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.

Under the UAE Federal Maritime Law (Law No. 26 of 1981) ("FML") a right of arrest as provisional relief may be exercised in respect of a maritime debt. Claims constituting "maritime debts" are listed in Article 115 of the FML (see question 5).

An ex parte application is made to the Civil Court having jurisdiction over the port where the vessel is and the grant of any relief is entirely discretionary. A Plaintiff must provide prima facie evidence that it has a maritime debt against the Defendant, and that unless an arrest order is made, the Defendant is likely either to leave the Emirates permanently or to act in a manner which is likely to prejudice the Plaintiff 's rights. The court will after examination of the application and the supporting documents filed arrive at a decision -often without hearing Counsel. The Court may require counter security from the Plaintiff in the form of a bank guarantee (see question 10). The court will also require the following from the Plaintiff:

(a) An undertaking to pay all official fees and expenses relating to the towing or moving of the vessel or in any way connected with the arrest of the vessel including any amounts due to the crew;

(b) An undertaking to compensate the owners of the vessel against any delay or damage that may arise from the arrest of the vessel if the arrest is held to be wrongful by a judgment of the court.

(c) The Dubai courts have in the past been known to require confirmation from the port that the defendant is the owner of the vessel and that the vessel is within port limits.

The FML (Article 122) provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in certain circumstances even if the vessel does not fly the UAE flag (see question 16).

The FML (Article 325) contains certain provisions as to the jurisdiction of the courts in cases involving collisions. The UAE Civil Procedure Code of 1992 was most recently amended by Cabinet Resolutions Nos. 27 of 2018 and 33 of 2020 ("CPC") and appears to confer jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter.

The UAE courts have granted arrest applications as security for arbitration proceedings in another jurisdiction. In addition to the powers of arrest conferred by the Maritime Law, the Port Authorities of each Emirate also have certain powers of arrest and detention. The UAE courts do not award legal costs other than in a token amount. Accordingly, the costs relating to the arrest and substantive claim will not be recoverable.

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

The UAE is not a party to any International Convention relating to arrest of ships. The arrest will be under the FML.

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

See questions 1 and 2 above. The arrest is under the FML.

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

The arrest is under the FML.

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

Claims which constitute "maritime debts" as listed in Article 115 of the FML. These are:

- (a) damage caused by a vessel as a result of a collision or other accident;
- (b) loss of life or personal injury occasioned by the vessel and arising out of the use thereof;
- (c) assistance and salvage;
- (d) contracts relating to the use or exploitation of the vessel under a charter party or otherwise;
- (e) contracts relating to the carriage of goods under a charter party, bill of lading, or other documents;
- (f) loss of or damage to goods or chattels transported by a vessel;
- (g) general average;
- (h) towage or pilotage of a vessel;
- (i) supplies of products or equipment necessary for the use or maintenance of the vessel, in whichever place the supply is made;
- (j) building, repairing or supplying a vessel and dock dues;
- (k) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;
- (l) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
- (m) disputes over the vessel's ownership;
- (n) a dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof;
- (o) a maritime mortgage.

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?

The Plaintiff may arrest not only the vessel to which the claim relates, but also any vessel owned by the Defendant provided it was owned by him at the time the claim arose. The courts are not generally inclined to lift the veil of corporate personality. There is no right to arrest other vessels owned by a Defendant in the following circumstances (Article 116.2 and 117 of the FML):

- a) in a dispute regarding the ownership of the vessel;
- b) in a dispute relating to the co-ownership of the vessel, or the possession or use thereof, or the right to profits arising out of the use thereof;

c) in a claim arising from a maritime mortgage;
d) where the vessel was chartered by demise.

In relation to a claim against a vessel not owned by the owner but by the demise charterer, the Plaintiff may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demise charterer. The Plaintiff may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

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

See question 8.

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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 of office of an international bank for a period of 18 months, and acted as counsel for the Middle East and South Asia operations.
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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 Ariabic:
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 stipuldates 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 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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