

Ship Financing and Maritime Law Conference 2010
At Singapore on 24-26th March

Overview of Japanese Maritime Law

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Jurisdiction of Japan

United Nations Convention on the Law of the Sea (UNCLOS).

- Territorial Sea (12 miles)
- Contiguous Zone (24 miles)
- Exclusive Economic Zone (200 miles)

Foreign Ship Navigation Law effective on 1st July 2008

- control of foreign vessels navigating in territorial sea
 - innocent passage only in territorial sea
 - to navigate continuously and expeditious
 - boarding investigation by Coast Guard to suspicious navigation



Crime on Vessel

M/V TAJIMA

- Panama flag, owned by Japanese company
- A Japanese crew killed by Pilipino crews on the high sea off Taiwan on April 7, 2002
- Japan had no criminal jurisdiction
 - crime took place on foreign vessel on the high sea
 - suspects had foreign nationality
- Philippine had no criminal jurisdiction
 - murder by own nationals out of jurisdiction
- Panama had criminal jurisdiction
- Master detained suspects with his own authority
- Vessel stayed long time until suspects were delivered to competent authorities



Environmental Law

1. MARPOL 73/78
 - Ocean Pollution Prevention Law

2. 92 CLC / 92FC / 2003 Protocol
 - enacted as Oil Pollution Damage Compensation Law

3. Bunker Convention
 - effective Nov. 21, 2008 but Japan not yet ratified.
 - however, reflected in Oil Pollution Damage Compensation Law

4. HNS Convention
 - adopted in May 1996 but not effective.
 - incorporate OPRC-HNS Protocol 2000 into Ocean Pollution Prevention Law



Charterparty

1. Governing law clause in C/P

- English law clause
- Japanese law clause: mostly between domestic parties without any foreign interests being involved

2. Collect of hire by Owners

- off-hire
- set off against other claim

3. Withdrawal

- In case of Charterers' failure to pay hire under Japanese law Owners are entitled to withdraw the vessel immediately?



Bills of Lading

1. Hague-Visby Rule / Japan COGSA

- Carriers' obligation
 - from receiving to delivery
 - tackle to tackle

2. Carriers' Limitation of liability under COGSA

- A cargo claim filed in shipowners' limitation proceeding, first limited by package or weight under COGSA?



Collision

1. Applicable Rule
 - general civil law applicable
 - 1 year time bar
 - personal injury claim?
2. Liability on Charterers
3. In a total loss case
 - loss of earning is recoverable?
4. Limitation of Liability of Shipowners / LLMC 96



Personal Injury

1. Applicable law
 - general civil law

2. Loss of Life for foreigners
 - If incident occurs in Japanese jurisdiction, loss of life of foreigners is assessed, on Japanese standard or his/her own country's?



Ship Arrest

1. Arrest on claim with Lien
 - contract lien ... not admitted
 - arrest of sister vessel ?
2. Arrest on claim without lien
 - put up counter security
 - in cash or bond issued by banks in Japan
3. Release of vessel
 - there is a case vessel can not be released even if counter security is provided



Lien under Japanese law

1. procedural costs for judicial auction
2. costs for preservation of ship at last port
3. public dues levied on ship for voyage
4. pilot dues and towage dues
5. salvage remuneration and GA contribution
6. claims necessity for the continuance of voyage
7. wages of crews
8. claims from ship sale or construction, provided before voyage
9. claims under LLMC
10. claims under CLC
11. cargo claim under COGSA

- Claim for bunker supply charge creates maritime lien under Japanese law.



Enforcement of foreign mortgage

- Mortgage on the vessel registered in other countries can always be enforceable ?
- Execution of mortgage in Japan
 - period until judicial sale
 - costs



Provisional attachment

- Almost all the claims under C/P and MOA do not have maritime lien, and provisional attachment must be applied.
- Provisional attachment is allowed only;
 - (a) to vessels owned by debtors
 - (b) necessity of preservation of assets before judgment
- Counter security
- In case of C/P dispute,
If foreign shipowners have many vessels which trade in/from Japanese ports every day, preservation before judgment is necessary?



Litigation

1. Court system

- District court / Appeal court / Supreme court
- no special maritime court
- no judges who are familiar with maritime law
- quality of judges

2. Jurisdiction

- defendants' domicile
- place of obligation performance
- place where vessel stay

3. Proceeding

- Period
- Court fee / legal costs
 - recoverable?



Service of Claim/Complaint

- In filing a suit against a company in Japan, Plaintiffs must clarify, for service of Claim with a certain document, such as a certificate of the corporate register;
 - registered address of Defendants
 - name of representative director
- How can we obtain such certificate of a mere registered company (PSC) in other countries and detect the name of the director?
- How can the time for suit be secured if Claim is not accepted by court?
- “piercing of corporate veil” is available?

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