

## SHIP ARREST IN JORDAN

By Omar N. Omar\*  
AL TAMIMI AND COMPANY  
o.omar@tamimi.com  
www.tamimi.com  
6th Circle, Emaar Towers, 11th floor,  
Tower A, PO Box 18055, Zip 11195, Amman  
Tel: +96265777415  
Fax: +96265777425



### 1. Please give an overview of ship arrest practice in your country.

The Jordanian Maritime Code does not regulate the conservatory arrest of ships. Therefore, the arrest of ships in Jordan will be subject to the Civil Procedures Law which gives any creditor the right to apply to the Court of First Instance (Summary Judge dealing with urgent matters) for a conservatory attachment of his debtor's assets to obtain security for his claim. The Court normally considers the arrest application of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter).

### 2. Which International Convention applies to arrest of ships in your country?

Jordan is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999.

### 3. Is there any other way to arrest a ship in your jurisdiction?

Yes. Ships may be arrested in Jordan in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings.

### 4. Are there alternatives e.g. saisie conservatoire or freezing order?

The precautionary seizure procedure above-mentioned (question No. 3) is an alternative to the saisie conservatoire procedure.

### 5. For which types of claims can you arrest a ship?

A ship may be arrested in the Jordanian territorial waters for any debt against the owner of the ship or the ship, provided that the debt is proved, on the face of things, to be serious and grounded.

### 6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Jordanian territorial waters can be arrested irrespective of the flag she is flying.

### 7. Can you arrest a ship irrespective of the debtor?

The ship can be arrested in the Jordanian territorial waters for any claim which the claimant has against the owner of the ship or the ship if he proves, on the face of things, that his claim is serious and grounded.

### 8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Jordan is possible since the creditor is given the right to arrest any of the assets of his debtor to secure the claim provided that he proves, on the face of things, that his claim is serious and grounded. As for the arrest of associated ships, this recourse is not available to creditors in Jordan.

### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The Jordanian Maritime Code does not give expressly the creditor of the charterer the right to arrest the ship for a debt resulting from the charterer's actions. Therefore, the position of the time charterer and bareboat charterer needs to be examined on a case by case basis while taking into consideration whether the charterer has a lien on the ship.

10. Do your Courts require counter-security in order to arrest a ship?

Yes a counter-security is required in Jordan.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for any maritime claim and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Jordan did not accede to any of the International Conventions relating to Maritime Liens. The Jordanian Maritime Code recognizes maritime liens and article 50 of the said code has listed them as follows:

- a) Judicial costs and expenses incurred in order to preserve the value for the benefit of the creditors generally (tonnage dues and lighthouse and port fees and other dues or fees of a similar nature) pilotage fees and guarding and maintenance costs from the time of the ship's entry to the port.
- b) Debts arising from the contract of employment of the master, crewmembers and other employees of the vessel.
- c) Charges due for assistance and salvage operations and for the contribution of the ship to general average losses.
- d) Indemnity for collision or arising from other perils of the sea and from damages caused to ports, docks and navigational routes, and compensation for injuries to passengers and crew and for loss or damage to cargo and baggage.
- e) Debts arising from contracts concluded, or operations carried out carried out by the master outside the ship's port of registration with his legal powers, and which are actually required for the preservation of the ship or for completing the voyage, whether or not the master is the owner of the ship, and whether or not the debt is owed to him, or the ship chandlers, repairmen, creditors or other contracting parties.
- f) Damages due to the charterers of the ship.
- g) The total of premiums due on insurance taken on the ship's hull, tackle and equipment for the last voyage insured, or for the last period of insurance on a term policy, provided that in both cases this total does not exceed one year's premiums.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Jordan, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Jordanian Embassy must be submitted to the President of the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Jordan is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Jordan prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The original documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into the Arabic language. Only official documents must be legalised up to the Jordanian Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Jordan.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

If foreign courts are given jurisdiction over the conflict, Jordanian courts will not accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the

court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form of either a bank guarantee issued by a local bank or cash deposited in the Court.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No they are not.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file an appeal against the arrest order before the Court of Appeal. Upon hearing the appeal, the Court may issue an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The appeal shall be submitted within 10 days from the date of issue of the arrest order. The judgment issued by the Court of Appeal may be appealed through normal channels.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must commence substantive proceedings within eight days starting from the date of issue of the arrest order.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

In principle, the concept of piercing and lifting the corporate veil is not recognised in Jordan.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Such sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

*\*In 2008 **Omar** joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries.*

*Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.*

*Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.*