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SHIP ARREST IN SPAIN FOLLOWING THE COMING INTO FORCE OF THE 1999 INTERNATIONAL CONVENTION ON ARREST OF SHIPS (PART 2)

WHAT CONVENTION WILL BE APPLIED TO ARREST OF SHIPS IN SPAIN?

So far, ship arrest in Spain has been applied either under the 1952 Brussel's Convention on unification of certain rules on arrest of sea-going ships or under the Civil Procedure Law 1/2000.

The 1952 Convention was interpreted and applied internally with our three-article domestic law 2/1967 on arrest of foreign ships. This law allowed the arrest of the ship for any maritime claim detailed in the 1952 Convention with the simple allegation of the claim.

Spain has denounced the 1952 Convention on March 24th 2011 and the denunciation will not come into force until March 28th 2012. This is the same date on which the Royal Legal Decree 12/2011 will come into force.

Therefore, regarding the applicable convention that would determine the claims subject to arrest BEFORE MARCH 2012:

- If the ship is flagged in a State Party of the 1952 Convention or a third State, this would be the applicable convention.
- If the ship is flagged in a State Party of the 1952 and 1999 Convention, this could pose some questions. In appliance of Vienna Convention of International Treaties, the 1999 Convention should be applied, being the problem the procedural law that should be applied in Spain – as the Royal Legal Decree 12/2011 would still not be in force. The Civil Procedure Law 1/2000 should be applied in that case, and it should be noted that the simple allegation of the maritime claim would not suffice to request the ship arrest.

PROCEDURAL ASPECTS OF THE SHIP ARREST AS FROM MARCH 2012:

The 1999 Convention mentions, under Article 3, that “Arrest is permissible of any ship in respect of which a maritime claim is asserted if ...” and Article 2 of the Royal Legal Decree 12/2011 establishes that “to decree the ship arrest, it will suffice to allege the maritime claim and the cause on which it is based”.

Discussions in the Spanish maritime law sector have taken place regarding the slight difference in this issue. It must be said that generally when a ship arrest was requested, the usual practice was to present a circumstantial evidence and this in order to avoid a “wrongful arrest”.

SECURITY TO RELEASE THE SHIP:

Another significant aspect is that related to the amount of the security provided to release the ship. In case of absence of agreement between the parties, the Court shall determine its nature and the amount – which shall not exceed the value of the arrested ship. The question that arises is: who will determine the vessel value and

how will it be determined? It would be interesting to see the practical application of this aspect by the Spanish Courts.

According to our applicable Civil Procedure Law 1/2000, this security can be cash, bank guarantee, insurance bond or any other security that according to the Court criteria can guarantee immediate availability.

JURISDICTION FOR THE ARREST OF THE SHIP:

According to the 1999 Convention, a ship can be arrested for the purpose of obtaining security, notwithstanding the fact that the maritime claim on which the arrest is to be based is to be resolved in a different State other than that in which the arrest is made, or is to be arbitrated or adjudicated subject to the law of another State.

Nevertheless, the efficacy, in Spain, of the above has to be judged together with what is established in Article 3.3 of the 1999 Convention. This article establishes that the arrest of a ship that is not owned by the person who is liable for the maritime claim will only be admissible if, under the laws of the State Party in which the arrest is requested, a judgement rendered on the merits of the claim can be executed against that ship.

This gives ground to a lot of discussions, such as, for example, the fact that enforcement of the judgment could be made against the security placed in substitution for the arrested ship; but it would of course represent a further problem when the debtor is in default and no security is placed.

JURISDICTION FOR THE MERITS OF THE CLAIM PROCEDURE:

The general rule would be that the competent jurisdiction is that under which the Parties have submitted the contract due to a jurisdiction clause or arbitration clause. On the contrary, the jurisdiction would be that of the country in which the arrest is made or where the guarantee is lodged.

In general, it seems that the 1999 Convention aims to decrease the number of arrests that were carried out as a “means of pressure” against debtors. In this sense, we would recommend that any ship arrest to be requested in Spain under the 1999 Convention should be carefully studied in advance.

It will be very interesting to see the practical appliance of the 1999 Convention in Spain. We would recommend you to contact us in case you have any particular doubt.

Further information can be obtained from INDECO.
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