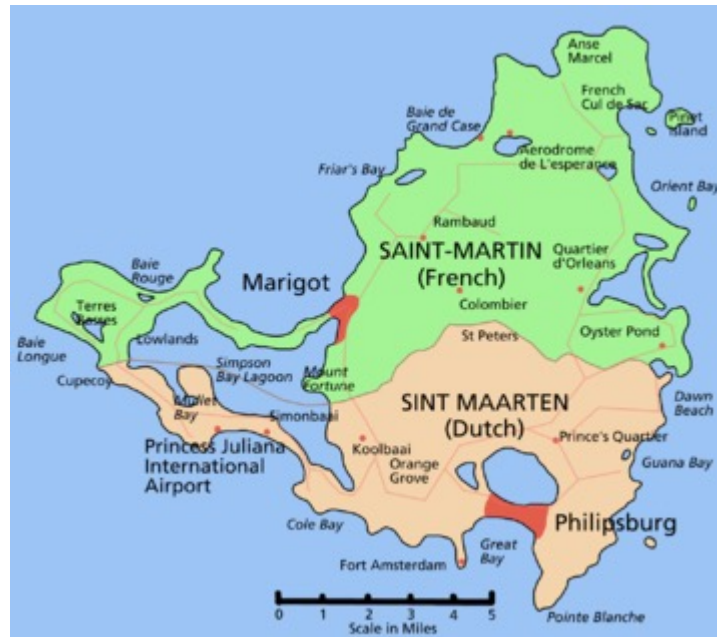
### Commercial claims:

**President of the Commercial Court** covering the port where the vessel is berthing

**Judge of Execution** of the Judicial Court  
(when an action on the merits is already engaged)



# 1<sup>ST</sup> ATTEMPT OF ARREST



**NO JURISDICTION !**

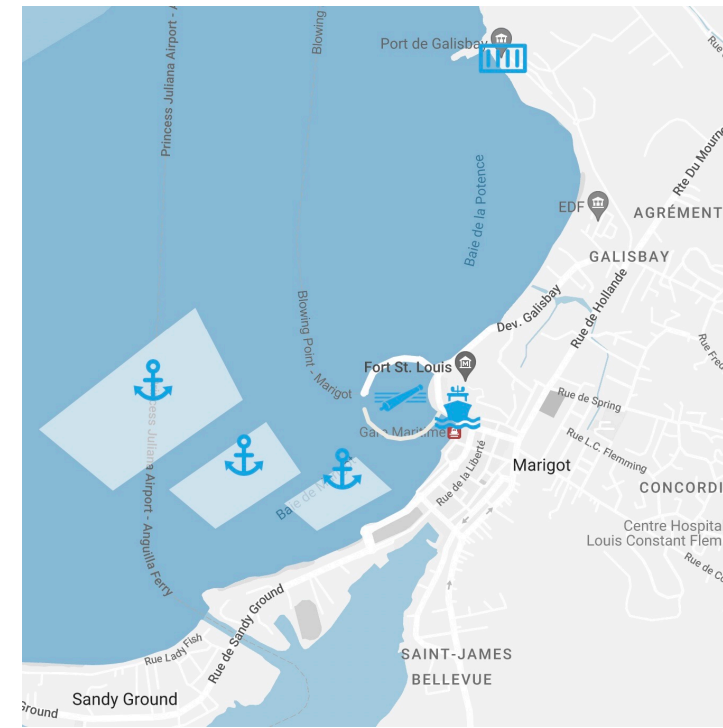






## 2<sup>ND</sup> ATTEMPT OF ARREST

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**The claim does not concern the ownership or co-ownership of the vessel but a dispute on the operation and use of the vessel.**



## FRENCH CASE LAW NEW TREND?

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### President of the Commercial Court of Perpignan:

« Whereas Y... omitted to bring to the knowledge of the court that it did receive proceeds from the chartering of the vessel ;

Whereas this behaviour reveals a lack of sincerity of the alleged maritime claim;

Whereas **the judge** ruling on a request to lift an arrest **must verify** whether the **allegation** seems to be **serious** and **reasonable** insofar as it **appears to be grounded in principle**.

Whereas in the light of facts it is established that Y does not have any claim against the owners of the vessel... »



## LEGAL GROUND

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### Article 9 of the 1952 Convention:

*“Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which was seized of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on maritime mortgages and liens, if the latter is applicable.”*

### Article L5114-22 of the Transports Code:

*“Any person having **a claim seeming to be grounded in principle** can request from the judge the authorization to undertake a conservatory arrest of a vessel”*



**TO  
BE  
CONTINUED...**

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