

SHIP ARREST IN ROMANIA

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

Conditions imposed by Romanian law:

- a) Indicate and provide evidences to the Court that plaintiffs have started the main legal action (Court action or arbitration proceedings according to the provisions of the C/P or B/L) against the defendant in 20 days from the date the Main Arrest has been granted by the Court. The evidence should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration was started;
- b) Indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel;
- c) In accordance with the Romanian Civil Procedural Code, the amount of the counter-security should be placed in cash and is limited at 20% of the claimed amount (usually this is between 5-10% of the claimed amount).

In case the matter is very urgent, vessels can be provisionally arrested through the Harbor Master, paying a tax of Euro 400 (Saturdays and Sundays the fees are in the amount of Euro 800).

A notice of the arrest will be notified to the Harbor Master.

The Harbor Master will issue the arrest order and submit it to the vessel's file and will not interrupt in any way vessel's operations. The arrest will become effective when the vessel will finalize operations and vessel's agent will attend the Harbor Master to receive the vessel's permit to leave the port. Starting with the hour when the vessel's agent will ask for the Permit to leave, the Harbor Master will count 24 hours (Saturdays and Sundays are not included within this hours anyway) and the vessel will be arrested for 24 hours. During these 24 hours, the plaintiff will need to apply to the Court asking for the arrest of the vessel. Courts are judging these cases on an urgent basis and normally are issuing the decision within 24 hrs. There is no need for the time being to place the counter-security which will be requested by the Court at a later stage.

The Court fees are low (about 200 Euros). The lawyer's fees are normally calculated on hourly basis. The costs are usually recoverable from the defendant.

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

Romania has ratified the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels on May 10, 1952, on November 8th, 1995. For the participant states of the 9th Diplomatic Convention of Maritime Law, it was enforced on February 24th, 1956.

Article 8(1) of the Convention provides that its provisions are applicable in any contracting state to any vessel that flies the flag of a contracting state. Paragraph 2 of the same article mentions the possibility to arrest any vessels flying the flag of a non-Contracting State in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.. Romanian Courts are applying this principle when taking into consideration the arrest of a vessel in the Romanian jurisdiction.

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

No.

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

No.

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

A ship can be arrested in Romania for one or more of the claims listed in article 1(1) of the 1952 Arrest Convention. Ships may be arrested in Romania also for one or more of the claims listed by the International Convention for the unification of certain rules of law relating to maritime liens and mortgages, 1926.

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

Article 8(2) of the 1952 Arrest Convention mentions the possibility that vessels flying the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state.

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

As already mentioned, it is compulsory to indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel.

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

Sister ships may be arrested in Romania, according to the provisions of articles 951-952, 959-968 of the Romanian Civil Procedural Code and the provisions of Article 3(1) the 1952 Arrest Convention. Ships in associated ownership cannot be arrested in Romania.

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

Bareboat and Time-Chartered vessels cannot be arrested in Romania for the claims against the Bareboat and/or Time-Charterer, with the exception stated in art. 3(4) of the 1952 Arrest Convention.

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

The Court will order the claimant to provide an amount as counter-security to the Court as a percentage of the claimed amount (the amount will be fixed by the Court, but in most of the cases is 5-10%). In accordance with the provisions of the new Civil Procedural Code the amount of the guarantee may be increased up to 20% of the claimed amount and needs to be placed in cash at the disposal of the Court. According to the recent case law from the Romanian Courts involving a ship arrest in Galati, the Court has set the amount of the counter-security at 1.5% from the claimed value.

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

Arrest of a ship for a maritime claim will be done according to the procedure established by the 1952 Arrest Convention and in case of arrest of a ship for a maritime lien mentioned by the 1926 Maritime Liens and Mortgages Convention.

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

Romania recognizes maritime liens according to the 1926 Maritime Liens and Mortgages Convention. Romania is not a party to the 1993 Maritime Liens and Mortgages Convention.

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

A notice of the arrest can immediately be sent to the Harbor Master. The Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way the vessel's operations. Notice of the arrest will be placed immediately when the file arrives to our law firm and an Engagement Letter will be signed by the client and sent by e-mail and/or fax.

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

Based on the Engagement Letter signed by the client, the law firm will provide to the Court a power of attorney in the standard format prescribed by the Lawyers statute.

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

There is no need to provide original documents to the Court, only copies mentioned to be true copies will be provided to the Court, on the understanding that the originals will be kept by the law office. It is necessary to be provided with originals of the documents, or Notary certified copies in order to translate them into Romanian and present legalized translations to the Court, taking into consideration that Public Notaries will not legalize translations without being provided with the originals of the documents. The evidence that the main claim proceedings has been instituted should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started.

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

No.

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

As long as the debt has been paid or a Letter of Undertaking/Bank letter of guarantee has been provided in order to release the ship, the debtor can request the Court to release the vessel from arrest. The Court will release the vessel from arrest on urgent basis, even in the same day.

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

In accordance with the Civil Procedural Code provisions, the security needs to be provided in cash at the disposal of the Court. Only in case the creditor agrees, the debtor may provide a Bank Letter of Guarantee or a P&I Letter of Undertaking at the disposal of the Court.

19. Does security need to cover interest and costs?

Yes.

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

The P&I LOUs may be accepted by the Court for lifting the arrest only in case the creditor agrees to accept such undertakings.

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

1-2 days, usually.

22. Is there a procedure to contest the arrest?

The arrest order issued by the Court may be appealed to the Court of Appeal.

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

Arrest cannot be requested if legal action on the merits has not yet started prior to the application to the Court. According to the Romanian Civil Procedural Code, it is possible that, in urgent cases, arrest of the vessel to be permitted without the need to commence substantive claim proceedings in advance. In such a case, substantive claim proceedings needs to be started in 20 days from the date the arrest application has been admitted by the Court.

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

Yes. In practice, it is very difficult to prove such a claim.

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.

**Adrian has written several articles exclusively on maritime law published by well-known Romanian publications such as "Law" and "Commercial Law Journal" as well as by the English "International Journal of Shipping Law". In 2001, he published the "Maritime Law" Book. Adrian current practice focuses on commercial and maritime law, international trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.*

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**Augustin Zabrautanu is a graduate of Bucharest University. He is a licensed attorney in Romania. His post graduate activity included Master in maritime law at Constantza Maritime University, private legal practice and criminology at Bucharest University School of Law. He is a member of the Bucharest Bar.*

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Starting in 2005, Augustin Zabrautanu and his colleagues had successfully represented numerous and various clients (both of domestic and international companies), in a broad array of maritime issues, including arrest of ships. Augustin speaks English and Romanian.