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Ship arrest in China
- Regulations on Certain Issues Concerning the Application of Law Relating to Arrest and Auction of Ships

On 28 February, 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. The Regulations are intended to extend the scope of the ships which can be subject to legal auction / sale procedures, and increase judicial efficiency of the legal sale / auction.

There are few key changes to previous regime under the Regulations we would like to highlight as follows:

1. Pursuant to Art. 2 of the Regulations, a maritime court can order the arrest of a ship which has already been under arrest. In addition, if the claimant for the first arrest does not then apply to auction the ships, the application for a subsequent arrest is entitled to make such an application, and will not need to wait for the previous arrest to get lifted.

2. 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, and the ship arrested under such charterparty can be auctioned or sold.

3. Except for straightforward claims arising from crew contracts or personal injury / death, it is a compulsory requirement for the applicant to provide counter-security for a ship arrest, regardless of whether the application is filed before or after the commencement of litigation / arbitration. Although the Regulations have certain rules for the amount of the counter-security to be provided, the Chinese maritime courts may still have considerable discretion when ascertaining the amount of any counter security.

4. There are three circumstances the court could return the counter security to the applicant:
   - the respondent has agreed to the return;
   - a binding legal document states that the amount of compensation which the respondent should be liable for is more or less the same as that of the security demanded by the applicant;
   - the respondent fails to file an action for wrongful arrest within 30 days of being informed of the claimant's application for the return of the counter security after issue of a corresponding and binding judgment

5. In respect of the auction procedures, if the first auction fails, the announcement period for the

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subsequent auction has been shortened from 30 days to 7 days.

6. With regard to the order of priority for the distribution of the proceeds of sale of the ship, the maintenance costs incurred (paid by other parties other than shipowner or the bareboat charterer) during the arrest should be categorized as "litigation costs" and should enjoy the corresponding order of priority. In addition, with regard to "ordinary maritime claims" (those are not secured by maritime lien/possessory lien/mortgage) which are in relation to the ship will take priority over the other ordinary maritime claims.

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