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Arrest of Ships in Thailand

Ship arrest is an effective channel to obtain security for a maritime claim held by a creditor domiciled in Thailand. The claimant is not required to submit a complaint, but only a petition requesting the arrest of the vessel along with fees as required by the Central Intellectual Property and International Trade Court (IP&IT Court). The IP&IT Court can grant an arrest warrant on the filing date. This article provides a general overview of ship arrest in Thailand.

The Brussels Convention on the Arrest of Sea-Going Ships of 1952 and the Geneva International Convention on the Arrest of Ships of 1999 have not been ratified by Thailand. Instead, ship arrest in Thailand is governed by Thailand's Arrest of Ships Act B.E. 2534 (1991), which adopts the general principles in the Brussels Convention, with some differences. As a civil law country, the statutory framework established by the Arrest of Ships Act and related laws is dispositive and interpretations thereof, even if rendered by Thailand's Supreme Court, are not binding precedents.

Domicile

To file a petition for ship arrest in the IP&IT Court, a claimant is required to have a local domicile, regardless of its nationality. In other words, a foreign claimant with a domicile in Thailand may seek the assistance of the IP&IT Court to arrest a ship.

Unfortunately, the Arrest of Ships Act does not define "domicile." Thus, one must look to Thailand's Civil and Commercial Code, which defines domicile as the place where a person has his or her principal residence. For a juristic person, domicile is the place where it has its principal office or establishment, or which has been selected as a special domicile in its regulations, articles of association, or bylaws. Domicile cannot be established by merely engaging an agent in Thailand.

Types of Claims

Creditors applying for a court order to arrest a ship must have a maritime claim arising out of at least one of the following general circumstances:

- Loss of life or personal injury caused by any ship or which occurs in connection with the operation of any ship.
- Salvage.
- Agreement relating to the use, hire, hire-purchase, or loan of any ship, provision of transport service, or any other similar agreement.
- Agreement relating to the carriage of goods on a ship under a bill of lading.
- 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 for the loss or damage caused to such property in consequence of an intentional act which is necessarily and reasonably done for the common safety of the ship and goods carried therein.
- Loss or damage to properties carried in any ship.

- Towage.
- Pilotage.
- Goods, materials, or whatsoever 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.
- Disputes as to the ownership of a ship.
- Disputes between co-owners of a ship as to its possession, employment, or earnings.
- Mortgage of a ship.

Object of the Arrest

A ship arrested under the Arrest of Ships Act must be a sea-going vessel for the carriage of goods or passengers internationally (not locally), regardless of her flag.

Thailand allows for a broad right of ship arrest, allowing a creditor to arrest a vessel, even if the vessel is not related to the maritime claim, where the vessel is:

1. In the possession of the debtor (regardless of the actual ownership of the vessel); or
2. Owned by the debtor (including sister ships).

This general rule does not apply where the claim relates to the ownership of the ship or to a mortgage on the ship. In this case, the creditor may only arrest a ship that is both related to the claim and owned by the debtor.

Arrest Proceedings

A petition to arrest a sea-going ship must be filed ex parte to the IP&IT Court. The request will be unilateral, and the judge will proceed with an ex parte inquiry on an urgent basis, normally on the submission date. If the IP&IT Court is satisfied that the maritime claim has merit, based on evidence adduced by the claimant, the Court will order the ship arrested within the same day. If the claimant petitions to arrest a ship that has not yet entered Thailand, the claimant must also prove that the ship will actually be entering Thailand.

Other Costs

In addition to legal fees, claimants must be prepared to remit the following funds:

1. Security in the amount of 3–5 percent of the total claim to the IP&IT Court.
2. Execution fee in the amount of 1.5 percent of the total amount claimed, not to exceed THB 100,000, to the Legal Execution Officer (prior to proceeding with the arrest of the ship).
3. Port fees where the ship was arrested while berthed at port facilities, as requested by the port owner.

Release of the Ship

A ship may be released in the following circumstances. If the debtor deposits funds in the same amount as prescribed in the order of the IP&IT Court, the Court will order the ship to be released immediately. In addition, if the claimant does not file a complaint within 30 days after the arrest warrant is issued, the arrest warrant will expire and the ship will be released.

Conclusion

In conclusion, the rights and remedies provided in the Arrest of Ships Act, as well as the streamlined procedure for arresting a ship, may only be enjoyed by creditors who have a local domicile in Thailand. Foreign creditors, however, may have remedies outside of the Arrest of Ships Act, depending on the nature and origin of the claim. Foreign creditors should speak with a legal professional prior to declining to take legal action in Thailand. ⚖️