

## SHIP ARREST IN LITHUANIA (QUESTIONS 1 TO 9)

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## (QUESTIONS 10 TO 26)

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

The claimant is entitled to arrest the ship to secure his claim before claim on merits is brought. Also, the ship which is at Klaipėda state port (the only one seaport in Lithuania) can be arrested in order to enforce already adopted court judgment, if the debt or any other amounts are already adjudged from the ship owner. Applications to arrest the ship are heard by Klaipėda regional or Klaipėda district court (depends on the amount of the claim), if the case on its merits will be heard at these courts and by Vilnius district court, if the claim on its merits will be heard in a court of arbitration or in a foreign State court. The law does not determine minimum amount of claim enabling ship arrest, the court is deciding according to his own evaluation. Language of hearing is Lithuanian and all documentation must be presented to the court in Lithuanian.

There are no specialized maritime courts in Lithuania, applications are heard by the courts of common jurisdiction, however ship arrest in Lithuania is normally handled speedily - within 1-2 working days as of submitting an application to arrest the ship. Deciding whether to arrest the vessel the judge takes into account prima facie formal legal basis. As soon as the Ruling is adopted the court sends the copy of the Ruling to the Port Master directly (by fax) ensuring urgency in case the ship is ready to leave or leaving the port. Appeal procedures does not suspend enforcement of the Ruling.

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

— The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, Brussels, 1952 (1952 Arrest Convention);

— The International Convention on Maritime Liens and Mortgages, Geneva 1993.

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

A ship that is not flying the flag of the State member to the 1952 Arrest Convention may be arrested for any type of claim in accordance with the Code of Civil Proceedings.

A ship may be arrested by the court bailiff in the execution process as well (decisions adopted by foreign courts or arbitration institutions shall be acknowledged by the Court of Appeal of Lithuania beforehand).

Port authorities are also entitled to detain the ship in case of unpaid port charges, fines, damages made to port infrastructure, other related claims.

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

No.

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

A ship flying the State flag of the Member State can be arrested to secure a maritime claim as specified in the 1952 Arrest Convention (Article 1(1)).

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

Yes. A ship flying the State flag of the Member State of the 1952 Convention can be arrested only for the maritime claims enumerated in the Article 1 of the Convention. Other ships can be arrested for any type of claims under provisions of the Code of Civil Proceedings.

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

Yes, subject to Art. 3 of the 1952 Arrest Convention.

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

Arrest of a sister ship is permitted, except in respect of the claims mentioned in Article 1(1), o-q of the 1952 Arrest Convention. Ships in associated ownership can be arrested as well, if the claimant succeeds to prove that they are beneficially owned by the same person.

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

When in the case of a bareboat charter the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the bareboat charterer, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim.

These provisions apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

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*Regina Derkintyte-Kaupiene is known not only as a shipping law practitioner but also as an active participant of the academic society. Regina is the co-author of the book International Maritime Law, highly appreciated by students and lecturers of Lithuanian universities. Having a solid academic background and extensive practice in the field, she is often invited to deliver lectures in universities and colleges; she is also a prominent speaker in various conferences and seminars.*

*Regina Derkintyte-Kaupiene is also included in the list of recommended arbitrators by the most reputable arbitration institutions in Lithuania – the Vilnius Court of Commercial Arbitration – and by the Riga District Arbitration Court.*

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

No counter security is required before arresting the ship. The court on request of the ship's interest may order the arrestor to provide counter-security within certain period of time. If this is not complied with, the arrest will be lifted.

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

In case of maritime claim it is allowed to arrest either the ship in respect of which the maritime claim arose or any sister ship. The subject of the maritime lien is the offending ship only. It can be enforced against the ship regardless of who was in control or possession of the ship when the events which gave rise to maritime lien occurred. Maritime lien is not enforceable against a sister ship. Otherwise, there is no difference.

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

Lithuania does recognise maritime liens as per the International Convention on Maritime Liens and Mortgages, 1993.

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

Normally it takes 2-3 working days. In very urgent cases it might be possible to arrest within the same day on which we receive the instruction. The Courts are closed on Saturdays, Sundays and National Holidays. No ship arrest is possible then.

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

We require a written legal service agreement that needs to be signed by the Client. Faxed or emailed copy of the legal service agreement is sufficient to make a ship arrest application on behalf of the Client. The original copy of the legal representation agreement must be presented if requested by the Court later. No notarisation or legalization of the legal representation agreement is required. Basic claim documentation evidencing existence of a maritime claim in favour of the arrestor 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?

All documents can be filed electronically for the purpose of ship arrest. Only original legal service agreement should be available if so requested by the Court. A ship arrest application normally should be supported by:

- A copy of legal service agreement between the lawyer and the Client;
- A copy of an extract from the Companies' Register of the Client's State, confirming that the Client exists as a legal entity;
- A basic Claim documents that will depend on the type of claim;
- Copy of an agreement containing the arbitration clause in case that the arrest is for obtaining security in respect of maritime claim that is to be pursued in an Arbitration or an agreement to litigate in a foreign State Court, or an evidence that such proceedings have been commenced.

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

Yes, the Lithuanian courts accept jurisdiction over the substantive claim once the vessel has been arrested, subject that there is no agreement between the relevant parties to litigate in another jurisdiction or to submit dispute to arbitration.

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

The Parties should make a written request to the Court to release the ship, in case they reach an agreement. Otherwise an adequate security needs to be deposited to the Court together with request to release the ship from arrest.

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

Any type of security if the Arrestor agrees. Cash payment to the court's account or Lithuanian Bank's guarantee if there is no agreement as to type of guarantee.

19. Does security need to cover interest and costs?

Yes.

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

Not, if the arrestor does not agree with it.

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

One day if there is no dispute regarding type or amount of security.

22. Is there a procedure to contest the arrest?

Yes, but it can take few months.

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

14 days in the National Courts and 30 days in arbitration or in a foreign State Court.

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

The court may order the Plaintiff to pay damage for wrongful ship's arrest in case if:

- The claim in respect of which the vessel was arrested was rejected;
- In case of misuse of the procedural rights to seek the ship arrest, for example arresting the vessel despite the fact that an adequate security has been provided, submitting to the court knowingly wrong information when seeking a ship arrest etc.

The ship's interest must prove what loss has been suffered due to ship's arrest.

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

There have not been relevant cases heard yet.

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

No.

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