

SHIP ARREST IN ESTONIA (Questions 1 to 9)



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

Ship arrest in Estonia is normally handled speedily and by a judge who specializes in maritime matters. Normally a ship will be arrested in Estonia within 1-2 working days as of submitting an application to arrest the ship, provided that the application is well grounded and the necessary fees have been paid.

In case of urgency, it may be possible to arrest the ship even on the same day when the application was submitted. Pohla & Hallmägi has successfully arrested a ship in the morning and managed to release the ship from the arrest in the evening after the outstanding payment has been made.

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

Estonia is a party to the following conventions, which regulate the arrest of ships and their possible sale:

- International Convention on the Arrest of Ships (1999) which specifies maritime claims;
- International Convention on Maritime Liens and Mortgages (1993) which specifies maritime liens;
- International Convention on Civil Liability for Oil Pollution Damage (1969) and amendments;
- Convention on Limitation of Liability for Maritime Claims (1976).

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

If the ship owner is an Estonian company, the court may arrest the ship under Estonian Code of Civil Procedure.

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

No

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

Maritime claims in Estonia can arise from the following:

- 1) loss of or damage to property caused by the operation of the ship;
- 2) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- 3) salvage operations or any salvage agreement, including, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- 4) damage or threat of damage caused by the ship to the environment, coastline or related interests, also:
 - costs of measures taken to prevent, minimise, or remove such damage;
 - compensation for such damage;
 - costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken;
 - loss incurred or likely to be incurred by third parties in connection with such damage;
 - and other damage, costs, or loss of a similar nature to those identified in this clause;
- 5) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- 6) any agreement relating to the use or hire of the ship, whether contained in the correspon

ding agreement or otherwise;

7) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

8) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

9) general average;

10) towage, pilotage;

11) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

12) construction, reconstruction, repair, converting or equipping of the ship;

13) port, canal, dock and other waterway dues and charges;

14) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

15) disbursements incurred on behalf of the ship or its owners;

16) insurance premiums (including mutual insurance claims) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

17) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

18) any dispute as to ownership or possession of the ship;

19) any dispute between co-owners of the ship as to the use of the ship;

20) restricted real rights established on the ship;

21) any dispute arising out of a contract for the sale of the ship.

The following claims in Estonia are secured by a maritime lien:

1) claims for wages and other sums due to the master, officers and other members of the crew in respect of their employment on the ship, including costs of repatriation and social security contributions payable on their behalf;

2) 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 ship;

3) claims for reward for the salvage of the ship;

4) claims for port, canal, and other waterway dues and pilotage dues;

5) claims which arise out of direct damage caused by the operation of the ship other than damage to cargo, containers and passengers' effects carried on the ship.

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

Yes.

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

Yes.

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

Arrest is also permissible of any other ship or ships which is or are owned by the person who is owner of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

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

Arrest is also permissible of bareboat charterer, time charterer or voyage charterer of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

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Law Firm Pohla & Hallmägi has a long history of ship arrests, being one of the first law firms engaged in ship arrests in Estonia. Martin Männik is responsible for all questions relating to maritime matters. He consults Estonian credit institutions on a daily basis involving arrest and enforcement proceedings of mortgaged vessels in Estonia and elsewhere in the world.

He represents clients in litigations concerning ship arrest in Estonia and has represented both creditors, owners of arrested vessels, mortgagees and ports as interested parties in the ship arrest procedure and in civil cases concerning collision of vessels and maritime insurance. He also assists various shipbuilders on a daily basis and is responsible for vessel transactions.

SHIP ARREST IN ESTONIA (Questions 10 to 26)



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

Yes. According to the law 5% of the claim is minimum counter-security. Usually Estonian Court appoints counter-security in the amount of 15% of the claim. In case of small claims higher counter-security may be appointed at the discretion of the judge. Estonian law provides currently 32 000 EUR as maximum amount of counter-security. By recent decision of the Supreme Court, lower courts may appoint higher counter security than 32 000 EUR if this amount is clearly not sufficient to protect owners against consequences of illegal arrest. Consequently the arresting party may after some time face a demand for higher security than originally paid to keep the arrest in force. Depending on the circumstances it is possible to apply that court will not appoint counter-security – claims of crew wages are the most common in this category.

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

Yes. In order to arrest a ship for maritime claim owner of the vessel or bareboat-charterer needs to be liable for the claim and should remain to be the owner or bareboat-charterer at the time of the arrest. In order to arrest a vessel for maritime lien you may also proceed, if the claim is against manager/operator of the vessel.

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

Estonia is party to 1993 Geneva Convention on Maritime Liens and Mortgages and recognises list of maritime liens set forth therein.

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

Provided we receive the file in early morning hours, arrest is possible by afternoon or evening of the next working day. In case we receive a file in the afternoon, arrest may not be possible during the next working day, but only on the day after.

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

It is necessary to provide to the Court documents, which convince the Court that there is a valid maritime claim. POA is required, but this does not need to be notarised and apostilled.

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

Upon applying for arrest all documents may be submitted electronically and no originals are required. Originals as well as notarisations and apostilles may be required in later stages of proceedings.

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

In case of clear agreement between the parties on jurisdiction of foreign court or arbitration, Estonian Court will not accept jurisdiction. In case of absence of agreement on foreign court jurisdiction or when parties demonstrate that they do not object to the jurisdiction of Estonian Court, it will accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

Court has to order a release, after which bailiff will take vessel documents back onboard, or captain or lawyer can collect them from bailiff's office. Bailiff's fees need to be paid before do

cuments are released from bailiff's office. After this there are no restrictions for a vessel to sail. Should any problems with different authorities occur, court order of release can be used.

18. What type of security needs to be placed for the release?

Quickest way to lift an arrest is to provide monetary deposit or first class bank guarantee in the amount the court has appointed. This amount will be appointed in the court arrest order.

19. Does security need to cover interest and costs?

In arresting order court will appoint the exact amount against which vessel will be released, so court order needs to be followed in this matter.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

LOU is accepted only in case opponents agree this to be sufficient guarantee, legislation does not support acceptance of LOU.

21. How long does it take to release the ship?

From the moment court receives monetary deposit order of release is issued immediately, however not after office hours. In case of bank guarantee court may ask claimants opinion, which delays the arrest for 1-2 working days. However dispute over acceptability of a bank guarantee may stop release. Rough optimistic estimation for release, provided monetary deposit or acceptable guarantee is given, shall be 24-48 hours from the moment court receives deposit or original guarantee letter.

22. Is there a procedure to contest the arrest?

Yes, it is possible to contest an arrest, but this does not affect procedure of arrest or release against guarantee. Contesting an arrest may take considerable time.

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

One month will be granted for claimants to take legal action on the merits.

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

There are no clear cases where arrest has been acknowledged wrongful, and currently it seems that courts are unwilling to recognise wrongful arrest, but no provision of law prevents Estonian Court to declare arrest wrongful in cases of misrepresentation or abuse of arrest mechanism by the claimant.

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

Lifting of the corporate veil in the context of ship arrest is not possible.

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

It is possible to apply for a court to allow sale of a ship pendente lite starting from the moment when her keeping costs under arrest (port dues, crew wages, bunkers, provision, port electricity etc.) in substantial amount remain unpaid. Being priority claims these will later be taken firstly from the proceeds of the sale and thus affect negatively all creditors. Any other circumstance having similar negative effect to condition and value of the ship and thus also to interests of the creditors will also serve as a ground for sale pendente lite. Obtaining a court decree allowing sale may take few days, but bailiff's procedure of sale on public auction, depending on circumstances, may take several months or even more. Quick sale on the initiative of the debtor against private offer, which is expected to be higher than estimated proceeds of public auction, is permitted by law, but such practice has not been introduced yet.