

SHIP ARREST IN *PORTUGAL*

By Ana Cristina Pimentel*
ANA CRISTINA PIMENTEL & ASSOCIADOS
SOCIEDADE DE ADVOGADOS, SP, RL
acp-11305L@adv.oo.pt
www.acpadv.pt
Av. Elias Garcia, 176 – 2º Esq.
1050-103 Lisboa - Portugal
Tel: 351 21 781 99 90



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

We may say that Portugal is a friendly jurisdiction for the arrest of a ship. Portugal is a party to the 1952 Brussels Arrest Convention. The Lisbon Maritime Court, with jurisdiction for all the continental territory (Madeira and Azores Islands excluded) has always been aware of the importance of this procedure and is very expedite in dealing with all the steps of the arrest procedure. The first detention order is decided by the judge within a period of 24 hours after the file is presented to the judge and such detention order is immediately sent by the court to the Harbour Master office of the port where the vessel is staying, thus preventing the vessel from leaving the port. A counter security from the arrestor although legally possible has never been requested by the court. The release procedure is also expedite although a LOU is only acceptable with the agreement of the arrestor.

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

Portugal is a party to the 1952 Brussels International Convention for the Unification of Certain Rules relating to the Arrest of seagoing Ships

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

No, but in certain situations, depending on the flag of the vessel, Portuguese law may apply, namely when we are talking about the arrest of a vessel that is sailing under the flag of a non-contractual State and when we are talking about the arrest of a Portuguese vessel in Portugal at the request of a Portuguese creditor (article 8 nr. 4 of the 1952 Brussels Arrest Convention)

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

No, the creditor will have to apply for the arrest. Several arrests may be granted against the same vessel at the request of different creditors.

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

Depending on the flag of the vessel, according to article 8 nr. 2 of the 1952 Brussels Arrest Convention, the ships sailing under a flag of a contracting State may only be arrested on the basis of a maritime credit as defined by article 1 of the same Convention.

Vessels sailing under the flag of a non-contracting State may be arrested on the basis of a maritime credit according to the definition provided on the arrest convention, but also on the basis of any other credit allowing the arrest under national law. In such case, besides alleging the existence of the credit, the arrestor will also have to provide evidence on the existence of a *periculum in mora*, thus justifying the need for the arrest as the sole way of providing the creditor with a payment guarantee for his claim.

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

Yes, but the applicable rules may be different. Depending on the flag of the arresting vessel, Portuguese law may be applicable instead of the 1952 Brussels arrest convention, as determined on its article 8 nrs. 2 and 4.

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

The debtor should be the owner of the vessel. If the debtor is not the registered owner of the vessel the arrest may be granted but the creditor will have difficulties in enforcing his title if there is no lien on the vessel (contractual or legal).

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

According to article 3 paragraph 1 of the 1952 Brussels Arrest Convention, it is possible to arrest the vessel that gave rise to the credit, as well as another vessel belonging to the same ownership.

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

The arrest of the vessel may be granted on the basis of the existence of a maritime credit. However, if the claim is not immediately settled and the main proceedings subsequent to the arrest have to be engaged, the arrestor might have difficulties in enforcing the condemning decision obtained against the bareboat charter or the time charterer if there is no lien on the vessel (contractual or legal).

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

Although it is established on article 374 nr. 2 of the Portuguese Code of Civil Procedure that the judge may request the arrestor to put up an adequate security, considering the circumstances of the case, to our knowledge never did a Maritime Court Judge request for such counter-security to be given by the arrestor as a requisite for the arrest.

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

There is no difference in respect of arresting a ship for a maritime credit or maritime lien; the same rules apply on both situations. However, when the arrest is requested on the basis of national law only, the arrestor will have to produce evidence on the probability of the existence of his credit, as well as on the financial situation of the arrestee, to justify that the arrest of the ship will be the only measure that will allow the arrestor to be able to receive payment considering the overall situation of the arrestee and his assets.

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

Since 13th May 2012, Portugal is no longer be a party to the 1926 Brussels Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages. The issue of maritime liens is now ruled by the Commercial Code, namely article 578, listing as maritime liens the “hypothèque” in the third place, after court costs and expenses incurred in the common interest of the creditors and salvage, and before other liens such as pilotage and tug costs; light, harbour and port dues; crew wages; supplies and repairs to the vessel; insurance premiums; unpaid last sale price of the vessel; unpaid amounts arising from shipbuilding contracts and indemnities due to cargo owners.

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

Once the file is analysed by the Lawyers, it will be necessary to prepare and draft the arrest application stating clearly all the relevant facts of the case, the reasons for the arrest to be granted and the amount claimed, all dully supported by the relevant documentary evidence (contracts, invoices, exchange of correspondence, etc.), translated into Portuguese (at least the most relevant documents). A list of witnesses to be heard has also to be included. The judge will have a period of 24 hours to analyse the file and give the first detention order preventing the vessel from sailing. This order is immediately sent by the Court to the Harbour Master office of the port where the vessel is staying. The hearing of the witnesses appointed, if necessary, will take place a few days later.

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

When submitting the arrest application, it will be necessary to attach a power of attorney, as well as all the supporting documents evidencing the facts of the case and the amount of the claim for the judge to be able to analyse the merits of the arrest application.

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

All documents are filed electronically, and the originals kept by the Lawyers. The original POA is kept by the Lawyers; the supporting documents may be kept only in copies. The POA has to be legalized with apostille or alternatively documents evidencing the identity and powers of the person signing the power of attorney should be presented to the Lawyer and considered as sufficient evidence.

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

Portuguese Courts will accept jurisdiction over the substantive claim on the situations listed on article 7 no. 1 of the 1952 Brussels Arrest Convention.

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

The arrestee will have to discuss settlement with the arrestor or alternatively put up security, directly within the court or in the hands of the arrestor. The ship will be released as soon as requested by the arrestor or when the judge considers the security provided is adequate.

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

Any kind of security will be accepted provided it receives the agreement of the arrestor. If security is placed directly with the court only cash deposit or bank guarantee will be acceptable.

19. Does security need to cover interest and costs?

Not necessarily, security will have to be sufficient to replace the amount of the claim guaranteed by the ship as established on the arrest decision.

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

P&I LOUs are only accepted if they receive the agreement of the arrestor. The judge alone will not consider P&I LOU as adequate security.

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

As soon as payment is made, or the security provided is considered adequate, the release request is sent to the court by the arrestor; the release order will follow immediately after. However, the release request will have to be submitted within the courts' working hours (week-ends and holidays are excluded).

22. Is there a procedure to contest the arrest?

The arrestee may oppose to the arrest decision within 10 days from service of the arrest documents or alternatively appeal from the arrest decision. In case of opposition, the arrestee may submit documents and list witnesses to be heard by the court. A new arrest decision will be given after the judge has considered the arguments of the arrestee. The arrest may thereafter be lifted, maintained or the amount granted reduced.

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

The time limit for the claimant to take legal action on the merits is thirty days counting from the date the arrestor is notified by the Court that the arrest application has been served on the arrestee. On

the basis of article 7 number 2 of the 1952 Brussels Arrest Convention the judge normally establishes a time limit of 60 days for the legal action on merits to be engaged.

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

Yes. Article 374 of the Code of Civil Procedure determines that if the arrest is considered unjustified or will become void because of the arrestor, the arrestor is responsible for the damages caused to the arrestee if the arrestor did not act as a normal and prudent man should have done. Civil liability rules will apply.

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

No. In principle only the debtor / arrestee and his registered assets are liable for the payment of the debts claimed against such debtor, an individual or a company. The Court will not look into the links between different companies and their shareholders.

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

It will be possible to request for the anticipated sale of the ship, providing one can justify the need for such measure because of, for instance, the depreciation of the value of the ship and the consequences thereof for the owner and claimants. The circumstances of each particular case are analysed by the Court and the sale is normally only allowed when the ship is abandoned by the owner/arrestee, remains arrested for a long period of time and her situation is uncertain. The sale procedure will take several months considering the need to obtain the judge's order, the service on the owner of the ship and the sale procedure that will follow thereafter.

**Ana Cristina Pimentel obtained her degree in Law in 1991, at the Université Catholique de Louvain-la-Neuve in Belgium and in 2003 a post graduate diploma on Maritime Law at the London Metropolitan University in the UK. She is a Lawyer and a member of the Portuguese Bar Association since 1994, working actively in Shipping, as well as in road and air transport and insurance. She has also been an invited teacher at the Escola Superior Náutica Infante D. Henrique, the Portuguese Maritime College, since 2004, giving lectures on different subjects on Maritime Law and Transport Law.*