

SHIP ARREST IN LATVIA

By Edward Kuznetsov*
MARITIME LEGAL BUREAU
ek@mlb.lv / office@mlb.lv
www.mlb.lv
2 Elizabetes Street, office 210,
Riga, Latvia, LV-1010
Tel: +371-67-399985
Fax: +371-29-271166



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

In Latvia claimant is entitled to arrest the vessel to secure his claim before claim on merits is brought. Latvian Maritime Code (hereinafter – LMC) gives definition of arrest as “any detention of a ship or prohibition of its relocation in accordance with a court adjudication in order to secure maritime claim. Arrest does not mean attachment of a ship in order to implement a court judgment or use of other compulsory means, including the detention of a ship in accordance with administrative procedures, upon implementation of state control of ports and supervision of the navigation regime of Latvian waters”.

Petitions to arrest the vessel are heard by the regional courts of common jurisdiction. Law does not determine minimum amount of claim enabling ship arrest. Court tax for debtor's asset arrest before bringing claim on merits is 0.5% from the claimed amount. Language of hearing is Latvian and all documentation must be presented to the court in Latvian. Ruling to arrest the vessel is issued by a sole judge on ex parte basis. If the claim is secured by arrest of the vessel, the court gives out a copy of corresponding decision to the claimant with an inscription that the copy is given out for detention of the vessel in the port. Appeal to the ruling cannot suspend the enforcement of the ruling. When making the decision on the question of arrest of the vessel the court takes into account prima facie formal legal basis.

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

Latvia is a party of the Ship Arrest Convention 1999. Definitions of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999. But the Ship Arrest Convention 1952 is also in force. These days in Latvia it is possible to apply to provisions of both Ship Arrest Conventions depending on the circumstances.

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

As per LMC and local Civil Process Code provisions arrest of any ship is allowed if a maritime claim exists in relation to this ship.

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

No, Latvian legal system does not recognize saisie conservatoire or freezing order.

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

A ship can be arrested to secure a maritime claim. Types of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999.

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

Provisions of the LMC apply to all ships located in waters under Latvian jurisdiction with no irrespective to the flag the vessel is flying. Thus, a ship flying any flag can be arrested in Latvia.

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

The arrest of any ship is allowed if in relation to the ship one of the following conditions is in effect:

- the person who owned the ship at the time when the maritime claim arose is liable for the claim and is the ship owner at the time of arrest of the ship;
- the person who was the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship;
- the claim arises from a mortgage or other similar type of encumbrance on a ship;
- the claim relates to the ownership or possession rights of the ship; or
- the claim is directed against the ship owner, bareboat charterer or ship's operator and this

claim is secured by maritime lien. Any other ship or ships that at the time of arrest are owned by such persons may also be arrested as are liable regarding a maritime claim and who at the time the claim arose were:

- The owner of the ship in relation to which the maritime claim arose; or
- The bareboat, time or voyage charterer of such ship.

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

LMC states that any other ship or ships can also be arrested if at the time of arrest they are owned by such persons who were liable for a maritime claim and at the time the claim arose were:

- 1) the owner of the ship in relation to which the maritime claim arose; or
- 2) the bare boat, time or voyage charterer of such ship.

This provision of LMC does not relate to claims arising from ownership or possession rights of the ship.

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

A ship can be arrested if the person who was the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship.

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

As per Latvian law the court could require the arresting party to put up security for a wrongful arrest, but in practice it is required very rarely.

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

There is a difference - if there is a maritime lien, a court action may be taken directly against the vessel.

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

Latvia recognizes maritime liens although is not a member of any appropriate Conventions. Claims secured by maritime liens are listed in the LMC in full accordance with Article 4 of the Geneva Convention 1993.

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

As it was mentioned above the language of the court hearings in Latvia is Latvian. Thus, translation of supporting documents is required. To save time on initial stage we usually ask our principals to provide us with all appropriate documents as soon as possible to start translation by sworn translators. It usually takes 2-3 days to translate depending on the quantity of documents. The court's resolution may be issued maximum within seven days after petition of the plaintiff and all supporting documents are delivered to the court.

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

Besides the petition and supporting documents, a relevant original Power of Attorney (POA) (notarized and legalized) to local lawyers is required. Copies of attached documents are sufficient at stage of arrest.

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

At the stage of arrest in order to secure a possible claim on merits court may accept copies of documents. Translation of the documents must be prepared. Latvian courts accept electronically filed documents if opposite party does not object against them. POA should be certified by a public notary and covered by Apostille in accordance with terms of the Hague Convention of 5th November 1961.

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

LMC states that if a vessel is arrested in Latvia in order to secure a possible claim on merits, Latvian courts hear the case if only the parties have not agreed about another country court's jurisdiction or arbitration court.

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

Lifting arrest is a long procedure taking into account that the order to release the vessel must be issued by the judge in the court trial, with participation of both plaintiff and defendant. In accordance with the law, trial to lift arrest must be held within 30 days after claimant delivers petition that he is satisfied with the defendant and asks to lift arrest. Practically such trial can be held during 3-5 days after petition to release the vessel is delivered to the court.

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

Security to release the vessel from arrest is known to Latvian legislation and is accepted by judges. Different types of security can be accepted: P&I Club's letter of undertaking, deposit to the court bailiff's account, bank guarantee etc.

19. Does security need to cover interest and costs?

In general yes, security needs to cover interest and costs if they are reasonable.

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

It is to the discretion of the court, but in principle LOUs are accepted.

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

See answer to question 17 above.

22. Is there a procedure to contest the arrest?

Legality and validity of arrest may be contested by a participant in the matter. On the basis of an application court may replace arrest with other means of security or revoke it.

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

If arrest ruling is obtained the court obliges the claimant to bring suit on merits during certain period of time, usually – one month. But claimant may ask the court about other time to bring suit on merits (two or three months). The court can accept such request taking into account concrete circumstances of the case.

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

Defendant has a right to claim the plaintiff for damages having arisen in connection with the claim security if the claim, which has been sued against him, was rejected by court. Claim for a wrongful arrest must be brought in the court in a common way.

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

The piercing and lifting of the corporate veil is not acknowledged in Latvian legal system.

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

There is no practice in Latvia regarding use of pendent lite. But in theory it is possible.

*Edward is CEO of law firm Maritime Legal Bureau (MLB). Before MLB he spent several years as managing partner of another law firm in Riga, manager of private Russian ship owning company, as manager of Legal Dept. of Lloyd's agency in Latvia and of local correspondent for P&I Clubs.

In May 2008 Edward was key person who hosted 5th Shiparrested.com members meeting in Riga. He is an arbitrator of Maritime Arbitration Commission (MAC) of ICC of Russia (Moscow), Full Member-arbitrator of the GMAA in Hamburg and Supporting Member of the LMAA. As a lawyer Edward has experience in resolution of a wide range of both dry and wet shipping matters. Edward represents clients in courts and in arbitrations in Latvia, Russia, Germany and UK.

In 2010 Edward has been selected as being among the world's pre-eminent shipping and maritime lawyers (Who's Who Legal). In May 2013 during 10th Shiparrested.com Conference in Marrakech (Morocco) Edward was called as the Best Member of Shiparrested.com of the decade 2003-2013.