

SHIP ARREST IN EGYPT

(QUESTIONS 1 TO 9)

By Omar N. Omar* & Hany Maamoon**
AL TAMIMI AND COMPANY
Cairo, Egypt
o.omar@tamimi.com
h.maamoon@tamimi.com
Tel: +202 2 3368 1000
www.tamimi.com



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

In this regard, we have to differentiate between two types of arrest. The 'conservatory arrest' and the 'executive arrest'. Both types of arrest are regulated by virtue of The Commercial Maritime Law No. 8 for the year 1990 ("**Maritime Law**").

The executive arrest is usually applied in enforcement of a final enforceable executable deed/judgment recognized by the Egyptian courts. Whereas, the conservatory arrest is considered to be a pre-judgment/ precautionary measure aimed to protect the creditor's claim with respect to maritime debts.

The third kind of arrest is that practiced by some of the governmental bodies, such as the port authorities which we can term the 'Administrative Arrest'. This type of arrest comes in multiple forms, sometimes by way of a letter addressed to the ship agents notifying them that the vessel is detained or even by verbal instruction.

However, the conservatory arrest is the most common in practice, and in this respect, please note that under the Maritime Law, a creditor is entitled to apply before the Court to obtain an order to arrest a vessel for security, if such claim is considered to be a maritime claim.

The application should contain a brief explanation of the "claim" and reasons he is applying for security and proof that the liabilities giving rise to the claim would come within the "maritime claims" as defined in the 1952 Brussels Convention.

The applicant must support his application with sufficient (original) documents to justify his claim and the application for security. The application is heard "in camera", i.e. none of the parties would be allowed to attend, and a decision is given on a documents-only basis. Although the presiding judge has the right to carry out brief investigations on the grounds upon which the application is made, in practice this rarely happens. No counter-security is necessary and the principle is not recognised. The judge, at his own discretion, is entitled to allow the order or reject the application without giving any reasons in any case. Normally it would not be possible to arrest a vessel during her transiting the Suez Canal or while anchoring OPL, as she must call inside a port in order to obtain/execute a court order to arrest her. It should be noted that the probability of granting conservatory arrest orders against vessels in general is 50/50.

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

Egypt has ratified and implements the International Convention on the Arrest of Seagoing Ships of 1952 "**Brussels Convention**". However, it has not ratified the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

As aforementioned, the Maritime Law recognizes only two types of arrest (Executive and Conservatory). However, in practice the Port Authorities, the Suez Canal Authority, the Egyptian Environmental Affairs Agency and a few other Sovereign entities do enjoy the power to detain a vessel without the need for obtaining any sort of judicial order. In our opinion, this kind of arrest is the most difficult when it comes to challenging it, as the laws do not specify the counter measures to lift such an arrest or detention and usually the ship's owners/operators are forced to reach an out of

court settlement with such a governmental authority in order to have their vessel released. It then falls to the owner to choose whether to initiate a recovery action or not. In criminal investigations into a vessel or her crew, vessels can be temporarily detained by virtue of orders issued by the District Attorney.

4. Are these alternatives e.g. saisie conservator or freezing order?

Aside from the detention orders mentioned in our answers above, no.

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

As aforementioned, under Article 60 of the Maritime Law, a creditor is entitled to apply for arresting a vessel for security, if such claim is considered to be a Maritime Claim as defined in the Maritime Law which were copied from the Brussels Convention; as set out below:

- (a) Port and water courses duties.
- (b) Expenses outlaid for removal, pick up, or lifting the wrecks and merchandise.
- (c) Damages caused by the ship by cause of collision, pollution or other similar marine incidents.
- (d) Casualties of lives or bodily injuries caused by the ship, as a result of using and exploiting it.
- (e) Contracts and deeds for using or chartering the ship.
- (f) Insurance on the ship.
- (g) Contracts for transport of goods by virtue of a rental contract or bill of lading.
- (h) Destruction of goods and luggage which transported by the ship, or their damages.
- (i) Salvage and rescue works.
- (j) Joint losses.
- (k) Tugging the ship.
- (l) Piloting works.
- (m) Supplies of materials or tools necessary for operating the ship or its maintenance, whatever the source of supplies being obtained.
- (n) Ship-building, repairing or furnishing the ship, and expenses incurred for the ship in dry-docks and dockyards.
- (o) Incurred salaries and wages for captain, ship-officers and the crew members by the shipping agencies.
- (p) Incurred money by the captains, Ship-forwarders, Ship-Charterers, or shipping agencies for the account of ship or ship-owners.
- (q) Disputes about the ownership of ship.
- (r) Disputes about the common ownership of ship, or about holding or exploiting and operating it, or the rights of ship-owners in common to the amounts resulting from using and exploiting the ship.
- (s) Marine mortgage.

This enumeration, as mentioned in the law is made on exclusive basis, and it clearly appears that the Egyptian legislator followed the same course as the one followed by the Brussels Convention.

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

Yes. Any ship anchored within the territorial waters of Egypt 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 irrespective of the debtor. However, the creditor must establish the relation with the debtor which gave rise to the maritime debt.

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

Article 61 of the Maritime Law provides that “Any person who adheres to one of the debts mentioned in the previous article may arrest the ship to which the debt relates or any other ship owned by the debtor, provided that it is owned by the debtor at the time the debt originated”. In other words, yes, sister-ship arrest is permissible.

Associated ship arrest is not permissible, however.

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

The claims arising from chartering the vessel are considered Maritime claims according to Article 60 of the Maritime Law.

Article 62 of the same law states that in cases where the ship's charterer was the party managing the vessel and is solely responsible for a maritime debt related to it, the creditor may enforce the arrest upon this ship directly related to the debt or on any other vessel owned by the charterer, and it is not permissible to arrest any other ship of the owner under that maritime debt. These provisions shall apply in all cases where a person other than the owner of the ship is liable for a marine debt.

****Omar** joined Al Tamimi & Company in 2008. He is a Partner, Head of the Transport & Logistics sector group and Head of the Insurance practice in the UAE. Omar is also a core member of the Projects sector group.*

Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. With a multinational team covering all the GCC countries, Egypt, Iraq and Jordan, his team advise many governmental bodies on the establishment and development of maritime and land transport laws, regulations and policies. In addition, Omar has distinctive experience in laws related to logistics and customs in the GCC.

Omar regularly advises on cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sales and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He has also drafted and advised on various types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover.

Omar is ranked in Band 1 by Chambers & Partners and ranked as a Leading Individual by Legal 500 EMEA for Shipping UAE. He is also an author of the UAE Vessel Registration and Mortgage Section in the internationally renowned Kluwer International Maritime Law Handbook.

Omar headed the team establishing and drafting the Emirates Maritime Arbitration Centre (EMAC).

He graduated from the University of Aberdeen in 1996, LLM International Law, and was admitted to the Jordan Bar Association in 1998. Omar is fluent in Arabic and English.

*****Hany** is a qualified lawyer with over 19 years of extensive legal experience. He is based in Port Said Office and he maintains excellent relationship with governmental bodies in Port Said and Alexandria.*

He is specialized in maritime law, and he deals with a wide range of high profile casualties, including collisions, oil pollution and groundings cases. He also deals with total loss, damage to ports' properties claims, stowaways and cargo claims. Hany handles international disputes for P&I Clubs and for a wide variety of clients worldwide in the shipping, insurance and international trade fields.

He is specialized in marine cases, shipping, arbitration and commercial litigation. His primary area of expertise and experience is wet and dry shipping.

(QUESTIONS 10 TO 26)

By Nabil Farag*
NABIL FARAG LAW FIRM
www.nbllaw.com

Port Said Office contact:
nbllaw@interlink.com.eg - nbllawf@gmail.com

Tel: +20 66 320 8888 / +20 66 3208963

Fax: +20 66 3208806 / +20 66 3208255

Cairo Office contact:
nbllawfirm@gmail.com – nabilfaraglaw@gmail.com

Tel: +20 224194407 Fax: +20 224194408

Mobile: +20 0127 332 2500



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

A counter security is not required under the new Egyptian Maritime and Trade Law No 8/1990.

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

There is no difference between the maritime claim and the maritime lien in respect to arresting a ship, which is subject to the same procedures.

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

The maritime liens are recognized by the Egyptian Maritime and Trade Law No 8/1990, also, the 1952 Brussels' Convention of the ship arrest is applied to ship arrest in Egypt.

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

The required time to arrest a ship starting from the moment of the referred documents arrival to our law firm is 24 hours.

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

A legalized power of attorney must be granted by the client (the claimant) who fills the arrest application. This power of attorney must be signed by the client and certified by the Apostille or the local authentication office then legalized by the Ministry of Foreign Affairs and by the Egyptian consulate in the client's country. This power of attorney must be translated into Arabic by the Ministry of Justice in Egypt, which takes from three to five days to be finished.

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 required documents relating these debts as indicated above in clause no (1) must be attached with the arrest application in addition to a certified translation into Arabic for all documents (Our law firm usually advises clients to send the documents by e-mail first to start the translation process urgently in order to save time for preparing the arrest application in proper time), e.g. in case the arrest application relating to outstanding invoices for insurance installments issued by a marine insurance policy. We have to present all outstanding invoices, Insurance Policy, and other documents such as mutual correspondents, Faxes, E-mails and other agreements which prove this debt).

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

The Egyptian courts accept jurisdiction over the substantive claim once the vessel has been arrested. Also all claims against the arrested vessel will be accepted in respect to the jurisdiction.

17. What is the procedure to release a ship from arrest?

According to the Egyptian Maritime Trade Law No 8/1990, Article No 63, in order to release a ship from arrest, an application of release must be submitted by the defendant to the chief of judge or his representative in his jurisdiction, attached with a bail or guarantee letter to be sufficient for settlement of debt.

18. What type of security needs to be placed for the release?

In spite of the article No 63, of The Egyptian Maritime Trade Law No 8/1990, didn't explain definitively the required type of security of bail or guarantee letter; however, the practice is indicated that a bank guarantee letter must be submitted by a known bank to be acceptable. Also, a deposit of cash money equivalent to the total debt will be acceptable too.

19. Does security need to cover interest and costs?

The security must cover the interest and 10% for the costs in case of the judge was included to the capital debt in the arrest warrant.

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

As referred above, the actual practice indicates that P&I LOUs are not acceptable at all.

21. How long does it take to release the ship?

It's usually takes from one to two days to release a ship from arrest starting from the date of submitting the application of release of the ship from arrest to the chief of judge.

22. Is there a procedure to contest the arrest?

The defendant has a right to contest against the arrest warrant before the summary execution court whether the arrest was executed or not yet. The defendant also has a right to consent against the plenary trade court through 10 days starting from the date of commencement of execution of the arrest. So, the judge can cancel the arrest warrant or amend it, Article No 197, of the Egyptian procedural law.

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

The Egyptian Maritime and Trade law No 8/90 gives the claimant 8 days exactly to take legal action on the merits starting from the day of arrest, or otherwise the arrest will be cancelled by law. The Egyptian courts usually take time approximately one year to issue her award in the legal action of merits.

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

The claims for wrongful arrest are allowed and organized by the Egyptian Civil Law No 131/1948, article No 163, which indicated as follows:

“Every fault which caused damages to others shall require indemnity”

So, the wrongful arrest is protected by the Egyptian Civil Law, and if someone arrests a vessel by wrong or by false documents. The claimant will be claimed by the ship-owners, Charters or operators to pay them all damages incurred as a result of the wrongful arrest. These damages will be determined by the court which has all rights and free to assume the value of damages including fines, incurred port dues and all other incurred expenses caused by this wrongful arrest.

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

As a basic rule, the shareholders of a company with limited liability are not personally liable for the obligations of the company, but, the Egyptian maritime and trade law is organizing this point on the basis that rules of Egyptian trade law, which is dependent on the type of company, so that if the ship-owner's company was established as a "Joint stock company", then the shareholders will not be personally responsible for any obligations at all. However, if the ship-owner's company was established as a "corporate company", then the shareholders will be personally responsible for the obligations, and then the piercing and lifting of the corporate veil will be applied.

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

When a vessel has been arrested, the ship-owners can't sell it without the court's permission unless the arrest is removed. If the ship-owners were to sell the vessel while it is arrested, this sale contract is considered null and void.

**Our legal services and consultancies are presented to Ship-Owners, Charters, P&I Clubs, Marine Insurance & Reinsurance Companies, Ship Agents, Repairs, Suppliers, Building, Oil & Gas Companies, etc. Our legal services are included, Marine insurance and reinsurance claims, Charter parties liabilities, Bills of lading, Ship sale/Purchase contracts, Collision/Salvage and General damage liabilities, Oil pollution/ Casualties, Stowaways and Refugees, Cargo liabilities (Shortage/Loose/Damage and Delay of cargo, Ship's Arrest/Release, in all Egyptian ports, Crew detention, Costs and Fines, Disputes settlements, Legal defense, disputes before the all Egyptian courts, Disputes under voyage/time charters, Financial collapse, Bankruptcy, Collisions of ships, Salvage claims and marine casualties, Marine mortgages, Crew wages claims, Personal injury and death claims, Ship registration, Ship deletion, Ship delays, Custom's fines and demurrage, Customs clearance facilities, Assisting in import & export procedures, All aspects of shipping, marine and trade disputes, International Arbitration, Execution of international judicial and arbitration awards in Egypt.*