

# Concurrent claimant contesting an Arrest of the ship

*Based on the ruling of 27 May 2010*

- 1) The origin of the claim : basis of the arrest
- 2) Contestation of the arrest

---

## 1) The origin of the claim: basis of the arrest

According to Article 2 of the [Brussels Convention of 10 May 1952 on the arrest of sea-going ships](#) applicable between Contracting States, « *A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim* ».

Under its Article 1, a maritime claim « *means a claim arising out of one or more of the following: [...] (o) disputes as to the title to or ownership of any ship* ». For such a claim and in accordance with Article 3 of the Convention, the only vessel which could be arrested is the one concerned by the claim/debt.

Once a claimant invokes such a claim, the judge has to verify if the claim has one of the causes listed in the Convention without having to check the seriousness and the certainty of the claim.

In the ruling of May 27th, 2010, the Court of Appeal came to specify that a claimed debt is a maritime one concerning the ship seized in the hands of his current owner since the liquidators of a company indicates that it is the company itself which has paid sums to acquire it. This claim is a maritime one because it is concerning the claim of the ship and not the sums spent for its acquisition. In the reported ruling, the debt was not a maritime one, in fact there was no direct link with the ship and thus it cannot be the basis of an arrest.

## 2) Contestation of the arrest

Article 4 of the foregoing Convention states « *A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made* ». The word “arrest” means the immobilization of a ship with the authorization of the competent judicial authority for guarantee of a maritime claim. Its Article 6 adds « *the rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.* ».

In France, according to article 29 of [decree of October 27th, 1967](#), the arrest of the ship is authorized by ordinance issued by the President of the Commercial Tribunal or by the trial Judge. [Article 496 of the Code of Civil Procedure](#) indicates that when a claimant asks for an arrest of a ship, if his request is refused, he can appeal within 15 days; if his request is accepted, concerned persons can contest it to the foregoing judge.