

China: Proposed Draft Provisions on Arrest and Judicial Sales of Ships

By Wang Zhonghua

YOUHUA LAW FIRM

[*Wangzhonghua@youhualaw.com*](mailto:Wangzhonghua@youhualaw.com)

In order to regulate the procedures of arrest and judicial sales of ships, the Supreme People's Court of the People's Republic of China recently drafted the provisions. Below are the introductions on some main points of the drafts, which we believe are very interesting topic of discussion, and also we will keep updated of any developments on it.

1. Non-arrest process

The claimant may apply for prohibiting the transfer of ownership, mortgage and demise chartering of ships and the maritime court shall permit such application with a notification to the ship registry for assistance in enforcement of court order. The non-arrest process shall not prejudice an actual arrest in respect of another claim.

2. Multiple arrest for another maritime claim

A ship which has already been arrested may be arrested in respect of another maritime claim. Where the former claimant does not apply for judicial sale of the arrested ship, the latter claimant may apply for the sale to the maritime court permitting the latter arrest.

3. Judicial sale of a demise chartered ship

Where a demise chartered ship is arrested in respect of a maritime claim for which the demise charterer of the ship is liable, the claimant

may pursuant to Article 29 of the Maritime Procedure Law of PRC apply for judicial sale of that ship to enforce a judgment in respect of that claim.

4. Exceptions to counter-security

In principle, the maritime court shall require the claimant to provide counter-security for ship arrest with two exceptions that: (a) the claimant has good credit, good financial position for civil compensation and no obstacles to honor a judgment; or (b) the claim arises out of crew member employment contract or personal injury with strong evidence.

5. Amount and adjustment of counter-security

The maritime court shall determine the amount of counter-security according to such damage or losses that could be caused to owners as a result of wrongful arrest as ship maintenance cost and expenditure, loss of earnings and cost for security, among which, the maintenance cost and expenditure and loss of earnings could be calculated temporarily based on 30 days arrest period. In case of emergency, the counter-security could be provided in phases. If the counter-security is found to be insufficient or owners raise a reasonable objection to it, the maritime court may have the counter-security modified or increased.

6. Refund of counter-security

The maritime court may refund the counter-security to the claimant when any of the following happens: (a) owners agree to the refund; (b) owners fail to file claim against claimant for wrongful arrest after six months from the day on which the ship was released from arrest or was judicially auctioned; (c) an effective judgment, mediation order or arbitration award held owners to be liable for maritime claim and the judgment amount is equivalent of the security provided by owners.

7. Custody of arrested ship

Owners or demise charterers shall be responsible for custody of arrested ship.

8. Judicial sale of arrested ship

The maritime court shall set a retentive price which should not be open to the public, based on the assessment price of an auction ship.

9. Distribution of auction proceeds

The proceeds from auction of a ship and interest thereon shall be distributed as per following order of priority: firstly, court fee, custody and auction fee and other expenses incurred for the common interest of all claimants; secondly, the claim secured by a maritime lien; thirdly, the claim secured by a possessory lien; fourthly, the claim secured by a ship mortgage; fifthly, other claim associated with the auction ship.