

SHIP ARREST IN QATAR

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

The Qatar Maritime Code regulates the conservatory arrest of ships. The arrest application is submitted to the Court of First Instance (Summary Judge dealing with urgent matters). The Court normally considers the application of arrest 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) provided that the claim is proven based on the face of things. The arrest order may be challenged but this procedure is usually complex and lengthy.

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

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

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

The ship could be arrested in Qatar 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 against the ship.

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

There are no alternatives for the arrest of ships in Qatar as the Maritime Code that regulates the arrest of ships prevents the applicant from relying on other laws in Qatar.

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

In order to arrest a vessel in the Qatari territorial waters the creditor must have a maritime debt against the ship. Article 42 of the Qatari Maritime Code defines "maritime debts" as follows:

- a. Damage caused by the vessel by reason of a collision or otherwise.
- b. Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.
- c. Assistance and salvage.
- d. Contracts relating to the use or exploitation of the vessel under a charter party or otherwise.
- e. Contracts relating to the carriage of goods under a charter party, bill of lading, or other documents.
- f. Loss of or damage to goods or chattels being carried on board the vessel.
- g. General average.
- h. Towage or pilotage of the vessel.
- i. Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.
- j. Construction, repair or fitting out of the vessel, and costs of it being in dock.
- k. Wages of the master, officers and crew.
- l. Sums spent by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.
- m. A dispute as to the ownership of the vessel.
- n. A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.

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

Yes. A ship anchored within the Qatari 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 Qatari territorial waters if the claimant successfully proves that he has a maritime debt against the vessel.

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

The arrest of sister ships in Qatar is possible for any of the maritime debts listed under question 5 above with the exception of debts arising out of a dispute as to the ownership or co-ownership or possession of the vessel (See question 5(m) and (n) above). Regarding the arrest of associated ships, there is a great degree of uncertainty as, for the arrest to be successful, we need to prove to the judge the close link between the entity owning the ship that incurred the debt and the entity owning the associated ship.

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

The Qatar Maritime Code gives the creditor of the charterer who has control over the nautical navigation of the ship the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

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

No counter-security is required in Qatar.

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 a maritime claim and the arrest of ship for a maritime lien.

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

The Qatar Maritime Code recognizes maritime liens. In fact, the Qatar Maritime Code has listed the maritime liens in Article 33 as follows:

1. Judicial expenses that were spent to maintain the Vessel, sell it, distribute its price, cargo and port charges as well as other charges, public taxes of the same kind, and charges of pilotage and compensations for the damage that caused to the installations of the ports, docks and navigation routes, and expenses for removing navigation obstacles caused by the Vessel as well as expenses of sentry duty and maintenance since the entry of the Vessel to the last port.
2. Debts resulting from the employment contract of the captain, sailors and others relating to the Vessel with an employment contract.
3. Monies due for assistance and salvage, and the share of the Vessel in general marine average.
4. Compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.
5. Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the Vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the Vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors. Qatar did not accede any of the International Conventions relating to Maritime Liens.

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 Qatar, 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 Qatari Embassy must be submitted to 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 Qatar is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Qatar 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 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 Arabic language. Only official documents must be legalised up to the Qatar Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Qatar.

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

There is uncertainty in this area of law especially where the jurisdiction is given to a foreign court and not arbitral tribunal. Therefore, and if jurisdiction is given to an arbitral tribunal, we recommend our clients to commence arbitration within the two weeks period (as highlighted under question 23 below) and request from the court the stay of the proceedings until an arbitral award is issued. However, if jurisdiction is given to a foreign court, we may argue in court that Qatari courts have 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. The decision issued must be served upon the ship and the harbour master or the coast guard. If the defendant to the application wants to release the ship then he must deposit the security requested by the judge and request from the judge the release of the vessel.

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 either of 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 decide on the amount of the security that must be deposited by the defendant to the arrest application.

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

No P&I LOUs are unacceptable.

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 a grievance before the Court of First Instance who issued the arrest order. Upon hearing the grievance, the Court may make an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The grievance shall be submitted within seven days from the date of issue of the arrest order.

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 two weeks starting from the service of the arrest order on the ship.

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

There are no legal precedents on the liability for the wrongful arrest of a ship. However, 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 Qatar. The Qatari courts might consider piercing and lifting the corporate veil where conclusive proof is submitted to the court in relation to the fictitious character of the company owning the ship.

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

Such a 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.