

SHIP ARREST IN UNITED ARAB EMIRATES



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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). If an arrest order is granted a substantive suit has to be filed within 8 days of the grant of the arrest order. 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 Law No. 30 of 2005) ("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 suit 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 these 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 demised charterer, the Plaintiff may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demisecharterer. 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.

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

In Abu Dhabi an application for arrest before judgment is considered on its merits and the court usually does not ask for security from the Plaintiff. It has to be satisfied on the evidence that there are sufficient grounds to grant provisional relief. In all the other Emirates the court requires the Plaintiff to provide some form of security, usually in the form of bank guarantee equivalent to the full amount of the claim. In exceptional circumstances such security may be dispensed with. In the

case of claims by crew members for their wages, the courts will not insist upon countersecurity being provided. If required, the guarantee must be from a bank in the UAE.

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

A vessel can be arrested only in respect of a maritime debt as defined by Article 115 of the FML (see questions 1 and 5). Strictly there is no distinction drawn between a claim and a lien (but see question 12).

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

The FML recognises debts which confer priority rights against a vessel. These include claims for judicial costs incurred in protecting and selling a vessel, port dues, pilotage fees, compensation for damage to port installations, debts arising out of contracts of the crew, claims in respect of assistance and salvage, compensation due for collisions, debts arising out of contracts concluded by the Master in respect of necessities, breakdowns and damage conferring a right to compensation to the charterer of the vessel, premiums in respect of hull insurance. Self-help remedies are however not recognised and a court order will be required to enforce priority rights.

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

This depends on the available documentation. Arabic is the official language of the UAE and its courts and all proceedings are conducted in Arabic. All documents that are filed in court must first be translated into Arabic by a translator licensed by the UAE Ministry of Justice. A power of attorney in favour of a local Arab advocate will be required. This must be signed before the relevant UAE Notary. If signed abroad, it must be duly notarised, attested by the Ministry of Foreign Affairs and authenticated by the UAE Embassy in the country in which it is signed. Thereafter it requires further attestation by the UAE Ministry of Foreign Affairs and, if not in Arabic, translation into Arabic by a licensed translator and certification by the UAE Ministry of Justice. Once the documentation and power of attorney is ready the application can be made and the court would ordinarily make an order on it on the same or the next working day.

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

Documents in support of the claim/debt must be filed with the application. A power of attorney is required (see question 13).

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

Original documents are generally not insisted upon at the first hearing. Documents cannot be filed electronically.

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

Article 122 of the FML 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 any of the following circumstances (in addition to those set out in the procedural laws of the UAE) even if the vessel does not fly the UAE flag:

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

Under the CPC, the UAE courts have jurisdiction to hear actions against nationals and foreigners having a domicile or place of residence in the UAE. In respect of claims against foreigners who have no domicile or place of residence in the UAE, the UAE courts have jurisdiction in certain circumstances including where the cause of action accrued in the UAE.

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

The substantive suit must be filed within 8 days of the grant of the arrest order.

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

An arrest will generally be regarded as wrongful if it is subsequently held by the court that the Plaintiff obtained the arrest order maliciously, in bad faith and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the Defendant who claims damages for wrongful arrest. This is an uphill task.

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

The UAE courts are not generally inclined to lift the veil of corporate personality.

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

The ship cannot be sold pendente lite. An order for the sale of a vessel is made once a final judgement has been rendered against the vessel and an order for the arrest of such vessel has been confirmed. The order stipulates the price at which the vessel is to be sold, and the date on which the sale is to take place. The FML contains provisions concerning the conditions upon which the vessel can be sold, the public auction for the sale, including requirements as to publication of the notice of the auction, the information to be contained in it, service of the same, time limits for the sale, the number of auctions to be held to achieve a sale for the reserve price determined by the court etc.

