

SHIP ARREST IN *FRANCE*

*By Henri R. NAJJAR, Partner**

RICHEMONT DELVISO

henri.najjar@richemont-delviso.com

www.richemont-delviso.com

1 bis avenue de Lowendal 75007 PARIS

Tel: +33 (0)1 84 16 46 40 - Fax: +33 (0)1 84 16 46 44

3 quai de la Joliette 13002 MARSEILLE

Tel: +33 (0)4 91 90 36 10 - Fax: +33 (0)4 91 90 36 11



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

During the years following the adoption of the 1952 Brussels Convention, France was held to be a ship arrest haven. Indeed, as a response to the abusive expansion of single ship companies, French judges resorted to an extensive interpretation of article 3.2 of the Brussels Convention, granting orders of arrest against any ship apparently owned by “the same beneficial or associated owner”, such concept including a company which shares are owned by an entity holding also shares in the capital of the debtor. This movement, which led to various conflicting judgments, subsided in the mid nineties. The French courts back-pedaled to a more conservative view, whereby the piercing of the corporate veil must reveal the fictitious character of the company owning the ship (see para. 25 below). France remains however an interesting forum for arrest insofar as the domestic legislation allows, under certain conditions, the arrest of a ship for any claim against the owner, were it not maritime, and as the procedure is relatively not costly and can be implemented rapidly.

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

France ratified the Brussels Convention on the Arrest of Sea-Going Ships of 10 May 1952 and incorporated it through the Decree no.58-14 of 4 January 1958.

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

Yes. Under the domestic regime framed by the Code of Transports (art. L.5114-20 to L.5114-29 and art. R5114-15 to R5114-47) and the Code of Civil Procedures of Execution (art. L.111-1 et seq. and art. R.112-1 et seq.).

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

As a matter of principle, a freezing injunction may be issued under the provisions of the Code of Civil Procedure, in case of urgency whenever the claim is not seriously disputable, otherwise when it aims at preventing an imminent damage or at stopping a disturbance obviously unlawful. In practice, it is rarely ordered against a ship.

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

Under the Brussels Convention, ships may be arrested for any of the “maritime claims” identified in article 1 of the Convention. Under the domestic legislation, ships can be arrested for any prima facie claim that the petitioner may have against the owner of the ship.

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

Yes. All ships calling at a French port may be arrested – save warships and state-owned ships employed in a public non-commercial service or ships proven to be necessary for the personal exercise of a professional activity (e.g. fishing boats).

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

Subject to the maritime claims identified in the Brussels Convention, in the event secured by a maritime lien, and to the circumstances described below, French judges have regularly dismissed any petition for the arrest of a ship not owned by the debtor.

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

Under French law, any ship belonging to the debtor may be arrested even where the claim is not related directly to the ship. The Brussels Convention permits such arrest provided the claim is not in connection with the title to or ownership of a particular ship or with disputes between co-owners or the mortgage or hypothecation of this ship. A ship owned by an associated company of the debtor may be arrested only if the company is proven to be fictitious (see para. 25 below), otherwise whenever the associated company is deemed to be jointly responsible for the claim.

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

Under the Brussels Convention, the holder of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the said ship or any other ship in the ownership of the charterer. The French domestic regime allows such arrest only if the claimant has a maritime lien on the ship or has reasonable grounds to believe that the underlying obligation was concluded on behalf of the actual owner of the ship.

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

It is not common practice that French courts require counter-security as a prerequisite for the arrest of a ship. However, judges have the free discretion to decide otherwise.

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

There is no difference in the procedure of arrest. However, a maritime lien would allow the arrest of the ship irrespective of the identity of its owner (“into whatever hands it may pass” – art 8 of the 1926 Brussels Convention on Maritime Liens and Mortgages; art. L.5114-18 of the Code of Transports).

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

Yes. France ratified the Brussels Convention on Maritime Liens and Mortgages dated 10 April 1926, incorporated into French domestic law (art. L.5114-7 et seq. of the Code of Transports), it being highlighted that an additional maritime lien is provided under article L.5114-8 of the Code of Transports (“the shipping agent’s claim for disbursements paid outside the port registry of the vessel”).

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

If all the necessary documents are provided in due time, the arrest can be made within the same day in case of urgency.

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

There is no need to provide a POA. Obviously, the petition must be substantiated with any document evidencing the existence and the cogency of the claim. When the petition is grounded on the Brussels Convention, the documents must also show the maritime nature of the claim.

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

In practice, no original or notarized documents are required. The documents supporting the petition must be handed to the ruling judge.

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

Save when the Brussels Convention applies (art.7), French judges may not rule on the merits of the claim, on the sole ground that the ship was arrested within their area of jurisdiction (Forum Arresti). The criteria and conditions set under the international rules of conflict, as per the applicable International Conventions and EU Regulations, must be met.

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

A ship may be released from arrest either by providing the appropriate guarantee or deposit as per the order of arrest or by serving upon the arrestor a writ of summons with a view to challenging the arrest (see para. 22 below).

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

As a matter of principle, any security that would be equivalent to the guarantee offered by the arrest of the ship for the recovery of the claim is acceptable. In practice, French judges accept bank guarantees, cash deposits and P&I letters of undertaking.

19. Does security need to cover interest and costs?

Security would need to cover the exact sum for which the arrest of the ship has been ordered. This sum often includes a provision for interests and costs.

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

P&I letters of undertaking are usually deemed sufficient when provided by P&I Clubs members of the International Group. For other P&I Clubs, it would depend on the identity, reputation and credit worthiness of the Club, as freely appreciated by the ruling judge.

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

In usual cases of urgency, the ruling judge would issue an order to lift or confirm the arrest of the ship the same day of the hearing at which the arrestor would have been summoned to appear. Once obtained, the order to lift the arrest can be notified forthwith, through bailiff, to the harbour master for an immediate release.

22. Is there a procedure to contest the arrest?

The arrest of a ship is challenged by writ of summons served upon the arrestor, which is deemed to have elected domicile at the offices of its lawyers and/or bailiffs. The writ, which does not need to be translated, summons the arrestor to appear before the judge who ordered the arrest at a hearing that could be scheduled at the first convenience of the judge or his/her substitute, including the same day of the arrest.

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

The claimant must institute legal proceedings on the merits within one (1) month after the arrest is performed, otherwise the arrest will automatically be held cancelled.

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

French judges are reluctant to accept a claim for compensatory damages for wrongful arrest, unless the bad faith or malice of the arrestor is clearly established.

25. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes. In this respect, French judges have been relying on the concept of “Fiction” instead of the theory of “Appearance”, i.e. one must establish that the company owning the ship is fictitious. To this end, various elements must be gathered: e.g. same beneficial or associated owner, want of employees, concurrency of assets and/or debts, unity of management, lack of participation to the profits and/or debts of the company, unequal distribution of the dividends, existence of a subordination bond between the existing entities, etc.

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

Yes. The judicial sale of the arrested ship is possible when the petitioner holds an enforceable deed or judgement. In practice, the procedure of judicial sale lasts around three to six months.

****Henri Najjar** holds a Master Degree in Business Law (Paris II, Assas) and a LLM in Maritime Law (Southampton, UK).*

Member of the Paris Bar, partner of the law firm RICHEMONT DELVISO, with offices in Paris, Marseille, Ajaccio and Douala, Henri advises and handles litigation of all kind in connection with the maritime practice, including casualties at sea, oil pollution and charterparty disputes. He represents P&I clubs, shipowners and various French, Spanish and US road carriers and freight forwarders, and has developed an expertise in the set-up of agencies and joint ventures worldwide. Henri is author of the fascicule on Oil Pollution and the outline on the Events of the Sea: Collision, Salvage, Towage, General Average of the JurisClasseur Transports (Lexis Nexis) and of various articles published in Lloyd's List, Bulletin des Transports and The Maritime Advocate.

He is member of the Association Française de Droit Maritime and the Instituto IberoAmericano de Derecho Marítimo, speaker at the International Maritime Committee, International Bar Association, Shiparrested.com and Containerisation International conferences.