

SHIP ARREST IN *SENEGAL*

Dr. Aboubacar FALL
AF Legal Law Firm
a.fall@aflegal.sn
www.aflegal.sn

Résidence EH Abasse SALL, Avenue Bourguiba
PO Box 17295 Dakar-Liberté - Dakar (SENEGAL)
Tel: +(221) 33 864 05 59 Direct
Mobile: + (221) 77 184 65 45 (WhatsApp)



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

Ship arrest is a frequent activity in Senegal due to the geographical location of Dakar where the main seaport is located and the dynamism of the import-export activity by sea in the country.

A part from the major shipping lines present in Dakar (Maersk, MSC, CMA-GMN, etc.) there is an intense activity of bulk transport by charter-party which often gives rise to arrest of vessels for various business and legal reasons such as non payment of demurrage, non payment of vessel hire, non payment of freight by shipper, etc.

Arrest activity must not be confused with the detention of the vessel which is an administrative operation generally carried out by customs for violation of customs regulations such as deficit or excess to the cargo manifest and the like.

This frequent arrest and/or detention activities justify the presence of major P&I Clubs in Dakar.

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

Senegal is a party to the 1952 Brussels Convention on Arrest of Seagoing Ships, the provisions of which have been transposed into the Senegalese Merchant Marine Code.

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

The Senegalese maritime law distinguishes between saisie conservatoire (arrest of vessel) which is authorized by a judge and the detention of a ship which is executed by an administrative authority such as the Port Authority, Customs, etc. The latter does not require the authorisation of a judge.

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

There are any other alternatives if it comes to arrest a ship under Senegal Law. The proceedings are described in both the Merchant Marine Code as well as the code of civil procedure (CCP). Only the President of the commercial court is competent to issue an arrest order. This operation is called “saisie conservatoire” as the arrestor would be required to transform the saisie conservatoire into a saisie execution. With the latter, the claimant would be able to sell the ship in order for the payment of his maritime claim.

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

There are two categories of claims which open the possibility to seek an arrest order against a vessel.

- i. the first category is composed of limited maritime claims which are listed in the 1952 Brussels Convention as well as the Merchant Marine Code.
- ii. The second category consists of any commercial claim in relation to the vessel of the vessel owner. Such arrest would be based on Senegalese general commercial law.

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

YES

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

YES; except if the ship belongs to the military defence (see the ARA Libertard case before the ITLOS).

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

Provided that the legal and business relationship between the sister ship and/or the ship in associated ownership is established, the President of the commercial court generally grants the arrest order. This is consistent with Article 3 paragraph 2 of the 1952 Brussels Convention on Arrest of Ships to which Senegal is a Party.

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

In both cases, the vessel can be arrested if the charterer is the debtor. While the Merchant Marine does not provide for a solution, local courts rely on the Brussels Convention which article 3 paragraph 4 provides that "when in the case of a charter by demise of a ship, the charter and NOT the registered owner is liable in respect of a marine claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship".

It is worth noting that the nature of the claim, i.e. a maritime claim, is a prerequisite condition to perform the arrest in the case of a bareboat or time charter.

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

NO, Senegalese courts do not require counter-security in order to arrest a vessel.

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

No, there is no difference. To get an arrest order in both cases, the claimant will have to submit an application for arrest to the Court along with all necessary supporting documents evidencing the claim.

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

While Senegal recognizes maritime liens and mortgages, its Maritime Code does not refer to any international Convention in this regard.

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

Provided that all documents supporting the claim are translated into French, the arrest could be obtained within the same day.

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

NO, there is no need to provide a power of attorney (POA). The claimants need only to submit the most pertinent documents supporting the 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?

It is advisable to submit original documents (BL, etc). However, where that is not possible, the copies must be readable and translated into French. All documents can be filed electronically.

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

YES, according to the Senegal private international law, Senegalese courts retain jurisdiction on the merit over the vessel arrested in Senegalese waters (lex loci), except in cases where an arbitration clause exists.

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

When the claim is not disputed, the conditions of the release are negotiated between the claimant and vessel owner or manager through the posting of a security bond in the form of bank guarantee or P&I Club letter of guarantee. When the claim is disputed, a short notice and emergency proceedings will take place before the President of the Court who will either order the release of the vessel or set the conditions for the release, i.e; the posting of a security bond (bank guarantee or P&I Club letter of guarantee).

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

As indicated above, the security could take the form of bank guarantee or a P&I Club letter of guarantee.

19. Does security need to cover interest and costs?

It is common practice in Senegal that the security posted covers principal, interest, and costs.

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

YES, in principle P&I letters of guarantee (LoG) are generally deemed sufficient to obtain the lifting of an arrest. However, the Court cannot force a claimant to accept a P&I LoG if the latter requires a bank guarantee. It is after all a matter of negotiation.

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

While the procedure to obtain the release order by the Court can sometimes take two to three days, the effective release of the vessel by the Port authorities is carried out the very same day.

22. Is there a procedure to contest the arrest?

YES, a procedure to contest the arrest does exist under Senegalese maritime law.

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

Once the arrest order is granted by the President of the Court, the claimant has 30 days from that date to file a legal action on the merits, it is called validation procedure.

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

YES, in principle, the Courts recognize and indemnify wrongful arrest provided that sufficient evidence of abuse of rights has been shown. It is worth noting, however, that to prevent wrongful arrest, the President of the Court generally rejects the request for arrest when she/he considers the evidence insufficient or the claim baseless.

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

YES, the Senegalese Courts acknowledge the piercing of corporate veil based of the civil law concept of “therorie de l'apparence”.

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

The only way to legally sell a ship is by auction before the Court. To that end, a whole formal procedure must be followed as prescribed by the Maritime Code.

**Dr FALL is a member of the Senegal Bar (West Africa) and a former member of the Paris Bar (France). He holds a Masters in International Transportation from University of Paris 1 Pantheon-Sorbonne (France), a PhD in International Business Law from University of Rouen Haute-Normandie (France) with a thesis on «The Fraudulent Practices in International Maritime Trade» and an LL.M in Law & Maritime Affairs from University of Washington in Seattle (USA).*

Dr FALL is a Titulary Member of the Comité Maritime International (CMI) and the former President of the Senegalese Maritime Law Association. He is currently serving as the President of the Senegalese Branch of the International Law Association (ILA) and is a member of its Commission on Maritime Law and the Law of the Sea. He is the Senior Partner at AF Legal and is recognized as one of the most prominent maritime lawyer in francophone Africa. He is the co-founder of Africa Law Alliance (ALA) which is composed of independent business law firms from 17 West and Central African countries.

Over more than 30 years, Dr FALL has developed strong experience in maritime law and policy in general and ship arrest in particular. He has advised and represented shipping companies, shipowners, P&I Clubs etc. He has led the legal team which drafted the new maritime legislation of the Republic of Guinea. He was also a member of the team which advised and represented the seven (7) West African coastal States in their legal action against illegal fishing before the International Tribunal of the Law of the Sea (ITLOS). He teaches international maritime law as well as the law of the sea at Senegalese and foreign universities. He speaks at international seminars, colloquia and conferences including the International Conference of Maritime Arbitrators (ICMA) where he presented a paper entitled: Defence and Illustration of Lex Mercatoria: the Case Study of the Extracontractual detention of a Vessel in Voyage Charterparty Disputes (published in the Journal of International Arbitration).

Dr FALL has published extensively in maritime law journals and reviews including Le Droit Maritime Français (DMF) la Revue de Droit commercial, Maritime et Fiscal (Scapel), IBA Maritime Transport Committee Newsletter etc.