

SHIP ARREST IN THAILAND

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

In Thailand, the ship arrest procedure is subject to The Arrest of the Ships Act, B.E. 2534. The vessel subject to a potential procedure of arrest must be a seagoing ship used in the international carriage of goods or passengers. The arrest must be made by way of petition before the Court which has jurisdiction. If the creditor provides evidence before the Court that his claim is a maritime claim as stated by the section 3 of the aforementioned Act, the Court would order the arrest of the ship concerned. Under the provision of the Arrest of the Ships Act, B.E. 2534, the arrest procedure must be urgent. For instance, upon acceptance of a petition for ship arrest, the Court would hold an ex parte inquiry without delay. However, the creditor who would like to apply for a petition to arrest a ship must be domiciled in Thailand. If not, the Court would not allow the arrest of the ship.

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

Thailand does not apply any International Convention. However, the Arrest of the Ships Act, B.E. 2534 is based on the content of the International Convention Relating to the Arrest of Sea-going Ship, signed at Brussels, on May 10th, 1952.

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

No.

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

No.

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

The maritime claims which could base an arrest procedure in accordance with the Arrest of the Ships Act, B.E. 2534, are the following:

- Loss of life or personal injury caused by any ship or which occurs in connection with the operation of the ship;
- Salvage;
- Agreement relating to the use, hire, hire-purchase or loan of any ship, provision of transport service, or any other similar agreement;
- General average act where the ship owners, the carriers and the owners of such goods as carried in a ship are bound to compensate the owners of a particular property in consequence of an international act which is necessarily incurred for the common benefit of all the parties concerned or for the common safety of the ship and goods carried therein, provided that there exists a specific law or mutual agreement governing liability in this regard;
- Loss or damage to properties carried in any ship;
- Towage;
- Pilotage;
- Goods or materials wherever supplied to a ship for its operation or maintenance;
- Construction, repair or equipment of any ship or dock charges and dues;
- Port facilities or port charges or dues;
- Stevedoring charges;
- Wages of ship masters or personnel;
- Master's disbursements, including disbursements made by the charterers, the agents, or the shippers on behalf of the owner or controller of a ship;
- Disputes between co-owners of a ship as to its possession, employment on earning;
- Mortgage of a ship.

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

The answer is yes. Basing on a maritime claim as mentioned in item 5, if the vessel is a sea-going ship in accordance with the definition stipulated in Section 3 of the Arrest of the Ship Act, B.E. 2534, the creditor can file a motion regarding the application of an arrest of a ship regardless of the flag of the ship.

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

The creditor who is domiciled in Thailand can apply before the Court for obtaining an order to arrest a ship owned by a debtor or which is in his possession, i.e. time chartered vessel etc.; thus, the arrest of the ship's procedure as regards sister ship is possible in Thailand.

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

With regards to the arrest of sister ships, please refer to point 7. With regards to the arrest of the ships in associated ownerships, a ship owned by the associated ownership cannot be arrested due to it is not owned by the debtor or in possession of the debtor.

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

Please refer to our comment point 7.

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

Before ordering the arrest, in practice, the Court would direct the creditor to furnish such security as it thinks fit to cover any damage arising out of the arrest.

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

There is no difference.

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

In Thailand, there is the specific Law regarding the maritime lien, namely, the Ship Mortgage and Maritime Lien Act, B.E. 2537.

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

In case the information and all documents are complete, the arrest and release procedure can be completed within 1-2 business day.

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

A POA is not required in case of arrest of a ship. However, in case of release of a ship owned possessed by a debtor who is not domiciled in Thailand, a POA or LOA (Letter of Appointment) would be required.

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

The electronic submission of the documents has not yet been made available before Thai Courts' procedure, but in ex parte inquiry, the creditor may adduce the copy document certified by the creditor to support the claim before the Court.

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

In principle, once the vessel is arrested in Thailand, the Courts accept jurisdiction.

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

The debtor or any person who has sustained damage by reason of ship arrest is entitled to apply to the Central Intellectual Property and International Trade Court for release of the ship. Once the application being filed, the Court would set up the trial and order the release on being satisfied that the security furnished by the applicant is valued or worth no less than the amount stipulated in the arrest order.

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

Normally, cash or bank guarantee. Letter of Undertaking issued by P&I Club is unacceptable for the Court.

19. Does security need to cover interest and costs?

No (see our answer to question no. 17 above)

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

No (see our answer to question no. 18 above)

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

Normally, one day.

22. Is there a procedure to contest the arrest?

No. The application for ship arrest is ex parte, and the Court order for arrest is final. However, the debtor is entitled to initiate an action to recover damage arising from wrongful arrest against the creditor.

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

Once a ship has been arrested, the creditor has to initiate an action based on his maritime claim within 30 days after a warrant of arrest has been posted on the vessel. If not, the Court shall have the power to order the release of the ship.

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

Thailand recognizes wrongful arrest. The debtor can make a counter claim to recover damages in respect of the arrest applied for the creditor.

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

This concept is not yet acknowledged by the Courts.

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

In Thailand, there is not any apparent statute prohibiting the selling of the vessel pendent lite.