

SHIP ARREST IN IRAQ

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

Iraqi Transportation Law does not regulate the arrest of ships in specific. Therefore, the general legal principles of precautionary attachment stipulated within the Iraqi Law of Civil Procedures will apply to the arrest of ships in Iraq. According to this Law, a creditor will have the right to attach the assets of his debtor if he succeeds in proving that he has a credible claim against the defendant and has a legitimate indication that the defendant might dissipate his assets. The arrest application is normally submitted to the First Instance Court. The court will consider the application on a prima facie basis and the arrest order will be issued in chambers on an ex-parte basis.

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

Iraq 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?

As previously indicated, ships may be arrested in Iraq in reliance to the Civil Procedures Law (Article 231) which regulates conservatory attachment of assets in general (please see above question no. 1).

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

No. The saisie conservatoire procedure will apply to the arrest of ships in Iraq.

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

In general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and justified.

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

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

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

In general, a ship can be arrested for any claim which the claimant has against her current owner provided that the claim is proven, on the face of things, to be serious and justified. However, in certain circumstances especially where the claim is secured by a maritime lien, it could be argued in court that the creditor has recourse against the ship regardless of the owner's identity.

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

According to the Iraqi Laws, the application of arrest should be directed against the party responsible for the debt. There is no legal provision which gives the creditor the right to arrest a ship unless its owner is responsible for the debt. The arrest of a sister ship might be possible providing that both ships are owned by the same party who is a debtor of the arresting party. The arrest of associated ships is not possible in Iraq.

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

The arrest of a ship for a debt created by the charterer of the ship is impossible.

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

Yes. Counter-security is required by the court prior to the issue of the arrest order.

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?

The Iraqi Maritime Code does not recognize maritime liens in specific. In addition, Iraq did not accede to any of the International Conventions relating to Maritime Liens. Therefore, and pursuant to the general legal principles applicable in Iraq, the following debts shall give the creditor a maritime lien over the ship:

- a) The costs of a court action and other costs involved in the sale of the ship and the distribution of the sale proceeds.
- b) The taxes and fees due to the treasury.
- c) The maintenance costs of the ship and its machinery and other equipment.

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 Iraq, 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 Iraqi 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 Iraq is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Iraq 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 arrest application must be submitted manually to the competent Court of First Instance as electronic filing is not available. The documentation supporting the claim must be attached to the application and if this documentation is in foreign language it must to be translated into Arabic language. Only official documents must be legalised up to the Iraqi Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Iraq.

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

In principle, they will not.

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. 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 only type of security acceptable by the court is bank guarantee issued by a bank.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

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

P&I LOUs are unacceptable by Iraqi 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 to the judge that issued the arrest order. Upon hearing the grievance, the Court may order the lifting of the arrest order and such judgment shall be enforceable. This judgment may be appeal through the normal channels of appeal.

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

The applicant must, within eight days starting from the issue of the arrest order, file substantive proceedings before the competent court to sustain the arrest order, failing which the arrest order will be void ab initio.

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

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 Iraq.

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

In principle, it is not possible unless we succeed in proving to the Court that 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.*