

A closer look at ship arrests in South Africa: more than just association



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South Africa continues to be a popular jurisdiction for maritime creditors to obtain security for claims.

This is primarily as a result of the well-known associated ship arrest, which allows a creditor to go beyond the traditional sister ship arrest by piercing the corporate veil of one-ship companies.

The purpose is to find a common beneficial owner or controller of a fleet of ships that may be susceptible to arrest. The term 'control' relates to overall control, as is exercisable by a majority shareholder of the assets or the power to control destiny of the shipowning companies.

Although the associated ship arrest is a key component of South Africa's arrest regime, there are a number of other aspects that contribute to its potency:

- Creditors have the freedom to arrest property in South Africa as security only for a claim that is subject to arbitration or court proceedings elsewhere
- It is not necessary for the claimant to have commenced the claim already; proceedings may merely be contemplated
- It is not necessary for the claimant to put up counter-security as a precondition for commencing arrest proceedings
- A claimant is free to arrest any property owned by the defendant within the jurisdiction of the South African court for providing security for foreign proceedings

- The associated ship provisions may be utilised to arrest ships as security for claims not only against shipowners but also against charterers - a claimant may look behind the confines of the owning entities of the ships in question until a common owner or controller is found
- For claims against charterers, associated ships and bunkers may be arrested to secure, for example, unpaid hire and early redelivery claims
- A subsequent setting aside of the arrest does not result in an automatic damages claim
- Arrested property may be released against the provision of a P&I Club letter, a bank guarantee or an escrow arrangement

This summary is by no means a complete exposition of the law and procedure of the arrest regime in South Africa, but serves to highlight its liberal nature and the possibilities open to creditors in the current distressed market.