

GENERAL REPORT

ON ARREST PROCEDURE IN TURKEY

IN FORM OF QUESTIONS AND ANSWERS

- 1. For what kind of claims can vessel be arrested as security measure? (1952 International Convention relating to the arrest of sea-going ship and if this does not apply then to be answered according to local law)**

It should be said that Turkey is not a party of the 1952 International Convention. Generally, arrest of a ship in Turkey can take place for all types of claims regardless of whether the claim has a maritime character or it is connected with the ship to be arrested or not. On the other hand domestic law does not provide for specific rules on this matter. The provisions of Turkish Bankruptcy Liquidation Code, Turkish Procedural and Turkish Commercial Code will apply.

- 2. International Private Law: which laws does the court handling the arrest petition apply to answer the following questions (i) does the creditor have a claim which is recoverable against the vessel? and (ii) does this claim have a preference over other claims?**

In case the Turkish Courts pass the jurisdiction and competency points, the Turkish Law apply to the claim. Therefore;

- i)* The creditor can place a claim which is recoverable against the vessel.
- ii)* The claim may have the priority once the maritime lien right is established by the courts and if it is requested by the creditor. Otherwise between the other claims this claim does not have any preferences.

- 3. Local Procedural Law: does the arresting party have to offer counter security to the ship owner? What procedural actions can the ship owner take to have an arrest lifted?**

The party who request the arrest of the vessel from the court shall request precautionary judgment decision from the court in order to obtain the arrest of the vessel. The court shall require the submission of the counter-security in the form of Bank Letter of Guarantee issued by Turkish Bank and/or cash deposit of money. The amount of counter-security is under discretion of the court but usually varies from 15% to 40% of the claim amount. In order to lift the precautionary judgment decision regarding the arrest of the vessel, the ship-owner either submits the Bank Letter of Guarantee issued by Turkish Bank and/or deposits the claim amount to the court file. (It should be noted that Turkish Courts are only accepting the Bank

Letter of Guarantee issued by Turkish Banks, therefore a Club Letter of Undertaking does not have any effect during court proceeding in Turkey)

4. Enforcement of foreign maritime mortgages: how to act if the jurisdiction where the auction takes place does not have a treaty with the jurisdiction of the vessel's register acknowledging the status of its maritime mortgages?

It should be said that in accordance with Article 23/3 of Turkish Enforcement and Bankruptcy Code, if the vessel is not registered to the Turkish registry, as being a property, the vessel evaluated as movable property. In this respect if the vessel carries foreign flag and has mortgage on, enforcement proceeding can be initiated against the vessel interests with demand for the foreclosure of the lien. In such a case, upon application to the enforcement office by requesting the service of the payment order, an arrest order can be also demanded from the enforcement office. Upon the application to the enforcement office, a payment order should be served on the interests of the vessel. Moreover, upon service of the payment order on the interests of the vessel, objections to the payment order may be raised by the interests of the vessel within 7 days as of the service of the same. In such a case, an action should be initiated with demand for the removal of the objection raised by the interests of the vessel. At the end of the court proceedings, in case a favorable decision is obtained, the judicial sale of the vessel can be demanded from the enforcement office.

It is required to indicate that in the event that any objection is not raised by the interests of the vessel against the payment order within 7 days as of the service of the same and that the receivable is not paid by the interests of the vessel within 15 days as of the service of the payment order; the payment order will be binding and finalized. In such a case, judicial sale of the vessel can be demanded from the enforcement office.

5. How long it does usually takes to have a vessel auctioned in court, meaning the period between the first arrest of the vessel and actual auction date? Can the vessel be sold in a court acknowledged private sale pending such auction procedures and does this also wash the vessel clean from its debts?

In accordance with the Turkish Procedural Rules, the claimant whom the court granted a precautionary judgment decision on behalf, has to initiate the main case within 10 days which starts from the date of the granting the precautionary judgment decision. During the main case the merit of the matter is discussed in details. After passing the submission of the petitions together with the evidences stage, the file is usually served to the expert(s) to have their opinion and if the expert report does not satisfy the court requests, the file may be deliver to the same expert(s) for additional report and or to another expert(s). Thereafter, the court can grant a decision. However, the party whom the decision is against have right to appeal the decision and also have right to request the correction of the decision from the Appeal Court. Taking all stages into consideration, the court procedure may take around 1 year to 2 years. Moreover, when the decision of the court is obtained, in order to enforce the decision, the payment order should be sent to the opponent party through the enforcement office. The

debtor either can deposit the guarantee to the security in the form of the Bank Letter of Guarantee and/or cash amount to suspend the enforcement procedure and appeal the decision of the court. Considering that the security is not deposited within 7 days as of the date of payment order served to the debtor, the attachment and sale of the vessel can be requested from the enforcement office respectively. If the vessel is sold by enforcement office through public auction, all encumbrances will be lifted and vessel cleans from her debts.

6. How will the court rank the individual claims of the vessel's creditors when dividing the auction proceeds? Which claims take preference over a maritime mortgage?

When the enforcement procedure becomes definite, the enforcement office prepares a list showing the sequence of payments to creditors and in case there is no objection against this list within 7 days the list will also becomes definite.

While the enforcement officer prepares the list, the expenses of the enforcement office and other compulsory charges comes first other than the creditors who has the lien right on the vessel.