



JICA-MOJ Project



Procedure relating to arrest of ships (From 2nd through 5th of February, 1999 in Hanoi, Vietnam) to be presented by Ikuya Fujii, a lawyer of Tokyo Bar, Japan

“A hypothetical case study where arrest of a vessel becomes necessary”

[Hypothesis – Stage 1]



X is a shipping corporation having its head office in Haiphong. X owns and operates cargo vessel “A” registered in Vietnam. X receives a report that “A” was involved in a collision with vessel “B” on the high seas in the Gulf of Tongking. Reportedly, the bow of vessel “B” owned by Y and of Panamanian registry, came into collision with the side of vessel “A” in ballast. As a result of the collision, vessel “A” valued at \$3,000,000, sank and was a total loss. Vessel “B” sustained damage to her bow, incurring repair costs estimated at US\$120,000 and detention losses estimated at US\$80,000. X believes liability for the collision should be apportioned 30% on vessel “A” and 70% on vessel “B”. Subsequently, X learns that vessel “B” will call at Danang within a few days and that she will sail therefrom within two days thereafter.

QUESTION 1

How much of X’s US\$3,000,000 in damages can X expect to recover from Y under internationally accepted maritime law, such as the Collisions Convention 1910?

ANSWER 1

X expects to recover US\$2,040,000 provided the limitation amount of vessel “B” is greater than that amount.

QUESTION 2

What legal mechanisms must be available for X to effect recovery of their loss and damages?

ANSWER 2

There must be measures which entitle X to arrest vessel “B” promptly. The main purpose of the arrest is to secure X’s maritime claim. It follows that Vietnam must have both substantive and procedural law allowing claimants to arrest vessels against which they have valid maritime claims.

QUESTION 3

What should be the requirements of Vietnam’s procedural law enabling the arrest of vessels for maritime claims.

ANSWER 3

Requirements should include followings:

- a-3-1 Any party alleging that a maritime claim exists in their favour may file a motion in court requesting the ship’s arrest.
- a-3-2 An arrest order may be issued prior to the arrival of the ship (or after the ship is in port.)
- a-3-3 An arrest order issued by a Vietnamese court with jurisdiction over the matter should be enforceable at any port in Vietnam.
- a-3-4 With respect to the burden of proof that must be met to obtain an arrest order, claimant must present *prima facie* evidence that their claim exists.
- a-3-5 Th motion for an arrest order should be granted in *ex parte* proceedings without the requirement of a hearing.
- a-3-6 Subject to certain conditions, a vessel should be deemed to be under arrest when an arrest order has been served on the vessel by the officers of the court even if the master is absent on board.
- a-3-7 Where the arrest order is issued prior to the arrival of the ship, the arresting party should be required to commence proceedings on the merits of the claim within a reasonable number of days after arrest has been perfected, failing which the arrest shall cease to have effect.

[Hypothesis – Stage 2]

X filed a motion for arrest with the court in Haiphong which granted the arrest. The arrest order was served on vessel B by an officer of the court of Danag. Claimant immediately filed a motion for commencement of auction proceedings. Within a few days the court declared auction proceedings commenced.

QUESTION 4

What other requirements would be contained in the Vietnamese procedural law relating to arrest of ships?

ANSWER 4

Requirements include followings:

- a-4-1 The owner of the arrested vessel (or their legal representative) must have right of access to the documents filed in the court by claimant. The purpose of this requirement is to give them notice of the nature and amount of the claim alleged against their vessel.
- a-4-2 The owner of the arrested vessel (or their legal representative) must have the right to release said vessel from arrest by putting up security in the court sufficient to satisfy the claim.

[Hypothesis – Stage 3]

There can be a few alternatives:

[Alternative 1 ---- 95%]

Y, through their lawyer YH of Hanoi, provides X with a security in the form of a letter of guarantee (L/G) in the sum of US\$3,000,000 plus interest and costs issued by hull underwriters of vessel B, in which jurisdiction of the Hanoi District Court is agreed. In consideration of the L/G, X withdraws not only arrest proceedings but also auction proceedings altogether. The vessel B is released from arrest. Subsequently X provides Y with an L/G for US\$200,000 plus interest and costs issued by hull underwriters of vessel A.

X, through their lawyer XH of Hanoi opens negotiation with YH in Hanoi in the hope of settling the matter out of court .

If and when the matter is settled, Y pays the agreed damages, say US\$1,720,000 to X.

X returns to Y the L/G for US\$3,000,000 plus interest and costs and Y returns to X the L/G for US\$200,000 plus interest and costs

[Alternative 2 --- 4%]

Y provides X with a security in the form of a letter of guarantee (L/G) in the sum of US\$3,000,000

plus interest and costs issued by hull underwriters of vessel B, in which jurisdiction of the High Court of London (or arbitration in Singapore) is agreed. In consideration of the L/G, X withdraws not only arrest proceedings but also auction proceedings altogether. The vessel B is released from arrest. Subsequently X provides Y with an L/G for US\$200,000 plus interest and costs issued by hull underwriters of vessel A.

X, through their lawyer XL of London (or XS of Singapore), opens negotiation with Y's lawyer YL of London (or YS of Singapore) in the hope of settling the matter out of court (or arbitration).

If and when the matter is settled, Y pays the agreed damages, say US\$1,720,000 to X. X returns to Y the L/G for US\$3,000,000 plus interest and costs and Y returns to X the L/G for US\$200,000 plus interest and costs

[Alternative 3 --- 1%]

X puts up security in the court of Danang sufficient to satisfy the claim (capital amount plus interest and costs, say US\$2,500,000). The vessel B is released. Auction proceedings continue in the Danang court, in the course of which merits of the claim are argued and adjudged at the end of the day. The judgement of the Danang Court is enforced upon the security under custody of the same court. The vessel A may be arrested by Y at a different port where different proceedings may be commenced.

In case where XL and YL are unable to settle, proceedings will be commenced in the High Court of London.

In case where XS and YS are unable to settle, arbitration proceedings will be commenced in Singapore.

N.B. Where the law provides the option of vessel arrest for prima facie evidence of maritime claims, the practice will develop whereby claimants use the threat of arrest to obtain letters of guarantee. Thus, the creation of arrest law is unlikely to result in a substantially increased burden on Vietnamese courts.

The end.