

SHIP ARREST IN ROMANIA

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

Conditions imposed by Romanian law:

a) Indicate and provide evidences to the Court that plaintiffs have started the main legal action (Court action or arbitration proceedings according to the provisions of the C/P or B/L) against the defendant. The evidence should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started;

b) Indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel;

c) Provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10%). In accordance with the new Civil Procedural Code which entered into force on 15th of February 2013, the amount of the guarantee should be placed in cash and is limited at 20% of the claimed amount. In cases where no written evidences concerning the relations between the creditor and the debtor are presented to the judge, the amount of the guarantee will be fixed at 50% of the claimed amount. Such cases may be for example cargo claims. The main purpose of such bank letter of guarantee is to compensate the losses of the defendant owner if finally the claim of the plaintiff will be found ungrounded by the Court.

In case the matter is very urgent, vessels can be provisionally arrested through the Harbor Master, paying a tax of Euro 400 (Saturdays and Sundays Euro 800). A notice of arrest will be notified to the Harbor Master. Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will become effective when the vessel will finalize operations and vessel's agent will attend Harbor Master to receive vessel's permit to leave outside. Starting with the hour when vessel's agent will ask for the Permit to leave, Harbor Master will count 24 hours (Saturdays and Sundays are not included within this hours anyway) and the vessel will be arrested for 24 hours. During these 24 hours, plaintiff will need to apply to the Court asking for the arrest of the vessel. Courts are judging these cases on an urgent basis and normally are issuing the decision within 24 hrs. There is no need for the time being to place the counter-security which will be requested by the Court at a later stage. Court costs are low. Lawyer fees normally calculated on hourly basis Costs are usually recoverable from defendant.

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

The International Convention for the Unification of rules about the arrest of ships signed in Brussels on May 10th 1952, on November 8th 1995 has been ratified by Romania.

Article 8, paragraph 1 of the Convention provides that its provisions are applicable in any contracting state to any vessel that carries the flag of a contracting state. Paragraph 2 of the same article sets out the possibility that vessel that carries the flag of a non contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state. Romanian Courts are applying this principle when taking into consideration the arrest of one vessel in Romanian jurisdiction.

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

No.

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

No.

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

A ship can be arrested in Romania for one or more of the claims listed in article 1.1 of the 1952 Arrest Convention. Ships may be arrested in Romania also for one or more of the claims listed by the 1926 maritime liens and mortgages Convention.

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

Paragraph 2 of the article 8 of 1952 Arrest Convention mentions the possibility that vessels that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state.

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

As already mentioned, it is compulsory to indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel.

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

Sister ships may be arrested in Romania, following the provisions of the articles 951-952, 959-968 of Romanian Civil Procedural Code and not the provisions of the 1952 Arrest Convention. Romanian Courts are reluctant to order the arrest of sister ships, although this is possible. Ships in associated ownership cannot be arrested in Romania.

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

Bareboat and Time-Chartered vessels cannot be arrested in Romania for the claims against the Bareboat and/or Time-Charterer.

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

Court will order to provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10 %). In accordance with the provisions of the new Civil Procedural Code the amount of the guarantee may be increased up to 20% of the claimed amount and needs to be placed in cash at the disposal of the Court. In cases where no written evidences concerning the relations between the creditor and the debtor are presented to the judge, the amount of the guarantee will be fixed at 50% of the claimed amount.

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

Arrest of a ship for a maritime claim will be done according to the procedure established by the 1952 Arrest Convention also in case of arrest of a ship for a maritime lien mentioned by the 1926 maritime liens and mortgages Convention.

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

Romania recognizes maritime liens according to 1926 Maritime Liens and Mortgages Convention. Romania is not a party to the 1993 Maritime Liens and Mortgages Convention.

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

A notice of arrest will be notified to the Harbor Master. Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will be placed immediately as the file arrives to our law firm and an Engagement Letter, even by e-mail and/or fax, will be signed with the client.

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

Based on the Engagement Letter signed by client, law firm will provide to the Court a power of attorney in the standard format prescribed by the Lawyers statute.

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

There is no need to provide original documents to the Court; only copies mentioned to be true copies will be provided to the Court, on the understanding that originals will be kept by the law office. It is necessary to be provided with originals of the documents, or Notary certified copies in order to translate them into Romanian and present legalised translations to the Court, taking into consideration that Public Notaries will not legalise translations without being provided with the originals of the documents. The evidence that main claim proceedings have been instituted should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started.

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

No.

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

As long as the debt have been paid or a Letter of Undertaking have been provided in order to release the ship, the debtor will request the Court to release the vessel from arrest. The Court will release the vessel from arrest on urgent basis.

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

In accordance with Civil Procedural Code provisions, the security needs to be provided in cash at the disposal of the Court. Only in case the creditor agrees, the debtor may provide a bank Letter of undertaking or a P&I Letter of Undertaking at the disposal of the Court.

19. Does security need to cover interest and costs?

Yes.

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

The P&I LOUs may be accepted by the Court for lifting the arrest only in case the creditor agrees to accept such undertakings.

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

1-2 days, usually.

22. Is there a procedure to contest the arrest?

The arrest order issued by the Court may be appealed to the Court of Appeal.

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

Arrest cannot be requested if legal action on the merits has not yet started prior to the application to the Court. According to the new Civil Procedural Code, it is possible that, in urgent cases, arrest of the vessel to be permitted without the need to commence substantive claim proceedings in advance. In such a case, substantive claim proceedings has to be commenced in 20 days from the date the arrest application has been admitted by the Court.

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

Yes. In practice, it is very difficult to prove such a claim.

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

No.

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

No.

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*Adrian has written several articles exclusively on maritime law published by well-known Romanian publications such as "Law" and "Commercial Law Journal" as well as by the English "International Journal of Shipping Law". In 2001, he published the "Maritime Law" Book. Adrian current practice focuses on commercial and maritime law, international trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.

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Starting in 2005, Augustin Zabrautanu and his colleagues had successfully represented numerous and various clients (both of domestic and international companies), in a broad array of maritime issues, including arrest of ships. Augustin speaks English and Romanian.