

## SHIP ARREST IN *POLAND*

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

Under Polish law, to arrest a vessel you will need a **court order**. Such order is granted by a court in accordance with provisions of the Polish Civil Procedure Code (PCPC) regarding securing claims (art. 730-757 of the PCPC). These provisions do not apply only to vessels but also to any other types of assets.

Under the art. 730 (1) of the PCPC the security order will be granted to a creditor:

- whose claim is probable (at this stage of proceedings the court will examine just prima facie probability of the claim) and,
- who has legal interest in the arrest.

Legal interest means the situation in which: (1) lack of security will make it impossible to satisfy creditor's claim or (2) satisfaction of this claim will be connected with serious difficulties

The example argumentation in this respect is that the vessel is the only asset of a debtor known to a creditor, a debtor has its vessel registered in the FOC jurisdiction and can transfer its ownership very quickly, debtor's company is registered in the tax haven, debtor has acknowledged the claim, time bars for claims are short etc.

A vessel is arrested by a bailiff who prior to seizure of a vessel should inform maritime authorities and the Polish Border Guard about the arrest so that the vessel cannot flee.

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

International Convention Relating to the Arrest of Sea-Going Ships of 10th May 1952 (Brussels Convention) applies to arrest in Poland. The Brussels Convention is an integral part of Polish law and is applied directly.

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

Maritime authorities may detain a vessel for up to 72 hours (on Sundays and public holidays this time does not run) to secure claims for outstanding port fees, claims for damages in port facilities, docks or sailing routes and claims arising from environmental pollution. This is used sometimes if you need to gain some extra time.

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

If a vessel is entered into the Polish register this is possible to encumber it with compulsory mortgage. In practice this is used mainly for securing creditors' claims on vessels under construction.

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

Vessels flying flag of member states of the Brussels Convention can be arrested only for maritime claims listed in art. 1.1 of this convention. Other vessels can be arrested also for other claims on the basis of provisions of the PCPC.

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

Yes, this is possible.

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

Yes (excluding warships and other vessels in state service).

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

As under the article 3.1. of the Brussels Convention.

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

As under the article 3.4 of the Brussels Convention.

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

The court may require payment of deposit to satisfy potential claims of the debtor connected with wrongful arrest. This is, however, very rare situation.

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

The procedure is the same.

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

Poland is a party to Brussels convention on maritime liens and mortgages of 1926. Polish Maritime Code also contains provisions concerning 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?

About 3-4 days (much depends on the judge).

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

We need POA and documents which prove that the person(s) who signed the POA is (are) duly authorised to represent the company (extract from commercial registers, etc.) We also need documents supporting the claim and its probability (invoices, contracts, bunker delivery orders etc.). Certified translations of all these documents to Polish are necessary in all cases.

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 should be filed in the Court in paper version – scans and copies are acceptable provided they are certified as “true copy” by Polish attorney-at-law (legal adviser or advocate). Additional legalisation, notarisation or apostille may (but does not have to) be necessary for claims listed in art. 1 para 1 letters “o”, “p”, “q” and with respect to maritime liens (actions in rem).

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

As under the art. 7.1 of the Brussels Convention. Moreover, careful examination of other sources of law is recommended (the PCPC and Council Regulation 44/2001 in the first instance).

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

The ship may be released in following cases:

- when the arrest is successfully contested (see question 22).
- when the cash security is given by a debtor (see questions 18 & 22).
- when the arrest collapses (see question 23 & 24),
- when the creditor agrees for the release (see question 20).

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

The fastest way to release the vessel is to **pay full amount determined in an arrest order into deposit bank account of a court which granted an arrest order**. In such case, **arrest will collapse automatically**. Main disadvantage of this procedure is that this money cannot be withdrawn from the deposit account until the proceedings are finished in final and legally binding way (see also point 24). However, debtor may at any time try to negotiate a change of type of security. See also question 22 in fine.

#### 19. Does security need to cover interest and costs?

Under Polish law, it is possible to secure future costs of proceedings and interest but it is not obligatory - only creditor decides whether to do so or not. So, if an arrest order includes costs of proceedings and interest, these costs will also be secured.

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

Under Polish law, a vessel will be released automatically by virtue of law **ONLY** if full amount determined in the arrest order is **paid into deposit bank account of a court which granted an arrest order** (see point 18).

Vessel can also be released at creditor's motion if creditor accepts bank guarantee, insurance guarantee, P&I LOU etc. as a sufficient security of its claim instead of court deposit. Anyway, this is always only creditor's decision.

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

Depends on the case - usually from two days to one week.

#### 22. Is there a procedure to contest the arrest?

Under Polish law, it is possible to lodge a **complaint against an unjust arrest**. It should be done within 7 days as from a date of arrest of the vessel. This procedure is quite time-consuming and may take **up to four months**. However, if debtor has time (for example if a vessel is arrested in a shipyard), lodging such complaint should be given careful consideration.

**ATTENTION:** If you pay full amount determined in an arrest order into deposit bank account of a court which granted an arrest order (see points 18 & 20 above), your complaint will be dismissed (payment of full amount determined in an arrest order into deposit bank account of a court automatically releases the vessel and where there is no arrest anymore, there are no grounds to lodge a complaint).

However, if debtor is trying to release vessel on the basis of other type of security - i.e. bank guarantee, insurance guarantee or P&I LOU, lodging of such complaint should be given careful consideration.

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

Up to 14 (fourteen) days. Otherwise, arrest will collapse (see also art. 3.3 of the Brussels Convention).

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

Yes. Debtor can lodge a complaint against the security order and if the court allows the complaint, a debtor may claim for compensation for its losses connected with the arrest. The same relates to situation when the arrest collapses – for example: (1) if the action as to the merits is not commenced in prescribed time, (2) the writ of summons is returned or rejected for formal reasons or (3) the claim is dismissed.

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

No.

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

No. Generally, no forced sale of the vessel in Poland is recommended. This is too complex (provisions regarding forced sale of the real estate will apply in this case) and takes too much time.

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*In his professional career, Bartosz represents both individual clients and large companies. With maritime law as his main area of interest and expertise, he specialises mostly in arrests and release of vessels as well as claims related to marine accidents, damages to cargo, oil pollution, shipbuilding and shiprepair, marine insurance etc.. In addition to this Bartosz deals also with company law, international trade law as well as intellectual property law.*

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