



Ship Arrest in Tunisia
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SHIP ARREST IN TUNISIA

A ship arrest in particular is not just a measure to secure the presence of the vessel at a later stage, where a judgement against the owner or the vessel is to be enforced through a forced sale of the vessel. An arrest can be the fastest, cheapest and most effective measure in obtaining voluntary payment of an outstanding claim against the vessel or the owner (as the case may be), provided that the measure of arrest – in a legal and commercial sense - is used correctly.

Achour Law Firm has significant experience in arresting vessels in all Tunisian ports: **Bizerte, Tunis, Sousse, Sfax, Zarzis & Gabes.**

In this article, you will discover how security for a maritime claim against a vessel owner can be obtained and the applicable procedure in Tunisia.

What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure in Tunisia?

The best option available to a party seeking to obtain security for a maritime claim against a shipowner is, certainly the arrest of the vessel.

Which international convention regarding the arrest of ships is in force in Tunisia?

Tunisia is neither a party to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships signed in Brussels on 10 May 1952, nor to the International Convention on the Arrest of Ships signed in Geneva on 12 March 1999. However, Tunisia attended the Diplomatic Conference on Arrest of Ships of 19 July 1999.

In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?

The arrest of vessels in Tunisia is governed by the Provisions 100 to 106 of the Maritime Trade Code. Generally, to arrest a vessel in the Tunisian jurisdiction, the claim must have a maritime character or be related to the vessel to be arrested.

Under Tunisian maritime law and according to article 100 of the Maritime Trade Code, a ship may be arrested pursuant to an ex parte request for an order of conservatory arrest for any claim, as long as the claim appears to be well founded in theory.

Under article 100 of the Maritime Trade Code, a vessel can be arrested in respect of a maritime claim, as follows:

][...[maritime claims, pretensions with a right or a claim having one of the following causes:

- Damage caused by any ship either in collision or otherwise;
- Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- Assistance and salvage;
- Agreement relating to the use or hire of any ship whether by a charter party or otherwise;
- Agreement relating to the carriage of goods in any ship whether by a charter party or otherwise;
- Loss of or damage to goods, including baggage carried in any ship;
- General average;
- Towage;
- Pilotage;
- Goods or materials wherever supplied to a ship for her operation or maintenance;
- Construction, repair or equipment of any ship or dock charges and dues;
- wages of masters, officers or crew;
- Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- Disputes as to the ownership or co-ownership of any ship;
- Disputes as to the exploitation or earnings of that ship;
- The mortgage or hypothecation of any ship and, generally, any claim that has its source in one of the causes that allow the application of limitation of responsibility of the owners or ship-owners.

Arrest of associated ships

Regarding the arrest of associated ships, pursuant to article 103 of the Maritime Trade Code, in the case of a charter vessel whose nautical management has been replaced and where the charterer alone is responsible for a maritime claim relating to that ship, the claimant may arrest such ship or any other belonging to the charterer. No other ship belonging to the shipowner can be arrested under such a claim. These provisions shall also apply to all cases where a person other than the owner holds a maritime claim.

WHAT ARE THE PROCEDURES TO ARREST A SHIP IN TUNISIA ?

There isn't any requested guaranty to be filed by the creditor. Otherwise, the arresting party does not have to provide security. The debtor can obtain the release of the arrest if it can provide a satisfactory guarantee to the arresting party.

The competent authority to order the arrest is the President of the Court (First instance) of the ship's port of call.

The procedure starts with submitting an arrest request to the President of the Court in whose jurisdiction the ship is located or is expected to arrive shortly.

This request can be filed any time of day, even during out-of-office hours or in the weekend. If it can be made clear to the judge that time is of the essence, the arrest can therefore be obtained immediately.

The request should contain the full style of the claimant and debtor, the grounds of the arrest and the amount of claim. The arrest order will be then be forwarded to a bailiff for enforcement.

In practice, an arrest means that the port authorities are informed and will not allow the ship to leave the port.

When granting the arrest, the court determines a time limit within which the creditor must file his claim in main proceedings (action on the merits) before the Court.

The documents needed to arrest a ship are those evidencing the claim (such as contracts, invoices, purchase orders/delivery duly signed by the Master, letters, etc.). Most Presidents of the Tribunals will not request a translation of these French documents. However, if supporting documents are in the English language an official translation is requested.

Who is responsible for the maintenance of the vessel while under arrest?

The bailiff in charge of the arrest of a ship will designate a person responsible for the surveillance of the vessel while under arrest. However, the shipowner and the OMMP are also responsible for the maintenance of the arrested vessel (article 21 of the Tunisian Maritime Trade Code).

Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Pursuant to article 104 of the Tunisian Maritime Trade Code, the arresting party must pursue the claim on its merits in the Tunisian courts that have jurisdiction to decide within 30 days of the arrest order. Otherwise, the arrest will be considered null and void.

What is the test for wrongful arrest?

Wrongful arrest would lie in the abuse of the right to arrest a vessel; absence of legitimacy, malice or the inappropriateness of the measure may constitute an abuse. In the event of such an abuse, the judge may award damages to the arrestee.

How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided?

In the event that the shipowner or charterer suffers a loss due to the arrest of the ship, such parties may apply for an emergency proceeding to request the release of the ship from arrest. Under the terms of article 105 of the Maritime Trade Code, at the request of the shipowner on a subsidiary basis, the judge may authorise the release of the ship subject to the issuance of a guarantee or security.

Pursuant to article 105 of the Tunisian Maritime Trade Code, the judge will decide as to the nature, extent and conditions of the guarantee if the parties do not agree. The guarantee or security will be deposited at the Fund for Deposits and Consignments. However, at the request of one of the parties it may also be deposited in the hands of a third party appointed for that purpose (in practice, often a bank). The judge who consents to such a request will state in his or her decision the conditions of such deposit. In the event that the third party refuses to accept such deposit, the sum will be deposited, without any new decision in this respect, at the Fund for Deposits and Consignments. Where the value of the guarantee cannot be determined immediately, the judge will invite the parties to appear before him with any evidence at a given date.

In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

It is up to the parties to determine the preferred/acceptable form of security. In practice, a bank guarantee, or a P&I letter of undertaking, are both acceptable.

However, if the parties disagree the form of security, the shipowner can provide only a bond or sufficient security (generally a bank guarantee) to ask the Court for the release of the vessel (Article 105 of the Tunisian Maritime Trade Code).

IMPORTANT FREQUENTLY ASKED QUESTIONS ON VESSEL ARREST IN TUNISIA

Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

Yes. The creditor of a charterer may arrest the vessel as long as he or she benefits from a maritime lien. Under Tunisian maritime law and pursuant to article 71 of the Tunisian Maritime Trade Code, the bunker supplier will have a maritime lien if it entered into a contact with the captain of the vessel in relation to the supply of bunkers ordered outside the vessel's home port.

Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

According to the Tunisian Maritime Trade Code, the arrest of a ship is subject to a specific legal regime, as a ship represents a specific type of property. Pursuant to article 71 of the Tunisian Maritime Trade Code, apart from ship arrest, a creditor can benefit from a maritime lien that can be executed on the freight, if the claim has become due during the transport and if its value is still in the hands of the captain or the owner's agent. In addition, the creditor can seek the arrest of the debtor's receivables.

Are orders for delivery up or preservation of evidence or property available?

No, not in their conventional form. Pursuant to the Tunisian Maritime Trade Code, the arrest of a ship is

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subject to a specific legal regime, as a ship represents a specific type of property. According to article 105 of the Tunisian Maritime Trade Code, the judge may either allow the operation of the arrested ship by the shipowner if he or she provided adequate guarantees, or adjust the management of the ship in a manner that he or she deems most useful for the duration of the arrest.

Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Yes. The arrest of a ship's bunkers is subject to the same legal regime as the arrest of the ship itself.

Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

The carrier may exercise lien over the cargo as per the Tunisian Maritime Trade Code. There is no specific provision in relation to a B/L marked as "freight prepaid" within the Maritime Trade Code.

However, in case of a claim for unpaid freight, where there is a prepaid B/L the Court would determine whether the freight was actually prepaid or not. On the other hand, the owner/demise charterer may exercise the lien over the cargo pursuant to general provisions under Tunisian law.

Lien over the cargo by the carrier may be exercised pursuant to Article 101 of the Tunisian Maritime Trade Code. Accordingly, the Carrier may exercise lien over the cargo for any and all claims arising from the freight contract / charterparty.

Abdelmonem Achour is a Tunisian maritime lawyer.

He specialises in both commercial and the litigation aspects of shipping, admiralty, marine insurance, transport, logistics, international trade and marine environmental law, as well as maritime casualty response and subrogated recoveries. He heads up the practice's Admiralty and Shipping department and is the Transport Headlight leader.

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