

## Authors

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## Overview

The Greek legal system provides basically for two types of seizure of the assets of a debtor, serving two different purposes, i.e. the provisional seizure, aiming to secure/ safeguard a claim (saisie-conservatoire) and the executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

## Applicable Laws

Applicable International Convention to the arrest of ships in Greece. As regards vessels, Greece has ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (10.05.1952) which was implemented in Greece by Legislative Decree 4570/1966(the "Convention").

- a. provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire)
- b. executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution)

Provisional seizure (saisie-conservatoire)

The Petitioner(s): Any party alleging to have a claim against the owners of a specific vessel may apply for her arrest as Petitioner. The Respondent (s): The registered owner (please see par 6)

The Petition: The petition in order to be complete should comprise the following elements:

Full identity of the Petitioner

Full identity of the Respondent

Description of the Vessel

Factual allegations and supporting documentation on the claim

A request for the vessel's arrest for a specific amount should be set out into the Petition ( mainly the amount of the claim plus 30% thereof for future interest and costs)

Interim Restraining Order: It is a standard practice that the Petition also contains a request for an Interim Order for the temporary prohibition of the vessel's sailing

If the ship under arrest is flying the Greek flag the Interim Order not only prohibits the vessel's sailing but also prohibits any change to her legal status.

### **Hearing of the Interim Restraining Order**

Once the petition is filed with the Court, the Respondents or their local representatives are notified by phone or telegram by the administrative personnel of the Court. The hearing may be fixed same day or next day. The Judge on duty hears the Arrest Petition and both parties (if present). Should the criteria described in par. "arrest procedure " are reunited an Interim order is granted.

### **Validity of the Interim Restraining Order**

The Interim Restraining Order is valid until the hearing date and subject to extension, on Petitioner's request, until the issuance of the judgment on the arrest Petition.

Hearing of the Petition: The Petition will be heard at a date which will be set by the Court upon its filing(15-30 days later). Care of Petitioners, the Respondents should be notified accordingly and summoned to appear at the hearing. The hearing is conducted orally and the parties may file Submissions along with supporting documents, translated into Greek and examine witnesses.

Judgment: On conclusion of the hearing, the Court in principle would reserve its judgment which will be normally issued in the next two weeks. The vessel may remain temporarily arrested by virtue of the Interim Order (if this was granted at the time and the court has extended its validity further to the demand of the petitioner).

Enforcement: An Interim Order or an arrest Judgment become effective as from their notification, by way of service of an official copy thereof upon Respondents as well as upon the competent Port Authorities for entry into the appropriate Books kept by them. The main effect of the enforcement is the prevention of the vessel's sailing. Furthermore and to the extent Greek law would apply, any disposal of the arrested vessel is forbidden and if effected in breach of such prohibition, will be nul and void towards the arrestor and for the amount for which the arrest was ordered; disposal is likewise nul and void towards third parties as well, if effected after the entry of the arrest Order or Judgment into the Arrest Book of the Port of the ship's Registry.

Provisional Validity: An arrest effected as aforesaid is provisionally valid i.e. until a final judgment on the merits is issued against the arrestor or a like judgment, issued in the arrestor's favor, has been enforced.

### **Alternatives**

#### **A. Under the Private Maritime Law Code**

I. The transfer of ownership in lieu of security (fiduciary transfer of ownership).

II. Hypothecation of the ship.

B. The Ship Mortgage (preferred Mortgage under Legal Decree 3899/1958

C. The Preferred Mortgage under the Legal Decree 2687/1953.

Claims subject to ship arrest

### **1. For which types of claims can you arrest a ship?**

Arrest can be sought for claims of any type and nature, be it conditional or subject to time terms, but where the Convention applies, an arrest cannot be ordered for claims other than maritime as defined in Art. 1.1 of the Convention

### **2. Can you arrest a ship irrespectively of her flag?**

Arrest of ships is subject to the regime of the Convention where the latter is applicable i.e. to vessels flying the flag of another contracting State calling at a Greek port and for maritime claims only as the latter are defined by the Convention, otherwise, the general provisions of domestic law shall apply.- In both cases the procedure to follow is identical. As regards Greek flag vessels their arrest can be sought and ordered even if they are not physically present within the jurisdiction of the Court with which the Petition is filed. The respective arrest judgment, being served as aforementioned, will cause the legal prohibition of any disposal of the vessel; the vessel's physical arrest may be then effected at any time within the jurisdiction of any Greek Court by virtue of the same judgment. Furthermore and insofar as Greek law is applicable, in case the ownership of the vessel has been transferred by the original debtor, arrest of the same vessel may be sought and possibly ordered against her new owner.

### **3. Can you arrest a ship irrespectively of the debtor?**

Actions in rem against the vessel only are not provided for by Greek law. Therefore, the Petition should be filed anyway against her registered owners, even in case the main liability for the claim lies on third parties such as the vessel's operators and possibly other parties having control over the vessel.

### **4. What is the position as regards sister ships and ships in associated ownership? Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

Under Greek law two ships are regarded as sister-ships if owned by the same person (or body corporate) and sister-ship arrests may be effected in Greece in limited circumstances. It has been held by the Greek courts that the corporate veil may be pierced to reveal the beneficial ownership only where there exists an in concreto reason for doing so. In lifting the corporate veil, the Greek courts have traditionally considered two criteria.

A. The criterion of “the effective control” (of the company)

B. The criterion of the “use of intermediary persons” in respect of shareholding or management.

#### Arrest Procedure

One-member district courts enjoy general subject matter competence for provisional remedies. An arrest may be ordered by Court judgment only, issued following summary proceedings initiated by the filing of the Claimants’ Petition. In circumstances of urgency, ex parte proceedings may be conducted should the requested measures seek to secure a substantive right and the indebtedness of the debtor is ostensible.

The sole oral hearing is based on a flexible procedural framework. This refers to both the authority of the judge for relying on facts not submitted by the parties and the free admissibility of any available means of proof. Evidence must be brought during this hearing. The decision to issue a provisional remedy, or to reject an application, is a judicial decision and may not be attacked by any methods of review.

According to Article 692/4 of the Code of Civil Procedure, provisional remedies must not lead to the full satisfaction of the substantive right which they seek to secure or preserve. An arrest judgment may be given provided that Petitioners would be able to show to the satisfaction of the Court, a prima facie founded and valid claim against the vessels’ owners and the occurrence of a situation of urgency or of imminent danger justifying the necessity for granting the requested arrest.

Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.

#### **Release from Arrest**

Release would be obtained at any time provided that Respondents have deposited with the Court a guarantee of a First Class Bank in Greece in favour of the arresting party and for such amount as fixed by the Court. Guarantee in any other form such as P&I letters of undertaking is not accepted; however if the parties agreed to such other form they may cause the vessel’s release following the procedure for the vacation of the arrest judgment. Vacation of the arrest judgment by virtue of a Court Order would entail the release from the arrest. Such vacation is mandatory when a final judgment on the merits has been issued against the arrestor or a like judgment, issued in the arrestor’s favour, has been enforced. Vacation will be likewise ordered if an agreement for the settlement of the claim has been reached, as well as when 30 days from the termination of the proceedings on the merit when a change in the circumstances, justifying such vacation, has intervened.

#### **5. Do your Courts require counter-security in order to arrest a ship?**

The Court has the power to order Petitioners to provide counter security by way of Bank guarantee; however in practice such counter security is rarely ordered, although frequently demanded by Respondents.

#### **6. Arresting a ship for a maritime claim and a maritime lien**

Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts.205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet )stated that the maritime liens, included in Art.205 para. 1 of the Code of Private Maritime Law take priority over a preferred maritime mortgage. The Supreme Court of Greece (Areios Pagos)in its decisions (913/1975,229/1983 (plenary) and 1055/1983 )held that Art.2 of the 1926 Convention cited by the acts above was to be dealt with as a fact.Thus,the party to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage.

#### **7. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?**

Upon receipt of instructions we may act all over Greece (through our network of associated offices) within the same day.

Court and related costs are in the region of Euro 250-300 including Bailiff's charges for the required notifications.

The respective lawyer's charges depend much on the urgency factor, the complexity of the issues involved, the work done and the time spent in initiating and conducting the arrest proceedings.

#### **8. Do you need to provide a POA, or any other documents of the claim to the Court?**

Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.

#### **9. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?**

Submissions along with supporting documents, translated into Greek and comments on the witnesses' depositions are filed within 3 working days from the hearing. Supporting documentation needs to be notarized and apostilled, although simple copies may be used during the interim restraining order.

#### **10. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?**

Jurisdiction of a Greek Court to decide on the subject merits is not created by the arrest itself. However and unless otherwise provided for by international conventions ratified by Greece, the presence of a vessel within the jurisdiction of a Greek Court, not competent in principle to decide on the merits, would create jurisdiction of this Court to so decide (*forum rei sitae*), for as long as the vessel is still within its jurisdiction. The jurisdiction so founded may, however, be affected by certain jurisdiction clauses or arbitration agreements.

#### Enforcement of Foreign Judgments

Article 905 of the Code of Civil Procedure provides for the enforcement of foreign judgments in Greece. Under Article 905, a civil judgment issued by a foreign court may be enforced in Greece if it has previously been declared executable by a decision of a proper Greek court.

Article 906 of the Code of Civil Procedure provides that foreign arbitration awards may be enforced in Greece if provisions of Article 903 of the Code are met.

#### Miscellaneous

### **11. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?**

Unless an action on the merits of the claim has been already brought, the arresting party should bring such action in the competent Court within such time as ordered by the Court, otherwise within 30 days from the service of the arrest judgment on Respondents, failing which the arrest is lifted *ipso jure*.

### **12. Do the Courts of your country acknowledge wrongful arrest?**

Following substantive proceedings against an arresting party, the latter may be held liable for damages resulting from an arrest or a guarantee lodged, only if Claimants would be able to prove to the satisfaction of the Court that the arresting party knew, or by gross negligence ignored, that its claim secured as above, did not exist. Furthermore such liability is conditional to a final and irrevocable judgment whereby the action of the arresting party on the merits of its claim is dismissed for it being unfounded.- In view of such requirements it is not an easy task for Claimants to succeed in his action for damages caused by a wrongful arrest.

### **13. Public auction Procedure. Is it possible to have a ship sold *pendente lite*?**

Under Greek law, the vessel remains in the custody of the ship-owner or the person who, at the time of the arrest, may be in possession of the ship. It is possible however, upon application to the Court for the arrestor to become the custodian of the ship in which case this party would have to bear the respective costs which are quite substantial. The disposal of the arrested ship may only be effected after an irrevocable judgment has been issued in the main action (which

may run in parallel with or follow the arrest proceedings) on the merits of the case. Such disposal may only take place in a public auction conducted by a Notary.

The “Forced Auction Procedure”.

This procedure is governed by specific provisions contained in the Civil Procedure Code. A Notary who is specifically appointed by virtue of a Court order executes the forced sale. The sale has the form of an open public auction whereby the interested parties may submit their bids on the basis of a schedule prepared by a Court bailiff. No judicial sale can take place within the context of a ship arrest procedure, as the latter may only serve as a means of preservation, not a means of satisfaction, of a claim.

There are cases however when, in the context of arrest proceedings, the property arrested may be subject to deterioration and at the same time the cost for preserving it, is disproportionately high having regard to the level of claim. In such instances the Court, may, after a summary hearing, order its disposal. The auction proceeds shall consequently substitute the arrested property and shall be deposited with the Loans & Deposits Fund, pending the issue of an irrevocable judgment on the merits of the claim. In shipping disputes, such a procedure may be encountered in cases where perishable cargoes have been arrested and the cost of preserving same until the issue of an irrevocable judgment is excessive. However it should be noted that such sale orders are granted in these very limited circumstances.