

## SHIP ARREST IN UKRAINE (QUESTIONS 1 TO 9)

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

Ship arrest in Ukraine is not simple though relatively inexpensive. The practice of ship arrest is rather wide, especially in the ports of Big Odessa (Odessa, Ilyichevsk, and Yuzhny). On the 7th of September 2011 Ukraine joined the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952. On the 16th of May 2012 the Convention took effect for Ukraine.

Previously, the matters of ship arrest were governed almost exclusively by the Merchant Shipping Code, which stipulated the possibility of the arrest, but did not set out the procedural rules. Thus the procedure for arresting a ship was governed by the common regulations of national procedural law. Arrests of ships were usually realized by the attachment of bunker fuel as security for the commercial suit or as a precautionary measure (pre-trial attachment), in which case the petition on arrest had to be followed by the filing of a lawsuit on the merits with the same court which imposed the arrest.

In order to implement the Convention into national law, Ukraine adopted amendments to the Commercial Procedural Code and the Civil Procedural Code. Now, matters involving ship arrest are subject to the competence of the relevant local commercial court or the court of general jurisdiction at the port of registration of the ship or the port of ship's call. However, Ukrainian commercial procedure exists only in the form of adversarial proceedings, meaning that a person with a maritime claim must initiate an action in a Ukrainian court and then apply for the arrest within the framework of such proceedings. Brussels convention covers the situations where the arrest is being imposed by one court and the case on the merits is being heard by another court. This concept is not peculiar to Ukrainian legislation; therefore, in most cases the arrest of the ship must be followed by an action on the merits in a Ukrainian court.

The legislation provides that the Ukrainian courts may hear a case on the merits if the defendant has movable or immovable property in the territory of Ukraine. A ship calling at a Ukrainian port may act as such property, but in practice it may be difficult to arrest the ship under the Convention since the Ukrainian court may declare a lack of jurisdiction, particularly where the contract giving rise to a maritime claim explicitly provides for commercial arbitration outside Ukraine. Court practice is not uniform, and generally the courts tend to avoid disputes involving complicated issues of jurisdiction. Under such conditions, the practice remains rather controversial.

### 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 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?

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 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;

(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 irrespectively of her flag?

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

7. Can you arrest a ship irrespectively 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.

## 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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