

SHIP ARREST IN SAUDI ARABIA

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

The Kingdom of Saudi Arabia has recently introduced the new Commercial Maritime Law No. 179 for the year 1440H (the "Maritime Law"). Pursuant to Articles 74 -81 of the Maritime Law a party who is seeking to recover a maritime debt may do so through the commercial courts and obtain an arrest warrant against the vessel to prevent her from sailing. Further, the arrest warrant can be served upon any sister-ship belonging to the same registered owner.

The arrest application should be filed through the online court system - Najiz - or in person and, once accepted, the court shall give its decision within three days.

Note that it is not uncommon for proceedings to require the presence of Owners and/or their agents, granting an opportunity to dispute the merits of the arrest. This may change over time.

A Power of Attorney is mandatory and this often takes time to arrange prior to an arrest being contemplated.

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

KSA 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?

Ships may be arrested in KSA in reliance upon the Maritime Law only.

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

No, there are no alternatives outside of the procedures stated in the Maritime Law.

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

It is essential to have a "maritime debt" to make a ship arrest application. A "maritime debt" is defined in Article 75 of the Maritime Law, which stipulates that a debt is a "maritime" debt if it arises out of one or more of the following:

1. Damage caused by the vessel by reason of collision, pollution, or other similar maritime accidents;
2. Loss of life or bodily injury caused by the vessel or arising from the operation thereof;
3. Contracts relating to the operation or charter of the vessel;
4. Contracts relating to carriage of goods under a charterparty or a bill of lading;
5. Loss of or damage to goods and baggage carried by the vessel;
6. Rescue operations;
7. General average losses;
8. Towage of the vessel;
9. Pilotage;
10. Supply of materials or equipment necessary for the operation or maintenance of the vessel;
11. Construction, repair or fitting of the vessel, and its docking costs;
12. Wages of the master, officers, crew members, and maritime agents;

13. Amounts expended by the master, consignors, charterers, or maritime agents on account of the vessel or its owner;
14. A dispute over the ownership of a vessel;
15. A dispute in connection with the co-ownership, possession, or utilization of a vessel, or with the co-owners' rights tot he amounts resulting from utilization thereof in connection with the rights of co-owners to amounts arising from the exploitation;
16. A Maritime mortgage;
17. Fees and charges of ports and waterways;
18. Insurance of a vessel;
19. Costs of raising and removing wreckage or goods.

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

Yes. A ship anchored within the territorial waters of KSA 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 regardless who the debtor is. However, the creditor must prove the connection with the debtor that led to the maritime debt.

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

The Maritime Law article No. 76 provides that a party who has a maritime debt may bring a legal action against the ship which is responsible for the debt or any sister ship owned by the same registered ship-owner, the same will be applicable for the associated ownership. It may be possible to obtain a sister ship arrest even where the vessel is not owned by the same registered-owner – however, this is more difficult, and would require concrete evidence of the relationship between the parties.

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

The arrest of a ship for a charterer's debt is possible, provided that the charterer retains operational control over the vessel pursuant to which the maritime debt relates. Additionally, any other vessel which is directly owned by the charterer may be the subject of an arrest, pursuant to Article 77 of the Maritime Law.

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

Yes. The courts to require counter-security subject to the discretion of the court.

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 any maritime debt and the arrest of ship for a maritime lien as both are mentioned in the article 75 of the Maritime Law.

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

KSA did not accede to any of the International Conventions relating to Maritime Liens. However, the Maritime Law recognises maritime liens in articles 46 to 58.

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 KSA and a legalised PoA is in place, the ship can be arrested within 1 week. It is advisable to start the process as early as possible to expedite the proceedings as far as possible.

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 KSA 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 KSA is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in KSA 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 shall be submitted through the online court system and the documents shall be attached along with the application. In our experience, all the documents can be submitted electronically. However, the original POA will be required if the application is submitted via the Ministry of Justice judicial services center.

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

Yes, the court will accept it if the claimant file the substantive case within 8 days from the court order subject to article 79 of the Maritime Law which says “The creditor must bring the action for the debt and for a declaration the validity of the arrest before the competent court within whose area the arrest was imposed within the eight days following service of the notice of arrest on the master or the person standing in his stead, failing which the arrest shall be treated as void ab initio, and the operator of the ship or the person acting on his behalf shall have the right to obtain a judicial order annulling the arrest.

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. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request the issuance of 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 local 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 not recognised forms of security.

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?

Yes it is possible to contest the arrest. There may be occasions where notice of the arrest proceedings may be given to Owners, permitting them to contest the application before the courts. If the precautionary arrest order is given, then the Owners have a period of 15 days to appeal the decision.

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 may be possible but in very limited circumstances.

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

It is not possible, until securing a final judgement.

****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 advises 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..

****Ahmed Hashem** is a Partner and the Head of Shipping of the firm within the Kingdom of Saudi Arabia. Prior to joining the Jeddah office, Ahmed was a Senior Associate in Kuwait office for almost three years. Before that, Ahmed was a Head of legal in Gulf Agency (Egypt) Ltd.*

He has extensive experience spanning over twelve years in Maritime law in the Middle East including freight forwarder disputes, agencies, customs and insurance.

Ahmed is a skilled litigator, he has handled hundreds of cases either on Maritime cases or commercial, labor, Civil and arbitration.

Being a head of legal and Senior lawyer, he is responsible for providing specialist legal advice in respect of commercial, corporate, customs and Maritime law. This includes providing legal oversight and legal risk analysis in respect to the development of rules as well as negotiating, reviewing, coordinating, drafting and revising all contracts/ agreements / tenders. Drafting all legal documents (memos, notifications, and statements) that are relevant to running or potential claims to be submitted to the competent court. Negotiating, reviewing, coordinating, drafting and checking of contracts/agreements, which clearly reflect the commercial, technical and financial objectives of GAC. Draft and review other documents and materials where there may be legal implications and responsible for ensuring dual language drafting accuracy in documentation with legal implications.