

MARITIME CLAIMS IN VIETNAM

PRACTICAL ISSUES OF SHIPPING IN VIETNAM

DZUNGSRT & ASSOCIATES LLC

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Seoul, 17th October 2019



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1. Overview of Vietnam Maritime Code and key issues of maritime claims in Vietnam

2. Collision and Allision

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SESSION 1

BỘ LUẬT HÀNG HẢI VIỆT NAM
VIETNAM MARITIME CODE

Overview of Vietnam Maritime Code and key issues of maritime claims in Vietnam



Collision and Allision



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OVERVIEW OF MARITIME CODE

- 20 Chapters with 341 Provisions
- Incorporating a number of provisions of the International Convention on the Arrest of Ship (Geneva 1999)
- Dedicating a Chapter for marine insurance contracts



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MARINE INSURANCE MARKET

LEADING UNDERWRITERS



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MARINE INSURANCE MARKET



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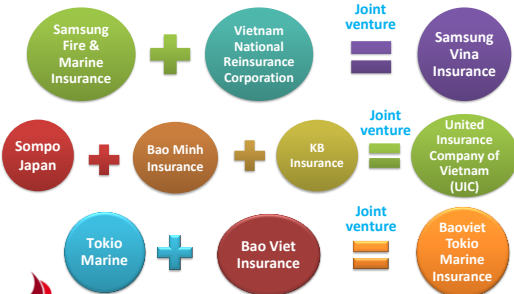
MARINE INSURANCE SERVICE UNDER VIETNAM'S COMMITMENTS TO THE WTO

- No limit on the market access related to insurance service
- Foreign underwriters with no commercial presence in Vietnam are also allowed to provide (cross border) marine insurance services
- Commercial presence of foreign underwriters in Vietnam (with regard to marine insurance only):



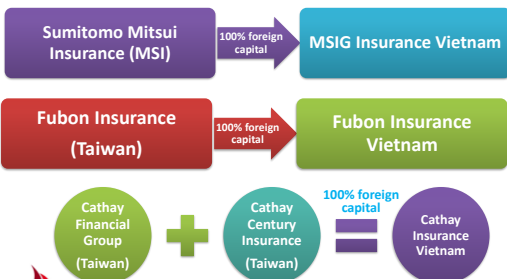
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FOREIGN UNDERWRITERS



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FOREIGN UNDERWRITERS



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PRACTICAL ISSUES

Bill of Lading

Problems
Arising from
Subrogation

Collision
and allision

Constructive
total loss

Dispute
Resolution



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BILL OF LADING

- No member of any international conventions
- An interesting combination of Hague-Visby Rules and Hamburg Rules
- Issues:
 - ✓ Who is the carrier?
 - ✓ Which charter-party to be incorporated?
 - ✓ Limitation of liability?
 - ✓ Endorsement?



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WHO IS THE CARRIER?



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WHO IS THE CARRIER?

- Carrier is not shown in the B/L
 - Actual carrier or contractual carrier?
- ➔ *In case it is impossible to identify who is the carrier, the ship owner shall be deemed the carrier and shall bear the responsibility of the carrier under the B/L*



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LIMITATION OF LIABILITY

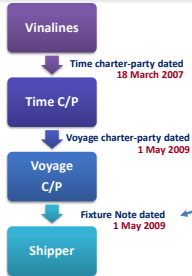
- Liability for any loss or damage to or in connection with the cargo: 666.67 SDR per package or unit, or 2 SDR per kilogram of gross weight of the goods lost or damaged
- Liability for late delivery of cargo: 2.5 times the freight of the quantity of cargo that is delivered late



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WHICH CHARTER-PARTY TO BE INCORPORATED?



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WHICH CHARTER-PARTY TO BE INCORPORATED?

- A cargo insurer (upon a Subrogation Letter from the cargo owner) claimed against Vinalines, being the ship-owner of M/V “Tay Son 3” under the B/L
- A cargo insurer was not able to submit the incorporated Charter-party
 - ➔ The court dismissed the case



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COLLISION



- Rescuing crew members
- Safety of the vessel - salvage
- Oil spill response
- Owners’ actions: contacting the underwriters & P&I Club insurers and appointing local lawyers

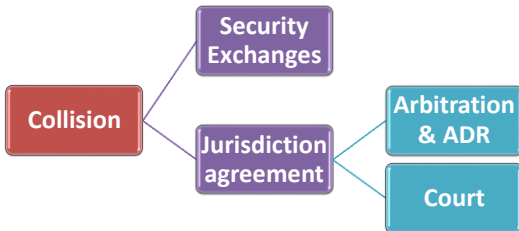


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COLLISION



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WHO HAS THE TITLE TO SUE?

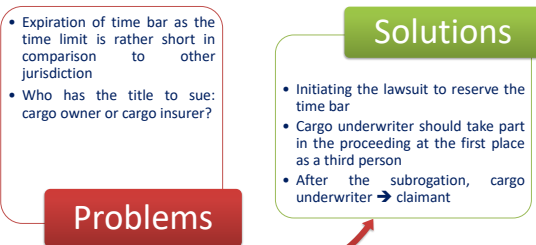
- The holder of the B/L shall have the title to sue the carrier for cargo loss or damage



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PROBLEMS AND SOLUTIONS?



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DISPUTE RESOLUTION

- Application of time bar
- Application of foreign laws
- Identification of competent court



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APPLICATION OF TIME BAR

- Not consider time bar at the time of filing
- Only apply time bar upon request of either party
- * Renewal of time-bar



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APPLICATION OF FOREIGN LAWS

IDENTIFYING AND PROVIDING FOREIGN LAWS UNDER THE 2015 CIVIL PROCEDURE CODE



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IDENTIFICATION OF COMPETENT COURT

- Jurisdiction of the court:
 - ✓ Territorial jurisdiction
 - ✓ Level of the court
- The Court may refuse to accept the case or terminate of the pending case upon the parties' choice of arbitration or foreign court (except for the cases fall within the exclusive jurisdiction of the Vietnamese court)
- Forum convenience and forum non-convenience principles are not applicable



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SESSION 2



Shipbuilding



Ship arrest in Vietnam



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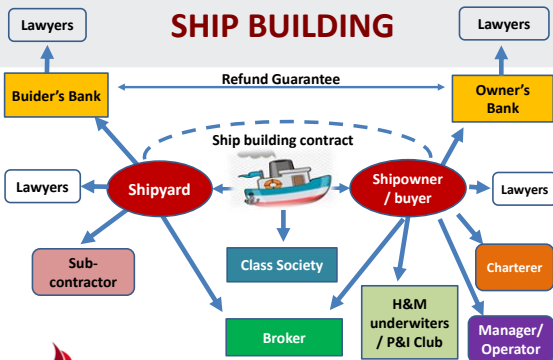
SHIPBUILDING



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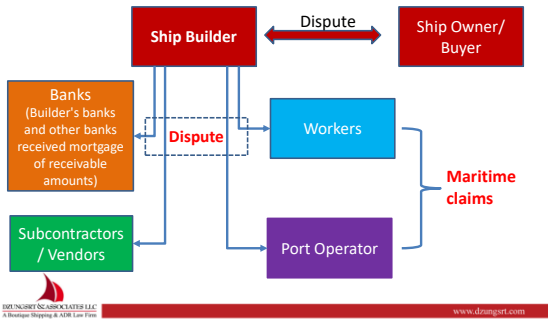
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WHEN THE BUILDER HAVE FINANCIAL DIFFICULTIES



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SOLUTIONS FOR SHIPOWNER?

- Re-negotiate contract's terms of payment, delivery, refund guarantee, etc.
- Terminate contract and tow the ship under construction out of the shipyard
- Negotiate with local creditors. Maritime claim holders on a settlement sum before ship's departure
- Litigation/Arbitration & ADR?



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SHIP ARREST IN VIETNAM

- Situation of ship arrest in Vietnam
- Forms of security for release of arrested vessels



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SHIP ARREST IN VIETNAM

Types of arrest:

1. To secure the maritime liens / claims;
2. Under interim reliefs;
3. For enforcement of judgments / arbitral awards;
4. Judicial assistance

*In practice: (1) & (2), especially arrests for obtaining security for maritime claims: 90% of cases



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SHIP ARREST IN VIETNAM

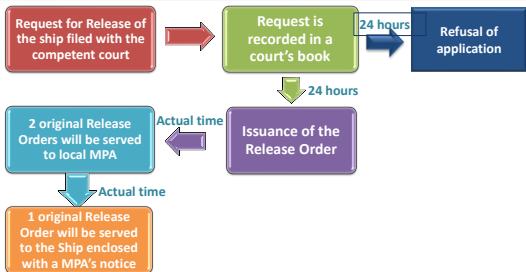


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PROCEDURES FOR RELEASING ARRESTED VESSEL



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FORMS OF SECURITY TO RELEASE ARRESTED VESSELS

- Escrow account
- Bank Guarantee
- Letter of Undertaking

* Some courts do not accept LOU



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