

SHIP ARREST IN *BULGARIA*

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

In principal, the arrest of a ship according to the Bulgarian law is a procedure that provides pre-judgment security for future claims or already brought proceedings. The arrest of a ship shall be allowed, if without it, it will be impossible or difficult for an eventual future court decision to be executed, until the necessary guarantees are provided by the shipowner. Notwithstanding the relatively formal character of the procedure according to the Bulgarian law, after the country became a party to the International Convention on Arrest of Ships, 1999, the number of applications for security of maritime claims through an arrest was increased, as well as the terms and condition for allowance of such applications were unified.

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

The Republic of Bulgaria is a State party to the International Convention on Arrest of Ships, adopted on March 12, 1999 at the United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships, held in Geneva ("The Convention"). The Republic of Bulgaria has signed the Convention on July 27, 2000 and ratified it in accordance with the constitutionally established procedure. In accordance with its Article 14 (1), the Convention went into force on September 14, 2011, six months after the Republic of Albania became the 10th State to accede it. State parties include Albania, Algeria, Benin, Bulgaria, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and the Syrian Arab Republic.

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

The merchant ship, which is located at a Bulgarian seaport, regardless of its flag, can be arrested only for securing a maritime claim for the purposes of Art.1, para.1 of The Convention. Besides the above procedure, the Bulgarian Merchant Shipping Code envisages a specific procedure for the arrest of ships sailing in inland waterways, as a prejudgment security for future claims or already brought proceedings. The grounds for arrest of ships sailing in inland waterways are identical to those provided in the Convention. Arrest of a ship, according to the domestic law might be allowed: By the district court at the location of the ship (the respective port) in a procedure for securing of a claim, including a future claim, by imposing of a collateral measure "arrest of a ship" under the provisions of the Bulgarian Civil Procedure Code for a claim arisen in connection with the ship. In addition to the above, the Bulgarian Merchant Shipping Code provides for a specific procedure concerning the arrest of a ship and cargoes only for unpaid sums of customs, port and other fees, taxes and fines. The Executive Director of the Bulgarian Maritime Administration or the captain of a port may arrest Bulgarian or foreign ships for such claims, if the request is made on behalf of governmental and judicial authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration. The arrest shall continue until elimination of the grounds for it.

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

Such instruments are not provided and applicable according to the Bulgarian law.

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

Grounds for arrest of a ship, according to the Convention are maritime claims, as defined in Article 1 (1) of the Convention. The competent authority is the Court.

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

The Bulgarian Merchant Shipping Code does not specify exceptions to this general rule, stipulating that authorities “may arrest Bulgarian or foreign ships and cargoes”. Article 8, para 1 of the International Convention on Arrest of Ships, 1999 states that the rules and regulations set by the Convention apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party. Article 8, para 2 however makes an exception, declaring that said rules and regulations do not apply to any warship, naval auxiliary or other ships owned or operated by a State and used only on government non-commercial service.

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

The general rule, according to the Bulgarian law is that a ship arrest is admissible for maritime claims against the persons who are responsible under the maritime claim. The ship-owner is the owner of the ship, entered in such capacity in the register of the ships or any other person who utilizes the ship on other legal grounds (by example on the ground of a bareboat charter agreement) at the time when the maritime claim arose and the arrest is effected. In order for the arrest of the vessel to be allowed the debtor should be responsible under the maritime claim as well as a person specified in Art. 3 of the Convention.

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

The Bulgarian Merchant Shipping Code stipulate that the sister ships and ships in associated ownership may be arrested for claims arisen from other ship, according to the Convention, under certain terms and condition. In this procedure, the arrest is admissible for any other ship or ships which when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose: (a) owner of the ship in respect of which the maritime claim arose; or (b) demise charterer, time charterer or voyage charterer of that ship.

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

9.1. Regarding the Bareboat-Chartered vessels

Arrest is permissible of any ship in respect of which a maritime claim is asserted if the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or the claim is against the demise charterer and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

9.2. Regarding the Time-Chartered vessels

The Vessels, which are used on the grounds of concluded contract for Time-Chartered, may be arrested only as a security for a maritime claim for which the owner is deemed responsible. The arrest of a ship as security marine claim against Time-Charter is permitted for ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime and who was, when the claim arose, time charterer.

The long effective provision regarding the administrative procedure for detention of a vessel, provided for in the initial version of the Merchant Shipping Code (MSC), has been replaced by the provision of Article 364a of the MSC, which is intended to eliminate conflicting case-law that has led to a conflict of laws in the interpretation and implementation of the provisions of the MSC and the International Convention on the Arrest of Ships, done at Geneva on 12 March 1999. Thus, the only legal possibility for the arrest of a merchant vessel while in a Bulgarian sea port, regardless of the flag she is flying, is solely and exclusively in order to secure a maritime claim within the meaning given by Article 1, paragraph 1 of the International Convention on the Arrest of Ships, done at Geneva on 12 March 1999 (ratified by the Republic of Bulgaria by a law promulgated in the State Gazette No. 7 of 2001).

A vessel is arrested and released from arrest by the Harbour Master of the port in which the vessel is, in furtherance of a judicial act decreed in conformity with the conditions provided for in the International Convention on the Arrest of Ships by:

1. The first-instance or the intermediate-appellate-review Bulgarian court where before the maritime claim case is pending;
2. The district court exercising jurisdiction over the location of the vessel: where a future maritime claim is secured.

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

The court may require a counter-security – in the form of a deposit made to the court's bank account – before issuing an arrest order. The assessment of the court whether to require a guarantee will depend on the type of the claim and the evidence provided by the applicant. If the court decides a guarantee is necessary, then it will usually be in the amount of up to 10% of the claim, though in rare cases it might exceed this amount.

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

There are no specific provisions providing a difference between arrest for a maritime claim and for a maritime lien.

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

No.

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

3 days from receiving a full set of documents substantiating the claim.

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

Yes, power of attorney and evidence supporting the claim must be presented as attachments to the arrest application. Evidence shall include contracts, invoices, receipts and any other documents, proving agreements between the parties, as well as performance of obligations of 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?

For the arrest documents must be filed on paper to the court where the ship is anchored. The documents can be filed electronically, but this creates a risk of delay – depending on the case. For the arrest scanned copies of documents would suffice in most cases. In general, all official documents must be translated and legalized, including good standing certificate of the applicant – which means that apostilles are required (unless there is a bilateral contract between Bulgaria and the country of origin of the document). In our experience some courts would proceed even if the documents at the time of the filing of the arrest application are not apostilled. However, at a later point the original documents with full legalization will be required – usually for the filing of the claim.

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

Yes, in line with art. 7 of the International Convention on Ship Arrest from 1999.

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

The ship can be released only upon order from the court, which has arrested the ship. The court will issue such an order in three cases:

- when the claim has been found to have no merits with a final decision;
- when the claim was not filed in the term specified by the court or there are other irregularities with the claims, which were not removed in a term set by the court;
- when the debtor under the claim presents a sufficient guarantee before the court – the guarantee should be either accepted by the creditor, or determined by the court.

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

The guarantee must be satisfactory – as per the requirements of art. 4, para. 1 of International Convention on Ship Arrest from 1999. Of course, a deposit to a bank account of the court would always be accepted.

19. Does security need to cover interest and costs?

Security should cover interest included in the claim – but costs and interest after the filing of the claim are not required to be covered by the security.

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

It is possible – if the creditor agrees, or the court deems the LOU sufficient. In general, such a letter would more likely not be accepted, if the creditor does not agree.

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

Usually 2 – 3 work days, if the guarantee was approved by the creditor. In some situations the creditor might delay the process, if there is a dispute over the provided security.

22. Is there a procedure to contest the arrest?

Yes – the arrest can be contested before the next instance court within 7 days from receiving notice of the arrest. The decision of the second instance court is final.

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 30 days. Usually courts provide no less than 21 days.

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

Yes – and the applicant can be held liable if the claim is not filed on time or is found to have no merits. In these cases the party harmed by the arrest can file a claim – relying on the counter-security provided by the applicant. If the damages are higher, the party harmed by the arrest can claim the actual amount of the damages suffered.

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

Only in certain cases and to a limited extent.

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

Only under agreement between the parties to the dispute. Otherwise, the ship can be sold only after conclusion of the court proceedings by a bailiff and on basis of a writ of execution under a strict enforcement procedure.

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