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- Ship Registration and Ship Arrest in Cambodia

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I. Ship Registration

The registration of a merchant vessel is governed by the Resolution for Merchant Ship the Registration adopted on 28 February 2003 by the Office of Council of Ministers.

How to apply for ship registration?

The first step for the registration of a vessel starts with the owner of the vessel (where such vessel is owned by a private individual/s) or a director or secretary of the corporation or other officer or agent authorized (where such vessel is owned by a legal entity) filing a written application, in which the owner makes a declaration as to the name of the vessel, her gross and net tonnage, the place where she has been built, the year and the name and residence of the owner. The Director General of the International Ship Registry of Cambodia (ISROC) has the discretion to decide to register or refuse to register any vessel as a Cambodian Ship without giving the reason.¹

What is Certificate of Registry issued to an applicant?

Upon receipt of the application of the vessel's owner, the Director General may issue a Provisional Certificate of Registry for the vessel or a Permanent Certificate of Registry for the Vessel.

Provisional Certificate is issued directly by the Director General or Deputy Registrar for only a period of six months from the date of issuance. This Certificate can be issued provided that the Director General is satisfied with the following:

- o Ownership of the Vessel
- o The Vessel is in seaworthy condition
- o The Owner has paid fees for registration to the Director General

The owner of the vessel, within 30 days after the



1. Article 22 of the Resolution for the Merchant Ship Registration

issuance of the Provisional Certificate of Registry, shall furnish further documents to the officer to whom the application for registration has been presented, showing that the vessel's outstanding foreign marine documents have actually been surrendered for cancellation (if the vessel was registered in another country), or if before such 30-day period it is established that any obligations imposed by the Resolution will not or cannot be complied with, the Director General may declare the Provisional Certificate of Registry null and void.²

Permanent Certificate of Registry is issued by the Director General of ISROC after he/she gets the authorization of a higher level authority, i.e. of an inter-ministerial committee called "The Ship Registration Management Committee" of the office of the Council of Ministers when the latter has been satisfied with the following:

- Ownership of the vessel, which means the clear proof of ownership of the applicant over the vessel
- The vessel is in seaworthy condition
- The Owner has paid fees for registration to the Director General
- The markings of name, official number, gross/net tonnage, home port and draft have been made in accordance with the norms prescribed in Article 32 of the Resolution.
- A certificate of measurement has been made (as to the building of the vessel, number of decks and masts, length, breath, depth, tonnage, and the markings in the foregoing point).

II. Ship Arrest

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**.

2. Article 28 of the Resolution for the Merchant Ship Registration

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Even though Cambodia has not acceded to any international conventions, in 2003, Cambodia adopted its own regulation of Prakas on Resolution for the Registration of Merchant Vessels, dated February 28, 2003 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.

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 Cambodian 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 irrespective 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 irrespective 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 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.

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.

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

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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.



Legal Update

Royal Kram, dated 23 November 2016 adopting the “Protocol to Implement the Sixth Package of Commitments on Financial Services under the ASEAN Framework Agreement on Services” (AFAS)

Under this Protocol, member states who are members of The World Trade Organization (WTO) must continue to extend their specific commitments under the General Agreement on Trade in Services (GATS) to other member states who are non-members of WTO. This Protocol and its annexes form part of the GATS. The annexes include each member state’s Consolidated Schedule of Specific Commitments on Financial Services, which comprises the member states’ horizontal and sector specific commitments, as well as the lists of Most-Favored Nation Exemptions.

This protocol and the commitments herein as stated in the Annexes shall take effect 90 days after the date of its signing.

Royal Kram No. 1116/016 on the Promulgation of the Law on Ratification of Protocol 7 on Customs Transit System of ASEAN Framework Agreement on Facilitation of Goods in Transit

The contracting states (ASEAN countries) shall establish the “ASEAN Customs Transit System” or “ATCS” to provide for the efficient and effective arrangement of the transit of goods among the contracting states.

Under this customs transit system, a contracting party must allow goods to be transported across its territory under the ACTS procedure. However, a contracting party may prohibit and/or restrict certain goods from the use of the ACTS, where this is justified on the grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historical or archaeological value, or the protection of industrial or commercial property.

Royal Kram No. 1116/015 on the Promulgation of Law on the Ratification of:

- 1. The Agreement to Establish and Implement the ASEAN Single Window**
- 2. Protocol to Establish and Implement the ASEAN Single Window**
- 3. Protocol on the Legal Framework to Implement the ASEAN Single Window**

This royal kram is about:

1. Agreement to Establish and Implement the ASEAN Single Window

The contracting states agree that an effective and efficient arrangement to expedite customs release and clearance will promote trade facilitation, achieve economic efficiency and effectiveness of ASEAN economies and further the establishment of ASEAN economic community by the year of 2020.

The ASEAN single window is the environment of national single windows of contracting states which operates and integrates the following activities:

- A single point of data and information access and distribution
- A single point of synchronized processing of data and information
- A single decision-making power of customs release and clearance

2. Protocol to Establish and Implement the ASEAN Single Window

The objective of this Protocol is to provide a legal and technical framework for the establishment and implementation of the ASEAN Single Window concept and National Single Window as regional commitments towards the establishment of an ASEAN Economic Community. It also strengthens the coordination and partnership among lead agency/ASEAN customs administrations, relevant line ministries, agencies and economic operators.

3. Protocol on the Legal Framework to Implement the ASEAN Single Window

This Protocol aims to provide a legal framework for the operations, interactions, and electronic processing of transactions between national single windows within the ASEAN single window environment while taking into consideration the relevant international standards and best practices recommended by international agreements and conventions concerning trade facilitation and modernization of customs techniques and practices.