



Workshop: ship arrest in the Netherlands

10 October 2025

Topics:

- Theory
- Arrest procedure
- Some characteristics of a ship arrest
- 'Sailing' arrest

Theory

- Is there a claim?
- Who is the debtor of that claim?
- Does a treaty, statute, or agreement create a right of recourse on the debtor's assets?
- Does a treaty, statute, or agreement create a right of recourse on the assets of someone other than the debtor?

Is there a claim?

- **A proprietary legal relationship between parties**

Who is the debtor of that claim?

- **Contract: the contractual debtor**
- **Non-contractual: the person liable for the wrongful act**
- **Collision: liability channelled to the Registered Owner**

Does a treaty, statute, or agreement create a right of recourse on the debtor's assets?

- Right of recourse on the debtor's property (article 3:276 Civil Code)
- Statutes/International law or (contractual) agreements may limit this:
 - Dutch law: necessary bed, linen and clothing of the debtor and members of his household (article 447 Code of Civil Procedure)
 - International law: State-Owned Vessels (article 6 of the 1926 Convention on the Immunity of State-Owned Vessels and article 8 of the 1952 Convention on the Arrest of Sea-Going Ships)
 - International law: 'maritime claims' (article 2 of the 1952 Convention on the Arrest of Sea-Going Ships)

Does a treaty, statute, or agreement create a right of recourse on the assets of someone other than the debtor?

- **Recourse may also exist against the assets of a third party**
- **Dutch law contains provisions granting such rights of recourse on a vessel, even if the vessel no longer belongs to the debtor (i.r.o. inland shipping articles 8:220–229 Civil Code).**

Arrest procedure phase 1: preparing and filing a petition

- Content arrest petition (article 278 Code of Civil Procedure and court syllabus i.r.o. attachments)
- Competent court for filing an arrest petition (article 728 Code of Civil Procedure)

“The preliminary relief judge of the court in the jurisdiction where the ship is expected to arrive and the preliminary relief judge of the court in Rotterdam are also authorized to grant leave to impose a prejudgment attachment on ships.”

Arrest procedure phase 2: execution of the arrest

- **Arrest in the weekend?**
- **Should the bailiff board the vessel (article 564 Code of Civil Procedure)?**

Arrest procedure phase 3: lifting the arrest

- Voluntarily (e.g. when the creditor lifts the arrest or the debt is paid) or upon provision of sufficient security (article 6:51 sub 2 Dutch Civil Code)
- Summary proceedings or in 'ordinary' proceedings
- Grounds for lifting the arrest (article 705 sub 2 Code of Civil Procedure, non-exhaustive)
 - Failure to adhere to procedural rules
 - Prima facie invalidity of the claim (e.g. no claim or the wrong party)
 - The arrest is unnecessary (e.g. security already provided)
 - Failure to present all facts truthfully (article 21 Dutch Code of Civil Procedure)
 - Balance of interests of the parties (not one of the grounds mentioned in article 705 sub 2 Code of Civil Procedure)

Some characteristics of a ship arrest

- **Ship expected in port (article 728 Code of Civil Procedure)**
- **Liability for Wrongful Arrest**
- **Criminal Liability (article 198 Penal Code)**

‘Sailing’ arrest

- **The vessel is allowed to continue trading**
- **It appears unknown in other jurisdictions**
- **Request a ‘sailing’ arrest in a petition to arrest a vessel**
- **Convert a ‘regular’ arrest into a ‘sailing’ arrest**
- **Convert a ‘sailing’ arrest into a ‘regular’ arrest**
- **To enforce a ‘sailing’ arrest upon the creditor in summary proceedings**
- **Balancing the interests of the parties (based on the facts and circumstances)**
 - **The creditor’s interest in maintaining the vessel as security for recovery purposes.**
 - **The debtor’s interest in continuing trading operations, to avoid a disproportionate loss.**



• **Vragen / Discussie?**

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**Bedankt voor
uw aandacht**

