

SHIP ARREST IN FINLAND

By Ulla von Weissenberg*
Procopé & Hornborg Attorneys Ltd
ulla.weissenberg@procope.fi
www.procope.fi
Eteläesplanadi 18, FI-00101 Helsinki, Finland
Tel: +358 10 3090 300
Fax: +358 10 3090 333



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

The arrest of foreign vessels is possible in Finland if the underlying claim is a maritime claim as defined in the Arrest Convention of 1952, incorporated in the Finnish Maritime Code of 1994 (Chapter 4). However, Chapter 4 of the Maritime Code is not applicable if the applicant is domiciled in Finland and the vessel in question is registered in the Finnish Transport Register or the Ship Register of the State Department of Åland or if the claim is of a public nature.

The existence of a maritime claim in itself is not a sufficient ground for an arrest. It is only possible to arrest a vessel in Finland if the material claim as such can be enforced against the vessel in Finland. Therefore, the defendant must own the vessel or the claim should be secured by a maritime lien on the vessel. When arresting a vessel in Finland the applicant must provide security to cover the costs of an unjustified arrest.

An arrest is constituted in two independent and separate phases. Firstly, the applicant must obtain a court order for the arrest and thereafter apply for the actual enforcement of the order from the executive authorities. To maintain an enforced arrest in force, the applicant must commence legal proceedings against the defendant to obtain an enforceable judgment within one month from the date when the arrest was granted.

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

Finland has on 21 December 1995 ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships of 1952 (“the Arrest Convention”). Finland has also on 31 August 2000 signed the International Convention on the Arrest of Ships of 1999 but the Convention has not yet been ratified.

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

If the provisions of the Maritime Code concerning arrest do not apply for reasons explained in question 1, the general rules on precautionary measures incorporated in the Finnish Judicial Procedural Code, Chapter 7 apply.

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

When enforcing an arrest order the vessel is in principle taken in to the custody of a Bailiff but due to the nature of the arrested property, this is not possible in practice. Instead, the Bailiff takes possession of all the vessel’s necessary documents, e.g. nationality certificate, in order to prevent the vessel from leaving port. The vessel can also be chained to the pier or prevented from refueling. The Bailiff can also give notice of arrest and request executive assistance from e.g. the Coast Guard, the pilots, the Customs or the port authority to ensure that the vessel remains under arrest.

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

Generally, it is possible to arrest seagoing ships only to secure the enforcement of maritime claims as defined in the Arrest Convention. However, in certain cases the provisions set forth in the Convention do not apply. See question 1. Under Chapter 7 of the Judicial Procedural Code, the granting of an arrest order is subject to:

- (i) prima facie evidence of the applicant’s claim which the defendant can be ordered to pay by a judgement or an arbitral award enforceable in Finland; and

- (ii) the existence of a threat that the defendant will hide, destroy or dispose of his property or otherwise endanger the applicant's claim.

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

Finland has extended the scope of the application of the Arrest Convention to all vessels registered in the Finnish Register of Ships or in corresponding foreign ship register, regardless of the nationality or the trading areas of the vessel.

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

When ratifying the Arrest Convention Finland limited the possibility to arrest vessels owned by someone who is not liable for the claim of the applicant. Only when a claim is secured by a maritime lien on a vessel such vessel can be arrested irrespective of who the debtor is.

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

A fundamental principle under Finnish law is that in order to secure a claim it is only possible to arrest property owned by the defendant. Therefore, a sister ship can be arrested if both vessels were owned by the same defendant at the time when the maritime claim arose. The same does not apply to ships in associated ownership.

However, arrest of a sister ship is not possible if the underlying maritime claim is based on a dispute of ownership of a vessel or a dispute of ownership, possession or operation of or earnings from the vessels between co-owners of a vessel.

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

It will not be possible to arrest bare-boat or time-chartered vessels if the charterer is solely liable for the claim.

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

Yes, the applicant must provide security for any damage or loss which may be caused to the defendant if the arrest of the vessel proves to be unjustified. The law contains no guidelines for how to determine the amount of security. The Bailiff enforcing the arrest order will at his own discretion decide what security will be considered sufficient to cover the liability of the applicant and in practice a varying amount of securities have been required. Generally, only security given by a Finnish bank is accepted.

The Maritime Court may release the applicant from the obligation to provide security if the applicant cannot provide security and the applicant's claim is considered justified and well founded. However, it is highly unusual that such release is granted.

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

There are some differences in this respect. The main principle is that a ship can only be arrested if the claim is a maritime claim and the vessel owned by the debtor. If a claim is secured by a maritime lien on a vessel, such vessel can be arrested regardless of the debtor and it is not necessary to show any threat that the defendant will hide, destroy or dispose of his property.

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

Finland recognises maritime liens. The claims secured by a maritime lien are listed in the Maritime Code, Chapter 3, which corresponds to the list in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967. However, Finland has signed the Convention but it has not been ratified. A maritime lien is valid even if the debtor is a non-operating vessel owner, a charterer or other person who takes use of the vessel.

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

Generally, the application for an arrest must be served on the defendant and the defendant is given an opportunity to file a defense before the arrest order is finally given. As this procedure often endangers the purpose of the arrest, it is possible to obtain an interlocutory order, which is immediately enforceable without any service of documents on the defendant. In cases of extreme urgency an arrest order may even be obtained on the same day it is filed and enforced provided that the required security is available.

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

If the court so orders, a lawyer shall produce a POA personally signed by his/her client unless orally retained by the party in court. In general, courts do not require POAs from attorneys at law (i.e. members of the Finnish Bar Association). There are no specific requirements regarding the particulars of the arrest application but it should at least contain details of the applicant and the defendant, particulars of the vessel to be arrested, particulars of the amount of the claim with supporting documentation, a brief account of the grounds of the claim and an explanation why the arrest is considered to be necessary by the applicant.

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

A written application with supporting documents must be filed with the Maritime Court in order to obtain an arrest. If the applicant wants to invoke the benefit of a maritime lien, he must produce evidence of the existence of such lien.

Normally an extract from the relevant register or a corresponding document as evidence of the ownership of the vessel is required. Also particulars of the parties and the vessel to be arrested as well as particulars of the amount of the claim can be attached. The attached documents are not required to be original. Neither notarisation nor apostille of a document are normally required. Parties are in principle allowed to deliver documents electronically to the authorities. If the document is required to be signed, the requirements of an electronic signature as stated in the relevant act must be met. However, if the document includes information about the sender and there is no uncertainty about the originality or integrity of the document, the electronic document can be delivered unsigned to the authorities.

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

A court competent to try an action in civil litigation is the Maritime Court within whose jurisdiction the defendant is domiciled, has his principle place of business or where the vessel to be arrested is present.

If security has been lodged with an authority for release from arrest, an action can be brought before the Maritime Court where the security was lodged. The same applies even if the security has lapsed.

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

In order to release a ship from arrest the defendant can provide the Bailiff with a security for the applicant's claim. In some cases the arrest can only be lifted if the defendant provides a security that is approved by the applicant or in the Bailiff's view corresponds to the applicant's need for legal protection in an appropriate and sufficient manner. An arrest can also be lifted at the request of the defendant unless the applicant demonstrates that legal proceedings against the defendant were commenced on time. The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order was granted. An arrest shall also be lifted if the principal claim has been rejected or dismissed by a court or if the claim has been paid.

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

The security may take the form of a monetary security or a guarantee. The Bailiff may require a bank guarantee from a Finnish bank.

19. Does security need to cover interest and costs?

The security shall cover the amount that the court has ordered the ship to be arrested for. The security shall generally also cover interest and legal costs.

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

Sometimes P&I club letters may be used as an accepted form of guarantee to lift the arrest.

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

If the grounds for the arrest have lapsed, the Bailiff shall carry out the reversal measures. The law does not specify the duration of this procedure.

22. Is there a procedure to contest the arrest?

When the arrest is granted and enforced by a separate arrest order or during the proceedings of the principal claim, the defendant can appeal such an order in the court of higher instance. However, in cases of an interlocutory order, the order cannot be appealed but the applicant must commence legal proceedings against the defendant within one month from the final arrest order.

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

The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order is granted.

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

The applicant's liability for an unjustified arrest is strict. Therefore, the applicant is liable for any loss the defendant may suffer as a result of an unjustified arrest even if the applicant has not been negligent or acted in bad faith when enforcing the arrest.

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

Piercing the corporate veil is not common. Therefore, it is not normally possible to arrest the property of owners associated with the debtor. However, in 2015, the Supreme Court pierced the corporate veil in an IP-related case (KKO 2015:17) and considered the parent company liable for the debts of its subsidiary. Later in case KKO 2017:94, the Supreme Court deemed company A liable for some public debts of company B. A and B were managed and fully owned by the same person. The reasoning of the Supreme Court was that a part of the operations of company A had been transferred to company B without any sound business reason only in order to avoid some payments of public nature. However, in these particular cases, there was a relatively clear effort on part of the parent company/company A to circumvent their obligations under law. Some Finnish legal scholars have therefore argued that a Finnish veil-piercing doctrine has been confirmed to exist in situations where group structure or corporate form in general has been used in an artificial and reproachable manner to the end of creditors' rights being compromised or the evasion of a statutory obligation. The discourse is however not unanimous, and the and it is yet too early to assess definitive the impact of the se cases mentioned above remains to be seen.

In addition, property formally owned by a third party can be attached to secure a claim on condition that the ownership is based on formal arrangements which do not correspond to the actual nature of the transaction and aim at avoiding enforcement. A further condition is that the applicant's claim cannot be otherwise recovered from the debtor within a reasonable time.

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

The main principle under Finnish law is that it is not possible to sell the ship pendente lite. According to the Finnish Judicial Enforcement Act, if property which is subject to rapid deterioration or which is expensive to retain in custody has been arrested but the court has not yet given a judgment, the Bailiff is entitled to sell such property at the request of the claimant. In theory these principles may apply also to vessels under arrest.

**Ulla von Weissenberg advises on all aspects of international maritime and transport law and related insurance issues. She is also experienced in issues relating to shipbuilding and ship purchase. Ms von Weissenberg litigates frequently before courts and arbitral tribunals. Ms von Weissenberg heads the Shipping, Transport and Insurance practise of Procopé & Hornborg Attorneys Ltd. Prior to joining Procopé & Hornborg, Ms von Weissenberg was a partner at Borenus and Aminoff & Weissenberg, Attorneys Ltd. She has worked in the shipping industry with legal matters since 1994.*