

SHIP ARREST IN OMAN

By Omar N. Omar*
AL TAMIMI AND COMPANY

o.omar@tamimi.com

www.tamimi.com

Regus Business Centre LLC, Building 1340, Block 40
Plot No. 183, Street 327, PO Box 395 - P.C. 118, Muscat
Tel: +96893332341



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

The Omani Maritime Code regulates the conservatory arrest of ships. The arrest application must be submitted to the Court of First Instance. 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 one of the maritime debts listed in the Omani Maritime Code (please see below question No. 5). The arrest order may be challenged but this procedure is usually complex and lengthy and the quickest way to lift the arrest is to put-up a security (please see below question No. 18).

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

Oman 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 Oman 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 Oman as the Maritime Code that regulates the arrest of ships prevents the applicant from relying on other laws in Oman.

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

In order to arrest a vessel in the Omani territorial waters, the creditor must have a "maritime debt" against the ship. Article 188 of the Omani Maritime Code defines maritime debts as follows:

1. Damages caused by the vessel due to collision or other reason.
2. Losses of lives or physical injuries caused by the vessel or which has originated from utilization.
3. Aid and rescue.
4. Contracts for utilizing or chartering the vessel under a charter party or other contract.
5. Contracts for the carriage of goods under a charter party, bill of lading or other.
6. Complete loss of or damage of goods and luggage carried by the ship.
7. General average.
8. Towage of ship.
9. Pilotage of ships.
10. Supply of equipment and tools which are necessary for the ship's utilization or maintenance.
11. Building, repairing and equipping of the vessel as well as the ship as well as the expenses incurred thereon while in docks.

12. Wages of masters, officers and sea men and others who work on the ship under articles of agreement.
13. Sums spent by the master, shippers, charterer or agents for the ship's account.
14. Dispute over the ownership of a vessel or dispute over single ownership.
15. The rights over the profits resulting from her utilization.
16. Marine mortgage, especially every mortgage the origin of which enables the application of limitation of liability of the owner or her manager.

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

Yes. A ship anchored within the Omani territorial waters can be arrested irrespective of the flag she is flying.

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

Pursuant to Article 189 of the Omani Maritime Code, any debtor whose debt is qualified as a maritime debt may arrest the ship anchored in Omani territorial waters.

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

The arrest of sister ships in Oman is possible as long as the sister ship was owned by the debtor at the time the debt was incurred. However, if the debt resulted from a dispute over the ownership of the ship, the rights over the profits resulting from her utilisation and maritime mortgage (see above bullets No. 14, 15 and 16 listed under question No. 5).

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 Omani Maritime Code gives the creditor of the charterer who was given 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 Oman.

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?

Maritime liens are enumerated in Article 156 of the Omani Maritime Code. This Article reads:

"Lien right shall be considered so if it includes the vessel, the freight of a voyage during which the lien has originated, the accessories and the freight due on the day of the commencement of the voyage according to the following:

1. The legal expenses which were spent for keeping, sale and distribution of the price of the vessel, loading, lighthouses port and other fees as well as taxes of the same type, pilotage fees, indemnities for the damages sustained by port installations, decks and guarding and maintenance charges from the time of the vessel's entry into the last port.

2. The debts arising out of the terms of agreement of the master, seamen and others who work on the vessel under a contract.
3. The salvage monies payable for the aid and rescue as well as the vessel's share in the general average.
4. The indemnities payable for collisions, other navigational accidents, physical injuries to passengers, sea-men and others who work on the vessel under a contract and complete loss or damage of goods and luggage.
5. The debts arising out of the contracts concluded by the master and the operations he carries out, within the scope of his legal powers, outside the vessel's port of registration for an actual need which is required for the vessel's maintenance or continuing with the voyage, whether the master is the owner of the vessel or otherwise and whether the debt is payable to him, suppliers, lenders, persons who repaired the vessel or other contracted parties."

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 Oman, 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 Omani Embassy must be submitted to the competent Court 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 Oman is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Oman 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 Omani Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Oman.

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

The Omani courts will not accept jurisdiction over the substantive claim once the vessel has been arrested if the parties have agreed to give jurisdiction to a foreign court.

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 is either a bank guarantee issued by a local bank or cash deposited in the court.

19. Does security need to cover interest and costs?

The security needs to be equal to the amount included in the arrest order which will be assessed by the judge.

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

P&I LOUs are unacceptable by Omani Courts.

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

After the execution of the arrest, a period of 10 days is granted in order for the claimant to take legal action on the merits.

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?

This concept is not recognised in Oman.

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.