

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

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

The ship arrest practice in Russia is wide and may be different due to the differences in court practice in regions – west, south, north, east. Basic ports where there is wide practice of ship arrest are: St. Petersburg, Novorossiysk, Vladivostok, Kaliningrad, Murmansk.

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

Russia ratified the International Convention on the Arrest of Sea-Going Ships (10 May 1952, Brussels). The provisions of this Convention are mandatory applicable to all ships flying the flag of another Contracting State and calling at Russian ports. Merchant Shipping Code of Russia (1999) is the domestic law which implemented basic principles of the 1952 Brussels Convention and even Merchant Shipping Code (1999) is an advance over the 1952 Brussels Convention as it is based on principles of International Convention on Arrest of Ships (Geneva, 1999 ) especially in regard to the wide list of claims subject to ship arrest. According to both above mentioned Conventions a ship may be arrested only under the authority of a Court. The regulations of procedure for the Court in Russia are defined in two Codes: the Civil Procedural Code of Russia and Arbitration Procedural Code of Russia. In general the Civil Procedural Code defines the procedure for the physical persons acting as claimants or applicants, and the Arbitration Procedural Code defines the procedural for the legal entities.

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

Due to absence in above mentioned procedural codes of special clauses devoted to the ship arrest there is a way to arrest the ship as property of the debtor (regardless of status of a ship as special kind of property) by means of filing to the Court the application for the arrest of property of the debtor. Such application is filed together with the statement of the claim. The ship may be arrested also under criminal or administrative procedure as exhibit of case or as subject of criminal or administrative offense.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

There is a way to arrest the ship as property of debtor in security of civil action as well as in the bankruptcy proceeding.

5. For which types of claims can you arrest a ship?

Under Domestic Law - In Merchant Shipping Code of Russia (1999) the whole list of maritime claims (a to v) from the 1999 Geneva Convention is included. The domestic law is applied by the Russian courts mostly in respect of the Russian flag seagoing vessels. Under the 1952 Brussels Convention – the Russian courts are more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the courts apply this Convention mostly to the foreign flag vessels.

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

You can arrest a ship irrespectively of her flag.

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

According to the 1952 Brussels Convention which was ratified by Russia a ship may only be arrested in respect of a maritime claim only. Therefore bearing in mind the regulations established in the Arbitration Procedural Code of Russia the claimant first of all should prove the existence of the maritime claim in respect of the specific ship and same time the claimant should prove that the claim arose due to the actions of the specific debtor in respect of this specific ship when (as the claimant supposes) the debtor was the owner/ charterer of this ship. It may lead to that the real owner of the ship will try to object the arrest saying the ship never belongs to the debtor. The claims "in rem" can not be initiated in Russia. Certain claims may follow the ship regardless in whose hands it may be, e.g. claims for crew wages, salvage, port dues (maritime liens).

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ship as the property owned to same debtor.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The provisions for the arrest of the vessels in accordance with the domestic law are the same as in the Convention, 1999 article 3 par.(1)-(2). If the Convention, 1952 is to be applied then the provisions for the arrest from Convention, 1952 will be applied.

*\*For more than 15 years, Remedy Law firm has helped in obtaining a highly professional and commercially oriented advice on issues relating to shipping and transportation in the widest range. Remedy Law Firm deals mainly with claims handling, represents cases of its clients in common law courts, arbitrations and appeals courts on all aspects of civil, maritime and administrative law, scrutinizes documentation and its enforceability under Russian and international laws and gives legal opinions on different issues.*

*We also offer advice on the interpretation of charter party clauses, bills of lading, insurance policies and other contracts. Mr. Andrey Suprunenko is a director of the firm. Mr. Andrey Kosmachevskiy is a lawyer.*