

## SHIP ARREST IN CAMEROON AND CENTRAL AFRICA-LEGAL PROCEDURE-COMPETENT COURTS-2016

Ship arrest is both governed in Cameroon & Central Africa by the CEMAC merchant code of 03 August 2001 revised in July 2012 and the Brussels convention of 1952 on the unification of certain rules on the arrest of ship.



### **I- Conditions to arrest a ship**

#### **A. Type of claims**

According to section 149 of the Cemar merchant Code, the maritime debts which may give rise to ship arrest are the same enumerated by section 1 of the Bruxelles convention:

- a) Loss or damages caused by exploitation of the vessel;
- b) Death or corporal injuries arising, onshore or offshore, in direct relation with the exploitation of the ship;
- c) Operations of rescue or assistance, as well as all contracts of rescue or assistance, including, as the case may be, for special indemnity concerning operations of rescue or assistance to a ship which, by itself or by its cargo, was running the risk of causing damage to the environment;
- d) Damages caused or likely to be caused by the ship to the environment, to the coast or to connected interests; measures taken to prevent, reduce or eliminate the damages; indemnity for these damages; cost of reasonable measures to repair which was effectively taken or to be taken;  
Losses suffered or likely to be suffered by third parties in relation to these damages; and damages, costs or losses of a similar nature to those which are indicated in this item d);
- e) Costs and expenses related to the retrieving, removing, recovery, destruction or neutralization of a sunk, wrecked, grounded or abandoned ship, including all what is found or was found on board the ship, and costs and expenses related to the conservation of an abandoned ship and the up keep of its crew;
- f) Every contract related to the use or hire of a ship by chartering or otherwise;
- g) Every contract related to the transportation of goods or passengers by ship, by chartering or otherwise;

- h) Losses or damages suffered by, or in relation to, goods, including luggages transported by the ship;
- i) General average; j) Towing or piloting of a ship;
- k) Goods, materials, supplies, oil-fuel tank, equipment's, including containers supplied or services rendered to the ship for its exploitation, its management, its conservation or its maintenance;
- l) Construction, reconstruction, repairs, transformation or equipment of a ship;
- m) Port, canal, dock (dry-dock), anchoring and inland waterways duties and fees;
- n) Wages and other sums of money payable to the captain, naval officers and other crew members, by virtue of their engagement on the ship, including repatriation fees and social insurance contributions payable on their behalf;
- o) Payments made on behalf of the ship or its owners;
- p) Insurance premiums, including annual insurance contributions, in relation to the ship, payable by the owner of the ship or by the charterer by devolution or on their behalf;
- q) Agency fees or brokerage commissions or other in relation to the ship, payable by the owner of the ship or by the charterer by devolution or on their behalf;
- r) Every dispute arising from the ownership or possession of a ship;
- s) Every dispute between the co-owners of a ship in relation to its exploitation or the right to the proceeds of exploitation of the ship;
- t) Mortgage or rights of a similar nature over a ship; u) every dispute arising from a contract of sale of a ship.
- u) Every clash arising from a contract of sale of a ship.

## **B. Conditions relating to the ship owner and the ship**

The CEMAC code indiscriminately states that, a ship can be arrested provided it is the ship to which the claim relates, or any other ship owned by the owner at the time when the claim arose.

### **1. The vessel/ship to which a claim is related, or arrest "in rem".**

According to the said code, an arrest order can be executed either on the vessel to which the claim relates, or any other vessel belonging to the owner at the time when the maritime claim originated, the vessel of the owner to which the claim emanates.

Thus, in terms of the CEMAC code and the Bruxelles convention, an action against a ship is an action in rem.

Also, an arrest can be executed even when ownership of the same vessel has been transferred by the initial owner. This simply necessitates that the debt to be recovered must be linked to the concerned vessel.

### **2. The ship-owners fleet to which the claim relates is the security of creditors.**

Article 144 (1) of the CEMAC Code provides that the creditor may arrest any vessel belonging to the owner at the time when the maritime claim arose, the ship owner which the claim relates, This provision highlights a cumulative application of the concepts, action in rem and in personam.

It suffice to state the Bruxelles convention which extends the maritime claim to <<all ships at the moment of the birth of the debt, even those inherited by the owner.

## **II- The rules of procedure**

The *stating* of the competent jurisdiction and the means of the arrest is prior to the presentation of the applicable measures of execution.

### **A. The method of arrest**

Pursuant to the provisions of Article 150 of the CEMAC Code, the proceedings are commenced by way of an application.

Prior to the filing of the application, it is imperative to request the approval of the competent maritime authority, which in Cameroon is the Minister of Transport based in Yaoundé.

### **B. The competent courts**

The competent judge in Cameroon is the President of the Court of First Instance, with the emphasis that this country has three ports including the Kribi in the South region, Douala in the Littoral region and Limbe in the South West region.



Further, the creditor has a deadline of one month from the execution of the arrest order to initiate proceedings on the merits in order to obtain a writ of execution. To this end, the creditor may apply to the High Court of the place of seaport.

In the event where there exist an arbitration clause or a court chosen by the parties to the contract it is mandatory for them to seize the chosen jurisdiction.

## **III- The measures of execution**

The measures are carried by a sheriff bailiff (1) with the assistance of the Maritime Authority (2).

### **A- The Sheriff bailiff**

The arrest is executed by the sheriff bailiff by way of bailiff's report which is notified to the captain of the ship, the port authority and the maritime authority.

### **B- The Maritime Authority**

There is a constituted ship guard against remuneration; the maritime authority upon receipt of the bailiff's act makes an order to prohibit the sail.

From the moment the arrest order is executed, the creditor is required to fulfill certain formalities for the grant of an enforcement order for the sale of certain ship. Bien assuming or debtor has not deposited a bond or letter of guarantee.

Of course in this stage of the proceeding, the debtor has not deposited a caution or a letter of guarantee.

The sale in terms of pecuniary value will be evaluated separately.

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ship arrest according to CEMAC LAW