

SHIP ARREST IN *TUNISIA*

By Dr. Brahim LATRECH
LATRECH Law Firm
contact@cabinetavocat-bl.com
<http://www.cabinetavocat-bl.com>
Immeuble Lafayette Center - Tunis – Tunisia
Mob : +216 24 29 27 00
Tel : + 216 71 830 257
Fax : +216 71 830 257



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

Tunisia with eight commercial ports opened to international traffic remains one of the best countries in the world for ship arrests with simple and fast procedure.

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

Tunisia not ratify any International Convention, and only local laws will apply to the arresting of ships, but the legislator of Tunisian Maritime Law was influenced by the International Convention Relating to the Arrest of Sea-Going Ships Brussels, May 10, 1952.

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

- Arrest in accordance with an on-going or a final foreign arbitration award;
- Arrest within the frame of enforcement of a foreign Court decision;
- Arrest in accordance with a settlement agreement;
- Arrest in accordance with a contract;
- Arrest under procedures of execution.
- Arrest under a criminal matter or a civil debt against the ship owners.

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

These measures are similar to saisie conservatoire or freezing order (immobilisation du navire).

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

Tunisian Maritime Commercial Law defines “maritime claims” for the purposes of Tunisian law (créances maritimes). Claims falling within the definition of Maritime Claims include claims for:

- Bunkers, Goods, materials, provisions, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- Loss or damage caused by the operation of the ship;
- Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- Loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- General average; Towage; Pilotage;
- Construction, reconstruction, repair, converting or equipping of the ship;
- Port, canal, dock, harbour and other waterway dues and charges;
- Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- Loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- Disbursements incurred on behalf of the ship or its owners;
- Insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

- Any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- Any dispute as to ownership or possession of the ship; any dispute between co-owners of the ship as to the employment or earnings of the ship;
- Any dispute between co-owners of the ship as to the employment or earnings of the ship;
- A mortgage or a "hypothèque" or a charge of the same nature on the ship;
- Any dispute arising out of a contract for the sale of the ship.
- Salvage operations or any salvage agreement;
- Damage or threat of damage caused by the ship to the environment, coastline or related interests; - Measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken;
- Loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph;
- Costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew.

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

In Tunisia the presence of any vessel at Tunisian waters gives the court jurisdiction "in rem" over the vessel and "in personam" over the owners, operators and charterers. Tunisia does not recognize governmental immunity for state owned commercial trading vessels. Any vessel capable of being used in navigation can be arrested therefore pleasure vessels can be arrested.

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

In Tunisia, the claims subject to Tunisian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Tunisian Law anyone with authority binds the vessel in rem (in rem actions, meaning that the action is against a thing, rather than against a person). The ship can be arrested even if the ship owner's is not the debtor of the maritime claim. In order to have his ship released from arrest, the ship owner's have to pay the claim or to give a Bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasury Department of Tunisia. The ship owner's will have to guarantee the payment of the claim, even if a third person charterer, issuer of the Bill of Lading is the debtor toward the arresting party. Generally, the vessel, itself, is responsible owner encumbers a vessel with a First Preferred Ship's Mortgage, it is the vessel that guarantees payment, rather than the owner. However, the owner may be personally liable if they signed a personal promise or guaranty to pay.

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

Tunisian Maritime Law allows the arrest of sister ship and ship associated.

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

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

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

Tunisian Maritime law in practice does not impose on the claimant the deposit of a counter-security to cover costs, charges, damages, fees or other expenses but Any attempt to use a provision of Tunisian law in an abusive manner is a wrong actionable in tort as a fundamental principle of Tunisian law. In particular, pursuant to this fundamental principle, a plaintiff will have an action for abuse of the arrest provisions contained in Articles 100 to 105 of the Maritime Commercial Law (a claim broadly equivalent to a wrongful arrest claim under a common law legal system) if it can

show that the party who arrested a vessel knew or should have known that it had no right of arrest at the time the application for the arrest and the Court's order granting the arrest were made. Accordingly, the Plaintiffs' claim is actionable as a tort in Tunisia.

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

There is no substantial difference between arresting a ship for a maritime claim or a maritime lien, both are subject to the same procedures.

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

Tunisia recognizes maritime liens under the Tunisian Maritime Trade Law n° 13 /1962.

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 instructions and relevant documents, arrest order can be carried out within the same day.

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

No power of Attorney is requested, no original documents required, no counter security.

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

The claim's supporting documents or the documents proving the matter are required, documents filed electronically are accepted. All documents must be presented to the judge with a sworn translation into Arabic language.

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

Yes, Tunisian courts accept the substantive claim or the action on merits if a ship is arrested in any Tunisian ports.

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

A release can usually be obtained promptly provided the requirements for release are satisfied it may be done by any of the following:

- An emergency action to release the ship from arrest, submitted by the defendant to the Court.
- Amicably settlement agreement between applicant and defendant to release the ship.
- A Tunisian bank guarantee
- A cash deposit in the General Treasure Department of Tunisia.
- A repudiation of the arrest order by court decision.

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

A bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasure Department of Tunisia. LoU Club are not accepted by Tunisian court.

19. Does security need to cover interest and costs?

In some cases, but it always depends on the judge's ordinance.

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

No, Club LOUs are not accepted in Tunisia.

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

Between 4 and 10 hours.

22. Is there a procedure to contest the arrest?

An emergency action called “référé” to be presented within 8 days from the date of notification of the arrest.

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

The order authorizing the arrest shall indicate the deadline to start an action on merits, and it may not exceed one month within which the claimant will have to commence his action on the merits before the competent court. If the action is not made within this deadline, the conservatory arrest shall become null and void.

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

In an only case if the claimant knew it had no maritime lien or right of arrest and nonetheless proceeded with the arrest and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the Defendant who claims damages for wrongful arrest.

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

The vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested.

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

Under Tunisian Law when the arrester gets an enforceable title like a final arbitration award or a final court decision the procedure of sale of the vessel is made through public auction and it generally takes three to six months. The court's decision to sell the vessel is not susceptible of any appeal but can be either invalidated if the procedures were not respected. Such action must be brought 10 days at least before the auction or claimed by third parties who are entitled to do so at any time of the process.

****Brahim Latrech**, born in 1965, has a Master Degree in Law from the University of Perpignan (France) and holds the title of Docteur d'Etat en Droit. In 2002 he set up the Brahim Latrech Law Firm, specialised in maritime law.*

Brahim Latrech is member of the Association Française du Droit Maritime, of the Association Tunisienne du Droit Maritime and founder of the Revue du Droit Maritime Tunisien.