

The Act on Prevention of Collision of Ship B.E. 2522

History

Before the implementation of the Act on Prevention of Collision of Ships B.E.2522 (hereinafter referred to as "the Act"),the matter of collision of ships was governed by the Act for Prevention of Conllision at Sea B.E.2497 which was replaced by the Act in 1979.

The reason of implementation of the Act was that the Convention on the International Regulations for Preventing Collisions at Sea 1948 to which Thailand was a party,was repealed and replaced by the COLREG 1972 (the Convention on the International Regulations for Preventing Collisions at Sea 1972).It was,therefore,considered by the Royal Government of Thailand necessary to have the previous legislation amended.

As Thailand is a party to the Convention on the International Regulations for Preventing Collisions at Sea 1972,the principles in the Act and most of the rules in the Ministerial Regulations are in accordance with the said Convention.

Application

The Act mainly deals with the rules of navigation of every ship,regardless of her nationality,in Thai waters including the rivers,canals,lakes and other inland waters within the territory of Thai Kingdom.However,the Act also provides the rules for Thai ships during her voyage at high sea.

Regulations Issued under the Act

The Act comprises ten sections only.Therefore,the Act itself does not directly stipulates any rules for prevention of collision of ships but empowers the Ministry of Communications to issue the Ministerial Regulations. There are three crucial Ministerial Regulations issued under the Act.

The first regulation was issued in 1979,the same year of the implementation of the Act,Stipulating the rules for prevention of collision of every ship during sailing in sea waters within the territory of Thai Kingdom including the navigation of Thai ships at high sea.

The second regulation was issued in 1981,to govern the navigation of any ship in the rivers,canals,lakes and other inland waters within the territory of Thai Kingdom.The reason of issuing the second regulation was to provide the rules for prevention any collision of ships in canals,rivers,lakes and other inland waters which were not covered by the first regulation.

The third regulation was issued in 1990 to amend the first and the second regulations.There were many rules in the previous regulations,being amended by this third Ministerial Regulations.The cause of amendment was a necessity to make the rules accordant with the amendment of the Convention on the International Regulations for Preventing Collisions at Sea,1972 which was ratified in the year 1979 by the Royal Government of Thailand.

Besides the aforesaid international conventions,the Traffic Separation Schemes stipulated by the International Maritime Organization (IMO)are also recognised by the Act.

Ship

The Act applies to not only any motored and non-motored ships capable for water transport,but also seaplane and aircraft of every kind built to move on the surface of the water.

Ships' Liability

The rules no.2 of the first and the second Ministerial Regulations provide the same principles of liability that the ship or the owner, The Master or crew shall be liable for any consequence resulting from their neglect to comply with the Ministerial Regulations or their neglect of any precaution which may be required by the ordinary practice of seaman, or by the special circumstances of the case.

As the regulations provide only the rules for preventing collisions of ships, neither prescription of time for compensation arising out of a collision nor criminal penalty in case of violating the rules, is imposed by the Act and the Ministerial Regulations.

Under sections 7 and 8 of the Act, it can, however, be deemed that the Act is part of and must be applied with the provisions of the Act on Navigation in Thai Waters B.E.2456. As a result, any person who violates or fails to comply with the rules issued under the Act, shall be liable and punished with the same provisions of the Act on Navigation in Thai Waters B.E.2456 .

Owners' Limitation of Liability

Due to the following reasons, the owners, in a collision case, are not entitled under Thai law to limit liability ;

1. Thailand is not a party to the 1957 and 1976 Limitation Conventions. As a result, the tonnage and global limitation are not applicable in Thai Courts.

2. The matter of compensation for claim arising out of a collision is governed by the provisions of the Civil and Commercial Code in respect of "wrongful act" under which no limitation is provided.

As for cargo claims, the owners may, subject to the cause of collision, be entitled to limit liability for damage, loss and delay in delivery of goods under the provisions of the Carriage of Goods by Sea Act B.E.2534

Prescription of Time

According to the precedent of the Supreme Court judgement No.828/2499, the one-year prescription of time of the Civil and Commercial Code in respect of "wrongful act" applies to the claims arising out of a collision.

MARITIME LIEN

As a matter of Thai law, maritime lien is governed by the provisions of the Ship Mortgage and Maritime Lien Act B.E.2537. Part of maritime lien in the said Act commences from Section 22 to Section 28.

Actually, the provisions in respect of maritime lien under the said Act do not deal with the matter of right of retention or *cliene* under English law. In fact, it provides the preferential ranks among the creditors who have the rights of claim involving a ship.

1. Ranks of Maritime Liens :

The ranks of maritime lien are subject to the nature of right of the creditor's claim and are ordered as follows :-

- (1) a right of claim arising from working as the Master, a ship personal or a crew member of the ship ;
- (2) a right of claim concerning loss of life or injury with respect to any person but arising from operation of the ship ;
- (3) a right of claim on a basis for remuneration for salvage of the ship ;
- (4) a right of claim on a basis of wrongful act arising from operation of the ship, but this does not include a right of claim concerning the loss of or damage to cargo and things of passengers on board such ship.

However, it should be noted that despite the above ranks of maritime lien, it is stipulated under Section 25 of the same law that fees and expenses involving ship arrest or seizure shall be paid for prior to any other

maritime liens Section 25 is quoted as follows:-

"In the enforcement of maritime liens, the money derived from the sale of ship shall be first applied to the court costs, the expenses in arrest or seizure of the ship and her sale, the expenses in looking after the ship as from the time of her arrest or seizure, the expenses in repatriating the ship personnel to her domicile, and the expenses in allocating the money, in that order, and then the balance shall be paid to the creditor (s) with maritime lien".

Another point to be noted is the mortgage right. Such right is another kind of preferential right but comes after the maritime liens enumerated in the above (1)-(4) ranks. In other words, the mortgage right is in the fifth rank.

2. Claims which do not give rise to Maritime Liens :

2.1 cargo claims ;

2.2 claims under 1.(2) and 1.(4) in the above, arising from pollution by oil, radiation, radioactive, material and nuclear material.

3. Special Characteristics of Maritime Liens :

3.1 a maritime lien is always attached to the ship irrespective of whether or not a debtor under the right of claim is the owner of the ship and will not be extinguished by the transfer ownership over the ship ;

3.2 a maritime lien is established by the effects of law and is not required to register the lien.

4. Extinguishment of Maritime Liens :

4.1 In case the ship is sold ; if the creditor with the maritime lien fails to submit his claim to the transferee of the ship within a stipulated period which shall not be less than 60 days from the date of notice calling for submission of the claim being published in a daily newspaper, the maritime lien will be extinguished.

4.2 In other cases, a maritime lien shall be extinguished upon ;

(1) one year having elapsed from the date the maritime lien arose ;

(2) the ship being sold by court order, in which case the proceeds from the sale shall be subject to the enforcement of the maritime lien instead;

(3) the mortgage foreclosing the ship mortgage ; or

(4) a final judgment or order of the court to confiscate the ship.