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Thailand
Shipping

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Thailand.

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Thailand: Shipping

1. What system of port state control applies in your jurisdiction? What are their powers?

Thailand is a signatory to the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific region (**Tokyo MOU**). The Marine Department is a governmental body that oversees port state control with regard to the inspection and detention of vessels so as to ensure that the vessels' compliance with the following international conventions and domestic laws:

International Conventions

1. The International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended
2. The International Convention on Load Lines 1966, as amended
3. Annex 1 and 2 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 and 1997 Protocols as amended (MARPOL)
4. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW)
5. The International Convention on Tonnage Measurement of Ships, 1969, as amended (TONNAGE)
6. The Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG)
7. The Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC)

Domestic Laws

1. Navigation in the Thai Waters Act BE 2456 (1913) (as amended)
2. Thai Vessel Act BE 2481 (1938) (as amended)
3. Act on Prevention of Collision of Ships BE 2522 (1979)
4. Merchant Marine Promotion Act BE 2521 (1978) (as amended)

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

Thailand has ratified the following conventions with respect to pollution:

1. The International Convention for the Prevention of Pollution from Ships (MARPOL), 1973 as modified by the Protocol of 1978
2. The International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992
3. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1992
4. The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990

However, Thailand has not yet become a signatory to any international conventions concerning wreck removal.

The domestic laws addressing issues of pollution and wreck removal are as follows:

1. Thai Vessel Act BE 2481 (1938)
2. Navigation in the Thai Waters Act BE 2456 (1913)
3. Civil Liability for Oil Pollution Damage Caused by Ships Act BE 2560 (2017)
4. The Requirement of Contributions to The International Fund for Compensation for Oil Pollution Damage Caused by Ships Act BE 2560 (2017)
5. Enhancement and Conservation of National Environmental Quality Act BE 2535 (1992)

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

Thailand has ratified the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973 as modified by the Protocol of 1978. However, it has not ratified Annex VI of the Convention, which pertains to emissions. Therefore, no limits on the sulphur content of fuel oil are currently enforced within Thai territorial waters. In addition, No Emission Control Areas have been established in Thailand.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

With respect to navigation and safety, Thailand has ratified the Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), 1972. Such

Convention has been implemented in domestic law, i.e., the Prevention of Collision Act, BE 2522 (1979). The rules of the road at sea are thoroughly set out in the Ministerial Regulations and the bylaws issued by the Minister of Transport under the aforesaid Act.

In view of the liability arising from collisions, Thailand is not a signatory to the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910. However, Thailand does have domestic legislation in this respect, i.e., the Civil Liability and Damages Arising from Collision of Vessels Act, BE 2548 (2005). This Act governs collisions between vessels when at least one of which is a sea going vessel. The provisions of the Act are similar to those in the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910, but with additional details on computations of damages.

Thailand has also ratified the International Convention on Salvage (SALVAGE), 1989. Such Convention has been implemented in domestic law, i.e., the Marine Salvage Act, BE 2550 (2007). For salvage contracts, due to the absence of a standardised domestic contract templates, the Lloyd's Open Form is often the choice for significant operations, while tailor-made contracts tend to be used for the smaller ones.

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Thailand is not a signatory to the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, and its Protocol of 1996. More interestingly, Thailand does not even have domestic legislation in this respect. In cases involving this matter where Thai laws are applicable, the shipowners, charterers, managers, operators, and salvors can not avail themselves of immunity by means of tonnage or global limitations. Thus, it is fair to say that Thailand is, in some respects, a claimant friendly jurisdiction for maritime catastrophe claims that can involve large claim amounts.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Thailand has not been a signatory to any international conventions on the arrest of ships. The rules that permit the detention of a ship are set out in two pieces of legislation, each active at different stages. The most prominent legislation for ship detention is the Arrest of Ships Act, B.E. 2534 (1991) (the ASA) which governs the detention prior to the commencement of the substantive claim in the court or arbitration. Another piece of legislation is the Civil Procedure Code (the CPC) which applies to detention after the commencement of the substantive claim to the court or arbitration. The latter regime is much more complicated, making the process of acquiring an injunction more challenging.

With regard to the ASA, claimants entitled to apply for arrest are restricted to those who have maritime claims which embrace loss of life, personal injury, or property damage due to ship operations, salvage, a contract relating to use or hire of a ship or other similar contracts, including a charterparty, a contract of carriage of goods by sea under a bill of lading, general average, damage to cargo, towage and pilotage, supply of any materials to a ship, shipbuilding, repair or shipyard fees, port charges and dues, stevedoring, master's or crew's wages, ship expenses, ship ownership, and disputes between co-owners and ship mortgages. On the contrary, the CPC permits detention for claimants with other claims, not just those with maritime claims.

The ASA does not make clear whether the court can keep the security obtained from an arrest for a claim that will be determined in arbitration or a court in another jurisdiction. In practice, it is advised that the claimant arrests the vessel and negotiate with the relevant P&I club, shipowner, and/or charterer to obtain a form of security, such as a letter of undertaking and/or a bank letter of guarantee with proper wording, and then request that the court release the arrested vessel. In this circumstance, such security in lieu of the vessel herself could be utilised worldwide.

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

By and large, the original power of attorney is required. However, some judges may exercise his/her discretion to accept a PDF version.

The most notable procedural requirement under the ASA is that not all claimants who have maritime claims are entitled to arrest a ship in Thailand; only those claimants who have their domicile in Thailand are entitled to do so.

On an important note, there has never been any precedent, transfer of maritime claim may be an alternative solution for a foreign claimant.

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

Maritime liens are recognised under the Vessel Mortgage and Maritime Lien Act BE 2537 (1994) covering claims arising from:

- Work of the master and crew,
- Loss of life or personal injury,
- Salvage operation, and
- Tort arising from the operation of the ship, with the exception of claims for cargo loss/damage and personal belongings.

The Act is silent on the issue of the law under which maritime liens are recognised. The disputes concerning the applicable law are governed by the Conflict of Laws Act B.E. 2481 (1938) (the CLA). If a party who seeks to rely on foreign law with respect to maritime liens fails to provide sufficient proof, the court will apply Thai law instead.

9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

Under Thai law, actions *in rem* are not recognised; only actions *in personam* are possible. Therefore, the vessel can be arrested if the shipowner or demise charterer is liable *in personam*.

Unpaid bunkers and other necessaries can be grounds for arresting a vessel. The ASA provides that a claimant may apply for an arrest of a vessel in the debtor's possession, even though she is not owned by such debtor. There is no doubt, for the case of demise charter, that the demise charterer possesses the vessel, and such vessel could be arrested in the case where the demise charterer fails to pay for the bunkers and other necessaries. In the case of time charters, Thai courts have not yet set any precedent regarding whether non-payment for bunkers and other necessaries by the time charterer could constitute the right to arrest a vessel. However, considering that the time charterer merely has control over the commercial aspect of the vessel but does not directly possess the vessel, it is less likely that the court will grant an arrest in this respect.

10. Are sister ship or associated ship arrests possible?

The arrest of a sister ship is permissible, provided that the debtor must have been the owner or possessor of the sister ship at two specific points in time, i.e., when the cause of action arose and at the time the application for arrest was made. For the arrest of an associated ship, since the concept of piercing the corporate veil or beneficial ownership (or both) is not currently recognised by Thai courts, it is less likely that the court will grant an arrest of an associated ship.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

If the debtor does not have domicile in Thailand, the court may, at its discretion, order that the arresting party make a deposit of a counter-security. However, if the debtor has domicile in Thailand, the court will have no discretion and is obligated to order that the arresting party make a deposit of a counter-security, unless the arresting party could prove to the satisfaction of the court that the debtor lacks sufficient assets in Thailand to be enforced.

The test for wrongful arrest has not been well established in the ASA or by Thai court precedents. Some academic articles suggest that the test should be in accordance with general tort law under the Civil and Commercial Code (the CCC), where liability ranging from wilfulness down to an ordinary degree of negligence is required. If the

arresting party wilfully (with intention to cause loss) or negligently acts in arresting the vessel and results in loss suffered by the shipowner, charterer, and/or cargo interest, the arresting party will be liable to those parties in tort. It is important to note that the counter-security deposited with the court in accordance with the abovementioned court's order is a security for damages suffered by the debtor in the arrest proceedings, not a security for damages suffered by other parties, such as the cargo interest on board the arrested vessel.

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

For a security to be officially placed with the court in exchange for the release of the arrested vessel, cash or cashier cheque will be accepted. Other types of security, such as a bank letter of guarantee or Club LOU are at the court's discretion. Given that the P&I clubs do not hold assets in Thailand, the court will be hesitant to accept the Club LOU as a security. To address this issue, a P&I club may negotiate with the arresting party, requesting that it places the LOU directly with such party instead of depositing it with the court. If this negotiation is successful, the arresting party will file a motion to the court requesting for withdrawal of the arrest proceedings, which will eventually result in release of the vessel.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

In order to sell the arrested vessel, the claimant is required to proceed until obtaining a favourable court's judgment for the substantive claim. Then it must further liaise with the Legal Execution Department to proceed for the auction sale.

The priority ranking of claims is as follows:

- Court and execution fees
- Expenses for arrest of the vessel
- Expenses for seizure of the vessel
- Expenses for sale of the vessel
- Expenses for maintenance of the vessel after the arrest
- Expenses for maintenance of the vessel after the seizure
- Expenses for transporting the master and crew to their domicile
- Expenses for allocation of the funds received from the sale
- Maritime liens with the following ranking (However, maritime liens arising from the salvage operation will have superior priority over any other maritime liens existing before commencement of the salvage operation.)
    - Work of the master and crew,
    - Loss of life or personal injury,
    - Salvage operation, and
    - Tort arising from the operation of the ship, with the exception of claims for cargo loss/damage and personal belongings,
- Vessel mortgage
- Priorities under the CCC, such as tax or wages of the employees of the defendant other than the master and crew on board the vessel
- Other claims

14. Who is liable under a bill of lading? How is “the carrier" identified? Or is that not a relevant question?

For claims under the Carriage of Goods by Sea Act BE 2534 (1991) (the COGSA), both contractual and actual carriers need to be liable under the bill of lading. For claims under the Multimodal Transport Act BE 2548 (2005) (the MTA), only the contractual carrier (multimodal transport operator) needs to be liable under the bill of lading. Nevertheless, the actual carrier under a multimodal transport arrangement may be liable in tort under the CCC. It is important to note that, even though the cause of action should be in tort, the actual carrier under a multimodal transport arrangement remains entitled to invoke the exclusion of liability, limit of liability, and limitation or prescription period as prescribed in the MTA.

Since Thai law does not recognise actions *in rem*, identifying the contractual carrier is of significant importance and could be complex in some circumstances. For the cargo carried by a liner, the name of the contractual carrier is usually specified in the bill of lading and, therefore, the carrier's identity is typically clear. Challenges often arise with bulk cargo carried under a charterparty, where the bill of lading is usually signed ‘on behalf of the master’ of the vessel without specifying the name of the carrier. In such cases, it is necessary to further examine the sub and head charterparty to determine who – be it the shipowner and charterer(s) – has navigational control over the vessel.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

For the carriage of goods solely by sea under the COGSA, an agreement in the bill of lading which stipulates a foreign law or international convention as the governing law will be rendered void if at least one party to the contract is a Thai national or is an entity established under Thai law. In contrast, if no party is a Thai national or an entity established under Thai law, an agreement to invoke a foreign law or international convention as the governing law will be honoured by the court.

Unlike the COGSA, the MTA is silent on this issue. Thus, in multimodal transport cases, if the court views that the agreement on the governing law in the bill of lading reflects the true intention of the parties under the CLA, the court will apply such foreign law or international convention to the case.

It is worth bearing in mind that the party seeking to rely on the foreign law or international convention under the choice of law clause in the bill of lading does have the burden of proof under the CLA. The party must adequately prove the details of such law and convention to the satisfaction of the court. If it fails to do so, Thai law will be applicable to the case.

16. Are jurisdiction clauses recognised and enforced?

By and large, according to the precedents established by Thai courts, exclusive jurisdiction is not recognised by the courts. In case where the parties to the contract deliberately agree in writing for the exclusive jurisdiction of any court in a foreign country, the court in the foreign country will have jurisdiction over the dispute. Thai courts will still have jurisdiction over the dispute as well, provided that the CPC prescribes so. That is to say, the parties to the contract may decide to commence proceedings in a Thai court, despite the exclusive jurisdiction clause specifying a foreign court. This principle also applies to disputes under contracts of carriage of goods solely by sea.

Nonetheless, for multimodal transport, the MTA does contain an exceptional provision which allows the parties to the contract to agree in the bill of lading on the exclusive jurisdiction of the court in a foreign country, provided always that such court also has jurisdiction over the claim in accordance with its national law.

17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

If the parties to the bill of lading are identical to the parties to the charterparty, there is typically no issue with the parties relying on clauses in the charterparty. Complications arise when the consignee under the bill of lading is not a party to the charterparty.

The issue regarding incorporation of an arbitration clause under the charterparty into the bill of lading has come up in some cases, but the parties in those cases decided to settle the claim amicably. To the best of our knowledge, Thai courts have addressed this issue in one case, but we believe that ratio decidendi discussed therein cannot and should not be regarded as a precedent. Thus, it is fair to say that this is still in limbo. Considering the Arbitration Act BE 2545 (2002) (the AA) alone, there is the possibility that the incorporation of the arbitration clause under the charterparty into the bill of lading will be, in certain cases, valid. It is anticipated that the following factors will be taken into account by the courts when this issue is required to be adjudicated: whether the parties to the charterparty has intentionally agreed on the arbitration clause with wet ink or electronic signatures; whether the bill of lading clearly states a specific charterparty under which the bill of lading is issued; whether the bill of lading clearly provides that the arbitration clause under the charterparty is incorporated therein; and whether the consignee has received a copy of such charterparty or fixture note, or at least similar wording to that effect.

18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Thailand is not a signatory to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (the Hague Rules), the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968 (the Hague-Visby Rules), the United Nations Convention on the Carriage of Goods by Sea, 1978 (the Hamburg Rules), and the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2009 (Rotterdam Rules). Nevertheless, by virtue of the 'paramount clause' in a bill of lading, those rules may be, in certain situations, applicable. Please see our explanation to Question 15 for further analysis.

In most cases, disputes arising from bills of lading for carriage of goods solely by sea will be governed by the COGSA, which is a combination of the Hague-Visby Rules and Hamburg Rules with some variations, while disputes under the multimodal transport bills of lading will be governed by the MTA.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Thailand has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This Convention has been implemented in domestic law, i.e., the AA.

The court may set aside an arbitral award made in Thailand or refuse to enforce a final arbitral award made in other countries, if a party to such award can prove any of the following:

- that a party under the arbitration agreement was under some incapacity under the law applicable to that party;
- that the arbitration agreement is not binding under the law of the country agreed to by the parties, or failing any indication thereon, under the law of the country in which the arbitral award was made;
- that the affected party was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings, or was otherwise unable to defend the case in the arbitration proceedings;
- that the award involves a disputed issue beyond the scope of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration clause. However, if the award on a matter beyond the scope thereof can be severed from a matter that is within the scope of the arbitration agreement, the court may revoke only the matter that is beyond the scope of the arbitration agreement or clause; or
- that composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, if not agreed otherwise by the parties, in accordance with the Arbitration Act.

An arbitral award made in Thailand may also be set aside if it appears to the Thai court that the award involves a dispute not capable of settlement by arbitration under the law, or that the recognition or enforcement of the award would be contrary to public policy.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

Time limits are prescribed in many legislations of the substantive law. Below is a summary of time limits which may be relevant to shipping matters.

Type of Claim	Time Limit
Cargo claims under contract of carriage of goods solely by sea	: **1 year** from the date of delivery
Cargo claims under multimodal transport	: **9 months** from the date of delivery
Sea passenger claims	: **10 years** from the date of incident
Collision claims	: **2 years** from the date of incident, if one party is a seagoing vessel**1 year** from the date on which the tort and tortfeasor became known but not exceeding **10 years** from the date of the Incident, if no party is a seagoing vessel
Salvage claims	: **2 years** from the date on which the salvage operation finishes
General average claims	: **1 year** from the date the amount of general average contribution is advised to the contributor but not exceeding **5 years** from the date of general average act, for the claim by the shipowner **1 year** from the date the amount of general average contribution is advised to the contributor but not exceeding **7 years** from the date of general average act, for the claim by the shipowner, for the claim by other party
Oil pollution from ship claims	: **3 years** from the date on which the damage appears but not exceeding **6 years** from the first date of incident
Ordinary tort claims	: **1 year** from the date on which the tort and tortfeasor became known but not exceeding **10 years** from the date of the Incident
Product liability claims	: **3 years** from the date on which the damage and liable business operator became known but not exceeding **10 years** from the date on which the damage became known, for loss of life, bodily injury, or health which involves toxic accumulation or whereby symptoms take time to appear**3 years** from the date on which the damage and liable business operator became known but not exceeding **10 years** from the date of the sale, for other claims

21. Does your system of law recognize force majeure, or grant relief from undue hardship?

Force majeure is expressly recognised under Thai law and exists as provisions in the CCC, COGSA, MTA, etc. To determine whether an event in question amounts to *force majeure* or not, the person who seeks to rely on it bears the burden to prove that an event could not have been prevented, even though a person against whom it happened or threatened to happen were to take such appropriate care as might be expected from him in his situation, and such event proximately causes a breach of the contract. Therefore, whether an event in question amounts to *force majeure* will be determined on a case-by-case basis. Conversely, the concept of hardship is not recognised under Thai law.

Since *force majeure* is recognised under Thai law, parties to a contract are entitled to rely on such immunity even though the contract is silent on it. In contrast, parties to a contract will not be able to rely on mere hardship to be exonerated, unless the hardship clause is properly agreed to in the contract and fulfilled.

With regard to the Covid-19 pandemic, if, owing to the pandemic, a public authority imposes an order which directly renders the performance of the obligation impossible, it is highly likely that the party in breach will

be able to rely on *force majeure* in order to escape from liability. On the contrary, if the pandemic merely causes hardship, e.g., significant inflation, a change in exchange rates, or an increase of freight or distance for carrying the goods, and the contract does not contain a hardship clause, the party in breach would not be entitled to rely on such hardship in order to deny its liability.

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