

SHIP ARREST IN UNITED ARAB EMIRATES (QUESTIONS 1 TO 9)

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

Under the UAE Federal Maritime Law (Law No. 26 of 1981) ("FML") a right of arrest as provisional relief may be exercised in respect of a maritime debt. Claims constituting "maritime debts" are listed in Article 115 of the FML (see question 5).

An ex parte application is made to the Civil Court having jurisdiction over the port where the vessel is and the grant of any relief is entirely discretionary. A Plaintiff must provide prima facie evidence that it has a maritime debt against the Defendant, and that unless an arrest order is made, the Defendant is likely either to leave the Emirates permanently or to act in a manner which is likely to prejudice the Plaintiff's rights. The court will after examination of the application and the supporting documents filed arrive at a decision -often without hearing Counsel. The Court may require counter security from the Plaintiff in the form of a bank guarantee (see question 10). The court will also require the following from the Plaintiff:

- (a) An undertaking to pay all official fees and expenses relating to the towing or moving of the vessel or in any way connected with the arrest of the vessel including any amounts due to the crew;
- (b) An undertaking to compensate the owners of the vessel against any delay or damage that may arise from the arrest of the vessel if the arrest is held to be wrongful by a judgment of the court.
- (c) The Dubai courts have in the past been known to require confirmation from the port that the defendant is the owner of the vessel and that the vessel is within port limits.

The FML (Article 122) provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in certain circumstances even if the vessel does not fly the UAE flag (see question 16).

The FML (Article 325) contains certain provisions as to the jurisdiction of the courts in cases involving collisions. The UAE Civil Procedure Code of 1992 as amended by Federal Laws No. 30 of 2005, 10 of 2014 and Federal Law No. 18 of 2018 ("CPC") appears to confer jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter.

The UAE courts have granted arrest applications as security for arbitration proceedings in another jurisdiction. In addition to the powers of arrest conferred by the Maritime Law, the Port Authorities of each Emirate also have certain powers of arrest and detention. The UAE courts do not award legal costs other than in a token amount. Accordingly, the costs relating to the arrest and substantive claim will not be recoverable.

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

The UAE is not a party to any International Convention relating to arrest of ships. The arrest will be under the FML.

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

See questions 1 and 2 above. The arrest is under the FML.

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

The arrest is under the FML.

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

Claims which constitute "maritime debts" as listed in Article 115 of the FML. These are:

- (a) damage caused by a vessel as a result of a collision or other accident;
- (b) loss of life or personal injury 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 transported by a vessel;
- (g) general average;
- (h) towage or pilotage of a vessel;
- (i) supplies of products or equipment necessary for the use or maintenance of the vessel, in whichever place the supply is made;
- (j) building, repairing or supplying a vessel and dock dues;
- (k) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;
- (l) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
- (m) disputes over the vessel's ownership;
- (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;
- (o) a maritime mortgage.

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

Yes.

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

Yes, assuming that it is not a sovereign asset enjoying immunity in law.

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

The Plaintiff may arrest not only the vessel to which the claim relates, but also any vessel owned by the Defendant provided it was owned by him at the time the claim arose. The courts are not generally inclined to lift the veil of corporate personality. There is no right to arrest other vessels owned by a Defendant in the following circumstances (Article 116.2 and 117 of the FML):

- a) in a dispute regarding the ownership of the vessel;
- b) in a dispute relating to the co-ownership of the vessel, or the possession or use thereof, or the right to profits arising out of the use thereof;
- c) in a claim arising from a maritime mortgage;
- d) where the vessel was chartered by demise.

In relation to a claim against a vessel not owned by the owner but by the demise charterer, the Plaintiff may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demise charterer. The Plaintiff may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

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

See question 8.

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Bashir has considerable experience advising international and domestic banks on a wide range of matters including loan and credit facilities, syndications and regulatory matters and has advised on a number of mining and refinery projects as well as infrastructure projects. He was seconded to the regional office of an international bank for a period of 18 months, and acted as counsel for the Middle East and South Asia operations.

***Chatura Randeniya** joined Afridi & Angell in 2008. His practice consists primarily of dispute resolution, ranging from pre-litigation strategy to representation in substantive litigation and arbitration. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, and ICC arbitrations. He also works with local advocates on matters before the UAE Federal Courts, including the Federal Supreme Court in matters of national security, as well as the Courts of Dubai and Ras Al Khaimah.

Mr Randeniya advises on maritime and shipping disputes, real estate and construction disputes, and disputes relating to commercial transactions. He has advised ship owners, P&I clubs, and drydocks on a wide range of disputes including arrest of vessels and cargo claims. Prior to joining Afridi & Angell, Mr. Randeniya was in the private bar of Sri Lanka practicing in the Law Chambers of Dr Harsha Cabral, President's Counsel. He was also a visiting lecturer in law at the faculties of Law and Management at the University of Colombo.

SHIP ARREST IN UNITED ARAB EMIRATES (QUESTIONS 10 TO 26)

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

There are no provisions in the UAE Federal Law No. 26 of 1981 (the Maritime Code) setting out the arresting party's obligation to provide counter-security and this is dealt with at the discretion of the judge relying on article 252 of UAE Federal Law No. 11 of 1992 (the Civil Procedures Law) on the general rules of sequestrations which are applicable to all arrests, including ships arrests.

The UAE Courts will not accept P&I letters of undertaking as forms of security, so counter-security normally takes the form of cash or a local bank guarantee. Recently UAE Federal Courts (Fujairah, Sharjah, Khor Fakkan, Kalba, Abu Dhabi, Ajman, and Umm Al Quwain) and Ras Al Khaimah have been more and more consistent in requesting for counter-security, while Dubai Courts seem less eager for such guarantee, however there is no possibility to anticipate the quantum of such counter security required. In our experience though we have seen the Courts asking for counter-security in between AED 50,000 and AED 300,000 depending on the value of the claim amount.

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

The Maritime Code does not make differences between a maritime claim and a maritime lien. Accordingly, an arrest application by the court would only be accepted if the claim falls within the purview of a "maritime debt" as listed in Art. 115 of the Maritime Code (similar to the "maritime claim" under the 1952 Arrest Convention).

Article 84 of the Maritime Code lists instead the priority debts against a vessel.

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

The concept of maritime liens does not exist with regards to arrest of vessels, however, the Maritime Code refers to "maritime debts" (and priority debts on the vessels as explained above article 84 of the Maritime Code) which are somehow analogous 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?

If the arrest is urgent, the Urgent Matters Judge can be approached for the issuance of an arrest order within the same day (or maximum the day after) provided the documents listed in point 15 below are presented to the Courts. In practice however, the time frame will depend on the availability of (i) an original power of attorney, and (ii) translation of the supporting documents. If all these documents are available in hand, an arrest order can be granted in one day.

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

To arrest any vessel in the UAE, the claimant shall provide a POA to lawyers having right of audience before the UAE courts. A copy of the POA and other documents will suffice for obtaining the arrest, however if the POA comes from abroad or is a special POA, it is needed in original in order to finalise the attestation in the UAE before it can be presented to the Courts..

The UAE are in fact not a party to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention), so if the POA is executed abroad, it shall be notarised in the foreign country and then attested by the relevant Ministry of Foreign Affairs of the country of execution and by the UAE Embassy in that country. The POA so legalised will then need further attestation in the UAE by the Ministry of Foreign Affairs and Ministry of Justice, along with translation into Arabic by a certified legal translator. This could be a lengthy process and in case of urgency, these procedures are often an impediment to complete the arrest process.

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

As an absolute minimum, to file an arrest application in the UAE, the Court must be provided with the following documents as evidence of the prima facie claim

- a) a notarised and legalised POA;
- b) all the relevant documents indicating the debt together with Arabic translations by a certified legal translator;
- c) evidence that the ship is owned by the debtor or is a sister vessel, if applicable; and
- d) payment of the appropriate Court fees and counter-security (if applicable).

No other documents are necessary, although it may be good practice to also provide evidence that the vessel is in territorial waters, and only the POA is required to be notarised/legalised. It has to be stressed however that all documents need to be translated into Arabic by a certified legal translator.

There are provision for filing electronically in advance of the arrest application only with the Dubai Courts, while in all other courts the documents have to be physically presented to the court.

Further, apart from the POA (for which see answer 14 above), copies of the documents can be filed, subject however to the possibility for the respondents to request the claimant to provide the originals.

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

Once the arrest order is granted, the claimant shall mandatorily file substantive proceedings (i.e. proceedings on merits) within eight (8) days of an arrest order having been served, failing which the arrest will lapse.

The substantive claim should be file before the court having jurisdiction on the merits, and arresting the vessel in UAE per se is not bringing jurisdiction of the UAE Courts on the substantive claim to the UAE.

Jurisdiction of the UAE Courts over the substantive claim is regulated by Article 122 of the Maritime Code, which – in addition to the circumstances set out in the procedural laws of the UAE – provides for jurisdiction of the civil court granting the arrest on the subject matter of the claim, regardless of whether the vessel flies the UAE flag, if:

- a) the claimant's usual address or main office is in the UAE;
- b) the maritime claim originated in the UAE;
- c) the maritime claim arose during the voyage upon which the vessel was arrested;
- d) the maritime claim arose out of a collision or assistance over which the court has jurisdiction; and
- e) the claim is secured by a maritime mortgage over the arrested vessel.

Once the arrest is granted the aspect of jurisdiction can be argued at the scheduled court hearing and a decision and interpretation of the law rests with the court alone, however the UAE Courts tends to have an exorbitant jurisdiction and is thus unlikely they will decline jurisdiction on the merits making the arrest order lapse.

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

Article 118(2) of the Maritime Code stipulates that the Court shall cancel the arrest upon the presentation of a guarantee or other security sufficient to satisfy the debt. Please note in this respect that the provision of security under UAE law does not amount to an admission of liability nor does it deny the shipowner his right to limit liability.

If security cannot be provided then the shipowner's only other recourse will be to successfully resist the claim and obtain release of the ship but this will obviously result in a longer period of non-use of the arrested ship. It should be noted that the ship will not automatically be released, regardless of provision of security, if the arrest relates to a dispute regarding the ownership of a ship or the possession, use or rights to profits arising from it. In such an instance, the Court has the discretion to order that, upon provision of security, a third party management company takes control of the ship so that the owner can make commercial use of the ship but she will legally remain under arrest and under the control of a neutral third party.

Once the Court has issued its order to release the vessel (which is normally in the form of a letter), copies must be made and served as soon as possible on the concerned authorities, which normally are the Harbour Master, the Coast Guard and the relevant maritime authority.

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

There are three types of security which are commonly accepted by the Courts for a maritime debt, namely cash or a managers cheque deposited into Court or a bank guarantee from a UAE domiciled bank. A party may also offer alternative assets as security in lieu of the vessel.

Although the Maritime Code states that security for a maritime debt will be “reasonable”, the Courts in practice only accept security equivalent to the full value of the claim, which is not always a reasonably calculated claim.

19. Does security need to cover interest and costs?

No.

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

Although the wording of Article 118(2) is broad, a Club letter of undertaking (Club LOU) is not recognized in the UAE despite Club LOUs being considered good security in many jurisdictions. This position (similarly to a bank guarantee which needs to be issued by a bank domiciled in the UAE) is based on the fact that the P&I Clubs are not domiciled in the UAE, and therefore Courts are reluctant to accept security which has no value beyond the reputation of a P&I Club domiciled in a foreign jurisdiction. It is however obviously possible for the parties to agree on acceptance of a Club LOU, in which case the Courts will not be involved and the Claimants will need to approach the Court to withdraw the arrest upon receipt of the LOU.

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

It is usual for the ship to be released the same day or the next working day from issuance of the Court’s order, although much does depend on the timing of receipt of the release order. In our experience we have seen delay where the release order has been granted in the afternoon or too close to the weekend.

22. Is there a procedure to contest the arrest?

Once the party whose vessel has been arrested has been informed and notified of the arrest they will be able to register a grievance/objection to the arrest. This process is treated entirely separately from the main proceedings and is dealt with under the Civil Procedure Code. The grievance will seek to challenge the correctness of the procedure and/or facts of the arrest pursuant to the Maritime Code.

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

As mentioned above the claimants have eight (8) days to file the substantive lawsuit after the arrest is granted and served on the ship.

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

There is no provision within the law claiming for a wrongful arrest. The wronged party may not claim damages unless he can show that the application for arrest was (i) malicious, in bad faith and with the intention to cause damages, or (ii) insignificant in comparison with the damage caused to the owner of the vessel, conditions which are extremely difficult to prove.

Although there is no history of claims for wrongful arrest in the UAE, we have managed to obtain compensation in one instance, which can however be considered an extreme case as the arresting party produced to the court forged documents in relation to the ownership of the vessel in order to obtain the arrest of a sister vessel.

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

There is no provision in this sense in the UAE legal system, and the UAE Courts are not generally inclined to do so, hence it may prove very difficult to pierce or lift the corporate veil.

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

A sale of the vessel *pendente lite* is not possible if a vessel is arrested and proceedings are ongoing, unless the owners consent to such sale and a joint application is made to the court for the judicial sale (and not for a private sale).

If however the claimants are unsuccessful in making good their damages pursuant to their claim from the defendants and have a favourable judgement from the court, then the Maritime Code contains provision for the judicial sale of the vessel in execution of the judgment.

***Jasamin Fichte** is one of the region's most experienced legal experts. She founded Fichte & Co in Dubai in 2005. It has since grown into one of the Middle East's most influential law firms, achieving numerous landmark judgments that have revolutionised legal practice in the UAE. It has been awarded a raft of prestigious regional and international accolades, including Shipping Law Firm of the Year 2015 in the UAE, and Best Maritime Law Firm of the Year 2015 and 2016.

As part of her ongoing mission to improve awareness and interest in the region's maritime sector, Fichte is the Founder and President of the UAE chapter of WISTA, the Women's International Shipping & Trading Association, Chair of the Dubai Maritime Advisory Council, which advises the Dubai government on improving the city's shipping framework, and an editorial board member of shipping magazine MARASI.

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***Alessandro Tricoli** joined Fichte & Co in 2006 and is presently a partner at the firm. He specialises in ship finance, ship sale & purchase, construction and conversion. He regularly acts for owners, yards and banks in contentious and non-contentious matters relating to ship building, ship finance, and ship sale and purchase contracts. His interest also lies in ports development and operation, where he has advised port authorities and operators regarding the development and restructuring of their operations. Given his finance background, Alessandro's clients naturally include ultra-high net worth families and individuals, and their family offices or private investments companies, for whom he regularly advises on wealth structuring and management as well as wealth and legacy protection.

Alessandro's broad knowledge further encompasses many areas of the firm's contentious work, with a particular emphasis on disputes resolution in which he advises a number of the firm's clients. Alessandro was leading the team that obtained the first recognition and enforcement of a foreign arbitral award under the New York Convention by the Fujairah Courts and was the instructing lawyer in both *Fiske Firmin v Firuzeh* and *Gulf Eyadah*, the two representative cases in the DIFC Courts for the enforcement of foreign arbitral awards and judgments. More recently he was involved in the dispute around "Luna", the second largest expedition yacht in the world, and her arrest by the UAE courts following a freezing order issued by the DIFC courts.

Before joining Fichte & Co Alessandro practiced in Italy with a top-tier insurance law firm, during which time he also assisted the Chair of Maritime Law at the University of Bologna. He then moved to the UK to read postgraduate maritime law at the University of Southampton and gained international work experience in London. Alessandro is the chairman of the Emirates Maritime Law Association and has been consistently named in the Legal 500 EMEA (Shipping) since 2011 (a professional lawyer who "gives sound, relevant advice on the matter at hand", with clients "particularly pleased with his expertise and knowledge in the maritime field"). He is also included in the list of Who's Who Legal (Transport) and was recognized in 2015 as Shipping & Maritime Lawyer of the Year (UAE) by Finance Monthly. Alessandro is fluent in English and Italian.