

SHIP ARREST IN CAMEROON

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

Ship arrest practice has been going on in my country Cameroon for decades now. Cameroon is a country found within the Gulf of guinea therefore making water to be its major boundaries. The country is made up of three (03) seaports which are the Douala, Kribi and Limbe Seaports. Arresting a ship in Cameroon commences by filing a motion ex-parte to the president of the Court of first Instance closest to the seaports where the ship is anchored. The motion should be accompanied by a list of documents to prove the claim of the creditor and to motivate the Judge to grant the motion and to give an arresting order against the ship. The Justifying documents could be any **contract, unpaid bills, bill of Lading, Maritime Survey Report** and any other document. The judge may sort the consultative opinion of the competent Maritime authority. Once the judge is convinced that the claim is justified, he grants the arresting order. The court sheriff/bailiff is charged to draft a report to affect the seizure by serving a copy of the arrest order to the Ship Captain, the Commander of the Port, the Competent Maritime authority and the Consulate of the country whose flag is being hosted on the ship or to the consignee of the ship.

The competent Maritime authority is appointed custodian of the seized vessel.

It should however be noted that the creditor must show proof that has done a formal request for payment of the outstanding debt to the debtor (ship owner) which has remained unpaid.

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

In cameroon, it is the Regional CEMAC Merchant shipping Community Code of 3rd August 2001 as amended on 22nd August 2012 that is applicable as far as arrest of ships is concerned.

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

Cameroon is a state of law, so the only legal way to arrest a ship is as its being described under law above mentioned.

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

Saisie Conservatoire is what is provided for under article 144-156 of the law mentioned above.

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

Pursuant to article 149 of the regional CEMAC code mentionned above, maritime claims that may give rise to the seizure of a vessel are those resulting from one or more of the following causes, being specified that a partial maritime claim is considered as a maritime claim:

- a) loss or damage caused by the operation of the vessel;
- b) death or bodily harm occurring, on land or in water, in connection with direct with the operation of the vessel;
- c) rescue or assistance operations, as well as any rescue or assistance, including where applicable, for compensation special concerning rescue or assistance operations with

regard to a ship which, by itself or through its cargo, threatened to cause damage to the environment;

- d) damage caused or likely to be caused by the ship in the middle, coastline or related interests; measures taken to prevent, reduce or eliminate this damage; compensation for such damage; cost of reasonable environmental remediation measures that have been actually taken or to be taken; losses suffered or likely to be suffered by third parties in connection with such damage; and damage, costs or losses of a similar nature to those indicated in the present paragraph
- e) costs and expenses relating to the recovery, removal, recovery, destruction or neutralization of a sunken ship, wrecked, stranded or abandoned, including everything that is or is found on board this vessel, and conservation costs and expenses of an abandoned ship and the maintenance of its crew;
- f) any contract relating to the use or rental of the vessel by charter or otherwise;
- g) any contract relating to the carriage of goods or passengers by the ship, by charter or otherwise;
- h) loss or damage suffered by, or in connection with, the property, including baggage, carried by the ship;
- i) general average;
- j) towing or piloting a vessel;
- k) goods, materials, supplies, bunkers, equipment, including containers, supplies or services rendered to the ship for its operation, management, conservation or maintenance;
- l) construction, reconstruction, repair, alteration or equipment of the ship ;
- m) rights and charges for the port, canal, basin, anchorage and other waterways;
- n) wages and other sums due to the captain, officers and others members of the ship crew, by virtue of their engagement on board the ship, including repatriation costs and insurance contributions social security payable on their behalf;
- o) payments made on behalf of the ship or its owners;
- p) insurance premiums, including mutual insurance contributions, in relationship with the ship, payable by the shipowner or by the charterer in devolution or on their behalf;
- q) agency fees or brokerage or other commissions related to the ship, payable by the shipowner or the charterer in devolution or on their behalf;
- r) any dispute as to the ownership or possession of the vessel;
- s) any dispute between the co-owners of the vessel regarding the operation or rights to the products of exploitation of that vessel;
- t) hypothec, "mortgage" or a right of the same nature on the vessel;
- u) any dispute arising out of a contract for the sale of the vessel.

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

The law provides that a ship irrespective of her flag can be arrested so far as the ship is found within the waters under the Jurisdiction of a CEMAC member state.

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

A ship can be arrested irrespective of the debtor being it a national, an expatriate or physical or moral person.

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

Sister ships or ships in associated ownership can equally be arrested for a claim against a principal ship. The CEMAC Merchant shipping community code has made provisions for the arrest of such ships.

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

The above mentioned law covers the arrest of all vessels including time-chartered vessels, and bareboat too so far as they are linked to a claim.

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

There is no counter security requested for the arrest of ships in Cameroon. The debtor instead is required to pay a security deposit if after the arrests he has an urgent sail to do. This is provided by article 146 and 147 of the law.

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

There is no limitation provided by the law as far as Maritime Lien is concerned. The lien that arise directly from a Maritime claim under article 75 of the code, may lead to the arrest of a ship.

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

Yes, Cameroon recognises Maritime Lien. This can be seen under article 75-88 of the regional CEMAC shipping code which is an international convention of CEMAC states to which Cameroon is a party to that was signed on 24th July 2012.

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

From the moment the file arrives my firm, we may take approximately five working days to effectively arrest a ship. The arrest order itself can be granted between 24 hours by the court from the time of filing the application by the firm.

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

The law has not stated the need of a P.O.A. however article 50 (2) of the code makes it mandatory to the claimant to produce justifying documents relating to the Maritime claim in order to motivate the presiding judge of the competent court to grant the arrest order. These justifying documents could be any valid contract, bill of lading, Maritime survey report assessing the claim and a formal notice to pay that has remained unsatisfied.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille and when are they needed?

In Cameroon, while filing the petition originals of the principal document attesting the claim need to accompany the application that is being filed to the court. In the absence of the originals, a certified true copy may be used. The law does not make mention of notarisation of any documents. In matters of extreme emergency, the courts may grant the arrest order with mere photocopies or copies printed electronically especially when the creditor does not reside in Cameroon.

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

Yes, our courts will assume jurisdiction over the substantive claim once the vessel is being arrested within its territorial waters. This in accordance with article 7 of the Brussel's convention of 1952.

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

An arrested ship maybe released at the instance of the debtor or the creditor. The code provision that the debtor shall within one month of the arrest, file a motion on notice before the court that ordered the arrest for the discharge of the arrest order. If successful, the release order is served on the creditor who may appeal, served to the Maritime authority in order to obtain an authorization to sail and served on the port authority.

The creditor can as well file a motion experts in court to obtain a release order if at all the creditor satisfies him by paying the outstanding debt. He (creditor) can as well simply act as the sheriff to serve a release order on the Maritime authority and port authority.

The regional CEMAC shipping code also provided a possibility for release in case of emergency at the instance of the debtor. Upon an application of the latter showing cogent and verifiable reasons

(carrying of perishable goods) the court may order a release for a specific voyage(s), upon deposit of a sufficient guarantee.

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

The law talks of sufficient guarantee to be presented as security before the release. This may refer to sufficient funds to cover the outstanding debt. However no security is needed when the debtor is filing an application to the court to obtain a release order from the court.

19. Does security need to cover interest and costs?

Yes, the security presented should be able to cover interest and costs of procedures.

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

Yes, they are accepted to lift the arrest.

21. How long does it take to release a Ship?

It takes some hours when the release order is initiated by the creditor. However it may take months or even years when debtor files an application in court for release. This time frame will also depend on appeals as the creditor will be heard and given the opportunity to show proof while the arrest order should be maintained.

22. Is a procedure to contest the arrest?

Yes. The debtor shall within one month of the arrest file an action in the competent court to contest the arrest if he has any valid points for contestation.

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

Pursuant to article 155 (1) of the code, the claimant has a statutory period of 1 month to institute legal action to obtain an executory formulae failure to do so will render the arrest null and valid.

24. Do the courts of your country recognize wrongful arrest?

Yes, the courts may order payment of damages for wrongful arrest to the ship owner upon filing an action if he suffered any losses as a result of the arrest of the ship based on a non-genuine claim.

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

Yes, the courts of Cameroon acknowledge the piercing and lifting of corporate veil. Article 54-74 of the CEMAC shipping code provides for co-ownership of a ship which makes it possible for the courts to acknowledge the above.

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

The only possibility for a ship to be sold pendente lite is under a MOU between the ship owner and the creditor, whereby the sales of the vessel is intended to clear off the debt. Apart from that, the legislation applicable in Cameroon does not have a vessel sold pendente lite.

**Tiku Elvis Tenjoh is a managing partner and co-founder of CAMA LAW FIRM in Douala, Cameroon. The firm specializes in business and corporate law, property law, debt recovery, maritime litigation, immigration law, mining law, and intellectual property, among other fields.*