

SHIP ARREST IN UAE (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). 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 Laws No. 30 of 2005 and 10 of 2014 ("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 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 UAE (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. This is a difficult aspect of the process because the claimant does not know with certainty whether or not he will be required to put up counter-security and, if so, how much. The UAE Court 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 Courts have been more and more consistent in requesting for counter-security, however there is no possibility to anticipate the quantum of such counter security required.

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).

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" which are somehow analogous to maritime liens.

13. What lapse of time is required in order to arrest a ship since 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.

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. Please also note the POA shall be presented in original and no copies will be accepted by the Courts. The UAE are not a party to the 1952 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, levied as a percentage of the claim (3.75%) but capped at a total of AED 15,000.

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 no provision for filing electronically, thus documents have to be physically presented to the court. Further, apart from the POA, 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 days of an order, failing which the arrest will lapse. Jurisdiction 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 take 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. Which 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 days to file the substantive suit after the arrest is granted.

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. So far there is no history of any claim for a wrongful arrest in the UAE.

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 *pendente lite* injunction is not possible if a vessel is arrested and proceedings are ongoing, unless the respondents consent to such 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.

**Jasamin Fichte started her career as a maritime lawyer in international law firms in Hamburg and London. Prior to founding Fichte & Co she also worked at the leading Lloyd's of London insurance brokerage firm as legal counsel for Middle East, establishing an excellent network within the maritime and trading community and handling huge amounts of marine insurance claims, from salvage, collisions, wreck removal to cargo claims and personal injury. This gained her the reputation as one of the most experienced marine experts in the region and she is a regular speaker at conferences and contributes regularly to legal magazines. By opening Fichte & Co in 2005 Jasamin had the opportunity to look outside the legal box: if a lawyer understands the business side of a transaction it is her and it is for a reason that she has been counted amongst the 20 top lawyers in the Gulf. Jasamin is fluent in English and German.*

**Alessandro Tricoli specializes in ship finance, ship sale & purchase, construction and conversion and has acted for owners, yards and banks alike in contentious and non-contentious matters relating to ship building and ship finance contracts.*

Alessandro's broad practice further encompasses many areas of the firm's contentious work, with a particular emphasis on charterparty and cargo disputes in which he advises a number of the firm's shipping clients and P&I Clubs, allowing him to deal with local counsel in different jurisdictions as well as drafting counter expert reports for the UAE 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 enhance his knowledge of Maritime Law at the University of Southampton and gained international work experience in London. Alessandro is fluent in English and Italian.