

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN THE UNITED ARAB EMIRATES

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in the UAE.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to arrest a ship in the UAE, he is strongly advised to consult a lawyer qualified to practise in that country.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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- 1. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?**
  - 1.1 A seafarer seeking to recover a maritime debt referred to in the UAE Maritime Code may arrest the vessel to relation to which the debt arose or any other vessel owned by the debtor at the time when the debt arose.
  - 1.2 The wages of a seafarer is one of the claims referred to as maritime debt which gives grounds for an arrest. The maritime debts referred to in the UAE Maritime Code are:
    - (1) damage caused by the vessel by reason of a collision or otherwise;
    - (2) loss of life or personal injuries occasioned by the vessel or arising out of the use thereof;
    - (3) assistance and salvage;
    - (4) contracts relating to the use or exploitation of the vessel under a charterparty or otherwise;
    - (5) contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents;
    - (6) loss of or damage to goods or chattels being carried on board the vessel;
    - (7) general average;
    - (8) towage or pilotage of the vessel;
    - (9) supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made;
    - (10) construction, repair or fitting out of the vessel, and costs of it being in dock;
    - (11) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;

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- (12) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
- (13) a dispute as to the ownership of the vessel;
- (14) 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
- (15) a maritime mortgage.

- 1.3 The UAE Maritime Code permits the arrest of any vessel owned by the debtor at the time which the debt arose. A court will not issue an arrest order over a vessel if the debt is not one of the maritime debts listed in the UAE Maritime Code.
- 1.4 There are no statutory restrictions regarding a seafarer's nationality or the flag state of a vessel which would prevent a ship arrest being approved.

## 2. What is the time limit within which a seafarer must start a claim for unpaid wages?

- 2.1 A claim brought by a crew member for payment of wages or dues will generally be a claim under an employment contract. The UAE Labour Law entitles employees to bring a claim in respect of entitlements for up to one year from the date on which the entitlement became due.
- 2.2 In practice, the UAE Labour Courts take a liberal approach in relation to time limits and have been known to accept claims which are filed within one year from when an employee's residence visa and work permit are cancelled, even if more than one year has passed since the relevant entitlement became due.
- 2.3 Under the UAE Civil Code, certain contractual claims may be brought for up to two years following the day upon which the right falls due, which includes a claim for payment of wages or dues.
- 2.4 Accordingly, a seafarer could seek to bring a contractual claim to benefit the longer time limit of two years, provided the entitlements are set out in the employment contract.
- 2.5 Where the time to bring a claim has lapsed a court may still hear the claim if the seafarer can show that there was a lawful excuse as to why an action was not brought within the stipulated time period. While there is no definition of 'lawful excuse', an unforeseen event or incapacity of the claimant would probably amount to a lawful excuse.

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2.6 If an overseas employment contract is subject to foreign law, a UAE Court would accept proof of foreign law, including the time limitation of that jurisdiction.

### 3. What documents are required to obtain an arrest of a ship?

3.1 The success of an arrest application is heavily dependent on the strength of the documentary evidence filed in support of the written application itself. All applications are made on paper. There are no oral applications before the UAE courts.

3.2 An arrest application must be supported by prima facie evidence of the relevant debt, i.e. the unpaid wages. There will also be a need to show that the vessel which is the target of arrest is owned by the debtor and that unless an arrest order is made, the vessel is likely to leave the UAE causing the applicant seafarer to lose his opportunity to secure his claim.

3.3 An arrest application is made on an *ex parte* basis before a judge of summary matters, usually in the Emirate in which the arrest is to be effected, although it could be filed before any of the UAE courts which has the competence to issue the arrest order.

3.4 Given that Arabic is the official language of UAE court proceedings, all court documents must be in Arabic, which not only means the application but also all supporting documents.

3.5 Certified legal translation (by a UAE court recognized translator) of all supporting documents must be obtained, including documents supporting a prima facie debt, giving rise to the right to arrest the vessel.

3.6 The arrest application must be supported by a Power of Attorney ('POA') in favour of the UAE advocate intending to file the arrest application. The POA will need to be signed by the arresting party before a UAE Notary Public. In the event the POA is executed outside of the UAE it must then be authenticated and legalised for use in the UAE.

3.7 The arresting party will also normally be required to provide counter-security, which is normally in the form of a bank guarantee or a letter of indemnity whereby the seafarer agrees to indemnify the shipowner for any damages suffered in the event of an unlawful arrest.

3.8 It is very unlikely in a legitimate claim for unpaid wages that an action for wrongful arrest would succeed.

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- 4. What are the costs of the arrest, including court expenses and other expenses?**
- 4.1 Court fees for filing an arrest application in the UAE vary from Emirate to Emirate, although they are fairly similar; for example, court fees in Dubai is 3.75% of the value of the claim up to a maximum of AED15,000.
- 4.2 In order for the arrest to remain valid the claimant needs to commence substantive proceedings within eight days of the arrest order, failing which the arrest will lapse.
- 4.3 Court fees for substantive proceedings similarly vary from Emirate to Emirate, although once again they are similar. In Dubai for example, the court fee is 7.5% of the value of the claim up to a maximum of AED30,000. Court fees for the Court of Appeal and the Court of Cassation stages are 1.5% of the value of the claim up to a maximum of AED6,000 and AED1,000, respectively.
- 4.4 In addition to court fees there will also be UAE's advocate fees for acting on behalf of the arresting party in relation to the attachment application and the substantive claim. Typically, the UAE advocate fees are charged as a lump sum or a percentage of the claim amount. It is common for an UAE advocate to request 50% of their fees in advance with the remaining 50% payable upon judgment, although this is subject to negotiation.
- 4.5 Additional disbursements which might also be incurred include, for example, legal translation fees and notary fees.
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
- 5.1 The party applying for an arrest can be required to lodge counter-security, but this is always subject to the discretion of the courts. Accordingly, given the potential size of claim (relatively modest) and the applicant (the seafarer), it is possible that the court might be minded to waive the need for counter-security, albeit this is not guaranteed.
- 5.2 Historically, the required security was in the form of a bank guarantee for the same value of the claim amount, but this is now more of an exception than a norm. Instead, courts now normally accept a simple letter of indemnity ('LOI') by which the arresting party merely agrees to be responsible for damages in the event of wrongful arrest.
- 5.3 The effect of the LOI is to indemnify the shipowner for damages suffered as a result of a wrongful arrest. The threshold to be awarded damages for an unjustified arrest is

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high as the injured party would need to demonstrate that the arresting party obtained the arrest order in bad, faith with no prospect of success and with the intention of causing damage to the shipowner or in violation of the law by misusing the process.

### **6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**

- 6.1 Simply because a UAE court may have jurisdiction to issue an arrest order does not necessarily mean that the UAE court also has jurisdiction to hear the substantive claim.
- 6.2 Pursuant to the UAE Maritime Code, a UAE court will have jurisdiction over the substantive claim if:
- (1) if the claimant has a usual place of residence or head office in UAE;
  - (2) if the maritime debt arose in UAE;
  - (3) if the maritime debt arose during a voyage upon which the vessel was arrested;
  - (4) if the maritime debt arose out of a collision or assistance over which the court has jurisdiction; and
  - (5) if the debt is secured by a maritime mortgage over the arrested vessel.
- 6.3 It is possible for a claimant to arrest a vessel for security only. If court or arbitration proceedings have already been commenced in another jurisdiction, the arresting party can ask the UAE court to stay the substantive proceedings pending judgment/ award in the foreign proceedings.

### **7. Will the crew and vessel be maintained/supported during the arrest?**

- 7.1 All costs and expenses associated in maintaining the vessel whilst under arrest will primarily be for the shipowner's account. If the shipowner fails to pay the costs and expenses, then these are unlikely to be paid by the court which can leave seafarers dependent upon charity from the likes of the Mission to Seafarers. If these expenses are paid, these will become a priority debt which will be recoverable from the proceeds of sale following a judicial sale.
- 7.2 As with judicial costs, costs and expenses incurred in maintaining the vessel including crew wages are a priority debt within article 84 and should be paid first before any unsecured creditor.

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- 8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?**
- 8.1 The shipowners are required to have at least a skeleton crew on board the vessel in order to operate, maintain, keep and care for the vessel whilst under arrest.
- 8.2 Arrangement of crew repatriation is primarily the responsibility of the shipowner. However, the shipowner would normally need to have a skeleton crew on board in order to operate and maintain the vessel while under arrest.
- 8.3 Subject to the relevant employment contract, the shipowner has an obligation to arrange repatriation of the crew member in the following circumstances:
- (1) the operator must return the crew member to the state if anything happens during the voyage which necessitates his disembarkation unless the disembarkation is by order of a foreign power in the port in which the vessel is lying, or by agreement between the operator and the crew member;
  - (2) if the crew member was engaged at one of the ports of the State, he shall be returned to that port unless it was agreed in the contract that the return should be to another port, and if he was engaged in a foreign port then he shall be returned at his own election either to that port or to any port in the State specified by him;
  - (3) a foreign crew member shall be returned to the port in which he was engaged unless the contract stipulates that he should be returned to a different port; and
  - (4) the obligation to return the crew member shall include the costs of transport, accommodation and subsistence during the period of his being returned.
- 8.3 The shipowner is not obliged to arrange a crew member's repatriation where the crew member does not want to be repatriated or if the crew member enters a new employment contract with the same shipowner or enters a new contract with another employer within a week after the termination of the previous contract.
- 8.4 On a practical level, if the seafarer is not going to be in the UAE when his claim is paid (e.g. out of the proceeds of sale of the vessel) he should ensure that the POA he gives to his lawyer is wide enough for the lawyer to receive, on behalf of the seafarer, sums awarded to him by the court.

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### **9. Do the seafarer's wages continue to accrue during the arrest?**

9.1 A seafarer's wages would normally continue to accrue even where the vessel has been arrested. The shipowner has in such cases an ongoing obligation to pay crew wages and to provide food and accommodation.

### **10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?**

10.1 There is no sale 'pendente lite' in the UAE. The vessel will only be auctioned and sold after judgment.

10.2 Where the arresting party has obtained a final and binding court judgment (there is an automatic right of appeal in the UAE), the arresting party can apply to the court for the judicial sale of the vessel.

10.3 It is difficult to predict how long it will take from the moment the court issues the arrest order to the distribution of the proceeds of sale, as much will depend on whether the debtor challenges the arrest and the substantive proceedings, and how the courts will deal with these points, including successive appeals by the parties to the Court of Appeal and thereafter to the Court of Cassation.

10.4 It would not be unusual for the court proceedings from the arrest application to the distribution of the proceeds to take two years.

### **11. How are the lawyer's fees for arresting the ship paid?**

11.1 The general principle is that commercial litigation is usually funded by the client personally e.g. the seafarer himself.

11.2 There are, however, non-governmental organisations, such as Mission to Seafarers, who will try to assist the seafarer as much as possible in various situations. Such assistance could be to provide food and accommodation, legal expertise and advocacy but would not, for example, normally extend to financial support for an advocate's fees.

11.3 Court fees are recoverable, but advocate's fees are not, save for a nominal sum of typically not more than US\$100.

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### 12. Are there any other procedures to enforce a seafarer's wage claim?

- 12.1 If the seafarer is employed under a UAE labour employment contract, then the seafarer can file a claim to the relevant UAE Labour Department who will call the parties to a meeting.
- 12.2 The aim of the meeting(s) is to establish what the main issues are and to consider whether the issue(s) can be resolved without recourse to litigation.
- 12.3 A seafarer may arrest a sister vessel owned by the debtor at the time the debt arose, save where the claim concerns disputes over ownership, joint ownership and mortgages, as here the party seeking to arrest is only entitled to arrest the vessel to which the debt refers. Associated vessels are unlikely to be not susceptible to an arrest. While the UAE courts are generally reluctant to pierce the corporate veil in order to ascertain the true ownership of the vessel, the arresting party will need to produce convincing evidence to satisfy the court that the vessel which is the target of the arrest is actually owned by the debtor.