PRACTICAL ISSUES OF SHIPPING IN VIETNAM DZUNGSRT & ASSOCIATES LLC Nguyen Thi Thu Trang | Counsel Seoul, 17th October 2019 Seoul, 17th October 2019

1

1. Overview of Vietnam Maritime Code and key issues of maritime claims in Vietnam 2. Collision and Allision 3. Shipbuilding 4. Ship arrests in Vietnam

2

SESSION 1 Overview of Vietnam Maritime Code and key issues of maritime claims in Vietnam Collision and Allision

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



MARINE INSURANCE MARKET

LEADING UNDERWRITERS













BẢO HIỂM BẢO VIỆT

5

MARINE INSURANCE MARKET

Vietnamese underwriters



Re-underwriters



















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):



7

8

Fubon Insurance (Taiwan) Cathay Financial Group (Taiwan) Cathay Financial Group (Taiwan) Cathay Financial Group (Taiwan) Cathay Cathay Cathay Cantury Insurance (Taiwan) Cathay Cathay Cathay Cathay Insurance (Taiwan) Cathay Cathay Cathay Insurance (Taiwan) Cathay Cathay Cathay Insurance (Taiwan) Cathay Cathay Insurance (Taiwan)

Problems Arising from Subrogation Collision and allision Constructive total loss Dispute Resolution

10

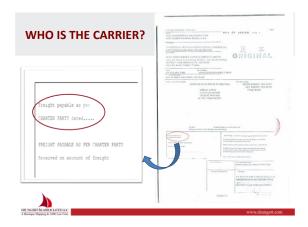
BILL OF LADING

- 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?



www.dzungsrt.com

11



WHO IS THE CARRIER?

- Carrier is not shown in the B/L
- Actual carrier or contractual carrier?

→ In case it is impossible to identity who is the carrier, the ship owner shall be deemed the carrier and shall bear the responsibility of the carrier under the B/L



www.dzungsrt.com

13

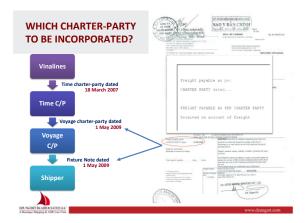
LIMITATION OF LIABILITY

- 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: <u>2.5 times</u> the freight of the quantity of cargo that is delivered late



www.dzunesrt.com

14



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



www.drungert.com

16

COLLISION

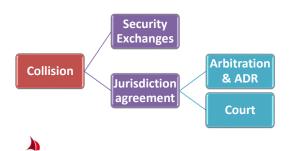


- Rescuing crew members
- Safety of the vessel salvage
- Oil spill response
- Owners' actions: contacting the underwriters & P&I Club insurers and appointing local lawyers

www.dzungsrt.com

17

COLLISION



3.	This Agreement shall be governed by and construed in accordance with Vietnamese law, and any dispute or difference arising hereunder shall be resolved by the Vietnam International Arbitration Centre (hereinather referred to as "VIAC") in accordance with its Rules of Arbitration for the time being in force, which rules are deemed to be incorporated by reference in this clause. The place of arbitration shall be if to this Might City, Vietnam. The language to be used in the arbitral proceeding shall be English.
4.	Each party represents and warrants to the other party with respect to itself that it has the full right, power and authority to execute, deliver and perform this Agreement. Further, each signatory warrants and undertakes to each of the parties that he or she has the full right, power and entitlement to execute this Agreement on behalf of that respective party.
5.	This Agreement is made in four (04) originals in English and shall supersede and replace all previous oral or written agreements, correspondence or other communications between the parties. Signed by

19

ALLISION





DZUNGSKI SEASSOKIATES ILI

www.dzungsrt.com

10,093,500 SDR + 83 SDR/ton over 70,000 GT

20

Ionna	Limitation of liability				
tion	Convention 1976	1996 Protocol	The 2012 Revision	Vietnamese Maritime Code	
Jp to 300 GT	167,000 SDR	1,000,000 SDR plus 400 SDR for each ton over 2,000 GT	1,510,000 SDR	83,000 SDR	
Jp to 500 GT				167,000 SDR	
Jp to 2000 ST	167,000 SDR + 167 SDR/ ton over 500 GT			167,000 SDR + 167 SDR/ ton over 500 GT	
Jp to 0,000 GT		1,000,000 SDR + 400 SDR/ton over 2,000 GT	1,510,000 SDR + 604 SDR/ton over 2,000 GT	167,000 SDR + 167 SDR/ton over 500 GT	
0,001- 0,000 GT	5,093,500 SDR + 125 SDR/ton over 30,000 GT	12,200,000 SDR + 300 SDR/ton over 30,000 GT	18,422,000 SDR + 453 SDR/ton over 30,000 GT	5,093,500 SDR + 125 SDR/ ton over 30,000 GT	

24,200,000 SDR + 200 SDR/ton over 70,000 GT

TONNAGE LIMITATION

36,542,000 SDR + 302 SDR /ton over 70,000 GT

21

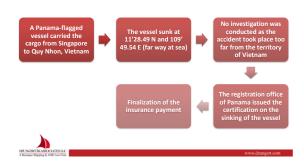
Over 70,000 GT 10,093,500 SDR + 83 SDR/ton over 70,000 GT

			(CASE 2	
Tonnation Limitation of liab			n of liability	ility	
	Convention 1976	1996 Protocol	The 2012 Revision	Vietnamese Maritime Code	
Up to 30,000 GT	5,093,500 SDR	12,200,000 SDR	18,422,000 SDR	5,093,500 SDR	
30,001- 70,000 GT	125 SDR per ton x 3,042 = 380,250 SDR	300 SDR per ton x 3,042 GT = 912,600 SDR	453 SDR per ton x 3,042 GT = 1,378,026 SDR	125 SDR per ton x 3,042 = 380,250 SDR	
Total	5,473,750 SDR ≈ USD 7,524,435.7	13,112,600 SDR ≈ USD 18,025,104.5	19,800,026 SDR ≈ 27,217,907.7 USD	5,473,750 SDR ≈ USD 7,524,435.7	
	1.	*The Gross To	onnage of vessel is	33.042 tons	



22

CONSTRUCTIVE TOTAL LOSS



23

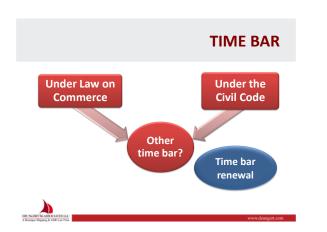
PROBLEMS ARISING FROM SUBROGATION

- Time bar issue
- Title to sue



		TIME BAR
TYPE OF CLAIM	STATUTE OF LIMITATION	STARTING POINT
Logistic service	09 months	The date of cargo delivery
Maritime liens	01 year	The date of arising of the maritime lien
Cargo loss or damage under B/L	01 year	The date cargo is delivered or should have been delivered
Performance of contract for towage of seagoing vessels	02 years	The date of arising of dispute
Contract for maritime insurance	02 years	The date of arising of dispute
DZUNDSKY ŠCASOCIATES ILC		www.dzunesrt.com

		TIME BAR
TYPE OF CLAIM	STATUTE OF LIMITATION	STARTING POINT
Performance of contract for maritime salvage	02 years	The date of completion of salvage operations
General average	02 year	The date of occurrence of general average
Collisions	02 years	The date occurrence of collision
Performance of Charter-party	02 years	The date the claimants are aware of or should have been aware of the violations of the charter-party or the date the charter-party terminated
DZUNGSKY SZASSOCIATES ILC		www.dzunesrt.com



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



por Indicate Table Section Test (1)
A Reverse Propuls A Dis to From
White Propuls Section Test (1)

28

PROBLEMS AND SOLUTIONS? • Expiration of time bar as the time limit is rather short in comparison to other jurisdiction • Who has the title to sue: cargo owner or cargo insurer? • Initiating the lawsuit to reserve the time bar • Cargo underwriter should take part in the proceeding at the first place as a third person • After the subrogation, cargo underwriter → claimant

29

DISPUTE RESOLUTION

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

DZUNGSRT SZASSOCIATES LLC A Bostique Shipping & ADR Law Firm	www.dzungsrt.com

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



www.dzungsrt.com

31

APPLICATION OF FOREIGN LAWS

IDENTIFYING AND PROVIDING FOREIGN LAWS UNDER THE 2015 CIVIL PROCEDURE CODE

Parties provide the contents of foreign laws





After 6 months without success, the Court shall apply Vietnamese law



32

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



was drangert com

SESSION 2



Shipbuilding



Ship arrest in Vietnam

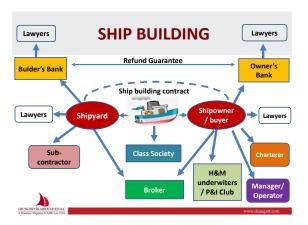


www.dzungsrt.com

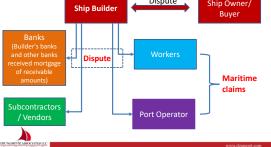
34

SHIPBUILDING HYUNDAI-VINASHIN SHIPYARD CO., LTD. SBIC SIDDUIT GITS TINGUASTICS Pharung Shipyard NVSRC NASICO

35



WHEN THE BUILDER HAVE FINANCIAL DIFFICULTIES Ship Builder Dispute Ship Owner/Buyer



37

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?



www.dzunesrt.com

38

SHIP ARREST IN VIETNAM

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



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

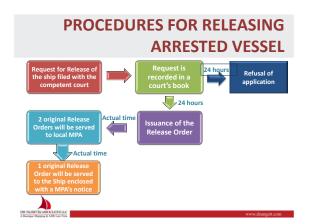
*In practice: (1) & (2), especially arrests for obtaining security for maritime claims: 90% of cases



40



41



FORMS OF SECURITY TO RELEASE ARRESTED VESSELS

- Escrow account
- Bank Guarantee
- · Letter of Undertaking
- * Some courts do not accept LOU



www.dzungsrt.com

43

THANK YOU

Dzungsrt & Associates LLC

A Boutique Shipping and ADR Law Firm Website: www.dzungsrt.com

Dang Viet Anh | Managing Partner E: anh.dang@dzungsrt.com Hotline: + 84 983 467 070 Nguyen Thi Thu Trang | Counsel E: trang.nguyen@dzungsrt.com T: + (84-24) 3772 6970



www.dzunesrt.com