

SHIP ARREST IN RUSSIA (Questions 1 to 9)



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

The ship arrest practice in Russia is wide and may be different due to the differences in court practice in regions – west, south, north, east. Basic ports where there is wide practice of ship arrest are: St.Petersburg, Novorossiysk, Vladivostok, Kaliningrad.

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

Russia ratified the International Convention on the Arrest of Sea-Going Ships (10 May 1952, Brussels). The provisions of this Convention are mandatory applicable to all ships flying the flag of another Contracting State and calling at Russian ports.

Merchant Shipping Code of Russia (1999) is the domestic law which implemented basic principles of the 1952 Brussels Convention and even Merchant Shipping Code (1999) is an advance over the 1952 Brussels Convention as it is based on principles of International Convention on Arrest of Ships (Geneva, 1999) especially in regard to the wide list of claims subject to ship arrest. According to both above mentioned Conventions a ship may be arrested only under the authority of a Court. The regulations of procedure for the Court in Russia are defined in two Codes: the Civil Procedural Code of Russia and Arbitration Procedural Code of Russia. In general the Civil Procedural Code defines the procedure for the physical persons acting as claimants or applicants, and the Arbitration Procedural Code defines the procedural for the legal entities.

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

Due to absence in above mentioned procedural codes of special clauses devoted to the ship arrest there is a way to arrest the ship as property of the debtor (regardless of status of a ship as special kind of property) by means of filing to the Court the application for the arrest of property of the debtor. Such application is filed together with the statement of the claim. The ship may be arrested also under criminal or administrative procedure as exhibit of case or as subject of criminal or administrative offence.

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

There is a way to arrest the ship as property of debtor in security of civil action as well as in the bankruptcy proceeding.

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

Under Domestic Law - In Merchant Shipping Code of Russia (1999) the whole list of maritime claims (a to v) from the 1999 Geneva Convention is included. The domestic law is applied by the Russian courts mostly in respect of the Russian flag seagoing vessels.

Under the 1952 Brussels Convention – the Russian courts are more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the courts apply this Convention mostly to the foreign flag vessels.

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

You can arrest a ship irrespectively of her flag.

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

According to the 1952 Brussels Convention which was ratified by Russia a ship may only be arrested

in respect of a maritime claim only. Therefore bearing in mind the regulations established in the Arbitration Procedural Code of Russia the claimant first of all should prove the existence of the maritime claim in respect of the specific ship and same time the claimant should prove that the claim arose due to the actions of the specific debtor in respect of this specific ship when (as the claimant supposes) the debtor was the owner/ charterer of this ship. It may lead to that the real owner of the ship will try to object the arrest saying the ship never belongs to the debtor. The claims "in rem" can not be initiated in Russia.

Certain claims may follow the ship regardless in whose hands it may be, e.g. claims for crew wages, salvage, port dues (maritime liens).

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

It is possible to arrest sister ship as the property owned to same debtor.

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

The provisions for the arrest of the vessels in accordance with the domestic law are the same as in the Convention, 1999 article 3 par.(1)-(2). If the Convention, 1952 is to be applied then the provisions for the arrest from Convention, 1952 will be applied.

Arrest Procedure



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SHIP ARREST IN RUSSIA (Questions 10 to 20)



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

In accordance with article 393 of the Code of Merchant Shipping, the court or arbitration which considers the application on arrest of a ship, may (but is not obliged to) order an applicant for arrest to provide security against any damages which may be caused by arrest and for which the applicant may be held liable. Amount and terms of such security shall be determined by the court. In practice, courts often require such counter-security as a condition for imposition or continuation of arrest of the ship.

However, counter-security may not be required from the applicant which demands arrest of a ship on the basis of a claim for amounts due to the master or crew of the ship for their work on board.

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

In accordance with the Code of Merchant Shipping (article 388), a ship may only be arrested on the basis of a maritime claim. However, all types of claims which are, under the Russian law, secured by a maritime lien are, at the same time, included in the list of maritime claims provided by the CMS.

12. Does your country recognize maritime liens? Under which international Convention, if any?

Yes it does - by the Federal law of 17/12/1998, Russia acceded to the International Convention on Maritime Liens and Mortgages of 1993.

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

In practice, and in an optimistic scenario, it takes 4-5 days from the date of arrival of the full package of necessary documents is the shortest term to have the vessel arrested: (a) on day 1 the documents arrive and [if the documents come from abroad] - a certified translation of foreign documents is arranged; (b) on the evening of day 1 or the morning of day 2, the authorized lawyer leaves for the city where the territorially competent court is located (normally – the arbitration (commercial) court of the); (c) on day 2, the application for arrest with attachments is filed to the competent court; (d) on day 3, the court considers the application and grants the arrest, (e) on day 3 or 4, the court issues an executive order on the basis of its decision by which arrest is granted, (f) on day 4 or 5, executive order is submitted to the bailiffs service which commences executive procedure and filed the executive order to the harbor-master of the port where the vessel is located.

It must be noted, though, that in order for the above-mentioned time-frames to be observed and for the arrest to be successfully obtained, coherent work between the clients and the lawyers is required at the preparatory stage, so as to ensure that the correct information is provided for drafting of an application and the necessary support documents are also supplied.

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

Yes, the POA is necessary. Documents which confirm the existence of a maritime claim must also be provided in order to confirm the existence of grounds provided in the law for imposing the arrest.

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

Of the documents filed together with the application, only the POA needs to be in original (or a

copy certified by the notary public). Other documents may be presented in copy certified by the applicant (an endorsement saying 'true copy of an original', a signature of a director and a company stamp). A general requirement of the law is that documents in the foreign language must be accompanied by a certified translation into Russian and that a document obtained abroad must be legalized, unless such requirement is abolished by an international treaty to which Russia is a party (for example, the Hague convention of 05/10/1961 and other multi-lateral or bilateral treaties, including the ones with CIS countries, Baltic countries, India, Argentina, Poland, Spain, etc.). In practice, commercial documents are not required to be apostilled but do require a certified translation.

Electronic filing of documents is envisaged by the legislation which entered into force this summer and became applicable from 01/11/2010. However, those provisions are not practically applicable at present.

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

When an arrest over the ship has been imposed in Russia, the Russian courts may accept jurisdiction over the substantive claim in cases provided for by the 1952 Convention:

- if a person which is a creditor under such claim has its main place of residence or business in Russia;
- if the substantial claim arose in Russia;
- if the claim relates to the voyage during which the arrest was imposed;
- if the claim arose from a collision or from other damages caused by one vessel to another vessel, or to people or goods on board of such a vessel;
- if the claim arose from salvage;
- if the claim is based on mortgage of the arrested vessel.

Alternatively, Russian courts may accept jurisdiction over the substantive claim on one of the general grounds which the procedural legislation provides for Russian courts to consider matters with foreign element. They include, i.a.:

- defendant having a place of residence, place of business or property located in Russia;
- the dispute arising from the contract which was intended to be fulfilled on the territory of Russia;
- the dispute arose out of damage to property, if such damage was caused or arose on the territory of Russia.

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

If arrest will be treated as a preliminary security measure for the purposes of commencing the main suit in the Russian court, than such period will be determined by the court in its ruling by which arrest will be granted. But in any event, it should not exceed 15 days.

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

Russian courts have a right to refuse application of arrest. When the judge considers the application, he/she refuses or satisfies it on the basis of its internal conviction. Also, as mentioned above, it is possible for the court to order the applicant to provide counter-security against any damages which may be caused by the arrest, including wrongful arrest and to determine the extent of applicant's liability in such case.

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 pendent lite; if so how long does it take?

No.



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