

SHIP ARREST IN VIETNAM

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

Having a long coastline, Vietnam maritime industry has played a key role in enhancing the country's economic activities, especially when Vietnam acceded to the World Trade Organization in 2007. Maritime claims, including ship arrest claims, have unceasingly occurred in the much more competitive maritime industry. The first claim resulting in a ship arrest took place in early 1990' at the request filed with the people's court of Da Nang city, Vietnam. Since that time, legislation covering ship arrest has increasingly developed. A ship can be arrested and detained until the claim is settled. The Vietnam Maritime Code 1990, as amended in 2005, the Ordinance on Ship Arrest 2008 and the Civil Procedure Code are the major sources of legislation governing ship arrest.

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

To the best of our knowledge, Vietnam has not ratified any International Convention on ship arrest even though Vietnam has been encouraged to accede to International Convention on the Arrest of Ship Geneva, March 12, 1999.

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

There are the following ways to arrest ship in Vietnam:

- Filing request with civil enforcement bodies for ship arrest for the enforcement of the judgment/ decision of the court or arbitration;
- Filing request with Chief of seaports for the detainment of ship for a maximum period of 30 days for the settlement of maritime claims;
- Filing request with the court for ship arrest during the settlement of a criminal or civil lawsuit;
- Filing with domestic arbitration tribunal for ship arrest during the dispute arbitration process; and
- Filing a request with a foreign court or foreign arbitration tribunal for ship arrest as a matter of international judicial assistance.

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

These measures correspond to saisie conservatoire or freezing order.

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

The types of claim which can give rise to a ship arrest are stipulated in Article 11 of the Ordinance on Ship Arrest including: Damages for the loss of life, personal injuries and other human health damage directly caused by the operation of seagoing ships; Freight, maritime security charge, pilotage, wharfage, and other seaport dues and charges; Seagoing ship salvage remunerations; Property losses and damage outside contract directly caused by the operation of seagoing ships; Loss of or damage to cargoes, including luggage carried on board seagoing ships; General average; Towage; Pilotage; Goods, materials, food, fuels and equipment (including containers) supplied or services provided to seagoing ships for their operation, management, preservation and maintenance; Building, transformation, reconstruction, repair or equipping of seagoing ships; Sums of money paid on behalf of ship owners; Insurance premiums paid by ship owners or other parties on behalf of ship owners or bareboat charterers; Commissions or charges for brokerage or agency for seagoing ships payable by ship owners, bareboat charterers or authorized parties; Disputes as to the title to or ownership of seagoing ships; Disputes between co-owners of seagoing ships over the use of these ships or earnings of these ships; Mortgage or hypothecation of seagoing ships; Disputes arising from contracts of seagoing ship purchase and sale...

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

Yes, we can.

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

Yes, we can. According to the Ordinance on Ship Arrest, a ship can be arrested in the following circumstances irrespectively of the debtor:

- The maritime claim is based on the mortgage of the ship;
- The maritime claim relates to the ownership or possession of the ship;
- The maritime claim is secured by a maritime lien in respect of that ship.

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

The Ordinance on Ship Arrest allows the arrest of sister ships in the following instances:

- The owner of the sister ship is also the owner of the ship concerned with the arising of the maritime claim;
- The owner of the sister ship is also the bareboat charterer, time - charterer or voyage charterer of the ship concerned with a maritime claim.

The Ordinance on Ship Arrest is silent on the arrest of ships in associated ownership. To our experience, arrest of ships in associated ownership is possible.

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

Kindly refer to answer no. 8.

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

Article 5 of the Ordinance on Ship Arrest requires the claimant to provide a valid bond or guarantee fixed by the court which is equivalent to the possible losses or damages resulting from wrongful arrest (if any).

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

Arresting a ship for a maritime claim: The arrest of ship is sought against the ship owner/bareboat charterer of the ship related to the maritime claim. Other ships of the ship owner can be arrested if, at the time the maritime claim arose, such party was also (a) the owner of the ship related to the maritime claim, or (b) the bareboat charterer, time charterer or voyage charterer of the ship related to the maritime claim.

Maritime lien: Maritime lien is sought against the ship related to the maritime claims giving rise to the maritime lien. Maritime lien over a ship shall not be affected by a change of owner, charterer or operator.

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

Yes, Vietnam recognises maritime lien in accordance with the Maritime Code of Vietnam.

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

Usually, it may take us from 03 [three] to 05 [five] working days to arrest a ship.

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

Yes, we do need to submit to the court a written request for the arrest of the ship and other documents in order to support the request for the arrest of the ship, including a POA for us to represent the claimant before the court.

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

All documents to be submitted to Vietnamese court to apply for the arrest of a ship must be original documents or certified true copies and must undergo notarisation and/or apostille and be translated

into Vietnamese (if made in foreign languages) in accordance with Article 8 of the Ordinance on Ship Arrest. Claimant can also file documents electronically through courts' web portal, if any. Of note, not every provincial court in Vietnam has its web site/ web portal.

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

Vietnam Court accept jurisdiction over the substantive claim in accordance with the provisions of the Civil Procedure Code of Vietnam, including the circumstance where the defendant has property in the territory of Vietnam. The law does not provide that the property must be real estate. Therefore, we assume that if a ship is arrested in Vietnam, Vietnam court may accept jurisdiction over the substantive claim if the defendant is the owner of the arrested ship.

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

The release procedure includes the following steps:

- Submission to the court of a written request for the release of the arrested ship and supporting documents, in which the lawful reason for the release of the arrested ship must be presented;
- Within 24 hours as from the receipt of the written request the court issue either the release order or a letter presenting the reason for which the release is not granted;
- In case of a release order, the court immediately sends the order to the relevant port authority for implementation thereof;
- The director of the relevant port issues a notice for the implementation of the court's release order and assigns a port officer to release the ship.

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

Type of security to be placed for the release shall be agreed between the parties or decided by the court. Normally, it can be a bank guarantee or a letter of undertaking (LOU) issued by a reputable insurers listed by Vietnam's competent authority. There have 29 of them according to a decision of the Ministry of Finance.

19. Does security need to cover interest and costs?

Yes, it does.

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

There has been no provision for the acceptance of P&I's LOUs as sufficient to lift the arrest.

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

24 hours from the court receipt of a written request for the release of the arrested ship.

22. Is there a procedure to contest the arrest?

Yes, there is.

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

- With regard to the loss of or damage to cargo, it is one year from the date on which the cargo was delivered or should have been delivered to the consignee.
- With regard to performance of voyage charter parties, it is two years from the date on which a complainant knows or should have known of the infringement of its interests.
- With regard to damages for the death, personal injury or damage to health of a passenger or for loss or damage to luggage, it is two years.
- With regard to charter parties, it is two years from the date of termination of the charter party.
- With regard to dispute over shipping agency contract, it is two years from the date on which the dispute arose.
- With regard to dispute over maritime brokerage contract, it is two years from the date on which the dispute arose.
- With regard to dispute over contracts for towage of seagoing ships, it is two years from the date on which the dispute arose.

- With regard to dispute over contracts for maritime salvage, it is two years from the termination of the rescue operations.
- With regard to recovery of compensatory amount in excess of its liability, it is one year from the date of payment of the compensatory amount.
- With regard to general average, it is two years from the date of the general average occurrence. The time taken for apportionment of general average shall not be included in this limitation period.
- With regard to marine insurance contract, it is two years from the date on which the dispute arose.

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

Under Article 4 of the Ordinance on Ship Arrest, in the event of wrongful arrest, applicants for the wrongful arrest shall be held responsible for the wrongful arrest. All losses or consequences of an application for the wrongful arrest shall be remedied under agreement between the involved parties. In case no agreement can be reached and a dispute arises, the involved parties may bring the case to a court or an arbitration center for settlement.

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

In principle, shareholders of a company with limited liability shall not be personally liable for the obligations of the company. In practice, the Vietnamese courts have not acknowledged 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?

An arrested ship can be put on auction in accordance with a court's decision only in case where the ship owner abandons the arrested ship. The timing for auctioning a ship is not specified by laws.

**Mr. Thuan has more than 13 years of experience working for the People's Court of Ho Chi Minh City. In March 2003, Mr. Thuan left the Court and joined the leading firm Vilaf – Hong Duc as a key litigator of the firm for more than 5 years, before joining the then rising firm Phuoc & Partners in October 2008, and getting promoted as the fifth partner of the firm in April 2009. Mr. Thuan is highly regarded for his versatility as a labor, commercial, shipping, insurance, construction trial and appellate lawyer. Not only handling dispute resolution works including litigation, Mr. Thuan also work intensively to advise clients on various legal fields including employment and labor, maritime & shipping, insurance, contract, civil, family and other commercial issues. Mr. Thuan has annually spoken at seminars on labor both in Vietnam and overseas.*