

## Seizing ships for debt payment

Creditors often face problems of enforcing their right to receive payment against debtors' assets. To alleviate this problem, several countries, including Thailand, have implemented measures to help creditors with enforcement issues.

One such measure is the temporary seizure or attachment of debtors' assets located in the creditors' place of domicile. More specifically, Thailand allows creditors domiciled in Thailand to submit an application to the court to arrest vessels belonging to or in the possession of a debtor.

The Arrest of Vessel Act, which became effective in 1992, allows creditors domiciled in Thailand to apply for the arrest of vessels owned by or in the possession of debtors if the underlying claim is maritime in nature.

Examples of claims pursuant to which a creditor is entitled to seek a court order for the arrest of a vessel include:

- ◆ loss of life or personal injury caused by the vessel or in connection with its operation;
- ◆ salvage;
- ◆ agreements relating to the use, hire, hire-purchase or loan of the vessel, provision of transport service, or any other similar agreement;
- ◆ agreements relating to the carriage of goods on the vessel under a bill of lading;
- ◆ damages caused to property on the vessel as a result of acts undertaken for the safety of the vessel and goods thereon;
- ◆ loss or damage to property on the vessel;
- ◆ towage and pilotage;
- ◆ goods supplied to the vessel for its operation or maintenance;
- ◆ construction, repair of equipment or dock charges and dues; port facilities or port charges or dues;
- ◆ wages of vessel personnel;
- ◆ master's disbursements;
- ◆ disputes as to the ownership of the vessel or disputes between co-owners as to its possession, employment or earnings; and
- ◆ mortgage of the vessel.

In addition to creditors domiciled in Thailand who have legitimate maritime

claims over the owner of the vessel or the debtor in possession of the vessel, the public prosecutor, acting on behalf of a creditor, can seek an order for arrest of a vessel if the underlying maritime claim relates to loss of life or personal injury caused by the vessel or in connection with its operation.

Eligible creditors are required to submit an *ex parte* petition to the Intellectual Property and International Trade Court. On receipt of the petition, the court will schedule an *ex parte* hearing on an urgent basis, normally on the same day as the filing. If the court believes there are reasonable grounds to issue an arrest warrant, it will issue an order to arrest the vessel.

Note that if the vessel is not in Thailand at the time the petition is filed, the creditors are required to provide evidence showing that it is soon to enter Thailand and the court's jurisdiction.

Note further that prior to the issuance of an order, if the debtor is not domiciled in Thailand, the court may request the creditor to post security with the court for any damage that may result from the arrest of the vessel for which the creditor has to be liable.

However, if the debtor is domiciled in Thailand, the court will direct the creditor to provide security unless the creditor is able to prove that the debtor does not have sufficient assets to cover its liabilities with respect to the creditor.

Once the arrest order is obtained, the creditor is required to pay a fee for arrest of vessel before the executing officer proceeds. The fee is calculated at the rate of one percent of the amount of the creditor's maritime claim, not to exceed 100,000 baht.

The fee as agreed on may later be deducted from the court filing fee to be submitted when the creditor files a maritime complaint.

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