

SHIP ARREST IN ROMANIA



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

Conditions imposed by Romanian law :

- a) Indicate and provide evidences to the Court that plaintiffs have started the main legal action (Court action or arbitration proceedings according to the provisions of the C/P or B/L) against the defendant. The evidence should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started;
- b) Indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel;
- c) Provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10%). The main purpose of such bank letter of guarantee is to compensate the losses of the defendant owner if finally the claim of the plaintiff will be found ungrounded by the Court.

In case the matter is very urgent, vessels can be provisionally arrested through the Harbor Master, paying a tax of Euro 400 (Saturdays and Sundays Euro 800).

A notice of arrest will be notified to the Harbor Master.

Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will become effective when the vessel will finalize operations and vessel's agent will attend Harbor Master to receive vessel's permit to leave outside. Starting with the hour when vessel's agent will ask for the Permit to leave, Harbor Master will count 24 hours (Saturdays and Sundays are not included within this hours anyway) and the vessel will be arrested for 24 hours. During these 24 hours, plaintiff will need to apply to the Court asking for the arrest of the vessel. Courts are judging these cases on an urgent basis and normally are issuing the decision within 24 hrs. There is no need for the time being to place the counter-security which will be requested by the Court at a later stage.

Court costs are low. Lawyer fees normally calculated on hourly basis Costs are usually recoverable from defendant.

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

Romania has acceded to the International Convention for the unification of rules about the arrest of vessels, signed in Brussels on May 10th 1952, on November 8th 1995. For the participant states of the 9th Diplomatic Convention of Maritime Law, it was enforced on February 24th 1956. Article 8, paragraph 1 of the Convention provides that its provisions are applicable in any contracting state to any vessel that carries the flag of a contracting state. Paragraph 2 of the same article concedes the possibility that vessel that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to

any other claim that permits the arrest according to the laws of that state. Romanian Courts are applying this principle when are taking into consideration the arrest of one vessel in Romanian jurisdiction.

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

Sister ships may be arrested in Romania, following the provisions of the article 907 and 908 Romanian Commercial Code and not the provisions of the 1952 Arrest Convention . Condition that substantive claim proceedings against the owner of the vessel has to be accomplished also.

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

No.

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

A ship can be arrested in Romania for one or more of the claims listed in article 1.1 of the 1952 Arrest Convention. Ships may be arrested in Romania also for one or more of the claims listed by the 1926 maritime liens and mortgages Convention.

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

Paragraph 2 of the article 8 of 1952 Arrest Convention mentions the possibility that vessels that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state.

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

As already mentioned, it is compulsory to indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel.

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

As mentioned above, sister ships may be arrested in Romania, following the provisions of the article 907 and 908 Romanian Commercial Code and not the provisions of the 1952 Arrest Convention. Romanian Courts are reluctant to order the arrest of sister ships, although this is possible. Ships in associated ownership cannot be arrested in Romania.

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

Bareboat and Time-Chartered vessels cannot be arrested in Romania for the claims against the Bareboat and/or Time-Charterer.

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

Court will order to provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10 %).

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

Arrest of a ship for a maritime claim will be done according to the procedure established by the 1952 Arrest Convention also in case of arrest of a ship for a maritime lien mentioned by the 1926 maritime liens and mortgages Convention.

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

Romania recognizes maritime liens according to 1926 maritime liens and mortgages Convention.

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

A notice of arrest will be notified to the Harbor Master.

Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will be placed immediately as the file arrives to our law firm and a legal assistance contract, even by e-mail and/or fax, will be signed with the client.

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

Based on the legal assistance contract signed with client or the engagement letter signed by Client, law firm will provide to the Court a power of attorney in the standard format prescribed by Lawyers statute.

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

There is no need to provide original documents to the Court, only copies mentioned to be true copies will be provided to the Court, on the understanding that originals will be kept by the law office. The evidence that main claim proceedings has been instituted should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started.

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

No.

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

Arrest cannot be requested if legal action on the merits has not yet started prior to the application to the Court. According to the new Civil Procedural Code which has not entered into force yet, it will be possible that, in urgent cases, arrest of the vessel to be permitted without the need to commence substantive claim proceedings in advance. In such a case, substantive claim proceedings has to be commenced in 20 days from the date the arrest application has been admitted by the Court.

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

Yes. In practice, it is very difficult to prove such a claim.

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

No.

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

No.



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Adrian has written several articles exclusively on maritime law published by well-known Romanian publications such as "Law" and "Commercial Law Journal" as well as by the English "International Journal of Shipping Law". In 2001, he published the "Maritime Law" Book. Lawyer within the Constanta Bar Association since 1996, Adrian is a member of the International Association of Lawyers, which is headquartered in Paris. He also regularly acts as an arbitrator within the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania.

** Augustin Zabrautanu is a graduate of Bucharest University. He holds a degree in juridical science and is a licensed attorney in Romania. His post graduate activity included Master in maritime law at Constantza Maritime University, private legal practice and criminology at Bucharest University School of Law. He is a member of the Romanian National Bars' Association and of the Bucharest Bar.*

Although Augustin is a experienced and dedicated criminal law litigator, his current practice focuses on commercial and maritime law, international trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.

Starting with 2005, Augustin Zabrautanu and his colleagues had successfully represented numerous and various clients (both of domestic and international companies), in a broad array of maritime issues, including arrest of ships. Augustin speaks English and Romanian.