

SHIP ARREST IN *BELGIUM*

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

Belgium, and most specifically the ports of Antwerp Bruges and Ghent have with reason a favorable reputation of being a convenient place to arrest ships. The fact that Antwerp is one of the biggest and busiest ports of the world is not the only reason. The arrest of a ship and the accomplishment of the required formalities are well-organized: a simple, fast and short procedure, an experienced Antwerp Maritime bar, local representation of all P&I Clubs of the world, excellent shipping signaling services and, last but not least, several Judges of Seizure who are at the disposal of the parties at every moment 24 hours a day, 7 days a week for all urgent matters related to the arrest of a ship. A vessel can be arrested within a few hours after having received instructions. No power of attorney or original documents are required. The owner of a ship may demand immediate release of the ship upon issuing an acceptable Bank or P&I Club Letter of Guarantee, covering the amount of the claim plus 30% as a retainer for costs and interests. The formalities to lift the arrest are minimal, and can be fulfilled within the hour. The owner of a ship may also request for the withdrawal of the judgment granting authorization to arrest the ship. This request has to be filed before the same Judge of Seizure who granted the authorization and is heard on a contradictory basis in summary proceedings. Moreover, in Belgium some rather unique possibilities with respect to arrest of a ship are available. For instance, a vessel can be arrested for certain maritime claims, even if the owner of the vessel is not the debtor of this claim (see further under n° 7).

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

All arrests of sea-going ships are subject to the Brussels Convention 1952 relating to the arrest of Sea-Going Ships, as enacted in the Belgian legislation (Article 2.2.6.1. and further of the Belgian Shipping Code).

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

No.

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

Not applicable.

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

A sea-going ship can be arrested in Belgian territorial waters as a security for a maritime claim, as specified in letter a to q of art. 1.1 of the Brussels Convention 1952 (as enacted in Article 2.2.6.1. a) to q) of the Belgian Shipping Code – previously Article 1468 of the Belgian Judicial Code).

Article 2.2.6.1. of the Belgian Shipping Code however added 3 more types of maritime claim for which a ship can be arrested in Belgium, i.e.:

- r) administrative fines for breaches of the shipping laws;
- s) a financial security which might be required by this Code in case of a shipping accident);
- t) costs incurred in relation to maritime employment.

It is generally accepted that the claimant only has to present an allegation of right or claim. As soon as the claimant proves that his maritime claim is ‘sufficiently probable’, i.e. when the judge accepts ‘prima facie’ evidence presented to him on an ex parte basis, his request for authorization to arrest a ship will be granted.

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

A sea-going ship can be arrested in Belgian territorial waters, whatever the flag it is flying.

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

Yes if the claim relates to the vessel and is based on an obligation that was entered into by the ship owner or the charterer or that can be accounted to them on the basis of the doctrine of trust. So if the debtor is not the ship owner, the arrest is still possible if the arrestor, at the time of entering into the contract which is at the basis of the claim, could rightfully assume that his invoice would eventually be settled or at least secured by either the ship owner or the charterer.

The case being, the ship owner shall, in order to have the arrest lifted, have to provide security for the arrestor’s claim.

The only restriction is when the ship to which the maritime claim has changed ownership between the moment the claim arose and the moment of arrest. In that case an arrest is no longer possible unless the claim is secured by a maritime lien or mortgage.

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

If the owner is liable for the maritime claim, not only the ship in respect of which the maritime claim arose may be arrested, but also all other ships in the same ownership. Ships will be deemed to be in the same ownership when all the shares therein are owned by the same person or persons (see also under n° 25).

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

The ship in respect of which the maritime claim arose can be arrested, regardless of whether the vessel is Bareboat – or Time Chartered, upon condition that the claim is based on an obligation that was entered into by the ship owner or the charterer or that can be accounted to them based on the doctrine of trust. See above under n° 7.

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

No. In theory this is a possibility (Article 2.2.6.6. of the 2019 Belgian Shipping Code) however in practice this has been in disuse for many years and the courts currently do not impose a counter-security.

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

There is no procedural difference.

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

Belgium incorporated the Brussels Convention on Maritime Liens and Mortgages of 10 April 1926 in its internal law through Book 2, Title 2, Chapter 5 of the Belgian Shipping Code (previously Articles 19 to 45 of the Belgian Maritime Code). The maritime liens or privileges are listed in Article 2.2.5.11 and 2.2.5.14 of the Belgian Shipping Code (previously: Article 23 of the Belgian Maritime Code).

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

Upon receipt of the instructions to arrest the ship, the arrest of the ship can be effected within approx. 4 hours. The unilateral request to obtain authorization to arrest a sea-going ship can be submitted at any moment of the day, even out of office hours and during the weekend or holidays. A ship under arrest will not obtain the services of a pilot. More specifically in the port of Antwerp an arrested ship will not be able to leave the port since also the lock-keepers are informed.

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

No POA is needed. Belgian counsels represent the client without needing to present power of attorney. Confirmation of written instructions (e.g. by e-mail) are sufficient.

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. It is not required to have documents notarized or apostilled either. Furthermore, in practice, no complete file of documents of evidence on the merits of the claim is needed in order to obtain an authorization to arrest a ship. A claimant, requesting authorization, only has to make his allegation of the existence of the maritime claim reasonably certain. Given the fact that at the time of the request the claim often just arose, the Judges of Seizure do grant authorizations for claims only scarcely documented. It is advisable though – but therefore not always necessary – to have a copy of the Bill of Lading, an invoice, a (general) protest and/or an interim report of a surveyor available.

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

According to Article 2.2.6.21 of the 2019 Belgian Shipping Code, Belgian courts have principally been given jurisdiction to rule on the merits of the claim on the basis of which the vessel has been arrested in Belgium; although this is only a possibility and not exclusive.

Furthermore a distinction is made depending on whether EU Regulation 1215/2012 (Brussels I Regulation recast) is applicable or not:

- If EU Regulation 1215/2012 applies, Belgian courts are competent on the condition that:
 - 1° the ship was arrested in Belgium, and
 - 2° the applicant either has his domicile or registered office in Belgium, the maritime claim occurred in Belgium, the claim arose of a collision, the claim relates to salvage or de claim is secured by a maritime lien or mortgage on the arrested ship.
- If EU Regulation 1215/2012 does not apply, then the Belgian courts are competent in all cases where the ship was arrested in Belgium.

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

The arrest may be lifted by putting up a security (see question 18) or after obtaining order of the Judge of Seizures deciding to set aside the original order for arrest (see also question 22).

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

A cash deposit (e.g. on a blocked account) and/or a bank guarantee are accepted to obtain the release of the ship. In practice an undertaking of a first class P&I Club is also mostly accepted (although the claimant may refuse such undertaking and ask for a cash deposit or bank guarantee). In case of disagreement, the Judge of Seizures may settle any dispute related to the nature of security.

19. Does security need to cover interest and costs?

Yes, the security should cover the principal amount of the claim, costs and interest. The global amount of interest and costs is normally determined at 30 per cent of the principal amount. In case of disagreement, the Judge of Seizures may determine the amount of the security.

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

See question 18.

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

If the parties agree upon the lifting of the arrest, the court bailiff may release the ship within the hour as from the instructions by the arresting party. In case opposition proceedings are initiated to have the ship released, the release will take longer as such proceedings are often slowed down by the desire of the parties to develop their arguments in written submissions.

22. Is there a procedure to contest the arrest?

The ship owner (or a third party) may file third party opposition proceedings with the Judge of Seizures within one month of service of the order of arrest for such order to be set aside or varied; if such application fails, appeal is possible before the Court of Appeal.

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

- a) The arrest is valid during three years. The arrest can be renewed for a second period of three years.
- b) The arrest of a ship does not impose upon the arrestor the necessity to start legal proceedings on the merits of the case; nor does Belgian law impose Belgian Jurisdiction for the claim on the merits after an arrest in Belgium (although this is a possibility – see question 16).

Obviously, since an allegation of a maritime claim has to be shown, it is necessary to start legal proceedings on the merits before the competent court within the time bar limits related to the claim itself.

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

Although the Belgian courts acknowledge wrongful arrest, they are rather reluctant to grant such claims. An unjustified arrest is not sufficient. Proof of a fault/bad faith on behalf of the arrestor is required. A claimant will only be considered as having acted at fault by arresting the vessel if he obtained and put the arrest in a thoughtless and reckless way knowing that he would cause damages (e.g. when the arrestor consciously hid important information from the Judge of Seizures). If later on, the arrestor loses the contradictory summary proceedings or the case on the merits, this does not automatically result in the arrest being wrongful. On the other hand, if the claim on the merits initiated by the arrestor had already been dismissed before the arrest was issued, a compensation for wrongful arrest might be imposed.

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

On several occasions Belgian courts have accepted the piercing and lifting of the corporate veil within the frame of conservative arrest proceedings. If the owner is liable for the maritime claim, not only the ship in respect of which the maritime claim arose, may be arrested but also all other ships in the same ownership (see our reply to question 8). This rule can be circumvented easily by creating ‘single ship companies’. In this respect Belgian Courts occasionally authorized the arrest of a ship owned by another company than the debtor of the claim. The courts thus lifted the corporate veil and treated ships owned by different companies as if they were in the same ownership as soon

as it was sufficiently evidenced that the separate corporate personality is only an artificial screen that does not correspond to reality.

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

Belgian case law accepts that a ship under arrest may be sold as soon as the claimant disposes of an enforceable title. It is disputed whether this will also be the case if the judgment is not rendered against the owner of the ship but against another person who is debtor of the claim.

**Steven D'Hoine read law at the University of Leuven. He joined the Antwerp Bar Association in 1990. In 2004, he founded the law firm D'Hoine & Mackay. D'Hoine & Mackay is a specialised law firm based in Antwerp offering the full range of legal services in the commercial area, with a focus on maritime and transport law, other port related areas and specie and fine art insurance. D'Hoine & Mackay primarily renders services to insurance companies, P&I Clubs, carriers, freight forwarders, logistics providers and trading companies. D'Hoine & Mackay also acts as correspondent on behalf of many law firms abroad for services in Belgium, as well as for Belgian law firms searching for specific services in their specialised field. Steven D'Hoine has been appointed as a recognized mediator. He is a member of the Belgian Maritime Law Association, the Royal Belgian Association of Maritime Insurers and various transport related organisations..*