

SHIP ARREST IN DENMARK (QUESTIONS 1 TO 9)

By Henrik Kleis*
DLA Piper
henrik.kleis@dlapiper.com
www.dlapiper.com
Hack Kampmanns Plads 2
DK-8000 Aarhus C, Denmark
Tel: +45 33 34 00 00
Fax: +45 33 34 00 01



(QUESTIONS 10 TO 26)

By Anders Amstrup Fournais & Harald Søndergaard*
HAFNIA LAW FIRM
aaf@hafnialaw.com & hso@hafnialaw.com
www.hafnialaw.com
Nyhavn 69, DK-1051 Copenhagen K, Denmark
Tel: +45 20 62 38 62
+45 51 94 40 50



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

Arrest of vessels in Denmark can be made very fast and on an informal basis, i.e. without POA, original invoices and notarized and authenticated documents. The rules are quite flexible and the Danish court system works efficiently. The costs of an arrest in Denmark are low.

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

Denmark is party to the 1952 Arrest Convention and the provisions of this convention have been implemented in Chapter 4 of the Danish Merchant Shipping Act. The Danish law on arrest of vessels thus to a high extent reflects the provisions of the Arrest Convention.

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

Yes. An arrest according to the Danish Administration of Justice Act prevents the owner from transferring title to the vessel or issuing new mortgages when the arrest is registered in a Ship Register but the vessel is not detained in a port or otherwise prevented from operating. Therefore, an arrest of a vessel according to the Administration of Justice Act is often of no interest; however, it may be applied when there is no maritime claim or when an arrest is made in cargo, freight, or bunkers etc.

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

No. The only alternative is an arrest according to the Danish Administration of Justice Act, which the courts only grant in rare circumstances.

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

Maritime claims are the basis for arrests according to the Merchant Shipping Act and are defined in accordance with the Arrest Convention. For a list of the individual maritime claims reference is made to Arrest Convention art. 1.

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

Yes.

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

Contrary to the Arrest Convention and the laws of some other countries, arrest in Denmark requires that execution of the claim can be levied against the owner of the vessel, meaning that the registered owner of the vessel must be liable for the claim/the debtor of the claim, unless the claim is secured by a maritime lien. Consequently, claims for which a charterer of the vessel is liable do not form basis for arrest of the vessel as the owner of the vessel is not liable and no execution of the claim against the owner is possible. However, assets owned by the charterer, e.g. bunkers, may be arrested in accordance with the Administration of Justice Act.

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

Sister ship arrest is possible, i.e. vessels that are owned by the same legal entity. Arrest of vessels in associated ownership is not possible as the vessel is not owned by the same legal entities.

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

Arrest of a vessel under a bareboat or time charter party is not possible as the registered owner is not liable for the claim/the debtor of claim. Only in case the owner is found to be the debtor of the claim an arrest is possible.

**Henrik Kleis is head of the Shipping & Transport group with DLA Piper Denmark which consists of 5 partners and various lawyers and junior associates. The group deals with shipping and maritime law as well as other transport matters; hence acting for ship owners, shipping lines, freight forwarders, ship brokers/agents and road carriers. The group is also highly specialized in aviation law acting for various air carriers in dispute resolution and contract works. Furthermore, Henrik Kleis acts for the majority of Danish ports and handles a long line of cases of various nature for the ports. Moreover, Henrik Kleis is Honorary British Consul.*

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

The courts have a discretionary right to demand counter security. Pursuant to the Danish Merchant Shipping Act such security should not exceed the equivalent of 5 days charter hire for the vessel in question. The courts invariably demand counter security equivalent to 5 days charter hire. In order to determine the relevant daily hire a shipbroker should be requested to provide an estimate. In this regard it is sufficient to provide an exchange of emails with a shipbroker containing such estimate. Under law, the courts can only accept cash or a bank guarantee but the lawyer submitting the arrest petition will sometimes be allowed to put up a personal guarantee equal to 5 days of charter hire provided that guarantee is quickly (within a few days) replaced with a cash guarantee. If vessels are arrested for a longer period of time, the courts generally condone setting higher counter-security than 5 days, which is within the court's discretion.

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

The formal requirements are the same but as mentioned above arrest for a maritime lien can be made irrespective of the ownership to the vessel.

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

Danish law recognises maritime liens. The rules regulating maritime liens are found in the MSA and are based on the 1967 Brussels Lien Convention. In order to determine whether a claim creates maritime lien it may not be sufficient to resort to Danish law. The maritime liens may be determined according to the law of the flag of the relevant vessel. Scandinavian case law supports that the law of the flag is relevant in this regard although the issue is untested under Danish law.

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

An arrest can typically be obtained within a day. Certain local courts may need further time and may not be available for an arrest during the weekend or nights. Some courts are more experienced in ship arrest than others, e.g. the City Court of Hjørring which covers Skaw where arrests are most frequently carried out.

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

No POA is required. In order to establish the claim only copies of the pertinent documentation is required.

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 nor apostille. Documents can be emailed to the courts.

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

The courts will accept jurisdiction over the merits. However, if the underlying agreement supporting the claim is subject to arbitration or litigation in a foreign forum the courts will not assume jurisdiction. In such case validation proceedings must nonetheless be commenced as a formal requirement but they will immediately be stayed pending the outcome of the arbitration or foreign litigation. In case of maritime liens, the substantive proceedings can be commenced against the ship owner or the Master of the vessel.

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

There is no formalized procedure and a petition to release the ship can simply be sent to the court by email.

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

The only requirement is that the security must be adequate to cover the debt including expected interests and the cost of the arrest, the cost validation proceedings and the cost of the proceedings on the merits.

19. Does security need to cover interest and costs?

Yes.

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

Yes.

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

Generally speaking, the release can be done within one workday.

22. Is there a procedure to contest the arrest?

The arrest can be contested during the validation proceedings, see also question 16 above.

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

Validation proceedings and substantive proceedings on the claim must be commenced within one week from the date on which the arrest has been granted provided there is jurisdiction for the substantive claim in Denmark. The deadline for commencement of proceedings on the claim is two weeks if the jurisdiction for the claim is not Danish. In practice, this will apply if the appropriate forum for the claim is a foreign court or an arbitral tribunal seated in a foreign jurisdiction. Once initiated, proceedings must be pursued without unreasonable delay.

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

Yes. The arrestor will be liable for wrongful arrest on a strict liability basis for any loss caused by the arrest provided the claim for which the arrest was made is dismissed. There is limited case law on wrongful arrest liability but it cannot be ruled out that the owner's right to compensation is influenced by the fact that the owner can always avoid the effects of an arrest by providing a guarantee for the amount in dispute. If the arrest falls away or is held to be unlawful for other reasons than the claim being dismissed, the arrestor can be held liable only if fault (culpa) is proven on the part of the arrestor.

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

The notion of piercing the corporate veil exists under Danish law but is limited to very special circumstances where there has been e.g. a mix of funds between the companies or where business has been otherwise conducted as if two companies were one. By no means should piercing the corporate veil be regarded as an active tool in ship arrest in Denmark and there are no notions under Danish law similar to associated arrest as it is practised in e.g. South Africa.

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

If the claim is not paid and no security is lodged for the claim the arrestor may ultimately sell the vessel by way of forced sales proceedings. It is a prerequisite for an auction that the arrestor has obtained an attachment against the vessel. Such attachment can only be obtained once the validation proceedings (whether litigation or arbitration) have been completed. Arrest based on a mortgage does not require validation proceedings and an attachment can be obtained immediately. Depending on the case load of the relevant local court it may take from 3 months up to 1 year until forced sales proceedings have been carried out. Certain notification requirements exist in respect of auction of foreign vessels (notification to the flag state and advertisement in the flag state).

**Anders Fournais and Harald Søndergaard are partners with HAFNIA LAW FIRM. Anders and Harald graduated from Aarhus University in 2011 and 2012 and begun a maritime law practice in 2012. Anders and Harald have a broad but dedicated practice within the field of ship arrest and have been involved in more than 350 ship arrests in more than 60 jurisdictions within the last ten years. The firm acts for banks, underwriters, owners, bunker suppliers, ship chandlers and trading houses in respect of strategic pursuit of claims against vessels as well as defense services to owners and banks. Anders and Harald frequently lecture in international fora on the topics of ship arrest and counter-party risks related to bunkering.*