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Ship arrest in China – Increased clarity from the Supreme People’s Court

March 11, 2015 | Written by Ik Wei Chong, Leslie Shen and Shan Gao

On 28 February 2015, the Supreme People’s Court of PRC published the Regulations on Certain Issues Concerning the Application of Law Relating to Arrest and Auction of Ships (“The Regulations”) which came into force on 1 March 2015.



With China being one of the mainstays of global trade, the number of ship arrest applications has increased continually; although China is still not regarded as a haven for ship arrest. The Regulations are intended

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to extend the scope of the ships that can be subject to legal auction/sale after arrest, to clarify and simplify the ship arrest and auction/sale procedures, and increase the judicial efficiency of the legal sale/auction.

The key changes to the previous regime under the Regulations are highlighted as follows:

- According to Article 2 of the Regulations, a maritime court can order the arrest of a ship which has already been arrested by itself or by other Chinese maritime courts. In addition, if the applicant for the first arrest does not then apply to auction the ship, the applicant for a subsequent arrest is entitled to make such an application, and will not need to wait for the previous arrest to be lifted.
- A ship arrested under a bareboat charterparty can be auctioned or sold. According to the PRC Special Maritime Procedure Law, a ship under a bareboat charterparty can be arrested if the bareboat charterer is responsible for the maritime claim against which the arrest is applied for. However, it was arguable whether a ship so arrested could be auctioned or sold if security was not duly provided to lift the arrest. The Regulations confirm that a ship so arrested can be auctioned or sold in such circumstances.
- The Regulations make it clear that, except for straightforward claims arising from crew contracts or personal injury/death, providing counter security for a ship arrest is a compulsory requirement; regardless of whether the application is filed before or after the commencement of litigation/arbitration. The Regulations further provide that the amount of counter security should be equivalent to the amount of “the various costs and expenses of maintenance of the ship that may be incurred during the arrest, the loss of earnings caused by the arrest, and the costs incurred by the respondent to provide security for lifting the arrest”. Although it remains to be seen how the maritime courts will apply the Regulations, the Chinese maritime courts may still have considerable discretion when ascertaining the amount of any counter security.
- The Regulations provide that, in the following 3 circumstances, the court could return the counter security to the applicant:
 - 1 the respondent has agreed to the return;
 - 2 a binding legal document has ruled that the amount of compensation which the respondent should be liable for is approximately the same as that of the security demanded by the applicant; and
 - 3 by the claimant’s application (for the return of the counter

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security) after issue of a corresponding and binding judgement, provided that the respondent fails to file an action for wrongful arrest within 30 days of being informed of the claimant’s application.

- The auction procedure has been simplified in various aspects under the Regulations. In particular, if the first auction fails, the announcement period for the subsequent auction has been shortened from 30 days to 7 days.
- With regard to the order of priority for the distribution of the proceeds of sale of a ship, the Regulations have made it clear that, in circumstances where the maintenance costs incurred during the period when the ship was under arrest have been paid by parties other than the shipowner or the bareboat charterer, the said payments should be categorised as "litigation costs" and should enjoy the corresponding order of priority. In addition, with regard to "ordinary maritime claims" (i.e. claims which are not secured by maritime lien/possessory lien/mortgage), those claims which are in relation to the ship will take priority over the other ordinary maritime claims.

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