

SHIP ARREST IN POLAND

By Bartosz Biechowski*
Attorney-at-law, Maritime and Commercial Law Office
bartosz@biechowski.com
www.biechowski.com
ul. Swietojanska 118/9, 81-388, Gdynia, Poland
Tel: + 48 50 462 89 29
Fax: + 48 58 661 33 38



1. Please give an overview of ship arrest practice in your country.

Under Polish law, to arrest a vessel you need a decision of the court (court order). Such order is given in accordance with provisions of the Polish Civil Procedure Code (PCPC) on securing claims (art. 730-757). These provisions do not apply only to vessels but also to any other types of claims - both pecuniary and non-pecuniary.

Under the art. 730 (1) of the PCPC the security order will be granted to a creditor:

- whose claim is probable (you do not have to prove your claim at this stage of proceedings),
- who has legal interest in the arrest.

Legal interest means the situation in which (1) lack of security makes it impossible to satisfy creditor's claim or (2) satisfaction of this claim is connected with serious difficulties. These circumstances should be probable but you do not have to prove them.

Arrest orders are enforced by bailiffs who prior to seizure of the vessel should inform maritime authorities and Border Guard about the arrest.

2. Which International Convention applies to arrest of ships in your country?

International Convention Relating to the Arrest of Sea-Going Ships of 10th May 1952 (Brussels Convention). The Brussels Convention is an integral part of Polish law and is applied directly.

3. Is there any other way to arrest a ship in your jurisdiction?

Maritime authorities may detain a vessel for up to 72 hours (on Sundays and public holidays this time does not run) to secure claims for outstanding port fees, claims for damages in port facilities, docks or sailing routes and claims arising from environmental pollution.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

If a vessel is entered into the Polish register this is possible to encumber it with compulsory mortgage. In practice this is used mainly for securing creditors' claims on vessels under construction.

5. For which types of claims can you arrest a ship?

Vessels flying flag of member states of the Brussels Convention can be arrested only for maritime claims listed in art. 1.1 of this convention. Other vessels can be arrested also for other claims.

6. Can you arrest a ship irrespectively of her flag?

Yes, this is possible.

7. Can you arrest a ship irrespectively of the debtor?

Yes (excluding warships and other vessels in state service).

8. What is the position as regards sister ships and ships in associated ownership?

As under the article 3.1. of the Brussels Convention.

9. What is the position as regards Bareboat and Time-Chartered vessels?

As under the article 3.4 of the Brussels Convention.

10. Do your Courts require counter-security in order to arrest a ship?

The court may require payment of deposit to satisfy potential claims of the debtor connected with wrongful arrest. This is, however, quite a rare situation.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The procedure is the same.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Poland is a party to Brussels convention on maritime liens and mortgages of 1926. Polish Maritime Code also contains provisions concerning maritime liens.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

About 3-4 days (much depends on the judge).

14. Do you need to provide a POA or any other documents of the claim to the Court?

We need POA and documents which prove that the person(s) who signed the POA is (are) duly authorised to represent the company (extract from commercial registers, etc.) We also need documents which show that claim is probable (we do not have to prove the claim in this stage of proceeding). Certified translations to Polish are necessary in all cases.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All documents should be filed in the Court in paper version – scans and copies are acceptable provided they are certified as “true copy” by the attorney-at-law (legal adviser or advocate). Additional legalisation, notarisation or apostille may (but does not have to) be necessary for claims listed in art. 1 para 1 letters “o”, “p”, “q” and with respect to maritime liens (actions in rem).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

As under the art. 7.1 of the Brussels Convention. Moreover, careful examination of other sources of law is recommended (the PCPC and Council Regulation 44/2001 in the first instance).

17. What is the procedure to release a ship from arrest?

The ship may be released in following cases:

- when the arrest is successfully contested (see question 22).
- when the cash security is given by a debtor (see questions 18 & 22).
- when the arrest collapses (see question 23 & 24),
- when the creditor agrees for the release (see question 20).

18. What type of security needs to be placed for the release?

The fastest way to release the vessel is to pay full amount determined in the arrest order into court deposit bank account. In such case, the arrest collapses automatically. The main disadvantage of this procedure is that this money will have to stay in the deposit account until the proceedings as to the merits of the case are finished in final and legally binding way. Another disadvantage is that the cash deposit must be paid in Polish Zloties.

However, the debtor may at any time try to negotiate with the creditor in order to change the type of security (e.g. cash deposit for bank guarantee etc.). See also question 22 in fine.

19. Does security need to cover interest and costs?

Under Polish law, it is possible to secure future costs of proceedings and interest but it is not obligatory - only creditor decides whether to do so or not. Anyway, security given by the debtor has to be in an amount corresponding with the amount determined in the arrest order issued by the court. So, if the arrest order includes costs of proceedings and interest, these costs will also have to be secured.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Under Polish law, the court will automatically release the vessel ONLY when the full amount determined in the arrest order is paid into the court deposit bank account. But still, maintaining or lifting the arrest is creditor's sole decision. So, if the creditor accepts the bank guarantee, insurance guarantee, P&I LOU etc. as the sufficient security of its claim instead of the cash deposit, there should be no problem with releasing the vessel on this basis.

21. How long does it take to release the ship?

Depends on the case - usually from two days to one week.

22. Is there a procedure to contest the arrest?

Under Polish law, it is possible to lodge a complaint against an unjust arrest. It should be done within 7 days as from the date of the arrest of the vessel. The main disadvantage of this procedure is that it is quite time - consuming - the case has to be re-examined by the court of the higher instance which may take about three months. However, if the debtor has time (for example if a vessel is arrested in a shipyard), lodging such complaint is recommended.

ATTENTION: If you pay full amount determined in the arrest order into the court deposit account, your complaint will be dismissed (where there is no arrest anymore, there are no grounds to lodge a complain). However, if the debtor is trying to negotiate other type of security - i.e. bank guarantee, insurance guarantee or P&I LOU, it does not prevent the debtor from lodging such complaint and does not itself lead to dismissal of the complaint.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Up to 14 days. Otherwise the arrest collapses (see also art. 3.3 of the Brussels Convention).

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Debtor can lodge a complaint against the security order. If the court allows the complaint, the debtor may claim for compensation for its losses connected with the arrest. The same relates to situation when the arrest collapses – for example (1) if the action as to the merits is not commenced in prescribed time, (2) the writ of summons is returned or rejected for formal reasons or (3) the claim is dismissed.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No. Generally, no forced sale of the vessel in Poland is recommended. This is too complex and takes too much time.

*Bartosz Biechowski, attorney-at-law, owner of the Maritime & Commercial Law Office in Gdynia, rendering tailor-made services to customers worldwide. Born on 19th March 1977 in Gdynia, Poland. Graduated from the Faculty of Law of the University of Gdansk and Postgraduate Study of Intellectual Property Law of the Uniwersytety of Warsaw.

In his professional career, Mr. Biechowski represents both individual clients and large companies. With maritime law as his main area of interest and expertise, he specialises mostly in arrests and release of vessels as well as claims for personal injuries at sea, claims related to damages to cargo, H&M claims and any other types of maritime claims. In addition to this Mr. Biechowski deals also with company law, international trade law as well as intellectual property law.

Mr. Biechowski has vast experience in international business environment and speaks fluently English as well as some Russian and French.