

## SHIP ARREST IN UKRAINE (QUESTIONS 1 TO 9)

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

Initial ship arrest in Ukraine is fast, simple and inexpensive. In order to start the arrest procedure one needs to file the application on arrest as preliminary measures to the local commercial court under the Ukrainian commercial procedural code. Usual term of considering the application is 2 working days, weekend excluded. Ordinary base of the demand is maritime claim. Normal period of the arrest: 30 days, until the claim on the merits will be filed to the relevant court/arbitration (from time to time it is better to file the claim on the merits to the same court in Ukraine in spite of Arbitration clause).

The practice of ship arrest is rather wide, more than 20 arrests per year, especially in the ports of Big Odessa (Odessa, Chernomorsk, and Yuzhny).

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

The International Convention for the Unification of Certain Rules Relating to the Arrest of a-Going Ships (Brussels, May 10, 1952) is the basic Convention. Also Ukraine adhered to the International Convention on Maritime Liens and Mortgages 1993 on 22 November 2002.

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

There are many ways to arrest a ship in a Ukrainian port. As a rule vessels are arrested in Ukraine by means of:

- a. preliminary arrest in security of a maritime claim pursuant to the order of the Court/ Commercial court;
- b. arrest within the frame of enforcement of Court or arbitration award in accordance with national legislation;
- c. arrest of a ship under a criminal matter.

Commercial courts and courts of general jurisdiction are the state courts which exercise jurisdiction over maritime disputes. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine is a domestic arbitral institution with a panel of arbitrators specializing in maritime arbitration.

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

These measures are similar to saisie conservatoire or freezing order.

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

In Ukraine the ship, being the debtor's property, can be arrested regardless whether claims are maritime or not. Nevertheless, according to the maritime law of Ukraine the vessel may be arrested only upon at least one of the following conditions:

- (i) a claim referred to the category of privileged claims, particularly:
  - claims arising out of labour relations, claims for recovering damage inflicted by injury, other impairment of health or death;
  - claims arising out of nuclear damage and maritime environment pollution as well as elimination of said pollution consequences;
  - claims regarding port and channel dues;
  - claims regarding salvage and payment of general average contribution;
  - claims for reimbursement of losses resulting from collision of vessels or from other sea casualty, or from damage to port facilities and other property located in the port as well as to navigational aids;
  - claims for reimbursement of losses related to cargo or baggage;
- (ii) a claim based upon the vessel's registered mortgage;
- (iii) claim referring to the rights of ownership or possession of a vessel;

- (iv) a claim not indicated herein above and referring to the person that is the vessel owner by the moment of origination of the said claim and is responsible for this claim by the moment of starting a procedure connected with vessel's arrest;
- (v) charterer of the vessel on bareboat charter is liable for the said claim and is the vessel's bareboat charterer or her owner by the moment of starting a procedure connected with vessel's arrest.

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

It is possible to arrest a ship irrespective of her flag in Ukraine.

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

Ukrainian legislation recognizes jurisdiction in personam and does not support the action in rem, therefore it is impossible to bring a suit in rem against the vessel to satisfy debts arising from the operation or use of the vessel, by the person other than the owner.

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

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the proprietor/owner of the vessel to which the said claim has arisen.

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

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the charterer of her on bareboat, time or voyage charter basis. The exceptions to this rule are claims with regard to ownership or possession of vessels

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## SHIP ARREST IN UKRAINE (10 TO 26)

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

In the civil proceedings the court is obliged to apply the counter-security if (i) the claimant is nonresident and does not have property, located on the territory of Ukraine in an amount sufficient to compensate for the defendant's possible damages that may be caused by arrest of a ship in the event of refusal of the claim; (ii) the court was provided with evidence that the claimant's financial status or his actions to dispose of the property or other actions may complicate or make it impossible to execute the court's decision to pay damages to the defendant, which may be caused by arrest of a ship in the event of refusal of the claim.

In all other cases, counter-security may be applied either at the request of the defendant or on the court's own initiative. The claimant shall pay counter-security within 10 days from the date of court order in respect of counter-security, otherwise the arrest of a ship will be cancelled. However, the better evidences are arranged and presented with the claim to the court the more chances to avoid the application of counter-security.

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

There is no procedural difference in respect to arresting a ship for maritime claim and a maritime lien.

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

Yes, Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993) on 22.11.2002.

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

Two-three business days will be required in order to arrest a ship.

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

No, we do not need a POA, Ukrainian advocates may represent claimant's interests in a court and the State Enforcement Service of Ukraine (bailiff service) on basis of an Advocate's Warrant (however the advocate shall keep the Legal Agreement between the advocate and the Client in original) . We need all documents relating to the claim, which are in possession of the claimant, - the presence of the written evidences may help to avoid a payment of counter-security to the Court.

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

The Court may require an original or its notarized and legalized copy of any document the plaintiff referred to in his claim. It is worth noting that Courts very formalize the issue of acceptance of evidences. Written evidences are welcomed. Electronic evidence shall be submitted in the original or in an electronic copy certified by electronic digital signature or in hard copy, certified, as well as written evidence.

We recommend preparing most important written evidences (contracts, BLs, charter parties, survey reports etc.) in original or its notarized and legalized (apostilled) copies. Other copies can be certified by the claimant's corporate seal and by signature of authorized officer. In case your Ukrainian advocate received a document in original he may hold the original in his office and the certified copy that is arranged by him will be served to the court, including electronically by using own electronic digital signature.

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

Yes. Unless a forum had been chosen by parties to consider the substantive claim in a foreign jurisdiction, the case may proceed on its merits in Ukraine as per the Art 7 of the Ship Arrest Convention (1952), and in some cases when domestic law otherwise gives the local Court jurisdiction, e.g.:

- (a) any claims if one of defendants is domiciled in Ukraine;
- (b) claims to a nonresident defendant in Ukraine may be filed at the place of his property location;
- (c) claims arising out of employment contract with ship's crew if a claimant is domiciled in Ukraine;
- (d) claims arising out of loss of life or personal injury to a person who is domiciled in Ukraine or in case the accident took place in Ukraine;
- (e) claims arising out of damage caused in Ukraine to property of private persons or legal entities during the operation of a ship;
- (f) claims arising out of any contract which specified a place of its execution or has to be executed in Ukraine only.
- (g) claims arising out of damage, caused in Ukraine.

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

There are two options:

- a court, which arrested a ship may lift the arrest itself;
- a court of appeals may dismiss an order of arrest that was issued by a court of first instance.

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

Best security that would be accepted by Ukrainian courts is a bank guarantee issued by a Ukrainian bank. It is also possible to propose to a court a deposit arranged with a Ukrainian bank or real estate property that is situated on the territory of Ukraine.

19. Does security need to cover interest and costs?

Ukrainian courts require that a security covers all amount demanded by claimant in his statement of claim submitted to the court.

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

No, Ukrainian courts do not accept LOU of P&I Clubs.

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

In case of option (i) mentioned in para 17 above: 2 days, if bank guarantee or a deposit has been provided to the court, and 5 days in all other cases. In case of option (ii) mentioned in para 17 above: 40-60 days.

22. Is there a procedure to contest the arrest?

Yes, you may write a reasoned petition to judge who arrested a vessel, or you may appeal his decision to court of appeals within 10 days.

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

The claimants must commence the legal actions on the merits in any jurisdiction (as well as arbitration) within 30 days from the day of the arrest of a ship by court and provide the court with appropriate evidence of such actions during this period; otherwise the arrest will be canceled.

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

Yes, Ukrainian Courts on request of defendant acknowledge a wrongful arrest in case of:

- (a) The claimant's lawsuit on the merits was left without consideration (except for certain cases established by law).

(b) The proceeding in respect of claimant's lawsuit on the merits was closed (except for certain cases established by law).

(c) The claimant fails fully or partially in his legal actions on the merits.

In case a wrongful arrest is acknowledged defendant or another person whose rights or legally protected interests were violated by such arrest of the ship may claim to an initiator of arrest to cover all losses and damages incurred.

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

No, Ukrainian Courts do not acknowledge the pierce and lift of the corporate veil. The basic principle of civil law is that a shareholder or director/officers of a legal entity could not be held liable for any debts or liabilities of the corporation.

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

No. A vessel's auction will take place only after the end of Court proceeding as an enforcement of the final Court judgment entered into force.

*\*Vagif is a Head of the firm's Shipping, International Trade and Insurance arm. Vagif has been involved in a wide range of both dry and wet shipping disputes on the side of P&I Clubs and Owners. His broad experience in dry shipping includes charterparty, Bill of Lading, ship building, and he also has experience of handling claims in the wet side: collision, general average, personal injury/loss of life and pollution. Vagif is attorney at law, member of Odessa Bar Association, Ukrainian National Bar Association and International Bar Association. Before practice of law his career includes 7 years in insurance sector starting from executive officer to chairman of the Board of Ostra Insurance company. He graduated the faculty of law (LLB) of Mechnikov's Odessa National University in Odessa, Ukraine; the faculty of psychology (LLM) of the International Academy for Psychology in Sant-Petersburg, Russia.*