

SHIP ARREST IN UKRAINE (QUESTIONS 1 TO 9)

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(QUESTIONS 10 TO 26)

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

Initial ship arrest in Ukraine is fast, simple and inexpensive. In order to start the arrest procedure one needs to file the application on arrest as preliminary measures to the local commercial court under the Ukrainian commercial procedural code. Usual term of considering the application is 2 working days, weekend excluded. Ordinary base of the demand is maritime claim. Normal period of the arrest: 30 days, until the claim on the merits will be filed to the relevant court/arbitration (from time to time it is better to file the claim on the merits to the same court in Ukraine in spite of Arbitration clause).

The practice of ship arrest is rather wide, more than 20 arrests per year, especially in the ports of Big Odessa (Odessa, Chernomorsk, and Yuzhny).

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

The International Convention for the Unification of Certain Rules Relating to the Arrest of a-Going Ships (Brussels, May 10, 1952) is the basic Convention. Also Ukraine adhered to the International Convention on Maritime Liens and Mortgages 1993 on 22 November 2002.

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

There are many ways to arrest a ship in a Ukrainian port. As a rule vessels are arrested in Ukraine by means of:

- a. preliminary arrest in security of a maritime claim pursuant to the order of the Court/Commercial court;
- b. arrest within the frame of enforcement of Court or arbitration award in accordance with national legislation;
- c. arrest of a ship under a criminal matter.

Commercial courts and courts of general jurisdiction are the state courts which exercise jurisdiction over maritime disputes. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine is a domestic arbitral institution with a panel of arbitrators specializing in maritime arbitration.

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

These measures are similar to saisie conservatoire or freezing order.

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

In Ukraine the ship, being the debtor's property, can be arrested regardless whether claims are maritime or not. Nevertheless, according to the maritime law of Ukraine the vessel may be arrested only upon at least one of the following conditions:

- (i) a claim referred to the category of privileged claims, particularly:
 - claims arising out of labour relations, claims for recovering damage inflicted by injury, other impairment of health or death;
 - claims arising out of nuclear damage and maritime environment pollution as well as elimination of said pollution consequences;
 - claims regarding port and channel dues;
 - claims regarding salvage and payment of general average contribution;
 - claims for reimbursement of losses resulting from collision of vessels or from other sea casualty, or from damage to port facilities and other property located in the port as well as to navigational aids;
 - claims for reimbursement of losses related to cargo or baggage;
- (ii) a claim based upon the vessel's registered mortgage;
- (iii) claim referring to the rights of ownership or possession of a vessel;
- (iv) a claim not indicated herein above and referring to the person that is the vessel owner by the moment of origination of the said claim and is responsible for this claim by the moment of starting a procedure connected with vessel's arrest;
- (v) charterer of the vessel on bareboat charter is liable for the said claim and is the vessel's bareboat charterer or her owner by the moment of starting a procedure connected with vessel's arrest.

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

It is possible to arrest a ship irrespective of her flag in Ukraine.

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

Ukrainian legislation recognizes jurisdiction in personam and does not support the action in rem, therefore it is impossible to bring a suit in rem against the vessel to satisfy debts arising from the operation or use of the vessel, by the person other than the owner.

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

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the proprietor/owner of the vessel to which the said claim has arisen. Additionally, there is no practice of lifting a corporate veil in Ukraine, so it is not possible to arrest a ship in associated ownership.

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

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the charterer of her on bareboat, time or voyage charter basis. The exceptions to this rule are claims with regard to ownership or possession of vessels

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

Counter-security in the arrest of the vessel in the Ukrainian jurisdiction applied based on the general rules established by Art. 154-155 of the Civil Procedure Code of Ukraine and Art. 141-142 of the Commercial Procedural Code of Ukraine.

Counter-security is a right, and not an obligation of the court, except for the cases specified in Art. 154 of the Civil Procedure Code of Ukraine (the plaintiff does not have a registered place of residence in Ukraine or the court has evidence that the plaintiff's property status or his actions may complicate or make impossible the execution of the court's decision on compensation for damages for wrongful arrest).

Counter-security can be provided as a court deposit, bank guarantee, or other actions determined by the court to eliminate potential losses. The amount of counter-security is determined by the court taking into account the circumstances of the case. The Plaintiff has 10 days for counter-security (if applicable), otherwise the arrest of a ship will be cancelled. Definitely, the best-case scenario would be not to use counter-security.

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

From a procedural point of view, there is no difference between the arrest of the ship for the maritime claim or a maritime lien.

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

Yes, Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993), by Ukrainian Law N 240-IV (240-15) of November 22, 2002.

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

Two-three businesses days are enough to arrest ship or release.

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

Under Ukrainian law, a lawyer's warrant and license are sufficient for a court or other authority. Also, the Ukrainian legislation requires an agreement between Attorney and the Client. Thereby, additional power of attorney does not require.

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 are no special requirements for documents to be submitted to the court, but the evidence must be sufficient. It is also necessary to submit to the court a copy of the Certificate of Good Standing if this company is not registered in Ukraine. If the documents are in a foreign language, they must be translated and, if possible, notarized.

It is also possible to submit documents in electronic form, in which documents will be certified by an electronic signature. However, it is also possible to file documents in hard copy.

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

If the parties have not chosen jurisdiction and applicable law, the Court may consider the case on the merits in Ukrainian jurisdiction in accordance with Article 7 of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships and in some cases when domestic law otherwise gives the local Court jurisdiction, e.g.:

- (a) any claims if one of the defendants is domiciled in Ukraine;
- (b) claims to a nonresident defendant in Ukraine may be filed at the place of his property location;
- (c) claims arising out of employment contract with ship's crew if a claimant is domiciled in Ukraine;

- (d) claims arising out of loss of life or personal injury to a person who is domiciled in Ukraine or in case the accident took place in Ukraine;
- (e) claims arising out of damage caused in Ukraine to property of private persons or legal entities during the operation of a ship;
- (f) claims arising out of any contract which specified a place of its execution or has to be executed in Ukraine only.
- (g) claims arising out of damage, caused in Ukraine.

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

There are two options for the release of the vessel from arrest. The first option is to apply for the release of the vessel from arrest to the same court that arrested the vessel, i.e. to the court of the first instance. The second option is to appeal the court's decision to the court of appeal. Undoubtedly, each of these options has its own characteristics, but the first option is more effective in most cases.

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

To release the vessel from arrest, appropriate security will be Bank guarantee, a court deposit, or LOU of P&I Clubs. As a rule, a bank guarantee can be used as a substitute for an arrest and, generally, Ukrainian courts recognise a bank guarantee as an appropriate form of security for a maritime claim. As for P&I Club's LOU, recent court practice admits the possibility of using a P&I letter of undertaking as a form of security in commercial proceedings.

19. Does security need to cover interest and costs?

Ukrainian legislation requires that the security be in the amount indicated by the Claimant in the maritime claim, that is, in the application to the Court.

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

Yes, Ukrainian Courts accept the P&I letter of undertaking as a form of security.

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

In the first option (paragraph 17) – 2 days, if a Bank guarantee, a court deposit, or LOU of P&I Clubs, in other cases – 5 days. In the second option (paragraph 17), the appellate court can consider the case for 30-45 days.

22. Is there a procedure to contest the arrest?

Yes, arrest of the vessel can be canceled by filing a statement with the Judge who arrested the vessel (that is, the court of the first instance), or by applying to the Court of Appeal within 10 days.

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

The arrest of the vessel is possible before the filing of the claim, so if the Plaintiff does not file a claim within the specified period (30 days) then the Court may release the ship from arrest. Also within 30 days, the Plaintiff must submit to the court evidence of filing a lawsuit with the claim, or commencement of the arbitration.

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

Under Ukrainian law, Courts acknowledge wrongful arrest. The wrongful arrest will be subject to legal proceedings, and it is possible to compensate for damages and losses due to wrongful arrest. In addition, in case of leaving the claim without consideration, closing the proceedings, refuse to satisfy the claim, failure of the applicant to file a lawsuit, the court has to release the vessel from arrest.

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

No, Ukrainian Courts do not acknowledge the pierce and lift of the corporate veil.

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

No, the sale of the vessel is only possible after the final decision of the Court.

Mr Sukachev is the Senior Partner at Black Sea Law Company and head of the company's shipping practice department, practicing in maritime law, particularly related to ship arrest and release, maritime arbitration, insurance, and assisting Ukrainian and international clients such as shipowners, P&I Clubs, ship-repair factories and shipyards, insurance companies, banks and other parties of maritime business. He has extensive litigation experience in ship arrest and releases cases.

Mr Sukachev is a Board Member of the Ukrainian Maritime Bar Association, represents Ukraine on the Comité Maritime International, and is a Supporting Member of the London Maritime Arbitrators Association.

He graduated from the faculty of law of Odessa National Maritime Academy (LLB), the faculty of administrative law of Odessa National Law Academy – High School of Judgment (LLM), the faculty of history of Mechnikov I.I. Odessa National University and was the first Ukrainian participant of the Maritime Law Short Course of Southampton University (the course program 2019).