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Ship Arrest and Detainment in Bulgaria

1. The Legal Framework

According to the International Convention on the Arrest of Ships (ICAS - Geneva, March 12, 1999), “Arrest” is any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument. The ship arrest, being a coercive measure, may be imposed solely on commercial ships, only by Court and may secure no other claim than a maritime one (within the meaning of Art. 1, par. 1 of ICAS).

Ship arrest in Bulgaria is regulated by two legal acts - the International Convention on the Arrest of Ships (Geneva, March 12, 1999), which was promulgated and entered into force on 14 September 2011, and the Bulgarian Merchant Shipping Code.

There are two main ports where ship arrest can be carried out – Varna and Burgas. Any merchant sea-going ship located in these ports could be a subject to arrest. Ship arrest in Bulgaria is admissible only for maritime claims against the party liable for a maritime claim. This can be the ship-owner (i.e. the party entered in that capacity in the ship register) or any other party, which utilizes the ship on legal grounds (for example – a bareboat charterer) at the time when the maritime claim arises.

The flag of the ship is irrelevant for the purposes of a ship arrest in Bulgaria.

A government-owned or a non-commercial ship cannot be arrested.

As concerns inland craft, the Bulgarian Merchant Shipping Code lays down a procedure for arresting a ship, which sails in inland waterways such as Danube. The legal grounds for such an arrest are similar to those in the Arrest Convention of 1999.

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The Bulgarian Civil Procedure Code stipulates that the ship arrest must be allowed by the respective district court provided that the location of the ship is clearly established. Such location may be either the District Court of Varna, or the District Court of Burgas.

Caution: in a recent case a judge has denied the application for arrest (amongst other reasons) for there was no clear evidence adduced that the ship was present in the jurisdiction of one of the above mentioned Courts.

2. The Procedure

The application for arrest must comprise as a minimum:

- a description of the nature of the maritime claim
- an excerpt from the Maritime Register showing the vessel's owner
- the contracts and invoices pertinent to the dispute
- an apostilled Certificate of Good Standing of the claimant
- a Power Of Attorney

The documents must be provided to the Court as attachments to the claim.

All documents should be officially translated in Bulgarian.

Courts decide upon arrest applications within up to three business days as from the date of the submission.

3. Execution

The Court order is executed by the Port Captain. If the arrest is allowed by the Court, the Port Captain may order that the arrested ship be relocated at a secure place in the port or at a roadstead until the reasons that led to the arrest are eliminated. The Port Captain's relocation Order is subject to a preliminary execution. The "Maritime Administration" Executive Agency will not bear any liability for the expenses incurred in relation to the ship's relocation.

4. Security

It is common that the judge requires the claimant to pay a security by way of a refundable deposit. That deposit can be in the region of 8-10% of the amount in dispute. The practice evidences that

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the most common type of security, provided in Bulgaria is the bank guarantee. The ship is usually released 2-3 days after the provision of a security.

5. Duration of the Arrest

The Court order allowing the arrest is usually valid up to 30 days, unless a law suit is filed against the debtor. Even then, the order could remain valid until the court procedure is over. If within the period of thirty days no claim is filed, the arrest gets lifted. In general, the arrest order remains in force until the grounds for it are eliminated.

6. Appeal

The order of the first instance Court could be appealed before the respective second instance Court of Appeal, the decision of which is final. If the arrest is proved to be wrongful, the party which has instigated the arrest, shall be liable.

7. Administrative arrests

The Bulgarian Merchant Shipping Code (MSC) regulates a special procedure for arrest of a ship or cargo for unpaid sums of customs, ports and other fees, taxes or fines. The Executive Director of the Bulgarian Maritime Administration or the Port Captain may arrest Bulgarian or foreign ships for such claims, if the request is submitted on behalf of administrative and judicial authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration.

8. Detainment & Prohibition of Departure/Entry

"Arrest" should be distinguished from "Detainment" and "prohibition of departure or entry" - coercive administrative measures, which may be imposed by Bulgarian authorities on non-commercial ships. According to the MSC, the Maritime Administration Executive Agency may detain a ship in territorial waters, internal sea waters and ports and perform a survey within 24 hours, if there are reasonable grounds to believe that the ship does not meet the prescribed safety requirements. The Maritime Space, Inland Waterways and Ports Act stipulates that the authorities shall have the right to stop a foreign ship and inspect, detain it and also disembark and detain the persons guilty of certain crimes. The MSC prescribes that "prohibiting of departure" is a security

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measure, representing detainment of a ship at the port for securing a public interest. The Port Captain may prohibit the departure of any ship for security, environmental and other reasons until their elimination. The Ordinance for ship detainment or prohibition of departure/entry may be appealed pursuant to the Administrative Procedure Code. However, the appeal does not stop the execution of the coercive administrative measure.