

SHIP ARREST IN *YEMEN*

By Dr. Ghazi Alaghbari*
ALAGHBARI & PARTNERS
apl@aghbarilaw.com
www.aghbarilaw.com
Sabeha Building, Algiers St.
Sana'a, Republic of Yemen
Tel: +967 1 538 638
Fax: +967 1 538 639



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

According to the provisions of the Yemeni Maritime Law, there are two types of arrests that can be imposed on a ship:

- Provisional attachment: It is meant to prohibit the ship from leaving the port by an order (writ) issued by the competent court in order to compel the person/entity indebted with a maritime debt to pay the claimed debt, or to present a guarantee of payment. This type of ship arrest ceases when the ship is released.
- Executive attachment: It means to arrest the ship based on an executory deed as a preliminary step to sell that ship in order to pay the creditors.

It's noted that the provisional attachment is more frequent in practice, while the executive attachment is less frequent as it is rare that ships are forcibly sold. This is due to the fact that debtors often tend to hastily pay off their debts.

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

The Yemeni legislator has included some provisions of the Brussels' Convention of 1952 in the Yemeni Maritime Law. This inclusion was made in articles (55 and onward) of the Yemeni Maritime Law.

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

The arrest methods stipulated in the Yemeni Maritime Law are the provisional attachment and, then, the executive attachment. No other arrest methods are stipulated in the Yemeni Maritime Law (Articles 83 & 91).

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

The arrest methods are exclusively limited to the provisional attachment and the executive attachment. However, freezing order is not stipulated in the Yemeni Maritime Law.

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

According to the general rules of the Yemeni law, the provisional attachment is imposed through a summary procedure in accordance with article (238 procedures) or pursuant to an independent request submitted to the president of the competent court (writ on petition) in accordance with article (246). However, it is understood by article (83/1 maritime) that the ship arrest procedure is done pursuant to a writ on petition; where the article states "a provisional attachment on a ship shall not be imposed except by an order (writ) issued from the competent court ...".

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

Yes, an arrest can be imposed on any ship in the ports of the Republic of Yemen, provided that the purpose of such arrest is to settle a maritime debt in accordance with article (83 maritime) excluding warships and ships that are dedicated to public services.

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

Ship arrest cannot be imposed on any ship unless that ship is owned by the debtor or if the charterer of that ship is solely responsible for the maritime debt that is connected to that ship in accordance with articles (85 & 86 maritime).

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

Any ship owned by the debtor may be arrested, whether it is the same ship to which the debt is connected or it is another ship owned by the debtor before that debt had emerged. However, according to article (85 maritime), if the dispute is over ownership or over a maritime mortgage debt, the arrest shall not be imposed on any ship other than the one to which the debt is connected.

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

The Yemeni law has permitted to impose an arrest on a chartered ship to which a maritime debt is connected or on any other ship owned by the charterer if that charterer is solely responsible for that debt, in accordance with article (86 maritime).

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

Yes, the Yemeni law requires a counter-security before the judgment becomes final in order to enforce the attachment validity judgment and the claimed right in accordance with article (339 procedures). A counter-security is also required by the debtor in case the debtor has submitted a request to the court to release the ship in accordance with article (87 maritime).

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

There is no difference as both are considered as maritime debts, whether it is a normal debt or a lien. However, when debts are to be paid off, priority shall be given to liens.

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

Yes, Yemen do recognize maritime liens. This is stipulated for in articles (55 to 66) of the Yemeni Maritime Law and which were quoted from those of the Brussels Convention of 1976.

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

Once we get all support documents proving the maritime debt, the time required to impose the arrest on a ship is about 24 hours. However, having in mind the current situation in Yemen, this time frame may reach up to a maximum of ten days. Whereas, the enforcement of the arrest needs a longer period of time, since the enforcement can only take place after a judgment is issued on the validity of the attachment claim (a primary judgment). In some cases the arrest is not enforced until a judgment is issued by Appeal Court if the enforcement was suspended by Appeal Court itself. Thus, the litigation, including the enforcement procedures, may take more than one year.

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

According to the general rules of the Yemeni Procedures Law, a claim shall be submitted along with sufficient evidences that prove the claimed right (i.e. the maritime debt), including evidences proving the legal capacity of the person submitting that claim (i.e. the power of attorney document), according to article (104 procedures).

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 original documents that should be submitted are:
 1. A Power of Attorney made by the person/entity requesting the arrest (the creditor). This document should be notarized by official entities.

2. Documents proving the debt and its relation with the ship and the ship owner or charterer.
- With regard to documents that can be submitted electronically, no copy shall have any legal power unless that copy is found to be authentic and identical with its original version, in accordance with article (101) of the Yemeni Evidence Law. This means that no document can be submitted electronically; i.e. the original hard copy of all documents should be presented to court to validate the copies of such documents. After these documents are found to be authentic and valid, the court shall return the original documents.
 - The documents that should be notarized is the Power of Attorney which is made by the person/entity requesting the arrest to be imposed.
 - All these documents are required at the time on which the claim or the attachment request is being submitted to the court.

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

Yes, the courts of Yemen do recognize and accept the legal jurisdiction in the substantive claim in case the ship is in the ports of Yemen in accordance with article (80/2 procedures).

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

The legally stipulated procedure to release an arrested ship is to submit a bank guarantee in accordance with article (87 maritime).

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

A Bank Guarantee or a capable guarantor. The enforcement judge shall decide whether a guarantor is adequately capable or not.

19. Does security need to cover interest and costs?

Yes, the guarantee must cover the enforcement's costs and expenses only. The legislator obliged that the enforcement judge shall deduct these costs and expenses from the amounts risen as a result of such enforcement in accordance with article (475 procedures).

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

What is well known is that the arrest imposed on a ship can only be lifted by a bank guarantee which could be issued by the P&I LOUs.

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

The release of a ship does not require a long time. The law obliged that once the adequate guarantee is submitted, the judge shall instantly release the ship. The remaining procedures can be finalized within 10 ten days in accordance with article (87 maritime).

22. Is there a procedure to contest the arrest?

Yes, in accordance with article (251 procedures), the debtor has the right to submit a grievance against the writ of attachment within 10 days from the date on which he/she is notified with that writ of attachment. The debtor also has the right to submit an appeal against the validity of attachment judgment within 15 days from the date on which that judgment is passed.

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

If (taking legal actions on the merits) means here the validity of attachment claim, then the timeframe to do so as stipulated for by the Yemeni Maritime Law is (15) days, starting from the date on which the ship Captain receives a copy of the arrest report.

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

Yemen does not recognize foreign writs of attachment unless such writs have the requirements stipulated for in article (494 procedures).

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

According to the Yemeni Corporate Law as well as all relevant laws, companies have an independent corporate veil. There is nothing in these laws that permit the piercing or lifting of the corporate veil.

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

No, the ship on which the arrest is imposed cannot be sold during the litigation process. However, it can be sold only after a judgment is issued.

**Dr. Ghazi holds a PhD in Commercial Law (1994); a Postgraduate Diploma in Private Law (1986); a Postgraduate Diploma in Islamic Law (1985); and a Bachelor Degree in Law (1982) from the Faculty of Law at Cairo University, Egypt. Dr. Ghazi is a well renowned and reputable Lawyer who has held highly ranked positions throughout his career. He began by working as a Lawyer and Legal Consultant from 1994 until 1998 and as Assistant Professor in the Department of Commercial and Maritime Law at Sana'a University, Yemen, from 1994 to 2006. He joined the judiciary in 1998; firstly as President of the Appellate Division in the Appeal Court in the Capital Sana'a and later in 2001 as member of the Commercial Division of the Supreme Court; until he was appointed as Minister of Justice in 2006. Following the end of his term as Minister, towards the end of 2011, Dr. Ghazi went on to re-establish a private law practice, which has since January 2014, expanded to create a leading multi-partner Law Firm, Alaghbari & Partners, Lawyers and Legal Consultants, which is considerably the largest Law Firm in Yemen. In addition, he is a certified Arbitrator from the Arab Union of International Arbitration, the Cairo Regional Centre for International Commercial Arbitration and the Yemeni Centre for Conciliation and Arbitration. As a result of the multiple roles he has held, Dr. Ghazi inevitably has a very developed understanding of the legal and administrative systems in Yemen this is reinforced through working extensively on the drafting/ amendment of numerous laws/regulations during his role as Minister of Justice.*