

# SHIP



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# SHIP ARREST IN UKRANIA



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

Ukraine is a shipping country with impressive law traditions, but as a sovereign and independent state, it exists only from the beginning of the nineties of the last century. Thus, new culture of jural state is at the initial stage of development. Ukraine is not a signatory to the international conventions which regulate relations connected with ship arrest. Thus, there is no special procedure as to arresting a vessel meaning that it is arrested as any other property. Of course, Merchant Shipping Code of Ukraine, adopted in 1995, provides for ship arrest procedure, but this procedure could be applied to vessels flying the Ukrainian Flag only. A vessel flying the flag of the other country can be arrested in Ukraine under conditions provided by the Commercial Procedure, the Civil Procedure Codes and the Private International Law Act of Ukraine. The practice of ship arrest is rather wide, especially in the ports of Big Odessa (Odessa, Ilyichevsk, Yuzhny).

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

No international conventions apply to arrest of ships in Ukraine.

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

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

- a) administrative arrest by the harbour master;
- b) preliminary arrest in security of a maritime claim pursuant to the order of Commercial court;
- c) arrest in accordance with Court or arbitration award;
- d) 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 these 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?

A vessel can be arrested regardless whether claims are maritime or not, in principle. Nevertheless, according to the maritime law of Ukraine the vessel may be arrested only upon at least one of the following conditions:

- a claim referred to the category of privileged claims, particularly:
  - \* claims arising out of labour relations, claims for reimbursing 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;
- a claim based upon the vessel's registered mortgage;
- a claim referring to the rights of vessel ownership or possession;
- a claim not indicated hereinabove 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;
- 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.

These rules shall not concern the vessels flying the State Flag other than Ukrainian. Such vessels are treated as a res in general legal sense.

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

It is possible to arrest a ship irrespectively of her flag in Ukraine, in principle.

#### 7. Can you arrest a ship irrespectively of the debtor?

There is no proceeding in rem in Ukraine, so it is possible to arrest a ship owned by the debtor only.

#### 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.

#### 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.

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

Ukrainian courts may require counter-security to arrest a ship, but they are not obliged to

do that. Thus, the Court or Commercial Court may request the person, who had placed a claim, to provide counter-security on the said claim, as a condition of vessel's arrest or its prolongation. Such practice is rare in Ukraine because it is supposed to complicate access to justice.

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

There is no substantial difference between arresting a ship for a maritime claim and a maritime lien.

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

Ukraine is a party to the Geneva International Convention on Maritime Liens and Mortgages, 1993, since 22 November 2002. Merchant Shipping Code of Ukraine recognizes maritime mortgage, namely, articles 364 – 378.

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

Usually, three working days is enough for our law firm to arrest a ship since we have taken a brief.

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

A copy of the legalized power of attorney (POA), as a rule, and documents supporting the claim in copies should be provided by the claimant or applicant. The claimant (applicant) is to pay the court fee to file an application (claim).

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

Court may require any document in the original. Electronic technology in Ukrainian court process is in the egg. For example, sending a case to the court via E-mail is impossible. POA and copies of official documents, especially framed in other countries, are to be notarized and legalized in accordance with the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 5 October 1961 if other is not stipulated by international agreements of Ukraine.

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

The vessel that has been under arrest and released from arrest or in relation to which a security to a maritime claim has been already provided may be arrested on the same maritime claim upon existence of some statutory conditions, for example:

- the amount of security to the same maritime claim received earlier is insufficient, though total amount of security to said claim shall not exceed the value of a vessel;
- the person who had brought the claim, was not able to take all necessary measures to prevent releasing the vessel from arrest.

All these rules shall not be applied if the vessel was released from arrest illegally. In this case Ukrainian courts must accept jurisdiction over the claim once a vessel has been arrested.

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

The claimants must commence legal actions on the merits within ten days from the date of judgement lien, if legal action was not commenced from the very beginning.

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

A person who arrests the ship is liable for its wrongful arrest, i.e. the person upon whose request the vessel has been arrested, is liable for any losses inflicted on vessel's proprietor/owner or charterer on bare-boat charter basis as a result of wrongful arrest of the vessel or providing excessive security to a maritime claim.

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

It is normal that corporation is the only liable party for its actions. That is why Ukrainian courts do not acknowledge the piercing and lifting of the corporate veil.

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

It's impossible to have a ship sold pendente lite. A ship may be sold on the base of court or arbitration award only.

