

SHIP ARREST IN CAMEROON

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- 1) **Governing Law:** The law governing ship arrest in Cameroon is the Merchant Marine Community code of 03/08/2001 (the code). The code was inspired chiefly by the International Convention of 1999 on the Arrest of Ships and the Brussels Convention of 1952 on the Unification of Certain Rules on the Arrest of Ships.

This code is a regional legislation applicable to the CEMAC (Communauté Economique et Monétaire de l'Afrique Centrale) sub-region comprising Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea and Tchad, with executive secretariat in Bangui.

- 2) **Definitions:** Ship arrest as a conservatory measure is arrest for security pending a substantive matter or the procurement of the executory formulae. It is the temporary immobilization of a ship by a claimant (presumed creditor) following a court order to that effect.

There is also ship arrest as an executory measure on the strength of a final judgment bearing an executory formulae (or decree absolute).

For the purpose of this paper however, "ship arrest" shall be interpreted to mean arrest as a conservatory measure within the letter and spirit of the International Convention Relating to the Arrest of Sea-going Ships of 1952 which provides in its article 1(2) that "Arrest means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment". Thus the topic "Ship Arrest in Cameroon" had better be reformulated to read "Ship arrest in Cameroon as a conservatory measure".

SHIP ARREST AS A CONSERVATORY MEASURE

- 3) **Object of arrest:** According to the code, the object of arrest shall either be:
 - the ship which caused the maritime claim to arise, or
 - a sister ship, meaning any other ship belonging to the person who was owner of the ship which caused the maritime claim to arise at the time the maritime claim arose. That is, if the ship which caused the maritime claim is not available (destroyed, sold out or missing in the high seas) any other ship belonging to the maritime debtor at the time of the arrest procedure would be arrested.

4) Exception

A ship belonging to a state, or exploited by a state, cannot be arrested if, at the time the maritime claim arose, it was doing exclusively a government (and not commercial) service.

What does the code mean by “state” in this sense?. Is it a limited definition to cover only CEMAC member states or a blanket definition to cover any entity (on the planet earth) having all the characteristics of a state within the spirit of constitutional law? Find the answer without the code as it is silent on the definition of “state” here.

5) Maritime nature of the debt.

The maritime debt which may give rise to ship arrest are those which, in accordance with the terms of the International Convention of 12/03/1999 on the conservatory arrest of ships, arise from one or more of the following causes:

- i) material or corporal damage, including loss of human life, on-shore or off-shore, caused by a ship or due to its exploitation;
- ii) assistance or rescue;
- iii) chartering contracts or contracts on the use of a ship;
- iv) contracts on the transport of goods by a ship;
- v) general average;
- vi) loss or damages to goods and luggage transported by a ship;
- vii) towing or piloting of a ship;
- viii) supply of products, materials or services to a ship in view of its exploitation or its maintenance;
- ix) construction, repairs, equipment of a ship or shipyard costs;
- x) salary of ship captain or crew;
- xi) expenses (pre-financed) of the captain, charterer, shipper or maritime agent made on behalf of the ship or its owner;
- xii) commissions of the agents of the ship;
- xiii) contested ownership of a ship;
- xiv) rights of co-ownership of a ship or rights to exploitation of a ship, or the proceeds of exploitation of a ship under co-ownership;
- xv) allowance or any remuneration due on the basis of any measure or attempt aiming at preventing, avoiding or limiting a damage attributable/imputable to a ship, including damage by pollution-by virtue (or not) of an international convention, a legislative or regulatory text, or a contract;
- xvi) costs and expenses incurred in the course of removing the remains of a ship or its cargo;
- xvii) any/all insurance premium(s) owing by a ship;
- xviii) any litigation resulting from the contract of sale of a ship.

The 1999 international convention is indeed very exhaustive with respect to the causes of maritime debts liable to give rise to ship arrest.

So far however, the following debt items, inter alia, have given rise to the arrest of ships in Cameroonian jurisdictions:

- i) premiums owing as a result of insurance contracts of ships;
- ii) supply of paint to ships;
- iii) delivery of various products such as petroleum and food items to ships;
- iv) supply of petrol, gas oil and advance payment to the owner of a ship;
- v) execution of a contract of representation and ship consignment;
- vi) claim by the crew of a ship who prove they had been abandoned by the captain without any protection, etc.

6) Jurisdiction

There are three sea ports (Douala, Kribi, Limbe) and one river port (Garoua) in Cameroon.

The competent courts in matters of ship arrest here is the “Tribunal de Première Instance” (in Douala Bonanjo, Kribi and Garoua) and the Court of First Instance (in Limbe). In spite of Cameroon’s relatively short coastline, there are one or two fishing ports such as Tiko and Idenau. A water vessel to be arrested in these ports should fall within the jurisdictional competence of the courts of first instance of Tiko and Buea respectively according to the theory of forum.

7) Procedure

Ship arrest in Cameroon is done by way of petition (“requête” in French or motion ex parte in English) to the president of the competent court who grants the same in the form of a court order (“Ordonnance” in French or Ruling in English) after seeking the opinion of the Competent Maritime Authority (the Department of Merchant Marine of the Ministry of Transport). The schedule to this petition are (of course) justifying documents, one of which shall be a notice to pay, addressed by the claimant to the debtor, which notice was either simply ignored or, the claimant was not satisfied with any reaction the debtor might have shown .

As soon as the maritime debt appears justified (if only in principle) the ruling is granted. In practice though, the opinion of the maritime authority (being of a consultative character) is not binding on the judge.

Petitions in view of ship arrest are filed on clear days (Mondays-Fridays) during working hours (7.30a.m.-3.30p.m or, so long as the private secretariat of the president of the competent court is open).

If allowed to move naturally (depending upon the number of petitions pending the president’s attention) it could take up to two weeks for the petition to be granted (or rejected). But if you see the private secretary (and talk sense) your petition would be put on top for the urgent attention of the president, who may also be interested in such a big file.

8) The arrest proper.

The arrest only stops the ship from moving. It does not temper with the rights of the owner.

The arrest is done in the hands of the captain of the ship via the services of a sheriff/bailiff who prepares a report thereof. A copy of this report is addressed to the commander of the port, the competent maritime authority, as well as the consul of the country of the flag state of the ship.

In this report the bailiff mentions the following details: the

- name, profession and residence of the creditor upon whose instruction he is acting; here the code assumes (not all too correctly though) the creditor would always be a physical person, as one only talks of “profession” with reference to a physical person.
- court decision authorizing the arrest;
- amount of claim justifying the arrest;
- date of the notice to pay (which preceded the petition);
- forum election done by the creditor in the competent jurisdiction, and in the place where the ship is berthed;
- name and address of owner of the ship;
- name, category, tonnage and nationality of the ship.

The report must equally have a statement and description of the launch, rigging and gear of the ship as well as its supplies and store rooms.

If the ship is flying the flag of a CEMAC member state, the arrest report is registered in the register kept by the competent maritime authority and in which the ship is immatriculated. This registration is required within seven days of the date of the report/arrest. But this deadline is increased to twenty days if the place of arrest and the place where the register of immatriculation is kept are not situated in the same CEMAC member state.

9) Effect of the arrest

The arrest is interpreted to mean “immobilisation of the ship at the port where it was found at the time of arrest”.

Indeed as soon as the competent maritime authority receives service of the ruling authorising the arrest, she issues an injunction prohibiting the ship to move. She also makes sure the injunction is enforced.

However the debtor may seek and obtain the authorisation of the president of the (same) competent court to make one or more specific voyages. Of course this authorization is only obtainable upon the (consultative) opinion (not binding on the president) of the competent maritime authority if the debtor provides sufficient guarantee. As the code has not defined “sufficient” in this context, the sufficiency of the guarantee lies in the breast of the (almighty) president. But we reasonably think “sufficient guarantee” here should be interpreted to mean “an amount of money in francs CFA (or its equivalent in stable foreign currency) equal to the quantum of maritime claim in question”.

According to the code, an application to be authorized to make one or more voyages upon the provision of sufficient guarantee may not (indeed never) be

interpreted to mean (i) acceptance of responsibility or (ii) denouncing the right to defence or (iii) denouncing the right to limit responsibility.

The president grants the authorization, and fixes the deadline within which the ship must berth back at the port of arrest. The president has the liberty to later modify this deadline to take account of circumstances, and as the case may be, authorize the ship to do more specific voyages. The code is silent as to the maximum duration of the specific voyage(s) a ship under arrest may be allowed to make.

If the ship does not return upon the expiry of the deadline (or final deadline) the sum of money deposited as guarantee is handed over to the creditor, the only exception being where the risk is covered by a current insurance policy.

Otherwise the owner of the arrested ship, or his representative, has a period of one month beginning from the date of service of the arrest report on the captain to apply to the court of summary proceedings by way of motion on notice for the cancellation of the ruling authorizing the arrest.

In Douala there are summary proceedings (référés in French) which have gone on and on for two months and more. Thus while the summary proceeding is pending, the owner of the arrested ship or his representative holds and keeps the right to apply to the (same) competent court to do one or more specific voyages under the conditions outlined above.

In the meantime the competent maritime authority plays the role of keeper of the ship and has only an obligation of means (not result) herein. We are of the opinion this renders the competent maritime authority irresponsible somehow.

This being ship arrest as a purely conservatory measure, the creditor has a period of one month, beginning from the date of service of the bailiff's report on the ship arrest for security, and under pain of nullity, to commence a substantive matter thereof or accomplish the formalities necessary for the obtention of the executory formulae.

It might happen that a ship arrest is wrongful, unjustified or fraudulent. In this event the owner of the ship (now released) has the right to sue in tort for damages and the courts in Cameroon would uphold his cause of action.

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