

# Arrest of Ships in Turkey

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## *Introduction*

Owing to its geographic location between Europe and Asia, Turkey has been a vital hub in international transport. The sea traffic is dense throughout the year in major ports of Turkey including Istanbul, İzmir, Mersin, Trabzon, and İskenderun.

Turkish courts are competent and highly experienced in the enforcement of provisional attachment on ships as well as other vehicles. As the provisional attachment in aid of an ongoing arbitration or litigation would constitute a significant security for the claimant until the proceedings are final, it is advisable to consider applying for a provisional attachment where there is persuasive evidence.

In this note, we summarize some important issues that should be taken into account in relation to this important legal tool.

### *a. Arrest of ships*

Under Turkish law, the special provisions of the Turkish Commercial Code govern the provisional attachment of ships, which is often referred to as arrest. Turkish Commercial Code, which entered into force before Turkey ratified the International Convention on the Arrests of Ships 1999, incorporates most of the rules of the said Convention.

Under the Turkish Commercial Code, arrest of a ship is only permissible if the claim qualifies as a *maritime claim*. Maritime claims are set out under Article 1352 of the Code, on a *numerus clausus* basis. Article 1369 provides additional requirements, which should be satisfied in order for the arrest to be enforced. Thus, as a special requirement applicable to arrests, the applicant should provide sufficient evidence to show the court that the claim qualifies as a maritime claim and clearly present the value of the claim. As a rule, save for certain limited types of maritime claims, in order to successfully place an arrest, the owner or the demise charterer when the maritime claim arose should be the owner of the ship at the time of arrest. Otherwise, such an arrest, if effected, would be wrongful and may entail liability of the applicant.

A ship may be arrested for a maritime claim regardless of its flag. The flag, however, is important for determination of the jurisdiction. The jurisdiction with regard to the arrest of the foreign-flagged ships belong only to the court

of the place where the ship has anchored, moored, berthed or docked. Turkish flagged-ships may be arrested also by the courts (i) where the ship is registered if it is registered with the Turkish Ship Registry, (ii) where the owner resides if it is not registered or (iii) where the charterer resides if it is registered with a private registry.

If the claim does not qualify as a maritime claim, it is possible to enforce provisional attachment on other assets of the owner/debtor in accordance with the general provisional attachment provisions.

b. *General notes*

- As a general requirement for provisional attachment requests, there should be a due debt or, if the debt is not due, the applicant should be able to provide sufficient evidence to show that the chances of recovery of the undue debt is at high risk.
- The evidence in this respect can be in any form. The court, which has wide discretion whilst evaluating such evidence, makes a *prima facie* examination on the persuasiveness of the underlying claim and the attachment application. Unless otherwise decided by the court, the evaluation is made without a hearing.
- In provisional attachment applications, the courts order the applicant to post a security, which is usually up to 15-40% percent of the claim amount as a security against probable wrongful attachment. In arrests, this security is fixed to 10,000 Special Drawing Rights (SDR) which is approximately equivalent to 13,250 USD according to the applicable rate. This is a minimum requirement to obtain an arrest order and the court may order for additional security upon request of the debtor.
- If an arrest order is effected before a lawsuit or debt collection proceeding has been initiated, the claimant should initiate complementary proceedings in the form of a lawsuit, debt collection proceeding, or arbitration -if there is an applicable arbitration clause or agreement- within one month. Otherwise, the arrest order will become null and void.
- The owner or the debtor may request removal of the arrest order subject to deposit of a security that covers the full amount of the maritime claim, its interest and costs. This security shall not exceed the value of the ship.



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