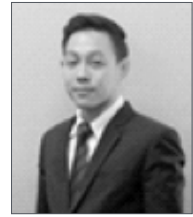


SHIP ARREST IN THAILAND

By Naiyachon Tathong*
Managing Director
JTJB INTL LAWYERS CO., LTD.
Bangkok, Thailand
naiyachon@jtjb.com
www.jtjb.co.th
Tel: +66 2116 1747 Ext. 11



1. Please give an overview of ship arrest practice in your country.

The arrest of ship is a well-known practice worldwide, especially in the country performing the marine trading. In the past, Thailand do not enforce the specific provisions regarding the arrest of ship. Until the late 1991, Thai law has enacted the arrest of ship Act B.E.2534 (1991) with the purpose to arrest the ship for security when there is a dispute in associated with the ship and the usage of ship. Moreover, Thailand is neither become the member in the treaty nor ratify the International Convention relating to the arrest of seagoing ships, Brussels, May, 10, 1952. However, the arrest of ship Act B.E. 2534 (1991) has the similar model as to the arrest of seagoing ships, Brussels, May, 10, 1952.

2. Which International Convention applies to arrest of ships in your country?

Thailand is not a party of the International Convention regarding the arrest of ships.

3. Is there any other way to arrest a ship in your jurisdiction?

According to Thai law, there are two Acts which are related to the arrest of ship; (1) Arrest of Ship Act B.E.2534 (1991), and (2) Navigation in the Thai Waters Act B.E.2456 (1913.)

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The temporary protection shall be requested from the Court of Thailand to seize or freeze of asset but such alternatives shall not be the security for debt repayment.

5. For which types of claims can you arrest a ship?

The creditor may claim for arrest of ship by the following matters:

- 1.Any damages arising from the ship whether by ship collision or other event;
- 2.Death or injury caused by the ship or related to the operation of any ship;
- 3.Marine salvage;
- 4.Charter agreement whether by the Charter-party agreement or other agreement;
- 5.Shipment agreement whether by Charter agreement or other agreement;
- 6.Loss or damages causing to the product including luggages carried by the ship;
- 7.General damages;
- 8.Loan agreement for carry on the business of ship by ship security(Bottomry);
- 9.Towage;
- 10.Pilotage;
- 11.Supply any goods or materials for ship operation or maintenance;
- 12.Shipbuilding, ship repairing;
- 13.Wages of naval officer, ship officer, ship equipment installation, or Dock charges and dues;
- 14.Disbursement which naval officer, consigner, charterer or the representative of the shipowner has caused in the name of the ship or the shipowner;
- 15.Disputes as to the title or ownership of any ship;
- 16.Disputes between the co-owners as to the possession, usage earning from the ship;
or
- 17.Mortgage or hypothecation of any ship.

6. Can you arrest a ship irrespective of her flag?

According to Thai law, any ship shall be arrested regardless of the flag.

7. Can you arrest a ship irrespective of the debtor?

The arrest of ship shall be performed as long as the type of claim falls under the matters in question no.5.

8. What is the position as regards sister ships and ships in associated ownership?

If the ownership of the sister ships and the ships in associated are of the same and the damages arises from the ships in associated, the sister ships and the ships in associated can be arrested in the same ground to provide the full debt repayment to the debtor except for these following disputes: 1. Disputes of rights or ownership of the ships; 2. Disputes between the co-owners regarding the right to possession; and 3. Mortgage of ships.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Both Bareboat and Time-Chartered vessels give the possession of ship to the charterer if the cause of claim arises whether from the ship or the business of the ship in particular and the debtor has the right to possession over the ship in the event of the claim of ship arise and the Court order the arrest of ship, the creditor may request the arrest of ship from the Court.

10. Do your Courts require counter-security in order to arrest a ship?

The counter-security shall be in the discretion of the Court. But in practice, the Court shall require the counter-security.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claim provides the right to arrest of ship but maritime lien provides the right to receive the debt repayment prior to other creditors and shall not limited to the preferential creditors.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Thai law recognizes Ship Mortgage and Marine Preferential Right Act B.E.2537 (1994.)

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

The arrest of ship shall be executed within 3-5 days if the documentary evidence is complete and the witness has to attend to the Court. The Court may consider the inquiry forthwith which is similar to the emergency inquiry.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Under Thai law, the following documents must be provided; (1) Motion to request the court to arrest of ship, (2) Deed of lawyer appointment, (3) Power of attorney (in case the creditor appoint someone or lawyer to be the attorney-in-fact), (4) Document regarding to status of the ship, (5) Document regarding to the status of the debtor and creditor, (6) Document regarding to the debts.

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

Under Thai law, the Thai Court do not accept the document filing electronically except the monor document or petition e.g. petition to copy the court order. Moreover, the original Power Of Attorney shall be required but the copies of other original documents may be filed except when the challenge is made by another party.

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

The Thai Court do not accept the jurisdiction over the substantive claim. The creditor shall have the domicile in Thailand to file the case to the Court. If Thai Court do not have the jurisdiction over the case, the Court may dismiss the case and also dismiss the security deposit.

17. What is the procedure to release a ship from arrest?

The arrest of ship shall be released by the following procedure:

- (1) When the debtor has provided the deposit not less than the amount prescribed in the arrest of ship order and the debtor accept the claim, the arrest of ship shall be terminated and the Court shall release the arrested ship immediately; or
- (2) When the debtor has the domicile in Thailand and the debtor has provided the deposit not less than the amount prescribed in the arrest of ship order and the debtor does not accept the claim, the arrest of ship shall be terminated and the Court shall release the arrested ship immediately; or
- (3) The offshore debtor or the third party may request the Court to release the arrest of ship by submission of petition to the Court and provide the security in the amount as prescribed by the Court order of the arrest of ship for the security of debt repayment to the creditor. If the Court found reasonable, the arrest of ship shall be released.

18. What type of security needs to be placed for the release?

Generally, the Thai Court accepts cash, government bond, and bank account shall be provided for security to release the arrest of ship. Other types of security may be provided by the discretion of the Court.

19. Does security need to cover interest and costs?

The discretion shall be determined by the Court.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I and LOUs are not accepted to lift the arrest. The security deposit shall be provided exclusively.

21. How long does it take to release the ship?

The procedure on no. (1) and (2) under answer to question 17 shall be taken approximately 3-5 days from the period of the Court ruled the order until the release of ship. The procedure on no. (3) under answer to question 17 shall be taken approximately 1-3 months from the period of submitting the petition to the Court until the release of ship.

22. Is there a procedure to contest the arrest?

As according to the arrest of ship Act B.E. 2534 (1991), the last paragraph of section 8 states that the order of the arrest of ship shall be final. Therefore, the arrest of ship shall not be contested nor appeal the order.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claim shall be made within 30 days from the date that the enforcement officer post the arrest of ship as according to section 12(2) of arrest of ship Act B.E.2534 (1991.)

24. Do the Courts of your country acknowledge wrongful arrest?

The Thai Courts accept the wrongful arrest of ship, but the claim for damages to wrongful arrest of ship; shall be filed in separate case.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Thai Courts do not acknowledge the piercing and lifting of the corporate veil.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It has not possible to a ship sold pendente lite. Under Thai Law, the ship can only be sold by the public auction in the process of legal execution as long as the Court has rendered the judgment for Plaintiff to win the case.

***Naiyachon** has been appointed as Managing Director and Head of JTJB Bangkok Office since August 2015. He was previously experienced in a leading International law firm, specializing in Commercial Dispute, Transportation & Maritime, Trade Competition, Labor Dispute, and Insolvency and Restructuring including Real Estate & Construction. While his practice has been focused on litigation in the past 15 years, he has a rich practice experience in handling both contentious and non-contentious matters.

Naiyachon is experienced in maritime and transportation dispute both in Thai Court and International Arbitration, his areas of work include Shipping & Maritime Disputes on Charterparty, Bunker Dispute, Cargo Dispute, Arrest of Vessel and Multimodal Transportation as well as project transactional work such as registration of vessels, Flag of Ship, Structuring of Logistic Provider and Freight Forwarder Company.

Naiyachon's litigation work has generally been in the area of Business and Commercial Dispute, Construction Dispute, Labour Dispute, and Bankruptcy as well as Intellectual Property dispute.

For non-litigation matters, Naiyachon has extensive experience in Trade Competition, Joint Venture, Commercial Agreement, Technology, Environmental, Regulatory and Property & Real Estate Transaction.

Naiyachon has been ranked in Asialaw Leading Lawyers 2018 as a Market-Leading Lawyer for Dispute Resolution, Litigation, Shipping & Maritime, Aviation and Intellectual Property practice areas. He was also nominated for the Dispute Star of the year 2018. Furthermore, Naiyachon is listing the Thailand Top 100 Lawyers published by Asia Business Law Journal.

In addition, Naiyachon is a speaker at Asia Business Connect on Labor Law, speaker on Arbitration Law and Maritime & Transportation Transaction to Legal and Charter Department of Public Company in Thailand.

Naiyachon obtained LL.B. and LL.M. (International Trade Law) from Thammasat University and he also obtained Barrister-at-Law from Thai Bar Association and Certificate of Specialized Environmental Lawyer from Lawyer Council of Thailand.