

SHIP ARREST IN CROATIA



By Miroljub Macesic*
Law Offices Macesic & Partners
macesic@macesic.hr
Pod kastelom 4,
51000 Rijeka, Croatia
Tel: +385 51 215 010
Fax: +385 51 215 030

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

According to Croatian law the arrest of ships is one of the "interim measures of security of a claim" that ensures future collection of the outstanding debt that is in dispute.

Apart from the arrest of ships other interim measures of security of a claim on ships are possible, but in practice are very rare.

The objective of the arrest of a ship is to make available to the creditor assets of the debtor for future enforcement. Therefore, arrested ships may be released if another security is given as replacement. The other security may be a monetary deposit, bank guarantee, P & I Club or other corporate letter of undertaking or other values that are available for enforcement if accepted by the creditor. If the creditor does not accept the offered security, the acceptability of the offered security will be decided by the court. Monetary deposits and bank guarantees are always accepted, while P&I Clubs/corporate letters of undertaking and other values on a cases to case basis.

Because of various issues with international elements, and in particular the applicability of foreign laws, that are involved in the arrest of ships there are sometimes inconsistencies in the interpretation of the rules of law and in-court practice. However, such cases are exemptions, and it may be said that it is possible to obtain the arrest of a ship or obtain the release of an arrested ship in accordance with accepted international standards.

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

Croatia has adopted the continental legal system. It is a member-state of the Arrest Convention 1952. The Enforcement Act applies as a subsidiary source of rules of law, to the Maritime Code that regulates arrest of ship proceedings. There is a significant court practice and number of books and articles that deal with various relevant issues with regard to the arrest of ships. Maritime Code applies. Maritime Code Amendments is few provisions slightly differ from the Convention.

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

No, there is no other way to arrest a ship with the purpose of security of the claim. According to the Paris Memorandum the Harbor Master Office Inspectors, exercising Port State Control authorities, can order the detention of a ship. The Custom authorities and the Criminal Court can hold the ship in temporary seizure for customs clearance or criminal proceedings purposes, but in practice very rarely and under very restricted terms.

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

Not in the sense of these alternatives and as these alternatives are known internationally. However, the Maritime Code provides that every interim measure that would achieve the objective of security of a particular claim may be granted. In other words, subject to the nature of the claim, various injunctions with regard to the ship are possible, but rare in practice.

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

A ship can be arrested for:

- maritime claims as provided by Art. 1 of the Convention; apart from bottomry and ownership claims, that are not provided in the Maritime Code, when Convention is not applicable,
- maritime liens as maritime privileges (separately provided in the Maritime Code),
- claims secured with mortgage, pledge or other similar registered encumbrances on the ship

according to the laws of flag (separately provided in the Maritime Code).
For all other claims notwithstanding to the nature, if there is no reciprocity between Croatia and the state of flag.

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

Yes, there are no limitations for the arrest of ships with regard to the flag of the ship. The Flag of ship affects to the applicability of the Convention or the Maritime Code, the existence of maritime privileges and registered encumbrances. It also possibly affects some other underlining issues subject to particular matters.

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

For maritime privileges and registered encumbrances, yes.

For maritime claims depends. The main principle, of the Maritime Code as regard to the relation of the debtor and the arrested ship, is that the arrested ship as an asset is the property of the debtor. The assets that are not the property of the debtor are not suitable to be the object of the enforcement. Consequently such ship is not suitable for arrest. In Croatia there is no "in rem" proceedings. The Maritime Code since the Amendments of 2004 varies in relation to the respective provision to the Convention, and according to the 2004 Amendments it is not possible to arrest the ship irrespectively to the debtor. The debtor must be the registered owner of the ship. In the case of the direct applicability of the Convention, the answer is yes, as it is provided in the Convention.

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

Sister ship and ship in associated ownerships may be arrested although in these cases the Maritime Code also slightly varies to the Convention.

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

According to the Maritime Code ships in Bareboat or Time Charter cannot be arrested, unless they are in the ownership of the debtor. In this regard the Maritime Code also varies from the Convention.

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

No, the Courts do not require a counter-security in order to arrest a ship.

However, the ship's interests may apply for counter-security in case of wrongful arrest as condition for maintenance of already ordered arrest. If the application is accepted and the counter-security is not placed within the ordered time period, the arrest will be lifted and the arrested ship released.

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

No, from the procedural point of view there is no difference.

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

Yes, Maritime Code defines maritime liens as maritime privileges. Provisions on maritime liens of the Maritime Code correspond to the International Convention on Maritime Liens and Mortgages, Geneva 1993. Croatia has not ratified any convention relating to maritime liens. However, since Maritime Code provides that a ship may be arrested for maritime liens and since according to the conflict of law rules the law of flag applies to maritime liens, a ship can be arrested for 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?

In principal several hours are needed for the preparation of the application, translation of supporting documents by a licensed court interpreter (one is part of our office staff) and to file the application for arrest with the Court. The Court will check with the Harbor Master Office the expected time of sailing and will decide on the application urgently before sailing, if in pressure of time. Arrest matters are always considered urgent and in most cases the Court will decide within one or two days. The ship is arrested when the Harbor Master Office serves the Master with the arrest order and takes away the Ship's documents which remain in custody of Harbor Master Office during the arrest.

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

Yes, the POA is a mandatory requirement of the arrest proceeding. For the arrest application a faxed or e-mailed copy is sufficient, while the original must be submitted to the Court within few days. No special form or legalization is required to grant a POA to an attorney at law. The applicant must make the claim probable. Probability is a lower level of proof. The difference between a claim made probable and a proven claim is qualitative. Therefore it is recommendable that as stronger as possible evidences of the claim are provided.

The applicant should make probable that the ship in question can be arrested, usually meaning evidence of ownership. There is no need to submit an extract from the Ships' Register, but any other public or private document, including electronic data is sufficient.

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

No original documents are required, copies are sufficient, apart from the application for arrest that must be in original, as well as POA that must be submitted within reasonable time after the filing of the application. Electronic filings with the Court are not possible for time being, but there are preparations in course and electronic filings with the Courts will be possible in the future. There are no documents that should be notarized or with apostille.

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

Yes, unless there is agreed or exclusive jurisdiction of another country, or if no arbitration is agreed between the parties. In latter cases the courts will accept that the arrest is properly justified if the litigation or arbitration are initiated in other jurisdictions.

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

As a matter of law it is mandatory that the arrest is justified by initiating the proceeding in the merits within 15 days from the service of the Arrest Order, and notification of the Court. In case the applicant fails to undertake legal action within the time limit, on motion of the ship's interests the Court will set aside the Arrest Order and release arrested ship.

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

Yes, the Courts acknowledge the wrongful arrest. In case of a wrongful arrest the ship's interests are entitled to claim indemnity from the applicant who wrongfully arrested the ship. The claim for indemnity should be placed in the same arrest proceedings if it is still in course. If the arrest proceedings is terminated the claim should be placed in a separate litigation proceedings.

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

Piercing (lifting) of the corporate veil is know to domestic law, however there is not sufficient and proper court practice that acknowledges this institute. The same is in arrest matters. There have been very few cases with regard to the piercing of corporate veil. However, it may be expected that in future there will be more cases that will clarify this institute and the terms of applicability.

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

Maritime Code has no provisions on pendente lite sale. Enforcement Act, that is subsidiary source of law in arrest of ships proceedings, provides pendente lite in certain circumstances that might be applied also in the case of arrested ships. It may be said that there a legislative frame for pendente lite sale exists. It is also an issue that will be clarified in future.

** Miroslav Macesic (1954) is the founder, Senior and Managing Partner at Law Offices Macesic & Partners. Mr. Macesic holds a law degree from Rijeka University. The Law Offices assist in all maritime and related matters in Croatia through the offices in Rijeka, Zagreb and Dubrovnik. The maritime team includes six lawyers.*

Mr. Macesic has more than 33 years of professional experience, especially in maritime, banking&finance, insurance, energy and corporate law. He is listed correspondent to all major P&I Clubs (members of IG) and acts on case to case basis to other liability, H&M and cargo underwriters, insured interests, shipowners, operators and other maritime related interests. He assisted all major financings in Croatian shipping and shipbuilding industry by foreign banks, major bankruptcies and restructuring processes. He also acts as the trial lawyer in court, arbitrations and mediation proceedings. With Croatian EU membership admission process he focuses on EU law.