



Arrest of Vessels in the UAE

Chatura Randeniya of Afridi & Angell provides an overview of the law relating to provisional arrest of vessels in the country.

The law relating to the arrest of vessels in the UAE is found in the UAE Federal Maritime Law (Federal Law No. 26 of 1981) (the “Maritime Law”), which was promulgated to govern maritime matters throughout the UAE.

The Maritime Law draws a distinction between ‘provisional’ arrest (sometimes referred to as a ‘preservatory’ arrest) and ‘executory’ arrests. The provisions relating to provisional arrests are contained in Articles 115 to 122 of the Maritime Law, while the provisions relevant to executory arrests are to be found in Articles 123 to 134 of the Maritime Law. In the event there are no legislative provisions made regarding a particular question, the UAE Courts may apply maritime customs, and general principles of justice, provided these customs and principles do not conflict with the provisions of the Islamic *Shari’a* (Article 8 of the Maritime Law).

PROVISIONAL ARREST OF VESSELS

A provisional arrest of a vessel may be sought as security for a maritime claim. Article 115 defines the term ‘maritime claim’ as being a claim arising out of any of the following:

- 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 luggage 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; and
- o) A maritime mortgage.

Article 115 of the Maritime Law specifically provides that an order for a provisional arrest may not be made

except for the enforcement of a maritime claim.

Pursuant to the provisions of Article 116 of the Maritime Law, a claimant may arrest not only the vessel to which the claim relates, but also any vessel owned by the defendant at the time the claim arose. The courts in the UAE 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:

- a) In a dispute regarding the ownership of a 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; and
- d) Where the vessel was chartered by demise.

MAKING AN APPLICATION FOR THE PROVISIONAL ARREST OF A VESSEL

Disputes involving maritime matters are heard by the ordinary civil courts. If an order of arrest is sought as a provisional remedy, it may be preferable to apply to the civil court of the Emirate where the vessel is located. In the case of an executory arrest, the order for arrest may be obtained from the courts of the Emirate which issued the judgment sought to be executed. Such an order of arrest must then be served on the vessel through the courts of the Emirate where the vessel is located.

Article 122 of the Maritime Law provides that the civil court in the jurisdiction where the arrest took place shall be competent to decide on the subject matter of the claim in any of the following circumstances (in addition to those set out in the procedural laws of the UAE), even if the vessel does not fly the UAE flag:

- a) If the claimant's usual address or main office is in the UAE;
- b) If the maritime claim originated in the UAE;
- c) If the maritime claim arose during the voyage upon 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.

The UAE Civil Procedures Law (Federal Law No. 11 of 1992 as amended) 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. Article 21(2) of the Civil Procedures Law states that the courts of the UAE shall be competent to hear a suit against a foreign defendant who has no domicile or residence in the UAE, if the case concerns 'property' in the state. The Arabic word for 'property' used in this provision is not the word used for land or real estate, but has a wider meaning, which includes any item or right of value. This should include, for example, funds

held in a bank account or a vessel within the territorial waters of the state. Article 22 of the Civil Procedures Law provides that the courts of the UAE shall be competent to order urgent or protective measures to be executed in the UAE, even if the said courts are not competent to hear the original case.

An application for the arrest of a vessel is ordinarily heard *ex-parte*. In order to obtain an order for the arrest of a vessel, a plaintiff must provide *prima facie* evidence that he has a maritime claim against the defendant. The court usually requires a letter from the Harbour Master confirming that the vessel sought to be arrested is within port limits. The granting of an arrest order under the Maritime Law is at the discretion of the court.

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The courts in certain Emirates may require the following undertakings 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 proved to be wrongful by a judgment of the court.

It is also in the discretion of the court whether to request a guarantee from the plaintiff and to set the value of the guarantee. If required, the guarantee must be from a bank in the UAE.

Article 285 of the Civil Procedures Law requires that the substantive suit, if not already filed, be filed by the plaintiff within eight days of the date on which the attachment was effected.

Although it is possible for a defendant to make an interlocutory appeal against an order of arrest, it is usually a very time consuming process and the chances of success are minimal. Consequently, the usual course is to provide security in order to obtain the release of the vessel. 📄



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