

SHIP ARREST IN *TURKEY*

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

The arrest of vessels in Turkey is mainly governed by the provisions of the Turkish Commercial Code, which entered into force on 1 July 2012 (“TCC”).¹ During the preparatory work, the drafting committee of the TCC had taken into account the provisions of the International Convention on the Arrest of Ships 1999 (“1999 Convention”) although Turkey had not ratified the 1999 Convention at that time. As a result, the arrest regime under the TCC reflects the provisions of the 1999 Convention.

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

Turkey is a party to the International Convention on the Arrest of Ships 1999² and the International Convention on Maritime Liens and Mortgages 1993³.

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

The TCC regulates the arrest of ships specifically and prohibits any other ways to arrest a ship.

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

From the procedural point of view, conservatory attachment leading to the arrest of the vessel is the only conservatory measure permitted under the TCC. Other conservatory measures such as a freezing order or similar shall not be applicable with respect to a maritime claim.

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

Before the enactment of the TCC, in principle, arrest of a ship in Turkey can take place for all types of claims regardless of whether the claim has a maritime character or is connected with the ship to be arrested or not. The TCC, however, adopts the definition of “maritime claim” provided in the International Convention on Arrest of Ships, 1999 and restricts the arrest of ships for maritime claims enumerated in the TCC.

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

A ship can be arrested in Turkey irrespective of her flag.

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

Except for arrests in order to enforce a maritime lien, only the vessels owned by the debtor can be arrested.

¹ Turkish Commercial Code Law No: 6102 published in the Official Gazette dated 14 February 2011 numbered 27846

² The Ratification Law related to “1999 Convention” Law No: 6904 published in the Official Gazette dated 25 March 2017 numbered 30018

³ The Ratification Law related to “International Convention on Maritime Liens and Mortgages 1993” Law No: 6940 published in the Official Gazette dated 25 March 2017 numbered 30018

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

The TCC specifically deals with the issue and permits the arrest of any other ship of the debtor provided that they are owned by the debtor liable for the maritime claim.

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

Except for arrests based on a maritime lien, only the vessels owned by the debtor can be arrested. The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant a maritime lien.

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

Except for claims related to crew wages, a fixed countersecurity of 10.000SDR has to be lodged before the court along with the arrest application regardless of the claim amount. The countersecurity may be in the form of cash or bank letter of guarantee. The countersecurity may be increased or decreased by the court at a later stage upon the application of the parties.

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

Maritime lien gives an in rem action against the vessel. Apart from that the same arrest procedure is applicable.

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

Turkey is a party to the International Convention on Maritime Liens and Mortgages 1993 and the TCC provisions on maritime liens reflects the aforesaid Convention.

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

We would need one day after we receive the supporting documents related to the claim in order to prepare and file the application and the countersecurity must be received as it has to be deposited with the application. The time required for the court to process application varies depending on the court and due to work load of such court. For example, while it takes a couple of days before Istanbul while it may be possible to obtain arrest order on the same day of application in other courts after filing.

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

We need a notarised and duly legalized POA, scanned copy of which will suffice provided that the original follows shortly.

Documents evidencing a possible claim along with their translations in Turkish need to be submitted.

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

Original documents or notarization/legalization of the documents are not required during filing or at a later stage unless the opponents object to the authenticity of such documents.

The only document that needs to be notarized and apostilled is the POA. (see our remarks for Question No.14)

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

In addition to the other rules for jurisdiction and subject to any agreement on jurisdiction or arbitration, the TCC explicitly provides that the arrest itself confers international jurisdiction to the Turkish court which has given the arrest order to hear the action in merits of the claim.

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

The vessel may be released by putting up a security covering the claim amount, interest accrued and costs.

It is also possible to file an objection against the arrest if the arrest order is given based on the ex parte application of the arrestor.

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

The security may be in the form of cash or bank letter of guarantee.

19. Does security need to cover interest and costs?

The security needs to cover the claim amount, interest and costs.

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

The security may be in the form of cash or bank letter of guarantee. In the event that the parties agree on another form of security such as a P&I letter, that may be possible as well.

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

It can be done within a couple of hours provided that the security required by the court is deposited.

22. Is there a procedure to contest the arrest?

It is possible to contest the arrest if the arrest order is given based on the ex parte application of the arrestor. The objection may be filed either before the court that has given the arrest order or if an action in merit has been filed before a Turkish court, before that court within 7 days after learning the arrest order. If the action in merits is filed before an arbitral tribunal or a foreign court, the objection may be filed before the court that has granted the arrest order. The court has to hold a hearing in order to hear the challenge to the arrest. The court's decision on the objection to the arrest is subject to appeal.

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

Under the TCC, the action in merits has to be filed within one month before the court or arbitration tribunal that has jurisdiction in merits. In addition to the other rules for jurisdiction, the TCC explicitly provides that the arrest itself confers international jurisdiction to the Turkish court which has given the arrest order to hear the action in merits of the claim.

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

Should the arresting party lose the action in merits, there may be liability for loss and damages suffered due to wrongful arrest which may be enforced on the countersecurity.

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

The concept of piercing and lifting the corporate veil does exist through court precedence. However in practice it is very difficult to resort to in practice. In the rare cases where this was possible, the courts take facts such as common address, management, shareholding and interest as among possible grounds to consider the possibility of piercing the corporate veil.

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

Under TCC it is possible to have a ship sold pendente lite base on Enforcement Court decisions (i) with the application of the owner, who is also the debtor, (ii) with the application of the claimants or Bailiff Officer if the vessel's value reduces significantly or costs of maintenance substantially (iii) with the application of the Bailiff Officer or Harbor Master if the vessel poses environmental or other security risks. The process would take minimum three months.

**Zeynep Özkan Özeren has a degree in both law and international relations and a post graduate degree in shipping law from University of Southampton. After working with various international consultancy firms specialized in transportation law and a local law firm in Istanbul, she founded Özkan Law Office in 2005. Her practice mainly focuses on shipping law and international trade law. Zeynep Özkan Özeren is as a lecturer of international trade law at the Bogaziçi University, Istanbul. She is a member of Istanbul Bar Association and International Bar Association.*