

SHIP ARREST IN TURKEY (Questions 1 to 9)



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

As a part of preparations for EU membership, Turkey is in the process of amending or promulgation its primary and secondary legislation. Within this framework, the long pending Turkish Commercial Code, a key element for the accession negotiations, was promulgated on 14 February 2011 and entered into force on 1 July 2012 ("New TCC"). New TCC regulates the maritime matters as well as other areas of commercial transactions and radically amended many aspects of Turkish maritime law, including arrest of ships. Until the enactment of the New TCC, there were no specific rules on ship arrest. The arrest of a ship was in general terms no different than any other conservatory measure or conservatory attachment of any other assets of a debtor. The New TCC, however, has specific provisions on the arrest of vessels and aims to bring a full and unified set of rules dealing with all aspects of arrest of ships and to tackle the special needs of the different parties in maritime transport.

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

Turkey is not a party to any of the international conventions on the arrest of ships. During the preparatory stage, the committee that has prepared the New TCC looked the arrest rules of various states such as England, Germany, US, South Africa as well as international arrest conventions. The arrest provisions of the New TCC mainly reflect the provisions of the International Convention on the Arrest of Ships 1999 even though Turkey is not a party to the aforesaid convention. In addition, relevant provisions of the International Convention on Maritime Liens and Mortgages 1993 are also reflected in the New TCC.

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

The New TCC regulates the arrest of ships specifically and prohibits any other ways to arrest a ship.

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

From the procedural point of view, conservatory attachment leading to the arrest of the vessel is the only conservatory measure permitted under the New TCC. Other conservatory measures such as a freezing order or similar shall not be applicable with respect to a maritime claim.

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

Before the enactment of the New TCC, in principle, arrest of a ship in Turkey can take place for all types of claims regardless of whether the claim has a maritime character or is connected with the ship to be arrested or not. The New TCC, however, adopts the definition of "maritime claim" provided in the International Convention on Arrest of Ships, 1999 and restricts the arrest of ships for maritime claims enumerated in the New TCC.

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

A ship can be arrested in Turkey irrespectively of her flag.

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

Except for arrests in order to enforce a maritime lien, only the vessels owned by the debtor can be arrested.

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

The New TCC specifically deals with the issue and permits the arrest of any other ship of the debtor provided that they are owned by the debtor liable for the maritime claim.

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

Except for arrests based on a maritime lien, only the vessels owned by the debtor can be arrested. The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant a maritime lien.



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SHIP ARREST IN TURKEY (Questions 10 to 20)



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

Under Article 1363 of the new Turkish Commercial Code (TCC) which came into force as of 1 July 2012, the applicants are required to deposit SDR (Special Drawing Rights) 10,000.00 counter security in advance irrespective of the claim amount. The counter-security can be by way of cash deposit or Turkish Bank Guarantee. In practice, the courts do not consider or even reject the arrest application if the counter-security is not deposited in advance when filing the arrest application. The opponents are entitled to request the court to increase the amount of the counter security at any stage. The courts may increase the security up to 15 - 40 % (of the claim amount). If the court accepts to increase the counter-security amount, the applicant has to deposit the exceeding sum within the deadline given by the Court. Otherwise, the vessel will be released by the court. On the other hand, the applicants are also entitled to request the court to reduce the amount of the counter-security.

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

If the claim grants a right of maritime lien, the theory that the maritime lien attaches upon the vessel applies and the vessel can be arrested even if the Ownership has been changed. There is no difference with regard to the applicable procedure.

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

With the TCC Turkey adopted the terms of International Convention on Maritime Liens and Mortgages (Geneva, 6 May 1993). Relevant Part of Article 1320 of TCC which is very identical to Article 4 of the Geneva 1993 Convention is as follows:

"Each of the following claims against the owner, demise charterer, manager or operator of the vessel grants a right of maritime lien to its claimant on the vessel:

- (a) Claims for wages and other sums due to the crew members in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
- (b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (c) Claims for reward for the salvage of the vessel;
- (d) Claims for port, canal, and other waterway dues and pilotage dues;
- (e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.
- (f) The general average contribution credit claims"

Turkey is also a signatory to Brussels Convention on the Unification of Certain Rules Relating to Maritime Liens and Mortgages. However, under Turkish Practice Maritime Liens are solely dealt by TCC.

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

All documents in support of the claim need to be submitted to the Court with their Turkish translations. The application can be filed after the completion of the translations and it is possible to obtain the arrest order within the same or the next working day of the application.

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

We need to provide a POA to the court. The POA has to be notarised and apostilled (or attested by the Turkish Consulate in the country of issuance) However, in urgent situations, it is possible to make the application with a fax copy of a POA signed by the arresting party with an undertaking to provide the notarised and apostilled POA within the quickest possible time.

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

It is possible to obtain the arrest order with fax or electronic copies of the documents in support of the claim. Only the POA requires notarisation and apostille. However, should the counter party files an objection against the arrest order there may be a requirement for submission of the originals of the major supporting documents depending on the nature of the objection. All the documents are required before filing the application.

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

Under Article 1359 of TCC, Turkish Court granting the arrest order has jurisdiction over the substantive claim provided that there is no jurisdiction agreement between the arresting party and the Owners of the vessel.

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

Under Article 1376 of TCC, the legal action on the merits has to be taken within one month after obtaining the arrest order. Otherwise, the arrest order will become null and void.

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

Turkish Courts acknowledge wrongful arrest. The court granting the arrest order has the jurisdiction for the claims arising out of wrongful arrests. If the arrest is wrongful, the arresting party will be liable for all loss and damages suffered by the defendant. The loss and damages arising out the wrongful arrest may be satisfied from the counter-security if sufficient (if not, enforcement proceedings have to be initiated against the arresting party)

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

The task of piercing the corporate veil under Turkish law is extremely difficult. Before the corporate veil can be lifted the following facts must exist:

- (a) The persons vested with authority to represent and bind both companies are the same;
- (b) Both companies have the same shareholders and board of directors/managers;
- (c) Transfer of the shares of the relevant company to a third party with the intention of escaping its liabilities i.e. bad faith.

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

Under Article 1386 of TCC, it is possible to have a ship sold pendente lite if:

- 1. The value of the ship reduce substantially and cost of maintaining the ship is excessive,
 - 2. The ship or her cargo causes danger for the safeties of human being, properties and environment.
- There is no certainty regarding the time for this issue.



** Sinan Guzel has graduated from Ankara University, Faculty of Law, in 1999. During his education he worked in various Law Firms to familiarize with general practice of Turkish Law. After his graduation he joined a foreign Marine Consultancy firm in Istanbul and started to work with a British Solicitor. He was qualified as a Turkish Lawyer and admitted to Istanbul Bar in 2000. After his qualification he continued to work with the foreign marine consultancy firm for 8 years where he was actively involved in all kinds of Maritime Law related matters locally and internationally. He has set up Fora Law Office, which became one of the leading Maritime Law Offices in Turkey within a short period, in September 2008 with his colleagues. Beyond ship arrest, Sinan has considerable experience in maritime related litigations and Marine Casualties. He is fluent in English.*