

## SHIP ARREST IN CROATIA

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

According to Croatian law the arrest of ships is one of the “interim measures of security of a claim” that ensures future collection of the outstanding debt that is in dispute. Apart from the arrest of ships other interim measures of security of a claim on ships are possible, but in practice are very rare. The objective of the arrest of a ship is to make available to the creditor assets of the debtor for future enforcement. Therefore, arrested ships may be released if another security is given as replacement. The other security may be a monetary deposit, bank guarantee, P & I Club or other corporate letter of undertaking or other values that are available for enforcement if accepted by the creditor. If the creditor does not accept the offered security, the acceptability of the offered security will be decided by the court. Monetary deposits and bank guarantees are always accepted, while P&I Clubs/corporate letters of undertaking and other values on a cases to case basis.

Because of various issues with international elements, and in particular the applicability of foreign laws, that are involved in the arrest of ships there are sometimes inconsistencies in the interpretation of the rules of law and in-court practice. However, such cases are exemptions, and it may be said that it is possible to obtain the arrest of a ship or obtain the release of an arrested ship in accordance with accepted international standards.

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

Croatia has adopted the continental legal system. It is a member-state of the Arrest Convention 1952. The Enforcement Act applies as a subsidiary source of rules of law to the Maritime Code that regulates arrest of ship proceedings. There is significant court practice and number of books and articles that deal with various relevant issues with regard to the arrest of ships. Maritime Code applies if there is no direct applicability of the Convention. Maritime Code Amendments in few provisions slightly differ from the Convention.

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

No, there is no other way to arrest a ship with the purpose of security of the claim. According to the Paris Memorandum the Harbour Master Office Inspectors, exercising Port State Control authorities, can order the detention of a ship. The Custom authorities and the Criminal Court can hold the ship in temporary seizure for customs clearance or criminal proceedings purposes, but in practice very rarely and under very restricted terms.

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

Not in the sense of these alternatives and as these alternatives are known internationally. However, the Maritime Code provides that every interim measure that would achieve the objective of security of a particular claim may be granted. In other words, subject to the nature of the claim, 67 various injunctions with regard to the ship are possible, but rare in practice.

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

A ship can be arrested for:

- maritime claims as provided by Art. 1 of the Convention; apart from bottomry and ownership claims that are not provided in the Maritime Code when Convention is not applicable,
- maritime liens as maritime privileges (separately provided in the Maritime Code),
- claims secured with mortgage, pledge or other similar registered encumbrances on the ship according to the laws of flag (separately provided in the Maritime Code). For all other claims notwithstanding to the nature, if there is no reciprocity between Croatia and the state of flag.

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

Yes, there are no limitations for the arrest of ships with regard to the flag of the ship. The Flag of ship affects to the applicability of the Convention or the Maritime Code, the existence of maritime privileges (liens) and registered encumbrances. It also possibly affects some other underlining issues subject to particular matters.

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

For maritime privileges (liens) and registered encumbrances, yes. In the case of direct applicability of the Convention, the answer is yes, as it is provided in the Convention. For maritime claims depends on the applicable law for merits of the matter. The main principal of Maritime Code as regard to the debtor and the arrested ship is that the arrested ship as an asset is the property of the debtor. In Croatia there is no "in rem" proceedings, but only "ad personam".

If the foreign law that applies to the merits of the matter provides "in rem" liability, and the debt is born with regard to the ship, the answer is yes. In this case the opposing party in the application for arrest should be the debtor who is not the owner of the ship.

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

Sister ship and ship in associated ownerships may be arrested although in these cases the Maritime Code also slightly varies to the Convention.

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

According to the Maritime Code ships in Bareboat or Time Charter may be arrested if there is direct applicability of the Convention, or if applicable foreign law for merits of the matter provides "in rem" claim, or if the principal debtor is the owner of the ship in Bareboat or Time-Charter (see answer under point 7.).

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

No, the Courts do not require a counter-security in order to arrest a ship. However, the ship's interests may apply for counter-security in case of wrongful arrest as condition for maintenance of already ordered arrest. If the application is accepted and the counter-security is not placed within the ordered time period, the arrest will be lifted and the arrested ship released.

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

No, from the procedural point of view there is no difference.

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

Yes, Maritime Code defines maritime liens as maritime privileges. Provisions on maritime liens of the Maritime Code correspond to the International Convention on Maritime Liens and Mortgages, Geneva 1993. Croatia has not ratified any convention relating to maritime liens. However, since Maritime Code provides that a ship may be arrested for maritime liens and since according to the conflict of law rules the law of flag applies to maritime liens, a ship can be arrested for maritime liens.

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

In principal several hours are needed for the preparation of the application, translation of supporting documents by a licensed court interpreter (one is part of our office staff) and to file the application for arrest with the Court. The Court will check with the Harbour Master Office the expected time of sailing and will decide on the application urgently before sailing, if in pressure of time. Arrest matters are always considered urgent and in most cases the Court will decide within one or two days. The ship is arrested when the Harbour Master Office serves the Master with the arrest order and takes away the Ship's documents which remain in custody of Harbour Master Office during the arrest.

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

Yes, the POA is a mandatory requirement of the arrest proceeding. For the arrest application a faxed or e-mailed copy is sufficient, while the original must be submitted to the Court within few days. No special form or legalization is required to grant a POA to an attorney at law. The applicant must make the claim probable. Probability is a lower level of proof. The difference between a claim made probable and a proven claim is qualitative. Therefore it is recommendable that as stronger as possible evidences of the claim are provided. The applicant should make probable that the ship in question can be arrested, usually meaning evidence of ownership. There is no need to submit an extract from the Ships' Register, but any other public or private document, including electronic data is sufficient.

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

No original documents are required; copies are sufficient, apart from the application for arrest that must be in original, as well as POA that must be submitted within reasonable time after the filing of the application. Electronic filings with the Court are not possible for time being, but there are preparations in course and electronic filings with the Courts will be possible in the future. There are no documents that should be notarized or with apostille.

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

Yes, unless there is agreed or exclusive jurisdiction of another country, or if no arbitration is agreed between the parties. In latter cases the courts will accept that the arrest is properly justified if the litigation or arbitration are initiated in other jurisdictions.

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

The ship will be released from the arrest if; (1) the applicant withdrew the motion for arrest, (2) if the applicant agreed to replacement security, (3) if the Court accepted replacement security, or (4) the opposing party's remedy was accepted and Arrest Order set aside. In the first two cases the Court will issue Release Order within one or two hours from the receipt of respective parties' submissions. In the two latter cases Release Order will be included in the Court's decision on acceptance of replacement security or acceptance of the legal remedy. In all cases, Release Order will be granted as the matter of urgency.

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

General provision of Maritime Code is that the security must be available and transferable to the applicant. Further, the applicant should notify the Court whether agreed to the security. If the applicant notified the Court that it agreed to offered security, the Court will immediately release the vessel from arrest.

When the applicant did not agree with the security, the Court will decide whether offered security is accepted or not. If yes, the vessel will be released immediately. In the court practice it is clarified that monetary deposit and domestic bank guarantee (usually granted against foreign bank counter-guarantee) are always accepted by the Court. P&I LOUs are mostly accepted (see also answer under point 20). Other corporate guarantees, LOUs and other values are considered on case-to-case basis, but rarely acceptable.

19. Does security need to cover interest and costs?

Yes, the security must cover the interests and costs. Usually, security amount is approximately 25 per cent higher than the amount of the principal claim.

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

P&I LOUs issued by the Clubs members of IG and highly ranked by reputable rating company are always accepted by the Courts. Other P&I LOUs are considered on case-to-case basis.

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

Release of the ship is always considered by the Courts with urgency. It takes one to two hours for the Court to issue Release Order and serve it to the Harbour Master Office.

22. Is there a procedure to contest the arrest?

Yes, the opposing party may place the remedy. Since the Arrest Order is granted "ex parte" the first instance Court may reconsider the matter on the ground of the remedy and set aside the Arrest Order if it found remedy grounded. Otherwise the remedy will be decided by the Court of Appeal. The Courts should decide on remedy as matter of urgency.

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

As a matter of law it is mandatory that the arrest be justified by initiating the proceeding in the merits within 15 days from the service of the Arrest Order. In case the applicant fails to undertake legal action within the time limit, or notify the Court accordingly, on motion of the ship's interests the Court will set aside the Arrest Order and release arrested ship.

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

Yes, the Courts acknowledge the wrongful arrest. In case of a wrongful arrest the ship's interests are entitled to claim indemnity from the applicant who wrongfully arrested the ship. The claim for indemnity should be placed in the same arrest proceedings if it is still in course. If the arrest proceedings is terminated the claim should be placed in a separate litigation proceedings.

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

Piercing (lifting) of the corporate veil is known to domestic law, however there is not sufficient and proper court practice that acknowledges this institute. The same is in arrest matters. There have been very few

cases with regard to the piercing of corporate veil. However, it may be expected that in future there will be more cases that will clarify this institute and the terms of applicability.

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

Maritime Code has no provisions on pendente lite sale. Enforcement Act, that is subsidiary source of law in arrest of ships proceedings, provides pendente lite in certain circumstances that might be applied also in the case of arrested ships. It may be said that there is a legislative frame for pendente lite sale exists. It is also an issue that should be clarified in future.

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