

SHIP ARREST IN UNITED ARAB EMIRATES

(QUESTIONS 1 TO 9)

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(QUESTIONS 10-26)

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

The UAE introduced a new maritime law, Federal Decree Law 43/2023 (“the Law”), which replaced the 1981 Federal Maritime Law (“1981 ML”). The Law came into effect on 29 March 2024. The question of ship arrests is governed by the Law.

Under the Law, a right of arrest as provisional relief (a provisional arrest) may be exercised only in respect of a maritime debt pursuant to Articles 53 to 60, while the right to obtain an executory arrest of a vessel is governed by Articles 61 to 67. Where an order for provisional arrest is sought, an application must be filed with the civil court of the Emirate in whose jurisdiction the vessel is located. In the case of an executory arrest, the order of arrest may be obtained from the civil courts of the Emirate in which the underlying judgment was issued.

A provisional arrest of a vessel may be obtained only as security for a claim which qualifies as a ‘maritime debt’ within the meaning set out under Article 53 of the Law (see question 5). The plaintiff must provide evidence establishing a *prima facie* maritime debt against the defendant. An application for provisional arrest is granted at the discretion of the court, which will arrive at a decision after examination of the application and the supporting documents filed - often without hearing oral submissions by Counsel. The application is determined without notice to the defendant. The applicant is required to provide a financial guarantee as a precondition to obtaining a provisional arrest order.

The Law provides that a substantive claim must be filed by the successful applicant within five working days from the date of arrest of the vessel (which is now implemented by the courts in cases of arrest), failing which the provisional arrest shall be deemed null and void (as if it has never been issued). Where the parties have agreed to arbitrate disputes, evidence that arbitration proceedings have been initiated in respect of the substantive dispute should be submitted in by the successful applicant within the five working days.

A notable change introduced under the Law is that courts may now accept letters of guarantee issued by Protection & Indemnity Clubs (P&I) as security pursuant to which a vessel may be released from provisional arrest. Previously, letters from P&I Clubs were not accepted as security. Guarantees from recognized financial institutions (in practice, UAE banks) continue to be accepted as adequate security. However, pursuant to Article 57(2) of the Law, a vessel may not be automatically released from arrest upon the provision of security if the arrest was granted in connection with maritime debts arising from:

- a. dispute over ownership or possession of the vessel; and
- b. a dispute between the co-owners of the vessel in common concerning its use or distribution of its proceeds.

In such cases, the court may permit the party in possession of the vessel to use it, if sufficient security is provided.

The Law (Article 60) also provides that, without prejudice to an agreement to arbitrate between the parties, the civil court in whose jurisdiction the arrest took place shall be competent to decide the merits of the claim, even if the vessel does not fly the UAE flag, in any of the following circumstances (see question 16):

- a. if the plaintiff's habitual residence or head office is in the UAE;
- b. if the maritime debt arose in the UAE;
- c. if the maritime debt arose during the voyage in which the vessel was arrested;
- d. if the maritime claim arose out of a collision or an act of assistance over which the court has jurisdiction; and
- e. if the claim is secured by a maritime mortgage over the arrested vessel.

Article 240(1) of the Law makes provision with respect to the jurisdiction of courts in cases of collision. It provides that a claim arising from a collision may be asserted in any of the following courts:

- a. the court within whose jurisdiction the defendant is domiciled;
- b. the court having jurisdiction over the port of registration of the defendant's vessel;
- c. the court within whose jurisdiction the collision occurred; and
- d. the court within whose jurisdiction the arrest of the defendant's vessel took place, or of another vessel owned by the same party (if the arrest of such vessel is permissible), or the court within whose jurisdiction the arrest could have been made, and the defendant has provided a guarantee or other security in accordance with Article 57 of the Maritime Law.

Parties may agree to assign jurisdiction to a different court or to refer the matter to arbitration (Article 240(2)). However, Article 240(3) prevents parallel proceedings by prohibiting a plaintiff from initiating the same action before another court, unless the original lawsuit before one of the courts set out in Article 240(1) is first withdrawn.

Court fees payable for instituting an action before UAE Courts of First Instance depend on the value of the claim. Court fees are usually awarded to a successful plaintiff and are recoverable from an unsuccessful defendant. UAE courts do not award legal costs except in a token amount, which generally does not exceed AED 2,000.

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

The UAE is not a signatory to the 1926 International Convention regarding the Immunity of State-Owned Vessels, or the 1952 International Convention relating to the Arrest of Sea-Going Ships, or the 1999 International Convention on Arrest of Ships. The arrest of vessels will be governed by the Law.

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

No. An arrest order may only be obtained under the Law (see questions 1 and 2 above).

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

See questions 1 and 5.

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

Pursuant to Article 53 of the Law, a provisional arrest of a vessel may only be obtained to secure a 'maritime debt', which is defined as a claim arising out of any of the following:

- a. loss or damage resulting from the operation of a vessel;
- b. loss of life or personal injury occasioned by the vessel or arising out of the use thereof;
- c. salvage operations or salvage agreements, including where the vessel or its cargo cause imminent damage to the environment;
- d. damage caused by the vessel to the environment or the coastal strip or the interests in connection thereto, and any costs and expenses arising from avoiding, mitigating or eliminating such damages;
- e. costs arising from salvaging of a sunken, wrecked, stranded or abandoned vessel and the costs arising from its transportation, recovery, preventing its harmful effect, or the destruction thereof;
- f. any agreement relating to the use of a vessel, whether contained in a charterparty or other document;
- g. any agreement relating to the carriage of goods or passengers onboard a vessel, whether contained in a bill of lading, travel ticket or other document;
- h. loss or damage to goods or luggage carried onboard a vessel;
- i. general average;
- j. towing;
- k. piloting;
- l. goods, materials, supplies, fuel, equipment, or containers supplied to a vessel as well as services provided for its operation, management, preservation or maintenance;
- m. construction, reconstruction, repair, conversion or equipping of the vessel;
- n. ports, canals, harbors and other waterway charges;
- o. wages and other amounts due to the master/captain and crew members for their work onboard the vessel, including repatriation expenses and social insurance contributions payable on their behalf;
- p. amounts paid on behalf of the shipowner or its operator;
- q. insurance premiums on the vessel and its Takaful insurance contributions that are payable by the shipowner, its bareboat charterer or anyone acting on their behalf;
- r. any commissions, brokerage, or agency fees payable by the shipowner, bareboat charterer, or anyone acting on their behalf;
- s. any dispute over ownership or possession of the vessel;
- t. any dispute between co-owners of the vessel in common concerning its use or distribution of its proceeds;
- u. mortgage of the vessel or any other real security encumbering it; and
- v. any dispute arising out of a contract for the sale of a vessel.

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

Yes.

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

Yes, assuming that it is not a sovereign asset enjoying immunity in law.

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

Pursuant to Article 54 of the Law, a plaintiff may arrest not only the vessel to which the claim relates, but also any other vessel owned by the defendant at the time of filing the application to arrest the vessel. The UAE courts are not generally inclined to lift the veil of corporate personality, and therefore, sister ships owned by subsidiaries of the defendant may not be arrested. Article 54 expressly provides that it shall not be permissible to impose a provisional arrest on a sister vessel (i.e., other than the one to which the debt relates) if the 'maritime debt' relates to any of the following:

- a. a dispute over ownership or possession of the vessel;
- b. a dispute between the co-owners of the vessel in common concerning its use or distribution of its proceeds;
- c. a mortgage of the vessel or any other real security encumbering it; and

- d. a dispute arising out of a contract for the sale of a vessel.

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

Pursuant to Article 55 of the Law, where the charterer of a vessel is solely responsible for the maritime debt, a provisional arrest may be imposed on that chartered vessel, during the period of the charter, or any other vessel owned by the charterer. However, a provisional arrest may not be imposed on any other vessel owned by the owner of the chartered vessel.

****Bashir Ahmed** joined Afridi & Angell in 1988. He advises clients on cross-border, maritime, general corporate and commercial, private equity, and banking matters. His maritime practice involves advising ship owners and P&I Clubs, dry docks and a number of ship repair companies on shipbuilding contracts, arrest of vessels, cargo claims, as well as advising on disputes. He represents a number of banks on ship financing transactions.*

Bashir has considerable experience advising international and domestic banks on a wide range of matters including loan and credit facilities, syndications and regulatory matters and has advised on a number of mining and refinery projects as well as infrastructure projects. He was seconded to the regional office of an international bank for a period of 18 months, and acted as counsel for the Middle East and South Asia operations.

****Chatura Randeniya** joined Afridi & Angell in 2008. His practice consists primarily of dispute resolution, ranging from pre-litigation strategy to representation in substantive litigation and arbitration. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, and ICC arbitrations. He also works with local advocates on matters before the UAE Federal Courts, including the Federal Supreme Court in matters of national security, as well as the Courts of Dubai and Ras Al Khaimah.*

Mr Randeniya advises on maritime and shipping disputes, real estate and construction disputes, and disputes relating to commercial transactions. He has advised ship owners, P&I clubs, and drydocks on a wide range of disputes including arrest of vessels and cargo claims. Prior to joining Afridi & Angell, Mr. Randeniya was in the private bar of Sri Lanka practicing in the Law Chambers of Dr Harsha Cabral, President's Counsel. He was also a visiting lecturer in law at the faculties of Law and Management at the University of Colombo.

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

Yes, Article 56 of the Maritime Code 2024 provides that it will not be permissible to arrest a vessel unless the arrest applicant provides a “financial guarantee” to cover the ship’s and crew’s necessary safety needs during arrest; these outlays are treated as judicial expenses. The financial guarantee form and value shall be at the discretion of the Urgent Matters Judge and can fluctuate in value on a case-by-case basis, and differ from emirate to emirate.

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

Arrest is available for any “maritime debt” listed in Article 53; maritime liens (referred to as “priority debts” in the Maritime Code) are a separate, preferred set of claims with statutory priority and specific rules on scope, priority, prescription, and extinction; both can found an arrest, but priority debts / liens carry enhanced priority for a period between 6-12 months and follow the ship/price upon sale per the statute.

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

Yes, liens are recognised under domestic law (Articles 29–37) , albeit termed as “priority debts”, with an enumerated list and priorities. The statute does not rely on a ratified maritime lien convention for recognition.

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

An application is filed for consideration by the Urgent Matters Judge. In most emirates the application is now filed online and applications are typically heard within 1-3 working days. Applications are not considered over the weekend.

The efficiency of the courts varies across the different emirates and can change over time. In practice, the time frame will depend on the availability of (i) a finalised power of attorney, and (ii) translation of the supporting documents. If all these documents are available in hand, an arrest order can often be procedured within 1-2 working days.

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

To arrest any vessel in the UAE, the applicant shall provide a POA to lawyers having right of audience before the UAE courts. The UAE is not a party to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (the Apostille Convention). Accordingly, if the POA originates outside of the UAE, it must be notarized in the place of issuance and then attested by the diplomatic institutions. Once legalized and couriered to the UAE, it will undergo attestation in the UAE by the Ministry of Foreign Affairs and Ministry of Justice, along with translation into Arabic by a certified legal translator. This process typically takes a minimum of one week and consequently often rule out urgent arrests where a POA is not already in hand.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

To file an arrest application in the UAE, the following documents must be provided, in Arabic:

- a) a notarized and legalized POA;
- b) all the claim documents evidencing the extant maritime debt, translated into Arabic by a certified legal translator;
- c) evidence that the debtor is the registered owner of the ship or the targeted sister ship; and
- d) payment of the appropriate court fee a provision of a financial guarantee.

It is good practice to provide evidence that the vessel is in territorial waters, and only the POA is required to be notarised/legalised. It has to be stressed however that all documents need to be translated into Arabic by a certified legal translator. Most emirates require filing of the arrest application online.

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

Article 60 stipulates that the court in whose jurisdiction the arrest order is made may seize jurisdiction over the substantive claim in specified cases (e.g., plaintiff domiciled in UAE; the maritime debt arose in the UAE; the maritime debt arose during the voyage when arrest was made; collision/salvage debts; mortgage-secured debt), without prejudice to any arbitration agreement. The court will want to see evidence of the commencement of substantive proceedings within five (5) calendar days from and including the date of the arrest order, failing which the arrest will be lifted.

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

The court must lift the arrest upon provision of “guarantee or other security” sufficient to satisfy the debt, except for ownership/possession and co-owner disputes (Art. 53(2)(S)–(T)), where the court may allow exploitation under security or appoint a manager. Absent the deposit of an acceptable guarantee or other security, the court will only lift the arrest upon confirmation of agreement between the parties / withdrawal of the arrest by the applicant or against a final and unappealable judgment / recognised and enforceable final arbitration award.

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

Article 118(2) Federal Law No. (26) of 1981 (“Maritime Code”) states that: “The civil court having jurisdiction shall order that the arrest be set aside upon presentation of a guarantee or other security sufficient to satisfy the debt.” In practice, the courts typically recognise three standard forms of security for a maritime debt: cash, a manager's cheque deposited in court, or a bank guarantee issued by a UAE-based bank.

In line with the Maritime Code, the courts tend to only accept security equal to the full value of the claim, which may not always be a fair assessment.

19. Does security need to cover interest and costs?

No, there is no requirement for the security to cover interest and costs in the UAE. However, we have seen instances where the court includes interest as part of the debt when submitted in the arrest application by the claimant. However, this varies on a case by case basis and as a result, if not worded carefully in the arrest application, could result in the rejection of the arrest.

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

The parties may agree for a P&I LOU to be accepted to lift an arrest, however, in such a case the UAE courts will usually not be involved and the parties will need to withdraw the request to arrest/precautionary attachment accordingly once the LOU is received. The UAE courts do not generally accept LOUs from P&I Clubs to lift arrests because P&I clubs are not based in the UAE. However, in some instances, we have succeeded, further to the parties' agreement, in obtaining the courts acceptance of the LOU from P&I Clubs to lift the arrests.

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

The timing of when the release order is received may impact when the vessel is released, i.e., where the release order is received in the afternoon or before a weekend, however generally a vessel is released on the same day or the next working day after the court order has been issued.

22. Is there a procedure to contest the arrest?

Yes, in accordance with the Civil Procedure Code, any party whose vessel has been arrested is entitled to file a grievance against the arrest. It is worth noting, that the court will review only two things in relation to a grievance; (a) the procedural elements of the arrest; and (b) whether the debt in question is a maritime debt in accordance with the law.

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

The claimant is provided with a time frame of eight (8) calendar days to initiate legal proceedings, running from the date that the arrest order is granted.

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

No, the legal framework of the UAE does not contain any specific provisions termed “wrongful arrests”. However, in the event of a wrongful arrest, an aggrieved party may seek compensation only if they can demonstrate to the court that the arrest was carried out with malicious intent or in bad faith, including submission of any fraudulent documents, amongst other things, with the intention of causing harm.

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

In the regulatory framework of the UAE, there are no legal provisions enabling the courts to pierce or lift the corporate veil. As a consequence, such proceedings are not mandatory and remain subject to the court's own discretion. As a result, it would be challenging for a claimant to seek such an action. However, it is worth highlighting that vessels owned by the same group owners will typically be regarded as sister vessels by the courts.

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

During the course of proceedings against a vessel, the applicable regulations do not provide for private sales of the ship. For a private sale to occur all debtors in relation to the arrest must come to an agreement on the private sale with no involvement of the court.

However, a judicial sale may be authorized if the vessel owners consent to the sale and a joint application is submitted to the court. The only other scenario in which a judicial sale may occur is when a claimant, following a court's judgment in their favour, is unable to recover damages from the defendant. In such cases, the Maritime Code empowers the court to order a judicial sale in favour of the claimant.

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.*

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