

The Vessel Colliding with Wharf Situation in Taiwan Ports

This regards to what will happen when a vessel collides with wharf in Taiwanese port. We begin with a brief introduction of the 4 major international ports in Taiwan, ie: Keelung, Taichung, Kaohsiung and Mailiao. The former 3 are owned by the government and administrated by respective harbour bureaus, the latter is a BOT case which was built, and is currently operated by the Formosa Group. The port of Mailiao is peculiar in a way that it is designed and constructed by Formosa Plastics Group, though under the supervision of Industrial Development Bureau, Ministry of Economic Affairs. Unlike other ports being managed by harbour bureaus, the port is managed by Mailiao Industrial Port Management Company, who has its own rules to run business, for example, special permit is required for all personnel and vehicle to enter the port area. With respect to issues concerning harbour management however, the Mailiao Industrial Port Management Co will report to the Taichung Harbour Bureau as its executive supervisor.

Depending on the extent of damage, the harbour bureaus will demand for security when there is damage to wharf facilities, including jetty, fender and others. In Keelung, Taichung and Kaohsiung, Club LoU has not yet been considered an effective security. Efforts have been exerted in the past few years to persuade the harbour bureaus to reconsider international pool Club LoU but so far to no avail. The reason appears to be obvious that the local harbour bureaus are not familiar with the operation of P&I Club's letter of undertaking, nor do they know the financial strength of the P&I Club.

Once a demand for security is put forward, it is always the bank guarantee. Cash deposit is an alternative but is not favourable to the shipowners and thus not recommended. Normally, the harbour bureaus prefer a bank guarantee provided by the Bank of Taiwan. It was widely considered that considerable time is required to have a bank guarantee issued but in recent years, the Bank of Taiwan has become more willing to assist and expedite process. As long as the instructing bank from abroad can sort out the bank guarantee wordings with the Bank of Taiwan quickly, then it might take only a day or 2 to obtain the bank guarantee. The bank guarantee is subject to a certain valid time (normally 5 years). Given the time that is required to prepare a bank guarantee, attempts are always made to persuade the harbour bureaus to accept a 'makeshift' undertaking, either issued by the port agent or

by Correspondents, which undertakes to supplement the bank guarantee at a later stage. It is however subject to the harbour bureaus' discretion to agree to favour the shipowners with such interim arrangement.

If the damage is relatively small, the harbour bureaus will not ask for bank guarantee as they at times choose to repair the damage themselves and submit claim against the shipowners, via the port agent, later. However, the harbour bureaus will request either the shipmaster or the agent to sign a "damage to port facilities report" before allowing the vessel to leave and in all occasions the shipsiders are forced to comply in order to sail the ship without undue delays. Obviously, the possible time loss greatly outweighs a rather smaller risk.

Mailiao however, as aforesaid, has its own rules to follow. But the concept is basically the same. They insist on either cash deposit or bank guarantee and in latter situation, they will have to receive the original before allowing the vessel to leave. Failing to comply within certain period of time, they will proceed to arrest the ship in court without hesitation. Again, attempts will be made to persuade them to accept a makeshift solution, by providing a Club letter first with a promise, another letter, to supplement the bank guarantee in a certain period of time. However, certain terms might be inserted by Formosa in Club LoU draft, which are subject to Club's agreement. The chance of success is high in Mailiao because Formosa knows better than other state owned ports about P&I business. Formosa is running shipping business too having a fleet of chemical tankers, bulkers and container ships, and trading the ships world wide should give them the knowledge of P&I Club undertaking.

As to the LoU amount, it is always subject to the port authorities' own calculation. Calculation includes the repair cost, loss of use, administration fee, etc. As to repair, Keelung, Taichung and Kaohsiung will request the shipsiders to arrange themselves. We have only had one single occasion when the shipowners were allowed to pay a lumpsum money to the port authority and walk away. That was a massive collision in the port of Kaohsiung where the entire wharf was almost destroyed. The money involved was a few millions of US dollars, but the insurance company, not a P&I Club, chose to settle by a lumpsum although knowing that the level of claim was exaggerated and subject to arguments. In all the other occasions,

shipowners were requested to arrange repair as quickly as possible because the longer it delays, the greater amount of loss of use claim will result. In addition, it is always more cost effective for the shippers to retain a contractor for the repair. The other reason to do so is time consideration. For the government to conduct the repair work, the Government Procurement Act is to follow which will take months to go through the process.

Given the relatively difficult circumstances as aforesaid, it is recommended that once an incident incurred which might turn out to be a bank guarantee demand situation, proper communication be established immediately with the harbour bureau's (including Mailiao port office) representatives. The representatives might not be the harbour bureau's personnel, but someone who has influences on the harbour bureau in decision making process, for example; the legal consultant. At times, harbour bureau rely heavily on advices from their lawyer because, as mentioned above, the bureau's personnel are not very familiar with maritime practices. A recent case in Mailiao suggested that this approach had its significant effect. With the assistance of our in house legal consultant, who is familiar with harbour bureau's lawyer, the harbour bureau's lawyer succeeded in persuading his Clients to accept a Club LoU as a temporary security which will be replaced in 1 week or so time by a local bank guarantee. Another example saw the efforts of both our lawyer and local surveyor, who were familiar with the harbour bureau staff in charge, turned out fruitful. Again a demand for bank guarantee was put forward immediately after the ship hit the wharf. The P&I Club in Europe counted on our local connection to persuade the harbour bureau for an exception. In the end, an interim Club's LoU was accepted and vessel's onward cargo operation and timely departure were secured.

Turning to ship arrest process, under Taiwan law, a claimant may apply with the court to arrest a vessel to secure the satisfaction of their claim against the shipowner. It is unnecessary for the claimant to prove the claim but show the court its reasonableness and legitimacy, since a counter security bond has to be posted before the arrest can be effected. The bond ranges from one third to 100% of the claim amount, subject to the court's discretion. In addition, an execution fee of 0.8% of the claim amount needs to be paid to the court. The security bond as mentioned here is in fact, in almost all occasions, cash and cash check issued by the bank. Cash check prevails in most cases

given its nature of convenience. Theoretically, bank guarantee can be used as security bond but the arrangement of it can, as you know, be time consuming. The wording of bank guarantee is identical to the one we use in other events but it is subject to review/consent by the court. Generally, cash/bank check can be replaced by bank guarantee as security bond at later stage.

John Chou

Taiwan Maritime Services Limited