



The Chinese Supreme Court clarifies and simplifies countersecurity requirements

In December 2016 the Chinese Supreme Court introduced new provisions which set time limits for the review of applications made to attach assets other than ships and clarified the amount and form of countersecurity that is acceptable.

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Success in litigation is an empty victory when the losing respondent is unable to pay the judgement. That is why claimants seek to secure their claim by arresting a vessel or attaching other assets of the respondent to preserve the ability to recover on the judgement. It is only fair that the claimant also provides countersecurity to protect the respondent from a wrongful claim.

In March 2015, the Chinese Supreme Court clarified the countersecurity requirements for ship arrest. A summary of the judicial interpretation and effect on the countersecurity required of a claimant to arrest a ship can be found in our article [China's Supreme Court issues new judicial interpretation on ship arrest and judicial sale of ships](#) of 6 March 2015.

Attachment of assets other than ships

In this Insight we review the December 2016 series of provisions concerning the attachment of assets other than ships, for example, bank accounts, real estate, shares, and other property interests that may be located in China. The Supreme Court's new provisions set time limits for the review of applications and clarify the amount and form of countersecurity that is acceptable. In summary:

Article 4 provides that courts must decide within five days of the application whether to grant the attachment application or not. This is the first time that a clear time limit is imposed on the courts for this type of decisions. The time period may be further reduced to 48 hours if it is an urgent application.

Assets may be attached either prior to suit or once substantive proceedings have commenced. For attachments to preserve assets before proceedings are commenced, claimants must provide countersecurity equal to the security required of the claimant. Where the preservation of assets by attachment is in the course of substantive proceedings, Article 5 of the new provisions reduce the countersecurity to 30 per cent of the security amount requested, or if the assets to be attached are the subject matter of dispute, the amount of security shall not exceed 30 per cent of the value of the subject matter of dispute.

Where an attachment of assets is made prior to suit, the claimants have 30 days to commence the substantive proceedings. The pre-attachment security remains in place during this period. It remains unclear whether the court, on claimant's application may reduce security now that substantive proceedings are underway. Certainly, lawyers for claimants will make such applications given the significant reduction available when security is requested after proceedings are pending.

In addition to the traditionally recognized types of countersecurity such as a bank guarantee and cash, Article 7 extends the form of the acceptable countersecurity to guarantees issued by liability insurers. Current market information suggests that premium for such liability insurance may be in the range of 0.1 per cent to 0.5 per cent of the requested countersecurity amount on a case by case basis. The provisions are new and untested, yet the new alternative suggests that the process of providing countersecurity may now be less expensive and time consuming. It may also prove to be a positive development for overseas companies who usually have difficulty in arranging local counter-security acceptable to Chinese courts.

The new provisions do not go so far as to accept guarantees issued by insurers not established in China under Chinese regulations. The letters of undertaking issued by International Group Clubs are not accepted.

Article 9 provides that some claims do not require countersecurity, such as recovery of salaries, personal injury claims, and cases where the facts and law are sufficiently clear that there would be little possibility of wrongful attachment. Countersecurity can also be exempted if the applicant claimants are commercial banks or insurance companies or other financial institutions established in China under Chinese law.

Some Chinese courts have access to a database containing information about personal assets. The database is used by the courts to enforce judgements and is not otherwise available to the public. According to Article 11, applicant claimants may now apply to the courts to check the information on the above network if the applicants have difficulty in locating assets for attachment. However, such application is not available for attachments prior to suit, but can only be made when substantive actions have already been commenced.

A full copy of the [new Provisions](#) in Chinese (最高人民法院关于人民法院办理财产保全案件若干问题的规定) can be found on the website of chinacourt.org

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