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# Shipping Law Updates – First Quarter 2021

## Introduction

This is the First Quarter 2021 issue of the Regional Shipping Update of Rajah & Tann Asia's Shipping & International Trade Practice, a publication that provides a snapshot of the key legal issues in various jurisdictions where our member firms have regional presence.

In this issue, we provide an overview of the procedures for arresting a vessel in Vietnam. We also report the measures that Singapore has recently introduced to ensure safe and responsible practices in the maritime and shipping sector amidst the COVID-19 pandemic.

## Arresting Vessels in Vietnam

The Maritime Code lays down the procedures for arresting vessels in Vietnam. The arrest of a vessel is ordered by the court in order to secure a maritime claim, apply interim measures, enforce civil judgments or perform mutual legal assistance.

The securing of a **maritime claim** is one of the most common reasons for arrests in Vietnam. In this section of our First Quarter 2021 issue, we go through the procedure involved in such an arrest.

Maritime claims include both contractual and non-contractual claims, and the Maritime Code sets forth an exhaustive (but wide) list of claims against which an applicant may pursue an arrest.

In Vietnam, vessel arrest can be considered an action *in rem*. Arrests can be applied against vessels that fly foreign flags.

### Step 1: Filing

Orders for arrest are issued by the provincial-level court at the locality of the port where the vessel to be arrested is engaged in maritime operations. Therefore, an applicant may directly file a request to the provincial-level court for the arrest of the vessel.

The law requires the applicant to submit documents and evidence to prove the legitimacy and lawfulness of the request. Due to the generality of this requirement, in practice, the court typically exercises broad discretion in determining whether or not the applicant's request is well-founded.

For foreign documents (e.g., where there are foreign entities or vessels involved), consularisation is generally required, together with certified Vietnamese translations. As considerable time is often spent in preparing such documents and the time window for arresting a vessel is usually limited, it is advisable that preparations for arrest be commenced as soon as possible. Otherwise, a court may (and in practice,

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have been known to) refuse to accept a request for vessel arrest due to non-compliance with formalities in documentation.

### **Step 2: Providing Countersecurity**

Under the law, the party applying to arrest a vessel will be held legally responsible for its request. As such, if the request is wrongful and results in loss or damage, the applicant is required to pay compensation.

Alongside the assumption of legal liability, an applicant is also required to provide certain countersecurity in the arrest. Particularly, save in limited cases (e.g., where the vessel is already mortgaged in favour of the applicant), financial security for arrest of the vessel must be provided. The court can accept two categories of security:

- (a) submission of a guarantee issued by banks or other credit institutions or individuals, agencies or other organisations; or
- (b) deposit of a sum of money, precious metals, gems or valuable papers into an escrow account.

However, in the case of a guarantee or letter of undertaking (“**LOU**”), the courts have typically required this to be issued by reputable credit institutions in Vietnam.

The sum of the requested countersecurity is fixed by the court, and it is intended to be equivalent to the loss or damage that could potentially be caused by a wrongful application for vessel arrest. In practice, the court may have regard to the quantum of the maritime claim in determining the countersecurity needed.

### **Step 3: Decision on Arrest and Execution of the Decision**

Within 24 hours of receipt of a valid petition, the court will issue a decision to arrest the vessel if it considers the petition to be factually and legally founded.

This decision becomes immediately effective upon its issuance. The court will then transmit the decision to the relevant port authority to execute the arrest.

### **Release of the Vessel through Furnishing Security**

The vessel owner, charterer or operator may apply to release a vessel from arrest by furnishing appropriate security. The law stipulates that the appropriate security must be “*agreed upon by the involved parties*”, the absence of which will prompt the court to decide whether the proposed security is appropriate.

In practice, without the agreement of the involved parties, courts typically would not accept P&I Club (“**Club**”) LOUs as an appropriate form of security. This is unless the Club has been listed by the Ministry of Finance as one of the “reputable” insurers. The current list only contains Vietnamese insurers. Hence, as it stands, foreign Club-issued LOUs are not accepted as a form of security for the release of a vessel.

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Similar to the formalities required of vessel arrest applicants, consularisation and Vietnamese translation requirements also apply to parties that apply for the release of a vessel.

## **Singapore: Admiralty Actions - Service of Warrants of Arrest and Writs on Agent; Dispensation of Security Guard**

The maritime and shipping industry in Singapore has had to adapt to ensure safe and responsible practices amidst the COVID-19 pandemic. In keeping with these efforts, the Supreme Court of Singapore has acknowledged the concerns involved in the requirement of in-person service of documents against a ship (such as the risk of exposure to the COVID-19 virus and the subsequent requirements of testing and potential isolation), and has addressed them by introducing temporary alternative methods of service, and dispensation with the deployment of security guards on arrested ships.

From 22 January 2021 until further notice, service of Warrants of Arrest or Writs in an *in rem* action against a ship, freight or cargo may be effected by leaving or transmitting the same to the agent of the ship instead of by attending onboard the ship. The new Order 70 rule 10A of the Rules of Court provides for such service by:

- (a) leaving a copy of the Warrant of Arrest or Writ with the agent of the ship or, where the agent of the ship is a body corporate, at the agent's registered or principal office; and
- (b) transmitting the Warrant of Arrest or Writ by fax or electronic mail to the agent.

In the same vein, the Sheriff's Office will dispense with the requirement to deploy a security guard on board an arrested ship with effect from 15 January 2021 until further notice. Instead, any law practice that has arrested a ship is to engage ship watch services, and provide daily updates to the Sheriff's Office on the location of the ship.

These changes have been introduced to respond to the concerns and after swift consultation between the Supreme Court's Admiralty Court Users Committee and other key stakeholders of the maritime and shipping industry, including the Maritime and Port Authority of Singapore (MPA), the Singapore Shipping Association and the Attorney-General's Chambers. The adoption of these temporary measures underscores the responsiveness of the Singapore Courts to the needs of the maritime industry and the legal profession, as well as the ability of stakeholders to collaborate in the development of flexible and functional solutions.

For more information, click [here](#) to read our Legal Update.

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