

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 Court/local Commercial court under the Civil Procedural Code of Ukraine/Commercial Procedural Code of Ukraine.

Civil Procedural Code of Ukraine regulates the ship arrest procedure in relation to labour or civil maritime claims (most often, the holders of such maritime claims are natural persons).

The Commercial Procedural Code of Ukraine regulates the ship arrest procedure in relation to commercial maritime claims (most often, the holders of such maritime claims are legal entities).

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 Odesa (Odesa, Chornomorsk and Pivdennyi). At the same time, practice of ship arrest shows that courts also arrest vessels in Danube ports – Izmail, Reni, Ust-Dunaisk..

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. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine may, at the written request of either party and if the request is considered justified, issue a decision to arrest a vessel. The application must clearly explain that the claim is maritime in nature.

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.

Vessels registered under a foreign flag may be arrested on the basis of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) for the following maritime claims:

- a) damage caused by any ship as a result of collision or otherwise;
- b) loss of life or personal injury caused by any ship or occurring in connection with its operation;
- c) salvage of a ship or its cargo;
- d) any agreement relating to the use or hire of a ship under a charter party or otherwise;
- e) any agreement relating to the carriage of goods by a ship under a charter party or otherwise;
- f) loss of or damage to goods, including baggage, carried by a ship;
- g) general average;
- h) bottomry;
- i) towage;
- j) pilotage;
- k) supply of goods or materials for the operation or maintenance of a ship, regardless of where the supply is made;
- l) construction, repair or equipping of a ship, or dock dues;
- m) wages of masters, officers or crew;
- n) expenses of the master, including disbursements made on behalf of the ship or its owner by shippers, charterers or agents;
- o) disputes concerning ownership of a ship;
- p) disputes between co-owners of a ship regarding ownership, operation or earnings from the ship;
- q) mortgage or maritime lien on a ship.

Vessels registered in Ukraine may be arrested under the Code of Merchant Shipping of Ukraine for a broader range of maritime claims, subject to certain conditions and procedural requirements.

Code of Merchant Shipping of Ukraine contains range of maritime claims that is not included in Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships: causing damage to the natural environment; remuneration due for carrying out salvage operations or fulfilling the requirements of any salvage agreements; compensation and other amounts due for eliminating or attempting to eliminate the threat of damage, for taking preventive measures, or performing similar operations; raising, removal, or destruction of a vessel that has become a wreck, or its cargo, and the expenses incurred thereby; port, canal, and other navigational waterway dues, as well as dock charges; insurance premium, including contributions for mutual insurance, payable in respect of the vessel by its owner or bareboat charterer; any commission, brokerage, or agency fee payable in respect of the vessel by its owner or bareboat charterer; any dispute arising from a contract of sale of the vessel.

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?

Sister ships 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?

If a charterer has possession of a ship under charterparty of a ship (with transfer of possession to the charterer) and is responsible for a maritime claim, the ship or any other ship owned by the charterer can be arrested. However, ships owned by the registered owner cannot be arrested for such claims.

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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.

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