

SHIP ARREST IN UKRAINE

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Overview

The Ukraine is not a signatory to the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships (Brussels, 1952) nor is the Ukraine a signatory to the International Convention on Arrest of Ships (Geneva, 1999).

It was a position of Ukrainian government which was vainly attempting to protect state shipping companies (namely: Black Sea Shipping Company, Azov Sea Shipping Company) from arrests of the state commercial vessels in foreign jurisdictions.

But it is the fact that many of Ukrainian state vessels had been arrested somehow in foreign jurisdictions, virtually all our state shipping companies are liquidated or are in the bankruptcy process but Ukraine has not still changed its position in respect of the mentioned above Conventions.

Applicable Laws

The ship arrest procedure is set out in the Merchant Shipping Code of Ukraine (the MSCU) which implemented identical scope of maritime claims defined in the 1999 Convention. It was a good effort of Ukrainian legislators to implement international arrest procedure into Ukrainian law but it failed. The problem is that the section II (4) "Ships Arrest" of the MSCU could be applied to vessels flying the Ukrainian flag only (Article 14 (1) of the MSCU).

Thus local lawyers have to use gaps in national law and other legal instruments than MSCU to arrest foreign sea-going vessels in Ukraine. These instruments are the Civil Procedure Code of Ukraine and the Commercial Procedure Code of Ukraine.

The ship is considered as a property of a debtor and can be arrested to secure any claim regardless of its nature. Sister ship arrest is therefore permissible.

There is an important prerequisite that must be met to get an arrest of a ship – a Ukrainian court has jurisdiction on the claim on merits. The mere presence of a foreign ship in Ukrainian territorial waters is not sufficient to found jurisdiction in Ukraine.

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Claims Subject to Ship Arrest

Vessel flying under Ukrainian flag can be arrested for any types of claim regardless whether the claim has maritime nature or not.

Foreign vessel that is a property of a non-resident person can be arrested in case a Ukrainian court has its jurisdiction on the claim on merits, in particular for the claims as follows:

- (a) Any claims if one of defendants is domiciled in Ukraine (Art.15 (3) of Commercial Procedure Code of Ukraine, Art.113 of Civil Procedure Code of Ukraine).
- (b) Proprietary claims relating to the possession of a ship, title to or ownership of a ship or a share in a ship (Art.16 (2) of Commercial Procedure Code of Ukraine).
- (c) Claims arising out of employment contract with ship's crew if a claimant is domiciled in Ukraine (Art.110 (1) of Civil Procedure Code of 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 (Art.110 (3) of Civil Procedure Code of Ukraine, Art.76 (3),(5) of Law of Ukraine No.1618-IV dd. 18.03.2004 "On International Private Law").
- (e) Claims arising out of damage caused in Ukraine to property of private persons or legal entities during the operation of a ship (Art.110 (6) of Civil Procedure Code of Ukraine, Art.76 (3) of Law of Ukraine No.1618-IV dd. 18.03.2004 "On International Private Law").
- (f) Claims arising out of any contract which specified a place of its execution or has to be executed in Ukraine only (Art.110 (8) of Civil Procedure Code of Ukraine).
- (g) Claims arising out of collisions and compensation relating to salvage operation (Art.110 (11) of Civil Procedure Code of Ukraine).
- (h) Any claims if the debtor owns any movable or real estate property that is located in Ukraine (Art.76 (2) of Law of Ukraine No.1618-IV dd. 18.03.2004 "On International Private Law").

In case Ukrainian court has its jurisdiction on the merit of a claim a ship can be arrested irrespectively of her flag.

Taking into consideration that proceeding *in rem* is not permissible in Ukraine only ships which are owned by the debtor may be arrested.

Procedure for Arrest

The courts may require counter-security for potential damages to the defendant but it happens very rare. The court defines the sum of counter-security that to be transferred to deposit account of the court. The better evidences arranged and presented with the claim to the court the more chances to avoid the payment of counter-security.

Arresting procedures of a ship for maritime claim and maritime lien are similar. In case a contract wherefrom a maritime claim/lien arose had been made in written and certified by a notary it is possible to order a notary executive writ instead of court proceeding which is more complicated, expensive and time wasted.

The Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993) on 22.11.2002 but its provisions were not incorporated into local laws therefore it is impossible to enjoy with its advantages.

For the purpose of ship arrest local lawyers need to have all documents/evidences translated into Ukrainian. Should the lawyers have the documents a ship can be arrested within 2-3 working days.

The lawyers need all evidences relating to the claim. Copies of most important evidences should be notarized and legalized/apostilled, other copies should be certified by the claimant's seal and signature. Original Power of Attorney has to be notarized, dully legalized/apostilled and translated into Ukrainian. In case the arrest petition is submitted to a court of common jurisdiction a local attorney-at-law is not required to present the POA (Art. 42 (4) of the Civil Procedure Code of Ukraine) at its initial stage.

To exercise an issue of jurisdiction the Ukrainian courts shall apply provisions of the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, and the Law of Ukraine "On the Private International Law".

Legal Actions on the Merits

Proceedings within civil jurisdiction: The petition to arrest a ship has to be submitted to a court of common jurisdiction on the same day of filling a statement of claim, or later during the civil proceedings.

Proceedings within commercial jurisdiction: Pursuant to the Art. 43-3 (3) of Commercial Procedure Code of Ukraine the claimants must commence legal actions on the merits within 10 (ten) days from the day of obtaining the arrest order.

Wrongful Arrest

It is worth to note that Ukrainian courts on request of defendant may acknowledge a wrongful arrest in case of:

- (a) The arrest is cancelled by the decision of court.
- (b) The claimant fails to commence proceedings on the merits within the given time.
- (c) The claimant recalled his claim.
- (d) The claimant fails in his legal action on the merits.

In case a wrongful arrest is acknowledged a defendant may claim to an initiator of arrest to cover all losses and damages incurred.

Release

An arrested ship may be released when claimant consents or court issues his order release. It happens in case of providing with reasonable security that is calculated on basis of the whole amount of claim together with legal expenses. As usual security is provided by way of bank guarantee or cash deposit or P&I Clubs letter of undertaking. But as a rule Ukrainian courts do not accept a P&I Clubs letters.

This article has been arranged for general information only and should not be considered as a legal advice. For advice you may contact our law firm at www.cmlaw.com.ua. We are welcome an opportunity to assist you in your legal issues.