

# Ship arrests in the Netherlands



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The Netherlands is a relatively easy jurisdiction in which to arrest, but the arrestor must ensure that he is arresting assets from his actual debtor in order to avoid facing a wrongful arrest counterclaim. Once an arrest has taken place, a Club letter is usually considered as sufficient security, however the Rotterdam Guarantee Form 2008 may also be accepted.

The Netherlands has always been considered as a favourable jurisdiction in which to arrest ships.

The below article considers the current position and some recent developments.

The Netherlands is a party to the Arrest Convention 1952 and stipulates that when a ship flies under the flag of one of the Contracting States, the claim of the creditor must qualify as a 'maritime claim'.

Under the Convention, the following claims can be considered as maritime claims:

- Costs incurred in respect of a ship's sale and of the goods carried on-board, as well as costs incurred in connection with wreck removal
- In the event of a ship arrest, the costs incurred to preserve the ship
- Claims in respect of crew contracts of employment
- Cost and claims in respect of salvage and GA contributions
- Port fees and associated costs to ensure the safety of the port and third parties
- Claims brought under Bills of Lading
- Claims against the owners as a result of collisions, death or injury, damage to goods and/or objects
- Lien on cargo from claims resulting from salvage and/or GA contributions

When a ship is not flying under the flag of one of the Contracting States of the Convention, the creditor can arrest the ship regardless of the nature of the claim (that is, it is not necessary that the claim is regarded as a maritime claim).

## Points to consider when arresting in the Netherlands

In practice, it is fairly easy to arrest a ship in the Netherlands and to obtain security. The courts of the port where the ship will call will have jurisdiction to deal with the arrest petition. It is also possible to file a petition in the jurisdiction of the port where a ship is

due to arrive. This means that it is possible to obtain leave to arrest days/weeks/months before the ship actually arrives in port. When filing the arrest petition, the arrestor needs to be certain that the assets that will be arrested are owned by his debtor. In the event the counterparty whose assets have been arrested is successful in proving wrongful arrest (for example, he is not the debtor of the claim) then the arrestor is strictly liable for the consequences of the arrest if the claim for which the arrest was made is found to be completely unfounded.<sup>1</sup> However, if the claim for which the arrest was made is partially awarded, this does not mean that the arrest was wrongful.

## The petition

Arrest applications are made ex parte and no evidence is required when making the application. Since 2011, under the Dutch arrest regime certain conditions must be satisfied before a judge will grant leave to arrest. Further updates to the arrest regime were made in January 2013, stating that an arrest petition must include:

1. The nature of the dispute
2. The basis on which the claim is brought
3. The claim amount
4. A description of the ship and whether it is a seagoing or inland ship-reference must be made to the ship's flag state and whether that flag state is party to the Arrest Convention 1952 and, if so, why the claim is considered to be a 'maritime claim'
5. An application to determine quantum
6. Disclosure of other pending cases in different jurisdictions in respect of the same claim

<sup>1</sup> Dutch Supreme Court, 5 December 2003, NJ 2004, 150



#### **Security amount**

When a claimant files a petition, it is the practice in the Netherlands to ask for an uplift of around 30% on the principal claim amount to cover costs and interest. The Dutch courts maintain a system for the security amount that will be granted that depends on the principal claim amount.

#### **What to do once an arrest has been made**

Pursuant to article 705 (2) of the Dutch Civil Code (DCC), an arrest must be lifted against "sufficient security". According to the DCC, sufficient security is a form of security that covers the claim, interest and costs, and should allow the creditor to obtain the money without too much trouble. There are several types of securities that can be offered when a ship is arrested in the Netherlands.

#### **Rotterdam Guarantee Form 2008**

This form is considered as acceptable security and should therefore keep discussions concerning the wording of the form to a minimal. A point that may cause discussion is whether the words "is no longer subject to appeal" should be included or not. The judgments rendered are usually declared "provisionally enforceable", which means that the judgment can be enforced regardless of whether the judgment is still appealable.

#### **Club letter**

It may happen that a Club letter is rejected as not being sufficient security, but case law relating to this issue appears to stipulate that Club letters from IG P&I Clubs that have reinsurance in place with well-established insurers are considered as sufficient security.

