

SHIP ARREST IN KUWAIT

By Zeina Wakim & Ahmed Rezzeik*

AL TAMIMI AND COMPANY

z.wakim@tamimi.com

www.tamimi.com

Khaled Bin Al Waleed Street, Sharq , Al Dhow Tower,

16th Floor , PO Box 29551, Safat 13156 , Kuwait City

Tel: +96522966420

Fax: +96522966424

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

The Kuwaiti 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?

Kuwait 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?

Ships could be arrested in Kuwait 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 these alternatives e.g. saisie conservatoire or freezing order?

There are not alternatives for the arrest of ships in Kuwait as the Maritime Code regulated the arrest of ships in specific which prevents the applicant from relying on other laws in Kuwait.

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

In order to arrest a vessel in the Kuwaiti territorial waters the creditor must have a maritime debt against the ship. Article 73 of the Kuwaiti Maritime Code defines "maritime debts" as a debt arising from the following:

- 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 charterparty or otherwise.
- e. Contracts relating to the carriage of goods under a charterparty, 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.

o. Maritime mortgages.

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

Yes. A ship anchored within the Kuwaiti 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 Kuwaiti 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 Kuwait 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 or mortgage on the vessel (Question 5(m), (n) and (o) above). Arresting ships in associated ownership is also possible if the debt is related to the ship. 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 Kuwait 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 needed to arrest a ship in Kuwait.

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

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

Kuwait did not ratify any of the international conventions related to maritime liens. The Kuwaiti Maritime Code recognizes maritime liens. In fact, the Kuwaiti Maritime Trade law has listed the maritime liens in Article 47 as follows:

a. 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.

b. Debts resulting from the employment contract of the captain, sailors and others relating to the Vessel with an employment contract.

c. Monies due for assistance and salvage, and the share of the Vessel in general marine average.

d. 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.

e. 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.

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

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Kuwait, 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 Kuwaiti 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 Kuwait is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Kuwait 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 Kuwaiti Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Kuwait.

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 Kuwaiti courts have jurisdiction over the substantive claim.

17. What is the procedure to release the 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 a bank guarantee issued by a local first class bank covering the value against which the vessel is arrested.

19. Does security need to cover interest and costs?

The security should cover the claimed amount in the arrest application.

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 a grievance before the Court of First Instance who issued the arrest order. Upon hearing the grievance, the Court may make an order revoking, confirming or modifying the arrest order and such judgment shall be enforceable through the normal channels. The judgment issued shall be appealable through normal channels.

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

According to the Kuwaiti Procedures law the applicant must, within eight day at the most from the date of the service of the arrest order, bring a claim before the court for the confirmation of his right and validity of the arrest, failing which the arrest shall be declared null and void.

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

Yes. The claim of wrongful arrest will 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?
Potentially yes depending on the type of company.

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

**Zeina has graduated from the University of Southampton in 2007 and has practised maritime and transportation law for more than 7 years. She acts for clients in a wide range of contentious and non contentious matters in her field of expertise including ship arrest, maritime claims, charterparty disputes and ship finance. She is member of the Women's international Shipping and Trading Association in Lebanon and a member of the International Bar Association.*

**Ahmed is an experienced bi-lingual litigator. He is able to handle all legal procedures including preparing and reviewing commercial documents and written pleadings, as well as drafting and reviewing claim writs and memorandums. In his work, he has acted as a representative of several Protection and Indemnity Clubs (P&I CLUB), involved in a wide range of P&I related work along with all related services such as, cargo claims handling and settlements, personal injury claims, fixed objects damage claims, collision liability claims, assisting marine agent enquires in all legal obstacles occurring at the ports, advising on charter party issues such as drafting, interpretation, disputes and resolutions and general legal assistance.*