SHIP ARREST IN *IRAQ*

*By Omar N. Omar**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
www.tamimi.com
Flat 22, Building 106, District 213, Kindi Street,
Al Harithiya , PO Box 6051, Baghdad
Tel: +96415420558
Fax: +96415420598

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

The Iraqi Shipping Law does not specifically regulate the arrest of ships. Furthermore, there is no independent maritime law specializing in the provisions of ship arrest, and therefore the general legal principles of precautionary attachment stipulated in the Iraqi Civil Procedure Law apply to ship arrest in Iraq. According to this law, the creditor has the right to seize the debtor's assets if he succeeds in proving that he has a reliable claim against the defendant and has a legitimate indication that the defendant may dissipate his assets. An arrest warrant is usually submitted to the court of first instance. The Court will consider the application on its face and the arrest warrant will be issued in chambers on the basis of an ex parte application.

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

Iraq is not a party to the International Convention on Maritime Liens of 1952 or the International Convention on Arrest of Ships of 1999.

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

As previously mentioned, the arrest is subject to the general legal rules that permit the seizure of the debtor's assets as security for a debt. It is worth noting that, under Iraqi law, the arrest is divided into several types: precautionary/conservatory arrest under the Civil Procedure Law, which can be exercised before the right to the debt is established or during the litigation; enforcement arrest, which is imposed by the Enforcement Department based on a final court ruling against the shipowner or charterer; and administrative arrest, which is imposed by port authorities. This type of arrest is defined in the context of administrative procedures authorized to port authorities or within the scope of addressing crimes or incidents, i.e., within the port's authority to maintain state sovereignty.Article 30 of the Ships Registration Law No. 19 of 1942 granted port authorities the right to detain violating ships without prejudice to the right to litigation. See the above question 1).

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

No precautionary arrest will be applied to ships in Iraq.

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

In general, a ship may be arrested for any claim that the claimant has against the shipowner or the ship, provided that it is proven that the claim is prima facie serious and justified.

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

Yes. A ship docked within Iraqi territorial waters can be stopped regardless of the flag it flies.

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

In general, a ship may be arrested for any claim that the claimant has against its current owner, provided that it is proven that the claim is, on the face of it, serious and justified. However, in certain circumstances, particularly when the claim is secured by a maritime lien, it can be argued in court that the creditor has the right to recourse against the vessel regardless of the identity of the owner.

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

According to Iraqi laws, the seizure must be directed against the party responsible for the debt. There is no legal text granting the creditor the right to seize the ship unless its owner is liable for the debt. A sister ship may be arrested provided that both ships are owned by the same party indebted to the arresting party. Vessels associated with it cannot be detained in Iraq.

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

No seizure of a ship shall be permitted for a debt incurred by the charterer of the ship.

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

Yes. The court must provide counter-security before issuing an arrest warrant.

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 arresting a ship due to a maritime claim and arresting a ship due to a maritime lien.

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

Iraqi maritime law does not specifically recognize maritime liens. In addition, Iraq has not joined any of the international conventions on maritime privileges. Accordingly, and in accordance with the general legal principles applicable in Iraq, the following debts grant the creditor a maritime privilege on the vessel:

a. Court costs and other costs incurred in the sale of the vessel and the distribution of the proceeds of sale.
b. Taxes and fees due to the Treasury.
c. Costs of maintaining the ship, 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 submitted documents have been translated into Arabic by a sworn translator in Iraq, the vessel can be detained within 48 to 72 hours.

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

A duly certified and notarized power of attorney must be submitted to the Iraqi Embassy to the competent court of first instance with the arrest warrant. In addition, we must attach to the arrest application all documents supporting the claim against the vessel. In this context, it must be noted that the official language in Iraq is Arabic, which means that all documents in a foreign language must be translated into Arabic by a sworn translator in Iraq before 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 original documents are the debt instrument or contract, the power of attorney, and a certified judicial guarantee from within Iraq (usually real estate or banking). The arrest warrant must also be submitted manually to the competent Court of First Instance, as electronic filing is not available. Supporting documents for the claim must be attached to the application, and if these documents are in a foreign language, they must be translated into Arabic. Official documents must be attested only up to the Iraqi embassy in the place of issue and then attested by the Ministry of Foreign Affairs in Iraq.

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

The jurisdiction of Iraqi courts is determined based on what was specified in Articles 14 and 15 of the Civil Code, namely that one of the litigants is Iraqi or a foreigner residing in Iraq, or that the subject of the lawsuit (the ship) is located in Iraq, or that the contract was concluded in Iraq. Therefore, since the ship will be in Iraqi territorial waters, the jurisdiction will be with the Iraqi court in accordance with Article 15.

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

The ship is released by the applicant by means of a simple memorandum submitted to the Court in this regard. If the defendant wishes to request the release of the ship, he must deposit the guarantee specified by the judge and request him to issue an order for the release of the ship. Both of these must be submitted to the vessel and the port captain or coast guard, and the attachment can also be lifted by its owners or the captain if a claim based on the original right is not filed within 8 days.

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

A conditional bail in the amount of 10% of the claim amount, which shall be either certified by a notary public or deposited in the court fund.

19. Does security need to cover interest and costs?

The guarantee will be only 10% of the debt value as stated above.

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 ship's release time depends on routine procedures, during which the court's notice of release can arrive, as Iraq relies on regular mail for notices and communications. In our case, it is possible that be in two or three days.

22. Is there a procedure to contest the arrest?

The defendant or a third party may file an appeal to the judge who issued the arrest warrant. Within 3 days, and the court's decision on the appeal is subject to cassation by the losing party within 7 days, and thus the Court of Cassation's decision will be final and conclusive.

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 from the date of the arrest warrant, file a substantive claim before the competent court to uphold the arrest warrant, otherwise the arrest warrant shall be null and void ab initio.

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

Under the general principles of civil law, a claim for compensation for unlawful seizure may succeed if the claimant can prove the bad faith of the party who carried out the seizure and the losses resulting from the seizure.

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?

If the ship has actually been seized by precautionary seizure or enforcement seizure, the sale shall be carried out through the Enforcement Department in accordance with the Enforcement Law, by opening a file to claim the original debt and demanding the debtor to pay the debt within 7 days, otherwise the Enforcement Department will take possession of the ship and sell it after its value is estimated by specialized experts, then sell it and deliver the price to the creditor.

In 2008, **Omar joined the Transport & Insurance Department at Al Tamimi & Company and currently holds the position of Department Head, covering 9 countries. Ranked by both Legal 500 and Chambers, Omar's experience as a lawyer and maritime advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs in relation to claims. He has represented many clients in maritime 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 the author of the Ship Registration and Mortgage Section in the UAE in the Lloyd's International Maritime Law Handbook. He currently chairs the Emirates Maritime Arbitration Center team to establish the first Maritime Arbitration Centre in the UAE and the region.