

SHIP ARREST IN BULGARIA (Questions 1 to 9)



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

In principal, the arrest of a ship according to the Bulgarian law is a procedure which provides pre-judgment security for future claims. The arrest of a ship shall be allowed, if without it, will be impossible or difficult an eventual future court decision to be executed, until the necessary guarantees are provided by the shipowner. Notwithstanding the relatively formal character of the procedure according to the Bulgarian law, after the country became a party to the International Convention on Arrest of Ships, 1999, the number of maritime claims, grounds for an arrest was increased, as well as the terms and condition for its allowance were unified.

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

The Republic of Bulgaria is a State party to the International Convention on Arrest of Ships, adopted on March 12, 1999 at the United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships, held in Geneva ("The Convention"). The Republic of Bulgaria has signed the Convention on July 27, 2000 and ratified it in accordance with the constitutionally established procedure. In accordance with its Article 14 (1), the Convention went into force on September 14, 2011, six months after the Republic of Albania became the 10th State to accede it. State parties include Albania, Algeria, Benin, Bulgaria, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and the Syrian Arab Republic.

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

In addition to the provisions of the Convention, a ship might be arrested on the grounds of the procedures stipulated in the domestic law. The grounds, as well as the procedure and competent authority to arrest of a ship in order to secure a maritime claim according to the domestic law are regulated by the Bulgarian Merchant Shipping Code and the Code of Civil Procedure.

Arrest of a ship, according to the domestic law might be allowed:

3.1. By the Bulgarian Maritime Administration for specified in the Bulgarian Merchant Shipping Code grounds, namely for claims arising of averages, collisions, rendered assistance, other services or of performance of carriage contracts, until the necessary guarantees are provided by the shipowner. The arrest of the ship shall be terminated after 72 hours, if within this period the district court at the location of the ship does not rule accordingly in a procedure for securing of a future claim;

3.2. By the district court at the location of the ship (the respective port) in a procedure for securing of a claim, including a future claim, by imposing of a collateral measure "arrest of a ship" under the provisions of the Bulgarian Civil Procedure Code for a claim arisen in connection with the ship. In addition to the above, the Bulgarian Merchant Shipping Code stipulates also a specific procedure for arrest of a ship and cargoes only for unpaid sums of customs, port and other fees, taxes and fines.

The Executive Director of the Bulgarian Maritime Administration or the captain of a port may arrest Bulgarian or foreign ships for such claims, if the request is made on behalf of governmental and judicial

authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration. The arrest shall continue until elimination of the grounds of it.

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

Such instruments are not provided and applicable according to the Bulgarian law.

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

Grounds for arrest of a ship, according to the Convention are maritime claims, as defined in Article 1 (1) of the Convention. The competent authority is the Court.

The grounds for arrest of a ship, if it is subject of an allowance by the Bulgarian Maritime Administration on the grounds of the Bulgarian Merchant Shipping Code are:

- claims arising of averages, collisions, rendered assistance, other services or of performance of carriage contracts, in case that the procedure is initiated by an interested Bulgarian or foreign physical person or legal entity are or;

- unpaid sums of customs, port and other fees, taxes and fines, in case that the procedure is initiated by governmental and judicial authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration

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

The Bulgarian Merchant Shipping Code does not specify exceptions to this general rule, stipulating that authorities "may arrest Bulgarian or foreign ships and cargoes".

Article 8, para 1 of the International Convention on Arrest of Ships, 1999 states that the rules and regulations set by the Convention apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party. Article 8, para 2 however makes an exception, declaring that said rules and regulations do not apply to any warship, naval auxiliary or other ships owned or operated by a State and used only on government non-commercial service.

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

The general rule, according to the Bulgarian law is that a ship arrest is permissible for maritime claims, as defined and specified in point 5 above against the shipowner. The shipowner is the owner of the ship, entered as such in the register of the ships or any other person, which utilized the ship on its own behalf on other legal grounds (by example on the ground of a bareboat charter agreement) at the time when the maritime claim arose and the arrest is effected.

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

With regard to the arrest procedure, the Bulgarian Merchant Shipping Code does not stipulate the possibility to be arrested a sister ships and ships in associated ownership for a claims arisen from other ship, notwithstanding that the shipowner is the same person or legal entity.

According to the Convention, under certain terms and condition, the arrest is permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose: (a) owner of the ship in respect of which the maritime claim arose; or (b) demise charterer, time charterer or voyage charterer of that ship.

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

The ship might be arrested for maritime claims, as defined and specified in point 5 above against the shipowner, irrespectively whether it is the owner of the ship, entered as such in the register of the ships or any other person, which utilized the ship on its own behalf on other legal grounds at the time when the maritime claim arose and the arrest is effected (please see point 7).

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Maritime law is an important aspect of the activities of the Law Firm. Its practices include consultations on the conclusion and implementation of maritime transportation contracts, sale and purchase contracts, maritime claims, litigation, and arrest of ships.

SHIP ARREST IN BULGARIA (Questions 10 to 20)



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The procedure for a ship arrest is regulated in the Bulgarian Merchant Shipping Code, whereby the latter could be enacted within an administrative procedure before the Maritime Administration or within a securitization procedure before the competent court. The Executive Agency "Maritime Administration" may detain ships flying the Bulgarian or a foreign flag, or cargoes upon request of natural and legal persons for claims arising of averages, collisions, rendered assistance, other services or of performance of carriage contracts, until the necessary guarantees are provided by the ship owner or the consignee. Under the administrative procedure the ship arrest would take between one to three days. For this purpose a fee of Euro 1,000 should be paid to the administration, which is applicable notwithstanding the type and freight capacity of the vessel.

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

Depending on the specific judge's discretion a guarantee (usually up to 20 % of the claimed amount) might be requested.

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

There are no exact provisions in the Bulgarian law concerning maritime claims and maritime liens.

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

No.

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

Usually 2 to 3 days upon receipt of the documents needed.

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

The following documents will be needed in general for the ship arrest procedure in Bulgaria:

- a. a copy of the carriage contract or the contract for the services;
- b. invoices regarding the deliveries (copies would suffice at first time);
- c. certificate of good standing of the creditor of the vessel;
- d. excerpt from the Maritime Register about the vessel's owner;
- e. power of attorney.

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 document under the item "c" should be verified with apostille as per the requirements of the Hague Convention of 1961, in order to be officially translated and legalized in Bulgaria. The documents under the other items should be officially translated in Bulgarian language, which may be accomplished in Bulgaria upon their receipt.

The set of the documents should be presented to the court as attachments to the claim.

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

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

The court order for the arrest of a ship is valid for a term of up to 30 days, unless a lawsuit is filed against the debtor, whereby the effect of the order could last throughout the court procedure. If the claim is not filed within the deadline given by the court, the arrest shall be lifted.

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

In case of groundless arrest the liability shall be borne by the person to the request of whom the arrest is imposed.

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?

According to the Bulgarian Law it's not possible to sell the arrested ship during the time of the court proceedings. After the court's decision the creditor may apply for an enforced sale of the ship.



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