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- Ship Arrest in Cambodia

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### INTRODUCTION

Ship Arrest is the detention or restriction on the movement of a vessel, by order of a court. Ship Arrest is an extreme and effective measure, used to compel the ship's owner to fulfill its legal obligation toward a creditor. It can be the result of the execution of a provisional remedy (or preservative measure), a court judgment, or an arbitration award.

In Cambodia, Ship Arrest is regulated by Book Six on **Compulsory Execution**, and **Book Seven** on **Preservative Disposition**, of the **Code of Civil Procedure**.

Even though Cambodia has not acceded to any international conventions, in 2003, Cambodia adopted its own regulations, relating to maritime lien.

Cambodia acceded to the International Convention (Brussels, 10 May 1952), relating to the arrest of sea-going ships, on 12 November 1956, (hereinafter referred as "Brussels Convention") but not to the International Convention on Arrest of Ships of 1999 (Geneva, 12 March 1999).

Cambodia is also a party to the 1969 Civil Liability Convention for Oil Pollution Damage (CLC), and its 1992 protocol.

A ship can be arrested for any of the maritime claims, covered by the Brussels Convention, or for any other credit (ordinary or privileged), by virtue of domestic law. A ship can also be arrested for a maritime lien. A maritime lien is a claim that specifically binds a vessel for non-payment of services provided to the ship, or a tort caused by the operation of the ship.

### 1. HOW TO ARREST A SHIP?

A ship can be arrested by way of provisional remedies (preservative measure), or by the execution of a court judgment.



Arrest, by way of provisional remedies, can be ordered by the court, following an application from the claimant, under reasonable apprehension that a compulsory execution of the judgment against the ship is not feasible, or almost impossible, if such remedies are not granted to it.

Because under Article 1 (2) of the Brussels Convention, a ship arrest does not include the "seizure of a ship in execution or satisfaction of a judgment", arrest, by way of provisional remedies, falls under the purview of the Convention.

In Cambodian jurisdiction, a ship arrest, by way of provisional remedies, can be executed by applying the Brussels Convention and the Civil Code of Procedure, Book Seven, regarding provisional remedies.

A ship can be seized by the execution of a court judgment, or an arbitral award. This is outside the purview of the Brussels Convention. However, a seizure can be made according to Cambodian domestic law, especially the Code of Civil Procedure, Book Six, regarding compulsory execution. Compulsory execution is possible only when the claimant obtains a title of execution, which can be a court judgment, or an arbitral award.

A title of execution includes a final and binding judgment from the court, an enforcement of real security rights, or a provisional attachment against the ship (e.g. confiscation of the Certificate of Registry of the ship). During this process, and before delivering a judgment, the court would request a security deposit from the debtor, to be deposited in the court, depending on whether or not any damages would be incurred because of the ship arrest.

Moreover, Cambodian courts accept jurisdiction, not only for domestic claims, but also for substantive claims listed in Article 8 of the Brussels Convention.

Once a 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 carried out.

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, government vessels have immunity, and

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## ABOUT US

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## 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).

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. CAN ALL TYPES OF SHIPS BE ARRESTED?

In principle, a ship arrest can also be made in regard to sister-ships, but there are certain exceptions. A sister-ship cannot be arrested if the claim, on a particular ship, concerns the ownership, the title, a security interest, or a dispute between two co-owners. 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 bare-boats 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 a security deposit, or any guarantee that is deemed to be appropriate, in the form of a negotiable instrument, cash, etc. In addition, the court may request a letter of undertaking as a security deposit. If the claimant accepts this request, the claim will be deemed forfeited and the court ruling shall be cancelled. Further, the ship can be released within a few days, on receipt of the security deposit, but a final and binding court ruling may be requested as well.

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 permission to sail under certain circumstances, or invoke a cancellation of compulsory sale proceedings.

Regarding 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 them, through a motion of objection, by contesting before the court the arrest itself. 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 determination of the amount is left to the discretion of the judges. It should be noted that the ship can be sold pendent lite (awaiting the litigation), 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, in fact, this depends on the type of company. Indeed, 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.



## LEGAL UPDATE

**Sub-decree No. 69 (RGC) dated 28 April, 2016 on the transfer of protected forests, forest conservation areas, fruitful forest areas, and economic land concessions, from the Ministry of Agriculture, Forestry and Fisheries to the Ministry of Environment.**

The purpose of this sub-decree is to transfer certain land areas from the Ministry of Agriculture, Forestry and Fisheries to the Ministry of Environment, as outlined below:

1-Transfer 13 protected forests and forest conservation areas, as listed in annex 1 of this sub-decree, from the Ministry of Agriculture, Forestry and Fisheries, to the Ministry of Environment

2-Transfer 5 fruitful forest areas, as listed in annex 2 of this sub-decree, from the Ministry of Agriculture, Forestry and Fisheries to the Ministry of Environment

3-Transfer 73 areas of economic land concessions, as listed in annex 3 of this sub-decree, from the Ministry of Environment to the Ministry of Agriculture, Forestry and Fisheries

Minister in charge of the Office of the Council of Ministers, Minister of Economy and Finance, Minister of Health, all relevant Ministers, Secretaries of State, relevant institutions, shall implement this sub-decree from the date of signature.

**Decision No. 38, issued 28 April, 2016 on the assignment to the National Road Safety Committee.**

This decision assigned H.E Sun Chanthol, Senior Minister, Minister of Public Works and Transportation, to become the deputy chief of the Permanent Road Safety Committee, and also the chief of the first sub Committee, in replacement of H.E Tram Iv Toek, who is to become the Minister of Post and Telecommunications.