

SHIP ARREST IN *RUSSIA* (QUESTIONS 1 TO 9)

Andrey Kosmachevskiy & Andrey Suprunenko
*REMEDY Law Firm**
ankos@remedy.ru & info@remedy.ru
www.remedy.ru
Prof. Popova str., 23-V, office 3-N
197022 St.Petersburg
Tel: (+7 812) 702-51-00
Fax: (+7 812) 702-51-01



(QUESTIONS 10 TO 26)

*By Alexander Mednikov**
JURINFLOT
Alexander.Mednikov@jurinflot.ru
www.jurinflot.ru
PO Box 60 Moscow, 109147 Moscow, Russia
Tel: (+7 495) 792-57-01
Fax: (+7 495) 792-57-00



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

The ship arrest practice in Russia is wide and may be different due to the differences in court practice in regions – west, south, north, east. Basic ports where there is wide practice of ship arrest are: St. Petersburg, Novorossiysk, Vladivostok, Kaliningrad, Murmansk.

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

Russia ratified the International Convention on the Arrest of Sea-Going Ships (10 May 1952, Brussels). The provisions of this Convention are mandatory applicable to all ships flying the flag of another Contracting State and calling at Russian ports. Merchant Shipping Code of Russia (1999) is the domestic law which implemented basic principles of the 1952 Brussels Convention and even Merchant Shipping Code (1999) is an advance over the 1952 Brussels Convention as it is based on principles of International Convention on Arrest of Ships (Geneva, 1999) especially in regard to the wide list of claims subject to ship arrest. According to both above mentioned Conventions a ship may be arrested only under the authority of a Court. The regulations of procedure for the Court in Russia are defined in two Codes: the Civil Procedural Code of Russia and Arbitration Procedural Code of Russia. In general the Civil Procedural Code defines the procedure for the physical persons acting as claimants or applicants, and the Arbitration Procedural Code defines the procedural for the legal entities.

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

Due to absence in above mentioned procedural codes of special clauses devoted to the ship arrest there is a way to arrest the ship as property of the debtor (regardless of status of a ship as special kind of property) by means of filing to the Court the application for the arrest of property of the debtor. Such application is filed together with the statement of the claim. The ship may be arrested also under criminal or administrative procedure as exhibit of case or as subject of criminal or administrative offense.

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

There is a way to arrest the ship as property of debtor in security of civil action as well as in the bankruptcy proceeding.

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

Under Domestic Law - In Merchant Shipping Code of Russia (1999) the whole list of maritime claims (a to v) from the 1999 Geneva Convention is included. The domestic law is applied by the Russian courts mostly in respect of the Russian flag seagoing vessels. Under the 1952 Brussels Convention – the Russian courts are more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the courts apply this Convention mostly to the foreign flag vessels.

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

You can arrest a ship irrespective of her flag.

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

According to the 1952 Brussels Convention which was ratified by Russia a ship may only be arrested in respect of a maritime claim only. Therefore bearing in mind the regulations established in the Arbitration Procedural Code of Russia the claimant first of all should prove the existence of the maritime claim in respect of the specific ship and same time the claimant should prove that the claim arose due to the actions of the specific debtor in respect of this specific ship when (as the claimant supposes) the debtor was the owner/ charterer of this ship. It may lead to that the real owner of the ship will try to object the arrest saying the ship never belongs to the debtor. The claims “in rem” can not be initiated in Russia. Certain claims may follow the ship regardless in whose hands it may be, e.g. claims for crew wages, salvage, port dues (maritime liens).

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

It is possible to arrest sister ship as the property owned to same debtor.

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

The provisions for the arrest of the vessels in accordance with the domestic law are the same as in the Convention, 1999 article 3 par.(1)-(2). If the Convention, 1952 is to be applied then the provisions for the arrest from Convention, 1952 will be applied.

For more than 20 years, **Remedy Law Firm has helped in obtaining a highly professional and commercially oriented advice on issues relating to shipping and transportation in the widest range. Remedy Law Firm deals mainly with claims handling, represents cases of its clients in common law courts, arbitrations and appeals courts on all aspects of civil, maritime and administrative law, scrutinizes documentation and its enforceability under Russian and international laws and gives legal opinions on different issues.*

We also offer advice on the interpretation of charter party clauses, bills of lading, insurance policies and other contracts. Mr. Andrey Suprunenko is a director of the firm. Mr. Andrey Kosmachevskiy is Head of Marine Practice.

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

In accordance with article 393 of the Code of Merchant Shipping, the court or arbitration which considers the application on arrest of a ship, may (but is not obliged to) order an applicant for arrest to provide security against any damages which may be caused by arrest and for which the applicant may be held liable. Amount and terms of such security shall be determined by the court. In practice, courts often require such counter-security as a condition for imposition or continuation of arrest of the ship. Therefore, the applicants should normally be prepared to provide counter-security in advance (together with application) in order to increase the chances of success of arrest application. However, counter-security may not be required from the applicant which demands arrest of a ship on the basis of a claim for amounts due to the master or crew of the ship for their work on board.

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

In accordance with the Code of Merchant Shipping (article 388), a ship may only be arrested on the basis of a maritime claim. However, all types of claims which are, under the Russian law, secured by a maritime lien are, at the same time, included in the list of maritime claims provided by the CMS. Therefore, there is no practical difference in arrest procedures whether the maritime claim is secured by a lien or not.

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

Yes it does - by the Federal law dated of 17/12/1998, Russia acceded to the International Convention on Maritime Liens and Mortgages of 1993.

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

In practice, and in an optimistic scenario, it normally takes 4-5 days from the date of arrival of the full package of necessary documents is the shortest term to have the vessel arrested:

- (a) on day 1 the documents arrive and [if the documents come from abroad] - a certified translation of foreign documents is arranged;
- (b) on the evening of day 1 or the morning of day 2, the authorized lawyer leaves for the city where the territorially competent court is located (normally – the arbitration (commercial) court of the), (c) on day 2, the application for arrest with attachments is filed to the competent court;
- (d) on day 3, the court considers the application and grants the arrest,
- (e) on day 3 or 4, the court issues an executive order on the basis of its decision by which arrest is granted,
- (f) on day 4 or 5, executive order is submitted to the bailiffs service which commences executive procedure and filed the executive order to the harbor-master of the port where the vessel is located.

In practice of some (but not all) courts and ports, procedure may be sped up by 2 days if the court is requested to include in the arrest ruling the order to the harbour-master not to grant to the vessel the permission to leave the port. If such order is included in the ruling, the vessel will be effectively immobilized before involvement of the bailiffs. It must be noted, though, that in order for the above-mentioned time-frames to be observed and for the arrest to be successfully obtained, coherent work between the clients and the lawyers is required at the preparatory stage, so as to ensure that the correct information is provided for drafting of an application and the necessary support documents are also supplied.

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

Yes, the POA is necessary. Documents which confirm the existence of a maritime claim must also be provided in order to confirm the existence of grounds provided in the law for imposing the 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?

Of the documents filed together with the application, only the POA needs to be in original (or a copy certified by the notary public). Other documents may be presented in copy certified by the applicant (an endorsement saying 'true copy of an original', a signature of a director and a company stamp). A general requirement of the law is that documents in the foreign language must be accompanied by a certified translation into Russian and that a document obtained abroad must be legalized, unless such requirement is abolished by an international treaty to which Russia is a party (for example, the Hague convention of 05/10/1961 and other multi-lateral or bilateral treaties, including the ones with CIS countries, Baltic countries, India, Argentina, Poland, Spain, etc.). In practice, commercial documents are not required to be apostilled but do require a certified translation. Filing of documents in electronic form is also possible.

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

When an arrest over the ship has been imposed in Russia, the Russian courts may accept jurisdiction over the substantive claim in cases provided for by the 1952 Convention:

- if a person which is a creditor under such claim has its main place of residence or business in Russia;
- if the substantial claim arose in Russia;
- if the claim relates to the voyage during which the arrest was imposed;
- if the claim arose from a collision or from other damages caused by one vessel to another vessel, or to people or goods on board of such a vessel;
- if the claim arose from salvage;
- if the claim is based on mortgage of the arrested vessel.
- Alternatively, Russian courts may accept jurisdiction over the substantive claim on one of the general grounds which the procedural legislation provides for Russian courts to consider matters with foreign element. They include, i.e.:
- defendant having a place of residence, place of business or property located in Russia;
- the dispute arising from the contract which was intended to be fulfilled on the territory of Russia;
- the dispute arose out of damage to property, if such damage was caused or arose on the territory of Russia.

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

Release from arrest is allowed only in case if sufficient security is provided (or the maritime claim in question is satisfied for good) and is effected on the basis of a ruling of a tribunal which ordered the arrest. In case if the bailiffs have been involved in the arrest, they also need to be notified of the tribunal's ruling and must terminate their execution proceedings.

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

Type and value of security may be determined by the agreement of the parties concerned. In case if the parties fail to reach such agreement, these issues may be determined by the tribunal which handles arrest proceedings. In the latter case, value of security may not exceed the value of the ship arrested but if the value of a ship is higher than the extent of the underlying claim, security in amount of the claim (including also the reasonable costs and interest) will in most cases be sufficient. Acceptable form is either to be agreed on by the parties or by the competent tribunal and may be provided in the form of deposit on the account of the court, pledge of other property or guarantee/surety from the third party (banks, insurers including P&I clubs).

19. Does security need to cover interest and costs?

Yes, security, unless it would exceed the value of the ship, would need to cover also interest and costs accrued by the respective time (i.e. date of application for release).

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

P&I LOUs are starting to be accepted as forms of security.

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

Release of a ship would, in practice, require at least two-three days: the courts are obliged to consider pleas for termination of security measures not later than the next day after filing of such pleas (provided that the defendant also submitted proof of providing the counter-security) and in case if arrest has been effected by the bailiffs, the latter would need to be notified and take respective action as well.

22. Is there a procedure to contest the arrest?

Arrest (as any other security measure imposed by the tribunal), in addition to being lifted in case of provision of security, may be contested by filing a respective plea to the tribunal in case if the arrest is unfounded (for example, when the vessel does not have the relation to the debtor which allows it to be arrested).

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

If arrest will be treated as a preliminary security measure for the purposes of commencing the main suit in the Russian court, than such period will be determined by the court in its ruling by which arrest will be granted. But in any event, it should not exceed 15 days.

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

Russian courts have a right to refuse application of arrest. When the judge considers the application, he/she refuses or satisfies it on the basis of its internal conviction. Also, as mentioned above, it is possible for the court to order the applicant to provide counter-security against any damages which may be caused by the arrest, including wrongful arrest and to determine the extent of applicant's liability in such case.

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

It may be said that at present, Russian courts dealing with maritime claims will not be likely to pierce/lift the corporate veil, but at the same time, in one of the acts of the Supreme Arbitration [Commercial] Court (in a case completely unrelated to shipping), the doctrine of piercing the corporate veil was expressly acknowledged, so it is quite possible that this doctrine will gain wider application in Russia in the near future.

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

No.

**Since 2003, Alexander Mednikov is a partner in "Jurinflot International law office", a Russian law firm which specializes in maritime law. His primary professional interests include ship finance and vessel mortgage, as well as joint-ventures and M&A in shipping and other spheres. Alexander graduated with honours from the law faculty of the Russian Peoples' Friendship University and speaks English and French.*