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## INTRODUCTION

A Ship Arrest is the detention or restriction on removal of a vessel by order of a court. This measure is considered as an extreme and effective weapon of the creditor's artillery to force the ship owner to fulfill his legal obligation. It can be the result of a court judgment or an arbitration award. In Cambodia, Ship Arrests are regulated by the Book Six on Compulsory Execution and the Book Seven on Preservative Disposition of the Code of Civil procedure. Moreover, it has regulated maritime liens since 2003 but is not a party to any related international Convention.

Since 1957, Cambodia is a party to the "International Convention" relating to the Arrest of Sea-Going Ships (Brussels, 10 May 1952) (hereinafter referred as "Brussels Convention") but not to the International Convention on Arrest of Ships of 1999 (Geneva, 12 March 1999).

### 1. HOW TO ARREST A SHIP?

A Ship can be arrested for any of the maritime claims covered by the Brussels Convention or for any other credit (ordinary or privileged), under the domestic law, being treated as any other execution, a Ship Arrest requires a Title of Execution. A ship can also be arrested for a maritime lien. A maritime lien is a claim that specifically binds the vessels for non-payment of services of goods to a boat. The procedure is the same whether it is for a maritime claim or for a maritime lien.

The Title of execution can be obtained by a final and binding judgment from the court, an enforcement of real security rights against the ship or a provisional attachment against the ship (e.g. confiscation of the Certificate of Registry of the Ship). During this process before delivering the judgment, the court would request a security

deposit from the debtor, which needs to be deposited in the court, depending whether or not any damages would be incurred because of the Ship Arrest. Moreover, the Cambodian Court accepts jurisdiction not only for domestic claims but also for the substantive claims listed in the Article 8 and the following ones of the Brussels Convention.

Once the Title of execution is obtained, the ship can be arrested irrespectively of the debtor. In fact, even if the possessor of the ship is not its owner, the Ship Arrest still can be done.

In principle, the Arrest is also made irrespectively of its flag. Nevertheless, its nationality might be taken into consideration. Indeed, the Court may need to inform the concerned embassy in case the vessel is subject to provisional attachments. In addition, governmental vessels have immunity and are protected by international law, which means that they cannot be arrested.

It is important to note that Cambodian judges accept a claim for damages for wrongful arrest only if bad faith or malice has been proved.

### 2. DO ALL TYPES OF SHIPS CAN BE ARRESTED?

In principle, the Ship Arrest can also be made in regard to sister-ships, but there are certain exceptions in case the sister ship is arrested (i.e. a sister-ship cannot be arrested if the claim concerns the ownership or the Title of a particular ship, a security interest constituted by a particular Ship or a dispute between two co-owners of a ship). If the ship is owned by an associated company, it can be arrested only if the associated company is jointly and severally liable for the claim. Ship arresting is also possible for Bareboats and Time-Chartered vessels.

### 3. HOW TO RELEASE A SHIP?

The procedure to release a Ship depends on whether the Ship Arrest is the result of a Court judgment or provisional attachments. In either case, the Court shall request for the security deposit or any guarantee that is deemed to be appropriate which can be in the form of negotiable instrument, cash money, etc. Also, the Court may request for a letter of undertaking as a security



## ABOUT US

BNG Legal is a leading regional law firm providing comprehensive legal services to foreign and local clients in Cambodia and Myanmar.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar, and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed.

Conducting daily business in Cambodia and Myanmar, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

## CAMBODIAN LAW BLOG

[cambodianlaw.wordpress.com](http://cambodianlaw.wordpress.com)

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

## LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, [www.bnglaw.net](http://www.bnglaw.net).

deposit . If it is accepted by the claimant, the claim is deemed forfeited and the court ruling shall be cancelled. Further, the ship can be released within few days on receipt of the security deposit but a final and binding court ruling might be requested as well. As based on the court's judgment if the ship is arrested it can be released through a money guarantee. The judgment can either give the ship a permission to sail under certain circumstances or a cancellation of compulsory sale proceedings. Regarding the security, it shall cover the total amount of the creditor's claim and the execution costs. On the other hand, if the ship was subject to provisional attachments, it can be released from provincial attachment by contesting before the court the arrest itself through a motion of objection. Such motion shall be introduced within a "reasonable period of time" after the ship has been arrested. When appropriate, the Court shall designate the required amount that has to be placed as a security by the debtor. The sum determination is left to the discretion of the judges.

It should be noted that the ship can be sold pendente lite (awaiting the litigation) by the bailiff at the request of the claimant, if it is subject to rapid deterioration or if the custody's costs are too expensive.

## 4. CAN THE CORPORATE VEIL BE LIFTED IN CAMBODIA?

In practice, it is rare to lift a company veil but it actually depends on the type of the company. In fact, if it is a general partnership, since all the partners are personally liable for the debts of the company, the veil might be lifted and partners' personal properties might be seized. If it is a limited company, the company veil can be lifted only if the company's existence is proven fictitious.

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## LEGAL UPDATE

### **Decision No 84 (RGC) dated 26 October 2015 on the Creation of the Mixed Working group for Mutual Evaluation on Anti-money Laundering and Combatting the Financing of Terrorism**

The mixed working group for mutual evaluation on anti-money laundering and combatting the financing of terrorism (Working Group) will be working under the National Coordination Committee for Anti-money Laundering and Combatting the Financing of Terrorism. This Working Group, consisting of many representatives from both public and private sectors, will be in charge of analyzing any information provided by

FATE, including legal instrument, financial data and researched document, as well as responding to mutual evaluation questionnaires of FATF. The collaboration with other countries' working group against money laundering and financing of terrorism, especially in Asia Pacific, will also be main task of Cambodian Working Group. Administratively, the Working Group will have to report periodically to the national committee what they achieve.

### **Prakas No.1146 (MEF) dated 15 September 2015 on Public Service Provided of General Department of Taxation Ministry of Economic and Finance**

Objective of this Prakas is to allow the General Department of Taxation (GDT) to collect the public service fee. In order to provide an effective public service the GDT have to create a set of all public services under its competency where every details related to the fee timeframe and required documents are set out. That information is subject to publish publicly.

General Department of Taxation welcomes the complaint from the public related to for instance, over charged fee and the late long process. Those complaints could be made at the complaint unit that will be set up. The GDT is also required to set up specific location with standby officer in the form of "One window service" in order to standardize the public service. General Department is required to record and report this income regularly. It has to issue the receipt (originally issued from General Department of State Asset) when receiving payment in cash or cheque.

### **Prakas Nos. 1149 (MEF) dated September 15, 2015, on the Public Service of the General Department of the Financial Industry of the Ministry of Economy and Finance**

This Prakas prescribes the public service to be provided by the General Department of the Financial Industry by listing the fee and the period of the service as attached in the annex of the Prakas. The General Department of the Financial Industry must prepare the place for the complaint on the practice that is not in compliance with the service standard or any overcharge above the fee determined in this Prakas.

The General Department of the Financial Industry must report to the Minister of Economy and Finance before the 10th of every month for the monthly report and before 15th of January for annual report. In case of necessary, the Minister of the Economy and Finance can amend the Public Service Fee.