

The Arrest of Ships Act, B.E. 2534 (1991)

Translation

Bhumiphol Adulyadej, Rex.

Given on the 28th day of October B.E. 2534

Being the 46th Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

WHEREAS it is expedient to enact the laws relating to the arrest of ships;

BE IT THEREFORE, enacted by the King, by and with the advice and consent of the National Legislative Assembly as follows:

Section 1

This Act shall be called "The Arrest of Ships Act, B.E. 2534 (1991)".

Section 2

This Act shall entry into force as from the day following the date of its publication in the Government Gazette.

Section 3

In this Act:

"Ship" means a seagoing ship for use in the international transport of goods or passengers.

"Maritime Claim" means a claim arising out of the following:

- (a) Loss of life or personal injury caused by any ship or which occurs in connection with the operation of any ship;
- (b) Salvage;
- (c) Agreement relating to the use, hire, hire-purchase or loan of any ship, provision of transport service, or any other similar agreement;
- (d) Agreement relating to the carriage of goods on a ship under bill of lading;
- (e) 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 or are bound to reimburse them for any extraordinary expenses 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.
- (f) Loss or damage to properties carried in any ship;
- (g) Towage;
- (h) Pilotage;
- (i) Goods or materials wherever supplied to a ship for its operation or maintenance;
- (j) Construction, repair or equipment of any ship or dock charges and dues;
- (k) Port facilities or port charges or dues;
- (l) Stevedoring charges;

- (m) Wages of ship masters or personnel;
- (n) Master's disbursements, including disbursements made by charterers, agents, or shippers on behalf of the owner or controller of a ship;
- (o) Disputes as to the ownership of a ship;
- (p) Disputes between co-owners of a ship as to its possession, employment or earnings;
- (q) Mortgage of a ship.

"Creditor" means a person to whom a maritime claim refers as a claimant.

"Competent Official" means a person who is appointed by the Minister of Transport and Communications for the execution of this Act.

"Court means" the Civil Court, the Thonburi Civil Court and Provincial Courts.

"Minister" means the Minister who is in charge of this Act.

Section 4

Subject to the provisions of Sections 5 and 6, before initiating an action in the Court, a creditor who is action in the Court, a creditor who is domiciled in Thailand may apply to the Court for an order direction that any ship owned by a debtor or which is in his possession shall be arrested, irrespective of whether he is domiciled in Thailand, as collateral sufficient to satisfy a maritime claim in respect of such ship. The application so made shall be by way of petition with the Court within whose jurisdiction the ship to be arrested is or will enter.

Section 5

A creditor may petition the Court to arrest a ship of which a debtor is in possession, not owned by him, if the cause of maritime claim arises out of the ship or its business activities and if the debtor has been in possession of the ship at the time when the maritime claim arises and when the arrest is applied for.

Section 6

Where a maritime claim involves either disputes as to the ownership of a ship, disputes between co-owners of a ship as to its possession, employment or earnings, or disputes over the mortgage of ship, no creditor shall petition the Court to arrest any ship other than that giving rise to those disputes and which is owned by a debtor or is in his possession.

Section 7

A petition for ship arrest shall be ex parte. A petition for ship arrest shall set forth the nature of a maritime claim and the debt to which it refers and shall specify at least the names of the creditor, the debtor, the ship and its registration number, dimensions, nationality and port of registry, including the name of its master or controller, if known, and location or place where the ship lies.

Section 8

Upon acceptance of a petition for ship arrest, the Court shall hold an ex parte inquiry into such petition without delay.

The Court shall order an arrest of such ship if it is satisfied by the evidence introduced by the creditor that the alleged maritime claim is founded, on which the arrest applied for relies and, if the ship to be arrested is not in Thailand at the time when the petition is filed, after the creditor has shown to the satisfaction of the Court that such ship will enter the Kingdom and come within the jurisdiction of the Court.

In the issue of an order for arrest under paragraph two, if the debtor has no domicile in Thailand, the Court may, before enforcing such order, direct the creditor to furnish such security as it thinks fit to cover any damage arising out of the arrest, for which the creditor may be liable to the debtor. But, if the debtor is domiciled in Thailand, the Court shall,

before enforcing such order, always direct the creditor to furnish security to the Court, unless the creditor has shown to the satisfaction of the Court that the debtor's other properties located in Thailand are insufficient to satisfy the creditor.

In its order for arrest made under paragraph one, the Court shall set forth such security as to be furnished by the debtor or person under Section 22 for obtaining the release of such ship.

An order for arrest under this Section shall be final.

Section 9

To effect the enforcement of an arresting order, the Court shall issue a warrant of arrest and send it to the enforcement officer for immediate action, and the enforcement officer shall carry out such order throughout the Kingdom.

The warrant of arrest under paragraph one shall be in such form as prescribed by the Minister of Justice.

Section 10

Before the enforcement officer proceeds to arrest a ship, the creditor shall pay ship arresting fee at the rate of one percent of the debt to which a maritime claim refers, up to a maximum of one hundred thousand baht.

Where the creditor initiates an action based on a maritime claim, the ship arresting fee payable under paragraph one shall be applied towards court filing fee payable by him in such action and shall be deemed as part of the court costs payable under the Civil Procedure Code in respect of such action.

Section 11

After receiving the arresting warrant from the Court, the enforcement officer shall immediately notify the competent authority dealing with the port clearance of ships by telephone, telegraph, and telex or otherwise to the effect that the ship has been arrested by order of the Court. Such notification shall be in accordance with the rules and procedures prescribed by the Minister.

After receiving such notification under paragraph one, the competent authority dealing with the port clearance of ships shall suspend the port clearance of such ship so that the enforcement officer can continue his duties under Section 12 until further notice.

Section 12

After receiving the arresting warrant from the Court, the enforcement officer is required to:

- (1) Serve such warrant to the ship master or controller and have him acknowledge its receipt;
- (2) Post such warrant in a conspicuous place within the ship;
- (3) Take other actions necessary for carrying out such warrant; and
- (4) Notify the consulate of the country to which the ship belongs.

In serving such warrant as set forth in (1), if the ship master or controller refuses to sign an acknowledgement of service, the enforcement officer shall be entitled to be accompanied by a competent or police official as a witness and, if the ship master or controller still refuses to do so, the enforcement officer shall leave the warrant on spot. In this event, the warrant shall be deemed as served.

Where service of such warrant cannot be made under paragraph one or two, the enforcement officer shall post it in a conspicuous place within the ship. In this event, the warrant shall be deemed as served.

The enforcement officer shall make report on the performance of his duties under this Section and send such report to the Court for collection on the case-file.

Section 13

To effect the enforcement of an arresting warrant, the enforcement officer shall, *mutates mutandis*, have the authority provided by the Civil Procedure Code relating to the enforcement of judgments and orders and have the authority to direct the ship master, controller, any crew member and any other person concerned to act or refrain from doing any act so as to carry out such warrant. If any such person disobeys the directive, the enforcement officer shall seek the assistance of any competent or police official to carry out such directive. For this purpose, the competent or police official shall be empowered to arrest any such person and hold him in custody so long as necessary to perform the duties of the enforcement officer.

Subject to the laws relating to navigation in Thai territorial waters, at the request of the enforcement officer or when the competent official thinks fit, the competent official shall be empowered to direct the master to anchor the ship in safe place or to take other actions necessary for carrying out the warrant of arrest, provided that this does not obstruct the loading or unloading of the ship.

Section 14

The creditor is bound to give assistance to the enforcement officer and make all disbursements necessary in the performance of his duties under Section 11, Section 12, Section 13 and Section 26.

If the creditor fails to give such assistance or make those disbursements under paragraph one, and if such failure makes the enforcement officer unable to continue his duties, he shall suspend the performance of his duties and report the fact to the Court making the arrest order without delay.

Upon receiving such report under paragraph two, the Court shall order as follows:

- (1) Where a warrant of arrest has not been posted on under Section 12 (2), the enforcement of the arresting order shall be suspended until the creditor has given assistance and made those disbursements within such time limit as fixed, not exceeding three business days, by the Court. When the time limit so fixed has expired, if the creditor still fails to assist and make those disbursements, the enforcement officer shall notify the competent authority dealing with the port clearance of ships of the fact so that the suspension of the fact so that the suspension of the ship clearance under Section 11, paragraph two, can be lifted. In this event, the provisions of Section 26 shall apply *mutates mutandis*.
- (2) Where a warrant of arrest has been posted on under Section 12 (2), the creditor shall give assistance and make those disbursements by giving a notice of his intention to do so to the enforcement officer within such time limit as fixed, not exceeding three business days, by the court. If the creditor fails to comply with such order, the Court shall order that the ship under arrest or the security furnished under Section 21 or Section 22, as the case may be, shall be released.

The decision by the court shall be final.

Section 15

No enforcement officer or competent official otherwise than the creditor shall be liable to the owner, master, controller or any crew member of the ship or to a third person for damage, if any, which may arise from the arrest of a ship, unless the enforcement officer or the competent official has violated the provisions of this Act or any other law.

Section 16

A warrant of arrest shall have effect throughout the Kingdom until a maritime claim to which it refers becomes time-barred.

Section 17

After the actions under Section 12 (1) and (2) have been taken:

- (1) The arrest of a ship by order of the Court shall have effect until the Court has otherwise ordered; and
- (2) No creation, transfer or change in ownership of the ship or its possessory right shall be valid against the creditor or the enforcement officer.

Section 18

A ship arrested under this Act shall be deemed as property in attachment made by the competent official under the Civil Procedure Code.

Section 19

If the debtor furnishes the Court with such sum of money in full as set forth in the arresting order under Section 8 paragraph four, with making admission of liability, the arrest of the ship by order of the Court shall come to an end and the Court shall immediately order a release of the ship arrested.

In this event, it shall be deemed that the Court has given a final judgment in favor of the creditor in respect of the maritime claim to which an application for ship arrest refers.

Section 20

Where the debtor is domiciled in Thailand, if he has furnished the Court with such sum of money in full as set forth in the arresting order under Section 8 paragraph four, without making any admission of liability, the arrest of the ship by order of the Court shall come to an end and the Court shall immediately order a release of the ship arrested.

Section 21

A debtor, not domiciled in Thailand, may apply to the Court making the arresting order for the release of the ship under arrest by filing with the Court a petition to release, together with such security as set forth in the arresting order to cover the amount to the creditor.

The debtor may, in writing or by telegraph or telex, grant a power of attorney in favor of a person who is domiciled in Thailand to represent him in seeking the release of such ship.

The debtor shall, in writing or by telegraph or telex, appoint a person who is domiciled in Thailand as his agent on whom the pleading or documents made in the course of court proceedings are to be served.

Where the agent under paragraph two files such petition with the Court, if no appointment of such agent is made under paragraph three, the petitioner shall be deemed as an agent under paragraph three.

The agents under paragraphs two and three shall state on oath to the Court that he has actually obtained authorization from the debtor. In this event, Section 47, paragraphs two and three, of the Civil Procedure Code shall not apply in respect of such appointment.

Section 22

A third person who has sustained or will sustain damage by reason of ship arrest may petition the Court to release the ship under arrest by furnishing security in the name of the debtor. In this event, all the acts done as necessary by the petitioner in seeking the release of such ship shall be deemed as done on behalf of the debtor.

The person under paragraph one may, in writing or by telegraph or telex, grant a power of attorney in favor of a person who is domiciled in Thailand to represent him in seeking the release of such ship.

Where the person under paragraph one files such petition with the Court, without any appointment of such agent under Section 21 paragraph three, the petitioner shall be deemed as an agent on whom the pleading and documents made in the course of court proceedings are to be served and, if not domiciled in Thailand, the petitioner shall, in

writing or by telegraph or telex, appoint a person who is domiciled in Thailand as his agent on whom those pleadings and documents are to be served.

The agent under paragraphs two and three shall state on oath to the Court that he has actually obtained authorization from the person under paragraph one. In this event, Section 47, paragraphs two and three, of the Civil Procedure Code shall not apply in respect of such appointment.

Section 23

To apply for the release of a ship, in addition to security furnished under Section 21 paragraph one or Section 22 paragraph one:

- (1) Where a petition is filed by the debtor himself who has no domicile in Thailand, proof of such appointment under Section 21 paragraph three shall be attached thereto;
- (2) Where a petition is filed by the debtor's agent under Section 21 paragraph two, proof of such appointment under Section 21 paragraph two shall be attached there to;
- (3) Where a petition is filed by the person under Section 22 paragraph one, the petitioner has no domicile in Thailand and does not attach proof of such appointment under Section 21 paragraph three, proof of such appointment under Section 22 paragraph three shall be attached to such petition.

If the petitioner fails to comply with the provisions of paragraph one, the Court shall order a rejection of such petition.

Section 24

A petition for ship release shall be ex parte.

Section 25

In addition to the circumstances of Section 19 and Section 20, the Court shall have the power to order a release of any ship in the following cases:

- (1) Where a creditor applies for the release of such ship;
- (2) Where a creditor fails to initiate an action based on a maritime claim within thirty days after a warrant of arrest has been posted on under Section 12 (2);
- (3) When a petition for ship release has been filed under Section 21 and Section 22 and the Court is satisfied that the security furnished is valued or worth no less than such sum of money as set forth in the arresting order, or if the petitioner asks to furnish security less in value than such sum of money as set forth in the arresting order, with giving reasons therefore in such petition and, when the Court has sent a copy of such petition to the creditor for objection to be made within a prescribed time limit, but no objection is filed within the prescribed time limit, or when the Court, after reviewing the objection filed by the creditor, considers it expedient to reduce such security as set forth in the arresting order, and when the Court has ordered the petitioner to furnish such security as deemed suitable and the petitioner has complied with such order.

The release order in this Section shall be final.

Section 26

After issuing an order for release under Section 25, the Court shall notify the enforcement officer of such order, and the enforcement officer shall be required to:

- (1) Notify either the creditor or the debtor in writing, as the case may be;
- (2) Notify the consulate in writing of the country to which the ship belongs; and
- (3) Immediately notify the competent authority dealing with the port clearance of ships by telephone, telegraph, telex or otherwise to the effect that the ship

under arrest has been released by order of the Court. Such notification shall be in conformity with the rules and procedures prescribed by the Minister.

The Competent authority dealing with the port clearance of ship, after being so notified as set forth in (3), shall proceed with the release of such ship without delay.

Section 27

The Court shall order a release of such security as furnished by the creditor, the debtor or person under Section 22 in the following cases:

- (1) Where the creditor fails to initiate an action based on a maritime claim within thirty days after a warrant of arrest has been posted on under Section 12 (2), and when the debtor has petitioned the Court to release his security after the passage of such thirty day time limit;
- (2) Where the debtor fails to initiate an action to recover damages in respect of the arrest applied for by the creditor, within sixty days after a warrant of arrest has been posted on under Section 12 (2), and when the creditor has petitioned the Court to release his security after the passage of such sixty day time limit;
- (3) Where either the creditor or the debtor has, at any time, petitioned the Court to release his security, and when the other party has made no objection thereto;
- (4) Where there has been a security furnished under Section 22;
 - (a) if the creditor fails to initiate an action based on a maritime claim within thirty days after a warrant of arrest has been posted on under Section 12 (2), and when the person under Section 22 has petitioned the Court to release his security after the passage of such thirty day time limit;
 - (b) if either the creditor or the person under Section 22 has, at any time, petitioned the Court to release his security, and when either the creditor or the person under Section 22, as the case may be, has made no objection thereto.

Section 28

After a warrant of arrest has been posted on under Section 12 (2), the creditor may initiate an action based on a maritime claim in the following Courts:

- (1) Court making the arresting order;
- (2) Any Court other than that set forth in (1) which is competent to deal with such action in accordance with the Civil Procedure Code, provided that such action is only accepted for trial after the creditor has shown to the satisfaction of the Court by way of petition that the trial of case will be facilitated by such Court.

Section 29

When a debtor, not domiciled in Thailand, has been sued in court and not yet represented by any lawyer, if service of the pleading or other documents on the defendant cannot be made in Thailand, the court official shall act as follows:

- (1) if there is such an agent under Section 21, paragraph three, serve those pleading on such agent;
- (2) in the case of Section 22 paragraph three, serve those pleading on the petitioner or his agent for this purpose, as the case may be;
- (3) if there is not such agent as set forth in (1), and not in the circumstances of (2), then serve those pleading on the master or controller of the ship at its whereabouts or at his address in Thailand.

Where service of the pleading or documents on such person as set forth in (1) or (2) cannot be made under the Civil Procedure Code, the Court may order that those pleadings or documents shall be posted in a conspicuous place at his domicile or business office, or

where service of the pleadings or documents on such person as set forth in (3) cannot be made, the Court may order that those pleading or documents shall be posted in a conspicuous place within the ship. In this event, Section 79 of the Civil Procedure Code shall not apply.

After the actions under paragraph one or two have been taken, those pleadings or documents shall be deemed as served on the defendant upon the expiry of fifteen days after the service or posting has been made.

Section 30

Where a maritime claim arises out of loss of life or personal injury caused by any ship or occurring in connection with the operation of a ship, and when the prosecutions officer considers it expedient to represent the creditor in such maritime claim, the prosecutions officer shall be empowered to apply for ship arrest on behalf of the creditor and be exempt from ship arresting fees payable under this Act.

Section 31

The Minister of Transport and Communications and the Minister of Justice shall take charge of this Act and shall be empowered to appoint competent officials and issue rules and procedures for the enforcement of this Act.

Countersigned by:

Mr. Anan Panyalachun

Prime Minister

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