

SHIP ARREST IN CROATIA (QUESTIONS 1-9)

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(QUESTIONS 10-26)

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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 is possible to obtain the arrest of a ship or obtain the release of an arrested ship in accordance with accepted international standards.

In order to justify and maintain granted arrest the creditor is due to initiate litigation or arbitration proceeding in merits of the matter within 15 days from the date of arrest order. Arrest lasts according to the arrest order, usually till the terms for enforcement of the judgment or arbitration award are met.

The opposing party may prevent the arrest before ship’s arrival in the domestic jurisdiction by placing in advance the motion for acceptance of the replacement security, if accepted by the court (see point 18).

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 there 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.

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 irrespective 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 irrespective 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).

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

The counter-security is not required by the Courts in order to arrest the ship.

However, under Croatian law there is an existing possibility for the opposing party (i.e. the owners of the vessel under arrest) to apply to the Court with request to order the claimants to provide a counter security after the arrest is granted. The Court may order counter security only following request of the opposing party. In such a case the Court may order the Claimants to put up a counter security for costs and damages sustainable by the owners for detention of the vessel arising out of the arrest, if subsequently a Court finds the arrest was not justified. Nevertheless, as a general view, the Courts of Croatia are not inclined to accept the request of the opposing party for counter-security.

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

From the procedural point of view, there is no difference in respect to arresting a ship for a maritime claim and a maritime lien. Nevertheless, pursuant to article 954, section 1, of the Croatian Maritime Code it is provided that as a security for the maritime claims (save maritime liens claims) any vessel may be arrested that is owned by a "personal debtor" at time of submission of the petition for arrest. The expression "personal debtor" relates to the registered owner of the vessel liable for respective claim.

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

Yes, Croatian Maritime Code provide a list of maritime liens. Under Croatian law the claims secured by maritime liens are taking priority over a ship mortgage.

As per the provisions of the Croatian Maritime Code, the claims secured by maritime liens are as follows:

1. Claims for salaries and other allowances owed to the master, officers and other crew members regarding their employment on board, including repatriation costs and social security contributions to be paid in their name;

The Croatian Maritime Code (2004 as amended) does not provide for sale of the ship pendent lite². Claims for death or personal injury occurred on land or at sea and are directly connected to ship employment;

3. Claims arising from remuneration for salvage at sea;
4. Claims for port fees and costs incurred in nautical ports and other special-purpose ports, expenses pertaining to navigation in channels and other sea lanes, including fees for safety of navigation, fees for use of navigation safety facilities, and pilotage costs;
5. Claims arising from non-contractual liabilities for material losses or damages caused by ship, with the exception of loss or damage to cargo, containers and passenger objects transported by this ship.

Maritime liens on a ship for the principal shall also apply on interest.

List of maritime liens provided by the Croatian Maritime Code corresponds to the International Convention on Maritime Liens and Mortgages, Geneva 1993. Croatia has not ratified International convention relating to maritime liens. As per provisions of Croatian Maritime Code (the conflict of law rules), the law of the ship's flag applies to 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?

The time required to arrest the ship since the moment the file arrives to our law firm depends of the scope of documents to be perused (and translated in Croatian language). Generally, it takes a few hours to prepare the application for arrest. The arrest proceeding is commenced by the petition for the arrest, submitted to the Court having jurisdiction over the Port where the ship is located and supported with copies of the respective evidence. All documents and evidence submitted should be supported with the translation into Croatian language by a sworn court interpreter. Once the application for arrest is submitted to the Court, the Court will decide within a day or two, depending when the application has been received by the Court. The ship is arrested when the Arrest Order is served to the Master, and ship documents seized by the competent Harbour Master's Office.

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

Yes, in order to apply for the arrest of the ship a PoA duly signed and sealed by the client/claimant is required.

In order to obtain the arrest of the ship, the claimant must demonstrate existence of an arguable claim against registered owner of the ship and to elaborate that on the facts of the case there is a reasonable possibility (danger) that an amount as established by a judgement or by award will not be recovered. If the registered owner of the ship is a foreign (non-Croatian) entity, existence of danger is assumed by law. No special form of legalization of PoA is required. A PoA, in a copy, by e-mail in advance, would be sufficient, and the original to be provided to the Court subsequently). The application for arrest should also be supported with an evidence regarding the registration of the ship with full identity of the registered owner (e.g. transcript of registry or Lloyds Intelligence/Equasis).

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

Save for the application for the arrest, no original documents are required. For the time being, no documents can be filed electronically. Nevertheless, implementation of electronical system is under way and should be available in near future. No documents require notarisation and/or apostille (for the purpose of arrest of the ship).

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

As a general principle under Croatian law, jurisdiction of the Court of Croatia can be founded on the arrest of the vessel (over the substantive claim), provided the exclusive jurisdiction of foreign court/arbitration has not been agreed by the contract.

In a case that the arrest of the vessel is granted, the Court will give the claimant 15 days period to commence the legal action on merits before the competent court and/or arbitration and to provide the Court with the evidence that such legal action has been commenced. If the claimant failed to

commence legal action on merits before the competent court and/or arbitration, the arrest will be lifted.

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

The ship can be released from the arrest if: a) the claimant submits a written motion and withdrew the application for arrest; b) if the respondent places the appropriate security (accepted by the court or the claimant); c) if the Order for arrest is set aside following appeal of the respondent; d) if the claimant fails to initiate the procedure on merits before the competent court/arbitration within the time granted (usually 15 days). In all cases the Court will issue a Decree and release the ship from the arrest within one or two hours.

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

According to the judicial practice of the Courts of Croatia, in order to release the ship from the arrest a cash deposit and/or bank guarantee are considered acceptable security without need for approval from a claimant. Accordingly, if a cash deposit is paid with the Court or bank guarantee is provided by a respondent as a security, the Court will release the ship from the arrest regardless to objection of the claimant. However, if other form of security is provided (e.g. P&I LOU or other form of guarantee of the insurer), the security will be submitted for consideration to a claimant prior the decision be made by the Court, which decision is subject to appeal.

19. Does security need to cover interest and costs?

The security need to cover the interest and costs as awarded by the Order for Arrest. The security amount is usually set in the amount of 120-130% of the principal claim.

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

Club LOUs will be submitted for consideration of a claimant prior the decision be made by the Court. Generally, IG P&I Club LoUs are considered sufficient security to lift the arrest. However, as the one LoU provided by the IG P&I Club has not been honoured, in certain cases the LoU has not been accepted by the Court as sufficient security.

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

The release procedure is also considered as an urgent procedure. The Court will issue the Order and lift the arrest within an hour.

22. Is there a procedure to contest the arrest?

Yes. The respondent has a right to contest the arrest by filing the appeal against the Arrest Order. Once the appeal against the Arrest Order is filed, the first instance Court may consider the appeal of the respondent and set aside the Arrest Order if found the appellations reasons grounded. However, the first instance Courts are not inclined to decide on appeal of the respondent, but forward the matter to the Court of Appeal for their consideration and decision.

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

In a case that the arrest of the ship is granted, the Court in Croatia will give the claimant 8-15 days period to commence the legal action on merits before the competent court and/or arbitration and to provide the Court with the evidence that such legal action has been commenced. If the claimant fails to commence legal action on merits before the competent court and/or arbitration, the arrest will be lifted following request of the respondent.

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

The Courts of Croatia acknowledge wrongful arrest. If the arrest is wrongful, the claimant would be liable for all costs, losses and damages sustained by the respondent, due to such wrongful arrest. The claim for compensation of damages arising out of and/or in connection with wrongful arrest should be submitted in the same procedure, if still pending. Otherwise, the claim can be submitted in a separate litigation procedure for compensation of damages.

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

The piercing and lifting of corporate veil is known to Croatian law. Nevertheless, as a general practice, under the Croatian law it is very difficult to pierce the corporate veil. In this respect, the Courts of Croatia will recognize only the registered owner as the owner of the ship and will not pierce the corporate veil between related companies.

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

The Croatian Maritime Code (2004 as amended) does not provide for sale of the ship pendent lite.

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Law Firm Kacic & Brbora is specialised in shipping and maritime affairs, aviation, finance and international commerce to and from Croatia, which aims to provide the clients with full advise, as well as all the necessary assistance, on all issues connected with such activities. However, shipping has been a core practice since the firm was founded. The long standing relationship created over the years through our practise dealing with all aspects of shipping and maritime affairs allows us to offer expertise and deep understanding of legal and business related aspects of maritime activities. The Firm is proud of the productive relationship we have developed with shipowners, insurers, P&I clubs, yards, banks and other financial institutions.

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