

# SHIP ARREST IN TAIWAN



By Vincent W. Liu\*

LIU & CO.

liuncotw@ms31.hinet.net

www.liunco.com

7th Floor, 73, Fu-Sing North Road

Taipei 10552, Taiwan.

Tel.: +886 2 2773 1133

Fax: +886 2 8773 0880

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

An arrest of ship in Taiwan shall be subject to either the Chapter on Precautionary Proceedings under the Civil Procedure Code, promulgated on 1st February, 1935, effective from 1st July, 1935, and last amended on 8th May, 2013 (the "CPC"), the Compulsory Execution/Enforcement Act, promulgated on 19th January, 1940, effective from 21st January, 1940, and last amended on 4th June, 2014 (the "CEA"), and the Maritime Act, promulgated on 30th December, 1929, effective from 1st January, 1931, and last amended on 8th July, 2009 (the "MC"). In addition to the foreclosure of ship mortgage and the enforcement of a final and irrevocable Court Judgment or Arbitration Award in favour of the claimant/creditor against the registered shipowner as the debtor; wherein, any ship of the same shipowner shall be at stake under the CEA, the competent Court may grant a Civil Ruling to provisionally seize/attach or dispose the ship in question, upon an application therefor submitted by the creditor/claimant. The criteria thereof, however, are stringent, and the procedures involved are cumbersome.

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

Taiwan is not the signatory country to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952. Ship arrest is governed by the CPC, CEA and/or MC as mentioned under Question 1.

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

No, there is no other way to arrest a ship, in terms of securing the creditor's/claimant's alleged claim.

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

Under certain circumstances, the ship could be subject to freezing order or saisie conservative, if she violates specific Taiwan administrative laws and/or regulations.

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

Arrest ship is available for general claims, no matter maritime or not, under the *lex causae*, vis-à-vis the registered shipowner of ship to be arrested, and for maritime liens according to the law of ship's flag, albeit the debtor in this context may be different from the registered shipowner of her.

MC provides, *inter alia*, that:

The claims listed hereunder may be secured by maritime liens and are entitled to a preferential right of compensation:

- (1.) Claims of the shipmaster, seafarer or other members of the ship's complement which have arisen from their contracts of employment;
- (2.) Claims against the shipowner, in respect of loss of life or personal injury directly arising from the operation of the vessel;
- (3.) Claims for salvage rewards, expenses for wreck removal or ships' contribution on general average;
- (4.) Claims against the shipowner, based on tort in respect of damage to or loss of property occurring, whether on land or on water, in direct connection with the operation of the vessel; and
- (5.) Harbour charges, canal or other waterway dues or pilotage dues.

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

Yes.

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

Yes, as long as the debtor/opponent is the registered shipowner, or whom the maritime lien claim is against.

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

It is possible to arrest sister ships owned, at the time when arrest is effectuated, by the identical registered shipowner who is liable for the general claims mentioned hereinabove. The "ships in associated ownership" has not been defined under Taiwanese laws, including the MA.

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

Unless the alleged claim constitutes a maritime lien against the subject ship, the ship may not be arrested for any claims vis-à-vis her bareboat charterer, or time charterer.

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

With the exception of an arrest based upon the final and irrevocable Court Judgment, Arbitration Award, or Civil Ruling granting the foreclosure of ship mortgage, the Court would only grant, without adjudicating the validity of claimant's application or claims on the merits of the case, such an arrest, seizure/attachment against a counter-security in the form of cash, the amount of which is subject to the Court's discretion, normally one-half (1/2) or more of the alleged claim amount. In addition, the claimant should pay around decimal eight percent (0.8% or 8/1,000) of its claim amount to the Court for the provisional seizure execution/enforcement fees when submitting the subject application, which shall be deductible when the compulsory enforcement/execution of the final and irrevocable Court Judgment is eventually lodged.

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

Subject to the law of ship's flag, an arrest for a maritime lien can be done irrespective of ship's ownership, who may be not identical to the registered shipowner. The application for arrest in this context should be thoroughly elaborated upon since generally speaking, the Court adjudges such an application prudently and strictly, as there is no concept of "action in rem" under Taiwanese legal system.

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

Yes, but it is subject to the law of ship's flag. As to the maritime liens under Taiwanese law, please refer to above-mentioned 5. Taiwan is not a signatory country to any International Conventions on maritime liens.

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

Provided the required information, documents and counter-security, if necessary, are well-prepared, an arrest may be completed within three (3) to five (5) days, should no complications arise.

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

Yes, notarized and legalized Powers of Attorney (the "POA") as well as the following documents/information are required:

(1) The full style of claimants, including their full name, registered address of headquarters and the name of their legal/statutory representative, i.e., the chairman of board of directors, the managing director, the president or the general manager who is the legal/statutory representative for the claimants under the law of the country/state where the claimants are duly incorporated;

(2) The information set forth in the preceding Item (1) of the debtors/opponents and if necessary, the proof in this context;

(3) The proof as to the ownership of the vessel to be arrested, i.e., a Certificate issued by the competent authorities of the state/country of her flag, which could sufficiently certify that she is currently owned by and registered under the name of debtors, or a similar statement on search therefor issued by the lawyer practising in the state/country of her flag;

(4) The description of claimants' claims vis-à-vis the debtors;

- (5) Copies of all the relevant documents regarding the claimants' claims; and
- (6) ETA and ETD of the vessel.

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

Certain numbers of type-written originals each of POA duly and separately executed by the chairman of directors board, the managing director, the president, or the general manager, who is deemed to be the legal/statutory representative therefor under the laws of the country where the claimants have been incorporated, of the claimants, before a notary public (notarization) and legalized/authenticated by the Taiwanese consulate or de facto consulate stationed in the country where POAs shall have to be issued and then sent to us by e-mail, facsimile and post. For the purpose of arresting ship, other documents could be submitted in copies thereof at the outset. Nevertheless, all the respective originals thereof shall be required to present before the court of trial, if any, at a later stage.

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

Unless the claim arising from a contract contains an exclusive foreign jurisdiction clause, or an arbitration in foreign forum clause, the Taiwanese Court accepts jurisdiction over the substantive claim once the vessel has been arrested.

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

In the case of an arrest based upon the final and irrevocable Court Judgment, Arbitration Award, or Civil Ruling granting the foreclosure of ship mortgage, the debtor, registered shipowner, or the interested party may apply, relying upon CEA, etc., to the Court for releasing the arrested ship against the lodgement of security in the amount of the alleged claim amount as well as the execution fees as court costs; or an equivalency of the ship's value; or an appropriate assets. As to the provisional seizure/attachment or disposal proceedings, the Court, when granting a Civil Ruling to provisionally seize/attach or dispose the ship in question, mentioned under Question 1, would normally allow the debtor/opponent or registered shipowner to revoke the provisional seizure/attachment or disposal proceedings, resulting in the release of arrested ship, against the lodgement of security, the amount of which is normally tantamount to the creditor's alleged claimed amount or more.

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

The security could be in form of: (1) cash; (2) the interest bearing term deposit/certificate issued by a local bank, (3) an appropriate assets; or (4) a letter of guaranty issued by local underwriter/insurer, or local bank running insurance business, which should explicitly undertake, inter alia, that the issuer shall be responsible for recouping the alleged debt and/or compensating the creditor for a certain sum in the event that the debtor, or registered shipowner does not fulfil its obligation. Items (2) to (4) shall be subject to Court's discretionary approval.

19. Does security need to cover interest and costs?

The security need to cover the alleged claim amount and the court costs, or execution fees.

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

P&I LOUs would not be accepted, unless it is a local underwriter/insurer.

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

It would take around ten (10) business working days, should no complications arise.

22. Is there a procedure to contest the arrest?

There are several approaches to contest the arrest under CEL and CPC.

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

The shipowner of arrested ship, or the named debtor may apply with the Court for a Ruling ordering the claimant to take legal action on the merits within normally seven (7) days, failing which the arrest may be left. Such a Ruling shall be rendered within two (2) to three (3) weeks upon an application.

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

Yes, but the substantiation of damages and/or loss shall be subject to another lawsuit.

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

Very rarely.

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

It is very impossible.

*\*Vincent W. Liu, LL. B., 1978, Faculty of Law, Fu-Jen Catholic University; LL. M., 1985, The London School of Economics and Political Science, University of London, admitted in Taiwan as an attorney-at-law, patent attorney & licensed conveyancer, as well as arbitrator (registered in panel), who helms Liu & Co. has been nominated and selected since December, 1999 as one of three leading international trade and maritime lawyers in Taiwan by Euromoney Legal Media Group in its "Guide to the World's Leading Shipping & Maritime Lawyers" and "Guide to the World's Leading International Trade and Shipping Lawyers".*