

SHIP ARREST IN *DOMINICAN REPUBLIC*

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

Found below herein.

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

None. However, the new law 5 -23 of maritime commerce of the Dominican Republic adopted and adapted to our internal regulations the International Convention on the Arrest of Ships of 1999 and the International Convention on Maritime Privileges and Ship Mortgages of 1993 of the UNCTAD.

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

A lien may be placed on the vessel by judicial authorization, an enforcement lien by means of a judgment with the authority of res judicata, by means of an authentic document or by means of a Maritime Mortgage contract.

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

Another alternative is the detention of the vessel by the public authority for services owed to the shipyard when the vessel is under repair at its facilities. The shipyard, crew members and agents of the vessel may oppose the departure of the vessel for labor debts and services rendered to them.

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

A vessel may only be seized exclusively for maritime claims.

In order of priority, the following shall have privilege over the maritime vessel, in the first place, even if it changes its registration or flag owner, and over the freights and passages originated in the voyage in which they are produced:

- a) For rewards for salvage of the maritime vessel, excluding expenses to the salvor to avoid a threat of damage to the environment;
- b) For the wages and other rights that the labor contracts and applicable regulations recognize to the crew;
- c) For death or injury to health, produced both on land and on water, provided that they derive directly from the navigation or operation of the maritime vessel;

- d) For port fees and services, customs duties, deposits, warehouses, use of canals and other navigable waterways and pilotage;
- e) The legal costs incurred and other legal debts, made to affect the public sale of the maritime vessel and the distribution of the price; and
- f) For non-contractual fault by reason of loss or damage to property caused by the operation of the seagoing vessel, excluding that which may be caused to the cargo, containers and effects of passengers carried on board the seagoing vessel.

In second place and with a rank after those previously listed, the following credits will have privilege over maritime vessels:

- a) For supplies and equipment of products or materials for the operation, provisioning or conservation of the maritime vessel;
- b) For construction or repair of the maritime vessel;
- c) For damage or missing cargo or unaccompanied baggage;
- d) As a result of contracts of lease or charter of the maritime vessel; and
- e) For the balance of the purchase price of the vessel and the interest accrued thereon in the last year.

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

Yes, a seizure, detention or opposition to sailing may be made for the causes set forth in Article 120 of Law 5 -23:

- a) The right of retention.
- b) The preventive or conservatory seizure of maritime vessels.
- c) Opposition to sailing by the Navy of the Dominican Republic in its role as National Maritime Authority.

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

The vessel may be seized for any maritime credit or privilege it has incurred in any of its voyages, regardless of who the debtor is. It is an in-rem action.

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

Maritime custom and according to international conventions and comparative law, any vessel owned by the debtor may be pursued. Dominican civil law allows the pursuit of the debtor's assets, which could be assimilated to the seizure of a sister ship or sistership. The vessels according to the national legislation allow the condominium regime, therefore, any debt emanating from any of the co -owners may affect the undivided part of the vessel.

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

If the vessel is unmanned and without just cause, the national legislation declares it abandoned. Law 5 -23 establishes that abandonment may be express or voluntary and tacit abandonment.

Abandonment is express or voluntary when the shipowner or owner presents a notarial act or proof of abandonment before the Navy of the Dominican Republic in which he establishes the place where the vessel is located and that the causes of such abandonment have been to save human lives.

Tacit abandonment is considered to exist in the following cases:

1. When all maritime vessels in jurisdictional waters lacking a minimum manning without justified cause, or do not have the minimum provisions for their operations and in cases where they are not operating within the parameters authorized by the National Maritime Authority;
2. When the vessel or naval artifact that is in jurisdictional waters of the Dominican State; and is not performing any operation, nor is receiving repairs, duly authorized by the authorities and is not requested to sail within a period of thirty days, counted from the date of arrival of the vessel or on the date on which the vessel has been anchored in any place of the jurisdictional waters; except in fortuitous case or force majeure duly proven; or in the event that such situation has its origin in a legal process; against the maritime vessel;
3. When a period of thirty days has elapsed, as from the date on which the loss, accident, shipwreck or finding of the shipwrecked maritime vessel or naval artifact occurs, without the shipowner or owner, his representative or the insurer having notified the Navy of the Dominican Republic of his interest in the maritime vessel or naval artifact. In this case, the shipowner or owner may request an extension for thirty days, through the person who has the legal capacity, being responsible for the consequences of any damage caused;
4. Those that have been the object of theft, when the shipowner or the owner or the flag State of the maritime vessel has been notified upon recovery and the latter has not proceeded to reclaim it within thirty days after notification;
5. When the maritime vessel or naval artifact constitutes an obstacle, risk or imminent danger to navigation, and its owner or owner has been notified within thirty days and has not taken any action. In the case of maritime vessels flying a foreign flag, the shipowner or owner shall be notified at the nearest consulate; and
6. In other cases not provided for in this law, when it can be clearly demonstrated the intention of the owner of the vessel or naval artifact to abandon his right over the same, as in the cases indicated in numerals 1), 2), 3), 4) and 5) of this article.

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

Yes. The sole paragraph of article 121 of Law 5 -2023 on maritime commerce establishes that if any preventive or conservatory measure is authorized with respect to maritime vessels, the court must require from the creditor, prior justification of sufficient solvency or that of a bank deposit certificate or a bond issued by an insurance company or any of those established in common law;

in both cases, to guarantee the reparation of damages that may be caused by the execution of the authorized measure, including port charges, the cost of stay in port and the maintenance of the vessel, if applicable.

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

There is no difference, the legislation establishes which are the maritime credits and an order of priority depending on the maritime credit, privilege and mortgage. This order of priority can be distinguished in article 101 and following of Law 5 -2023 on maritime commerce.

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

The new law 5 -23 of maritime commerce of the Dominican Republic recognizes maritime liens, which adopts and adapts to our internal regulations the International Convention on the Arrest of Ships of 1999 and the International Convention on Maritime Liens and Ship Mortgages of 1993 of the UNCTAD.

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

A preventive or conservatory seizure of vessels requires an authorization from the judge of the competent jurisdiction where the vessel is located. It requires a prior default. The requirement is administrative. The attribution for such authorization is of the civil and commercial judges. The time to issue a conservatory or preventive order is not foreseeable. It may take several days. In most cases it is not authorized. A different thing is the executive seizure that can be made by means of a payment order followed by a verbal executive process within 10 days of such notification.

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

Attorneys do not need to exhibit the power of attorney granted to them before the ordinary courts, unless the party they claim to represent expressly and formally refuses to do so. It is recommended to have a power of attorney when dealing with a foreign entity.

In the case of an executory measure against a vessel, it will be required the deposit of the titles that prove the ownership of an executory title, such as:

- Certified copies of the sentences sentenced to pay sums of money for maritime credit that have become enforceable;
- The first certified copy of the notarial act containing the obligation to pay amounts of money for a maritime credit, periodically or at a fixed time, and the second or subsequent copy, issued in accordance with the law, in substitution of the first;
- Creditor registration certificates (creditor duplicates) issued by the Registry of Admission and Registration of Ship Mortgages;
- Orders approving expenses, costs and fees in favor of attorneys, on the occasion of a maritime proceeding not subject to suspensive appeal;

- The ordinances of the competent courts in favor of the Dominican State, its decentralized institutions and the municipalities, upon diligence by competent officials, for the collection of taxes, duties, fees, rates, excise taxes, leases and debts;
- Arbitral awards with the character of irrevocable *res judicata*, when they contain obligations to pay sums of money payable by one of the parties, arising from a maritime credit; and
- Decisions and agreements to which the law attributes the effects of an enforceable judgment relating to a maritime claim.

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 titles of the executory measures and unproductive acts of the claims or lawsuits are required.

At present, the evidentiary documentation for legal proceedings cannot be used electronically, unless it is issued with a certificate of registration of electronic documentation from a duly accredited entity.

Foreign public documents must be duly legalized and apostilled in their country of origin to be valid. All documents drafted in a language other than Spanish must be accompanied by a translation by an authorized interpreter or through the Dominican consul in the country where the document was issued.

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

If the contract stipulated by the parties' grants jurisdiction to hear the merits of the lawsuit or claim or a special merit proceeding to another country, the Dominican court may decline to hear the merits proceeding before the country indicated in the contract if one of the parties proposes it, as well as if it contains a jurisdiction or arbitration clause.

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

For the lifting of preventive measures that generate the detention of a vessel because of a maritime credit, Law 5-23 on Maritime Commerce establishes the following procedures to release a vessel from detention:

Article 123.- Lifting of the preventive or conservatory measure. As of the notification of the seizure or opposition, the debtor may have the measure lifted by filing a lawsuit before the judge of the referrals in commercial attributions, of the place where the maritime vessel is located, by means of consignment in the secretary's office of the court or whoever the judge may designate, of the necessary sums to guarantee the causes of the seizure, its accessories and costs.

Article 124.- Lifting of the preventive measure or opposition. The constitution of an irrevocable bank guarantee or bond issued by an insurance company or letter of guarantee issued by a mutual or protection and indemnity club, which is equivalent to the amount that served as cause for the restraining measure, plus fifty percent of the same, entails the lifting of the same, without the need for contentious intervention of the jurisdiction.

Paragraph I.- In case of difficulty, the judge of first instance of the place where the maritime vessel is located, acting with commercial attributions and in accordance with the funny procedure, may order on minutes and by order with immediate enforceable force; notwithstanding any appeal, at the request of the interested party, the lifting of the measures seized, having had in view the documentation that proves the seizure or opposition to be lifted, as well as the provision of the bank guarantee, bond or sufficient certification, as established in the main part of this article.

Paragraph II.- The decision on the request referred to in paragraph I, of this article, shall be adopted within a term not to exceed twenty -four (24) hours counted as of the receipt of the request at the secretary's office of the court, and shall indicate in said decision, the date on which the maritime vessel shall return to the Dominican port.

Paragraph III.- The guarantee and the amounts deposited for the lifting of the attachment or opposition shall be assigned to the payment of the claim of the following period, with privilege over the other creditors, and as such shall be executed when the disputed claim has been the object of a judicial decision that has acquired the authority of irrevocable res judicata.

Paragraph IV.- In the event that the competent jurisdiction has authorized the departure of the vessel, in accordance with the provisions of this article and the preventive or conservatory seizure has become enforceable and the vessel has not returned to Dominican territory, there shall be no sale of the maritime vessel, but only the execution of the guarantee granted within the terms granted by the court.

In the case of the lien that covers the builder or repairer of maritime vessels, as security for the collection of its debt, because of a service performed and not paid to the maritime vessel to facilitate its use in navigation; this is extinguished when the maritime vessel ceases to be in the possession of the builder or repairer thereof. As for the lifting of such lien, they refer to the procedure described for the measures established for the preventive or conservatory seizure.

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

Regarding the lifting of the preventive or conservatory measure, by means of consignment at the court's secretary's office or of whom the judge may designate, of the sums necessary to guarantee the causes of the seizure, its accessories and costs.

Regarding the lifting of the preventive measure or opposition, the constitution of an irrevocable bank guarantee or bond issued by an insurance company or letter of guarantee issued by a mutual or protection and indemnity club, which is equivalent to the amount that served as cause for the measure, plus fifty percent of the same, entails the lifting of the same, without the need for contentious intervention of the jurisdiction.

19. Does security need to cover interest and costs?

In the case of a preventive or conservatory measure, the sums deposited as security must guarantee its accessories and costs.

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

Yes.

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

In the abbreviated procedure (referral matter), two or three weeks may elapse between the holding of the hearings and the file being in a state of judgment, depending on the judge's evaluation of the speed and urgency. The judge may take two or three weeks to issue a judgment in the best of cases. There are very few cases of decisions in this matter that have been ruled in less than 3 weeks.

22. Is there a procedure to contest the arrest?

In addition to the procedures for the lifting of the seizures described above (lawsuit in referral in commercial attributions), in the hypothetical case of initiating a seizure procedure for the purpose of sale at public auction of the same, incidental lawsuits may be formulated to make replies, means of nullity, of form and substance, means of inadmissibility, opposition to payment, against the seizure procedure that arises on the effect.

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

For the preventive or conservatory seizure, the conservatory measures taken without executory title shall be followed by a claim in payment of the credit that has served as cause and a claim in validity of the measures taken, which shall be filed jointly, within eight (8) days of the measure, unless the judge has set a different term at the time of authorizing it, which in no case shall be longer than thirty (30) days.

Without prejudice to the effects of the claim in payment of the credit, the violation of the eight (8) day term or of the term fixed in the order by which a conservatory measure has been authorized, renders the measure without effect, which shall be lifted by the judge of the referrals.

In the case of executive seizure, the creditor who after a preventive or conservatory measure, made in accordance with the provisions of this law, obtains an enforceable and irrevocable judgment that validates his credit and the seized measure, shall notify the debtor a payment order of the amount owed, with a term of not less than twenty-four (24) hours, under the warning that, in the absence of payment, the seized or unavailable goods will be sold by the validated measure. Upon expiration of the twenty-four (24) hour period provided for in Article 128, without the debtor having complied with the payment order and within forty-eight (48) hours after the order, the officer shall proceed to check the vessel or the seized or unavailable goods and shall record the missing or damaged goods.

As from the inspection report, the provisions relating to the enforcement seizure of vessels are applicable to the preventive or conservatory measures.

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

Not as a specific term, however, it explicitly recognizes counter-guarantees to compensate for damages that could be caused by the filing of an unjustified preventive or conservatory measure.

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

Yes, the courts may declare the partners liable for the debts of the company up to the limit of their shareholding, unless corruption or fraud is proven. The lifting of the corporate veil is also recognized in cases of criminal offenses.

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

It is not possible to sell a vessel pending a lis pendens that affects the auction of the vessel (in the cases established by law). A case on the merits for the issues of conservatory or preventive seizure can last from two to three years in litigation. It is different when there is a mortgagee registration or an authentic act or an irrevocable judgment, in these cases the procedure is expeditious and fast (about 3 months).