

# SHIP ARREST IN THE RUSSIAN FEDERATION

## Introduction

This article provides an overview of the law applicable to ship arrest in the Russian Federation and outlines the basis for jurisdiction of Russian courts to decide matters pertaining to ship arrests, as well as the procedures followed by claimants and the courts in petitioning for and determining issues of arrest.

## General

There are several procedures that a claimant may follow in order to procure the arrest of a ship through a Russian court, whether a court of general jurisdiction or a State Commercial Court<sup>1</sup>, or in particular cases from an arbitration court (through private arbitration). The two predominant methods, which are discussed in further detail in this article, are procuring arrest as an injunction measure in court proceedings, and procuring arrest based on a maritime claim (out of action proceedings) as set forth in Merchant Shipping Code of the Russian Federation dated April 30, 1999 (*hereinafter – the “Merchant Shipping Code”*).<sup>2</sup>

## Applicable law

Russia is a party to certain international conventions pertaining to the arrest of ships and to maritime liens and mortgages. For instance, Russia is a party to the International Convention for the Unification of Certain Rules relating to the Arrest of Maritime Ships concluded in Brussels on May 10, 1952 (*hereinafter – the “1952 Convention”*). Although Russia joined the 1952 Convention on January 6, 1999, it reserved the right to not apply the provisions of the 1952 Convention as follows<sup>3</sup>:

- to warships, war-subsidary and other ships owned by the State or used by the State solely for non-profit purposes;
- to arrest of a ship under a maritime claim arising from disputes involving the title to or ownership of a ship, disputes between co-owners of a ship regarding the ownership, possession, employment, or earning of such ship. Russia further reserved the right to apply Russian legislation to such claims;
- to not apply Article 3, Item 1 of the 1952 Convention to the arrest of a ship within the jurisdiction of Russia pursuant to claims arising from a ship mortgage.

By the general hierarchical rule the provisions of the 1952 Convention as an international agreement ratified by the Russian Federation have higher priority than national legislation, i.e. Merchant Shipping Code, Code on Commercial Procedures and Code on Civil Procedures in

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<sup>1</sup> The Commercial Court system in Russia should not be confused with private arbitration. The Commercial Courts grew out of the Soviet system for resolution of disputes between State enterprises, and these Courts today have jurisdiction over most commercial disputes with participation of legal entities and individual entrepreneurs. They are divided into Regional Commercial Courts (1<sup>st</sup> instance), Commercial Courts of Appeal and Circuit Commercial Courts. The highest instance for Commercial Courts is the Supreme Court of Russia, which merged with the Supreme Commercial Court in 2014.

<sup>2</sup> As amended on February 3, 2014.

<sup>3</sup> The below list contains all reservations.

particular<sup>4</sup>. However, the 1952 Convention itself establishes certain rules determining limits of its application (art. 8).

### **Conditions for Imposing Ship Arrest**

1. *Maritime Claim*
2. *Person Competent to Claim for Ship Arrest*
3. *Ships Subject to Arrest*

#### 1. *Maritime Claim*

There are 22 maritime claims enumerated in Article 389 of the Merchant Shipping Code, which corresponds to the list of maritime claims contained in the 1999 Convention.

A maritime claim is asserted by filing a petition for arrest with a court<sup>5</sup> and is defined as any claim arising out of:

(a) damage caused during the operation of a ship;

(b) loss of life or personal injury to a person which occurs either on land or on water, in direct connection with the operation of a ship;

(c) a salvage operation or any contract on salvage, etc<sup>6</sup>.

The presence of a maritime claim does not result in the automatic arrest of the ship. The claimant is required to introduce evidence to prove the presence of the maritime claim (agreements, bills, charters, correspondence of the parties, way bills, consignment note, charter, payment documents, correspondence between parties, etc.).

#### 2. *Person Competent to Claim for Ship Arrest*

The claim for a ship arrest may be signed by the claimant of the maritime claim himself or his representative. The authority of the representative should be proved by an appropriate power of attorney<sup>7</sup>.

#### 3. *Ships Subject to Arrest*

The Merchant Shipping Code defines arrest of a ship as any detention or restriction in movement of a ship within the jurisdiction of the Russian Federation, carried out under a decision of a court, Commercial Court or maritime arbitration court authorized by law to impose arrest on a ship to secure a maritime claim, except for seizure of a ship effected in execution of a decision of a court, Commercial Court or arbitration tribunal which has come into legal force. The legislation establishes that a ship may be arrested even when it is ready to sail.

Under the Merchant Shipping Code procedure, a ship against which a maritime claim has

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<sup>4</sup>Art. 15 para. 4 of the Constitution of Russia establishes this rule; it states the following: "The universally recognized norms of international law and international agreements of the Russian Federation shall be a component part of its legal system. If an international agreement of the Russian Federation establishes other rules than those provided by law, the rules of the international agreement shall be applied."

<sup>5</sup> See sections entitled "Jurisdiction" and "Procedure".

<sup>6</sup> Full list is prescribed in Article 389 of the Merchant Shipping Code.

<sup>7</sup> See section titled "Power of Attorney" for more details.

arisen may only be arrested under the following circumstances:

- a) a maritime claim against a ship owner is secured by a maritime lien on a ship and is among the list of claims established by merchant legislation;
- b) a maritime claim is based on the mortgage on a ship or duly registered encumbrance of the same nature;
- c) a maritime claim relating to the right of ownership or possession of a ship;
- d) other cases when the owner (bareboat charterer) of a ship is liable for a maritime claim and owns a ship (is her bareboat charterer) at the moment arrest procedure commences.

### *Sister ship(s)*

In accordance with the Merchant Shipping Code, a sister ship is any other ship that is owned by the person/entity liable under a maritime claim who was, at the time the claim arose, the owner of a ship against which a maritime claim has arisen, or the bareboat charterer, time charterer or voyage charterer of such a ship. The Merchant Shipping Code allows the arrest of one or more sister ships under a maritime claim procedure.

## **Jurisdiction**

### *1. Adoption of a Decision to Impose Arrest on a Ship.*

In accordance with art. 4 of the 1952 Convention a ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the Contracting State, where the arrest is being imposed. In the Russian Federation “Court or appropriate judicial authorities” include courts of general jurisdiction, Commercial courts and maritime arbitration courts authorized by law to impose arrest on a ship to secure a maritime claim<sup>8</sup>.

According to the 1952 Convention any Contracting State can identify which bodies should be regarded as such judicial authorities. For instance, according to the RF Law “On International Commercial Arbitration” of July 7, 1993 Maritime Arbitration Commission of the Chamber of Commerce and Industry of the Russian Federation is among such arbitration courts. The Chairman of the Commission may, upon request, adopt a decision to impose arrest of a ship located in a Russian port, against *the other party to the dispute*<sup>9</sup>. Therefore, the public function is not assigned in full to the arbitration courts; they may execute this function only when the main dispute is subject to their jurisdiction due to the concrete agreement between the parties.

As to the jurisdiction of the courts of general jurisdiction and Commercial courts, in practice Commercial courts consider cases on injunctive arrests in regard to maritime claims based on economic disputes (between legal entities and/or individual entrepreneurs). Courts of general jurisdiction are able to impose arrests only in regard to maritime claims involving individuals, regardless of their entrepreneurial activity.

### *2. Consideration of Main Dispute (on the Merits)*

1) When the arrest is imposed on a ship as a preliminary injunctive measure by Russian courts, jurisdiction to consider the main dispute belongs to the following bodies:

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<sup>8</sup> Art. 388 para. 1 of the Merchant Shipping Code.

<sup>9</sup> Para. 4 of the Appendix # 2 to the Law “On International Commercial Arbitration” of July 7, 1993 “Regulations of the Maritime Arbitration Commission of the Chamber of Commerce and Industry of the Russian Federation.”

i) Foreign court or arbitration body.

ii) Russian courts in cases under the 1952 Convention<sup>10</sup> and procedural legislation of the Russian Federation.

2) When arrest is imposed on a ship as an injunctive measure to the main action proceeding, the same court that adopted the decision to impose the arrest, shall consider the case on its merits.

### **Procedure**

According to the 1952 Convention all procedural rules related to ship arrests, filing of applications to obtain a decision on ship arrest and other procedural issues in this regard are regulated by the law of the state, where the ship was arrested or the request for the arrest was made<sup>11</sup>. Since the Merchant Shipping Code does not provide procedural rules in full, the Code of Commercial Procedure and the Code of Civil Procedure are applied, however only insofar as they are not in conflict with the Merchant Shipping Code.

#### *1) Arrest as an Injunctive Measure in Action Proceedings*

In order to procure arrest as an injunctive measure, the claimant must prove to the court that non-acceptance of the injunctive measure (arrest) would complicate the execution of the court's decision or make its execution impossible. The advantage of this approach is that in accordance with Russian procedural legislation, a petition for injunction must be examined and decided by a court of general jurisdiction on the day of its filing, and by a Commercial Court – not later than the next day. This usually means that the request for injunction will be considered by the court without the opposing party having an opportunity to be present in the court. Moreover, a court's ruling on ship arrest as an injunction measure must be executed immediately.

#### *2) Arrest as a Preliminary Injunctive Measure (Out of Action Proceedings)*

Another option for arrest of a ship is to file a petition on arrest as preliminary injunctive measure *before* commencing the formal proceeding, based on a maritime claim as outlined above<sup>12</sup>. There are no special procedural rules on the order of consideration of the petition on ship arrest in the Russian legislation; nevertheless, both Commercial courts and courts of general jurisdiction can consider these petitions, following the procedures on injunctive measures in action proceedings<sup>13</sup> taking into the account rules, established by the Merchant Shipping Code. As to the arbitration court, as it was mentioned before, it may consider such petitions in only one particular case<sup>14</sup>.

The outline for this procedure in regard to Commercial courts is as follows.

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<sup>10</sup> According to the art. 7 of the 1952.Convention.

<sup>11</sup> Art. 6 para. 2 of the 1952 Convention - this provision allows to impose arrest on the ship only in the period of its physical staying under the jurisdiction of the particular state (Russian Federation) - is aimed to exclude so called "paper arrests," i.e. the possibility to obtain the decision on imposing the arrest before the ship enters the port of the corresponding state, when it will not be physically under jurisdiction of this state yet.

<sup>12</sup> See sections entitled "Ship Arrest Pursuant to Maritime Claims" and "Ships Subject to Arrest."

<sup>13</sup> Art. 99 of the Code of Commercial Proceeding.

<sup>14</sup> See section entitled "Adoption of Decisions to Impose the Arrest on a Ship /Jurisdiction."

A petition for arrest of a ship under this scenario is to be filed with a Commercial Court at the place of location of the petitioner, funds or other property in question, or at the place of violation of the applicant's rights<sup>15</sup>.

A petitioner is required to provide counter-security for the amount specified in its petition and to provide the court with confirming documents. A statement of claim related to the demand form a preliminary injunction is to be filed with the court within 15 days from issuance of a court ruling granting arrest of the ship as a preliminary injunctive measure. In case of a violation of this requirement, preliminary injunctive measures are to be canceled by the court which originally imposed them.

At the stage of preliminary injunctive measures a defendant may plead to discharge the preliminary injunctive measures in exchange for counter-security (by way of depositing money in the amount of the claim into a deposit account of the court).

### 3) *Other options for arrest*

It is also possible to seek the arrest of a ship in a Russian court by way of execution of a commission from a foreign (non-Russian) court. In order to accomplish this, there must be a treaty between Russia and the foreign state providing for execution of commissions within the territory of the Russian Federation.

Russian legislation also provides for the arrest of a ship in a Russian court by way of execution of a relevant decision of a foreign (non-Russian) court. There must be an appropriate treaty between the foreign state and the Russian Federation governing execution of court acts. A complete discussion of the circumstances in which a Russian court will enforce a foreign court's judgment is beyond the scope of this article.

It appears from our recent practice that Russian courts currently prefer to impose arrest on ships as an injunctive measure in action proceedings as opposed to using the procedure established by the Merchant Shipping Code and Code on Commercial Procedures.

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*This article is only an overview of ship arrest topics and procedures in Russia. For concrete up-to-date legal advice please do not hesitate to contact our offices at the coordinates provided in the web-site and letterhead.*

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<sup>15</sup> A "place of location... of other property" in the context of the ships arrest is understood as not the place of the ship state registration, but place of its factual location.