

United Arab Emirates

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Attachment of Assets

- 1. What is the general nature and effect of judicial measures available for plaintiffs to obtain provisional relief affecting property of debtors to obtain security for judgments to be obtained (“attachments”)? Freezing property in place? Placing it in the custody of a third party, such as a court official, sheriff or marshal?**

(a) Interlocutory Attachment under the Civil Procedures Law

The UAE is a federation of seven emirates. The Constitution establishes the UAE as an independent sovereign federal Islamic state and provides for a federal court system. However, each constituent emirate has the right to maintain an independent court system. Currently, the emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain have joined the federal court system. The emirates of Abu Dhabi, Dubai and Ras Al Khaimah each maintain separate court systems.

The range of judicial measures available to the plaintiff vary depending on the nature and grounds of the claim.

Although various laws permit judicial measures to be undertaken, the single law¹ that captures the judicial measures available for plaintiffs is set out in the Civil Procedures Law (the “CPL”).²

¹ Although there are other laws that permit provisional relief and attachments subject to certain conditions, this is the main law governing the procedural attachment.

² Federal Law No. 11 of 1992 (as amended). All courts have jurisdiction to grant provisional attachment pursuant to the CPL as per Article 10 of the Federal Judicial Authority Law that provides:

“Federal courts shall have jurisdiction to resolve all disputes and crimes falling within their jurisdiction in accordance with the provisions of the Constitution and in the jurisdiction of any local judicial authorities transferred to federal courts upon request of the concerned emirate. The rules of jurisdiction of the federal courts shall be set out in the Civil Procedures Law, Criminal Procedures Law and other laws.”

The courts in Dubai are granted similar authority under the Federal Law No. (3) of 1992 on the Formation of courts in the emirate of Dubai in Article 4, which provides:

“Courts shall carry on their powers in accordance with:

Within the ambit of the UAE courts' jurisdiction, the CPL governs judicial measures and attachments with respect to all civil, commercial and personal claims. The main provisions of the CPL which apply to attachments are Articles 252 and 257. Additional provisions which apply to attachments were introduced through Cabinet Resolution 57 of 2018 (the "**Regulations**") and Cabinet Resolution 33 of 2020 made pursuant to the CPL.

The plaintiff (or prospective plaintiff) may request an attachment order for precautionary measures if he can establish the court's authority as set out in Article 252 of the CPL and/or Article 111 of the Regulations that grants the court authority to place provisional attachments against movables of the debtor in the cases and circumstances defined later or Article 257 of the CPL and/or Article 116 of the Regulations relating to assets in the hands of third parties.

Where the UAE courts have jurisdiction, the plaintiff's interest in the claim must be established before judgment is given. However, with respect to precautionary measures a *prima facie* case based on documentary evidence must be established.³

(b) Other Interlocutory Attachment

In addition to the provisional interim measures available in the CPL there are other laws in this jurisdiction that grant the right to apply for and/or grant provisional attachments, including:

(i) Federal Maritime Law

Under the UAE Federal Maritime Law of 1981⁴ ("FML") the courts are given the authority to exercise their discretion in granting provisional precautionary measures for a plaintiff seeking interim relief. The courts

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1. the application laws in the Emirate of Dubai;
 2. the provisions of the Islamic Shari'a;
 3. the customs, unless they are contrary to the laws, public regulations or public morals; and
 4. the principles of natural justice, right and fairness."

Both are unofficial translations.

³ Article 2 of the CPL.

⁴ The Federal Transport Authority is in the process of drafting a new Federal Maritime Law which is expected to be enacted by the end of 2019.

may arrest a vessel for an arising debt so long as the debt falls within the description of a “maritime debt” as prescribed in Article 115 of the FML.

Under Article 222 of the FML there is no “self-help remedy” to disponent owners distraining goods on board the vessel by reason of non-payment of freight. Thus, a lien over cargo cannot be exercised without a successful application to the local civil courts and would otherwise be unlawful in this jurisdiction.

The carrier may by means of application to the court deposit the goods with a custodian until such time as freight is paid. Accordingly, by virtue of the nature of the goods (perishable or not) the plaintiff may request the sale of goods.

(ii) Arbitration Law

Pursuant to Federal Law No. 6 of 2018⁵ (the “Arbitration Law”), the chief justice of the Court of Appeal may, at the request of a party or at the request of the Arbitration Tribunal, order interim or conservatory measures as he may consider necessary to be taken in respect of an existing or potential arbitration proceeding, whether before the commencement or after the commencement of arbitration proceedings.

(iii) Intellectual Property Laws

Under the Copyright and Related Rights Law,⁶ Trademark Law⁷ and the Patents and Designs Law⁸ (collectively, “IP Laws”) interim relief is available to the author/owner in the event of any infringement to his/her/its rights in the form of provisional attachment. The courts may grant the provisional attachment on the infringing products so long as the laws protect such product, the applicant filing for infringement has the authority to do so and the need for provisional attachment is present.

(iv) Banking and Finance Related Laws

The UAE enacted anti money laundering legislation, namely the Federal Law No. 4 of 2002 that gives authority to the Central Bank to “order the

⁵ Article 18 of Federal Law No. 6 of 2018.

⁶ Federal Law No. 7 of 2002 as amended by Federal Law No. 32 of 2006.

⁷ Federal Law No. 37 of 1992 as amended by Federal Law No. 8 of 2002.

⁸ Federal Law No 17 of 2002 as amended by Federal Law No. 31 of 2006.

freezing of suspected property with financial institutions for a period not exceeding seven (7) days.”⁹

Both the public prosecution and competent courts are given a similar right.

“The Public Prosecution Office may order seizure of suspected property, proceeds or instrumentalities according to its prevailing procedures.

A competent court may order provisional attachment, for unlimited period, on any property, proceeds or instrumentalities resulting from an offence of money laundering or associated with it.”¹⁰

Accordingly, the UAE Central Bank is empowered to order the freezing of suspected property held with financial institutions for a period not exceeding seven days. The Public Prosecutor may order the attachment of suspected property in accordance with established procedures under the UAE Federal Criminal Procedure Law and the UAE Penal Code.

2. What is the form of the attachment? Injunction? Other kind of judicial order? Specify.

(a) Interlocutory Attachment under the Civil Procedures Law

Judicial measures can take the form of substantive attachments, precautionary attachment, freezing of assets, arrest of a vessel, confiscation of goods and any other necessary action that may arise incidental to a claim.

Nevertheless, the order which is granted depends on the nature of the assets to be attached. Generally, the court after reviewing the application for provisional attachment will grant the same in the form of an order. The way the order is dealt with afterwards differs depending on the nature of the asset attached and the Emirate in which the order is made. Normally, if the order relates to the defendant’s bank account(s), the account(s) should be identified and the order is generally issued to the specific bank directly. Although the court usually requires the account(s) to be specified, it is also possible to obtain an attachment order against

⁹ Article 4 of the Federal Law No. 4 for the year 2002 Regarding Criminalizing Money Laundering.

¹⁰ Article 4 of the Federal Law No. 4 for the year 2002 Regarding Criminalizing Money Laundering.

a defendant's bank accounts without identifying the accounts. If the attachment order is made, the court delivers the order to the Central Bank which then in turn circulates the order to all banks in the UAE to execute the attachment order, requesting that the recipient banks "block" the accounts of the named party to a stated sum; and report the result to the Central Bank within seven days. In the Emirate of Dubai the order is generally issued to a specific bank directly. In the Emirate of Sharjah courts have, on occasion, written to the Central Bank and requested information of the account(s) held by the defendant.

Where it can be shown that the UAE courts would have jurisdiction over the substantive subject matter of the claim and the plaintiff's likely interest can be shown there is a range of pre-emptive remedies which are available to the plaintiff which include:

1. An order to prevent the debtor from leaving the country.¹¹
2. Attachment of debtor's movables.¹²
3. Attachment of debtor's debts in possession of third parties even if they are deferred or conditional.¹³
4. Attachment of debtor's stocks, securities, income and shares.¹⁴
5. Sale of attached real property.¹⁵
6. Imprisonment of a debtor.¹⁶
7. Impose a guarantee that he will pay or a guarantor that will guarantee his appearance before the court or to deposit the amount claimed at the court's treasury.¹⁷
8. Attachment, custody,¹⁸ preservation of assets within the ambit of the attachment order.

The attachment and/or any of the other pre-emptive measures sought are made by an application to a judge.

¹¹ Article 329 of the CPL, Article 188 (1) of the Regulations.

¹² Article 252(1) of the CPL, Article 111 of the Regulations.

¹³ Article 257(1) of the CPL, Article 116 of the Regulations.

¹⁴ Article 290 of the CPL, Article 147 of the Regulations.

¹⁵ Article 292 of the CPL, Article 149 of the Regulations.

¹⁶ Article 324 of the CPL, Article 183 of the Regulations.

¹⁷ Article 331 of the CPL, Article 183 (2)(b) of the Regulations.

¹⁷ Article 331 of the CPL, Article 183 (2)(b) of the Regulations.

¹⁸ Article 273/2 of the CPL.¹⁹ Article 116 of the FML.

(b) Other Interlocutory Attachment**(i) Federal Maritime Law**

The plaintiff seeking to recover a maritime debt may apply for provisional relief in the form of arrest of the vessel to which the debt relates in addition to any other vessel also owned by the debtor conditional upon the other vessel being owned by the debtor at the time the debt arose. The option of sister ship arrest is not available if the debt is related to a dispute of the vessel's ownership/co-ownership or a maritime mortgage.¹⁹

This right of arrest of the vessel subject of the debt and sister ship arrest extends to charterers under bare boat charter parties.²⁰

The vessel is not permitted to sail consequent to arrest.²¹

The claimant may also apply to the courts for an attachment order against goods delivered for which freight due and payable is not paid pursuant to Articles 222 and 223 as shown in q.1, *infra* and q.12, *supra*, respectively.

(ii) Arbitration Law

A party or an Arbitration Tribunal may apply to the chief justice of the Court of Appeal to order interim or conservatory measures necessary in respect of an existing or potential arbitration proceeding, whether before the commencement or after the commencement of arbitration proceedings. Such interim measures may include:

1. An order to preserve evidence that may be relevant and material to the resolution of the dispute.
2. Taking necessary measures to preserve goods which constitute part of the subject-matter of the dispute such as an order to deposit goods with a third party or to sell goods which are susceptible to damage.
3. Preserving assets and funds out of which a subsequent award may be satisfied.
4. Maintaining or restoring the status quo pending determination of the dispute.

¹⁹ Article 116 of the FML.

²⁰ Article 117 of the FML.

²¹ Article 118(1) of the FML.

5. An order to take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration process itself.

(iii) Intellectual Property Laws

The applicant whose IP rights have been infringed may request an order to prevent further infringement. This may take the form of attachment of all infringing goods and/or an order²² to stop further use of the protected right. Article 34 of the Copyright Law, Article 41 of the Trademark Law, and Articles 60 and 61 of the Patents Law grant the court authority to issue precautionary provisional attachment orders.²³ Furthermore, some of the UAE governmental departments have quasi-judicial powers to deal with IP matters, namely the Ministry of Economy and Commerce and the affected person may apply to them directly to request provisional precautionary attachment. In addition to a civil action being brought about for infringement, criminal proceedings may be a possible consequence.

(iv) Banking and Finance Related Laws

A UAE court may order provisional attachment for indeterminate periods where property has resulted from or is associated with a money laundering offence pursuant to Article 2 of the Money Laundering Law.²⁴

3. **What is the jurisdictional basis for an attachment? Is the presence of the debtor's property a sufficient basis for an attachment to be obtained, assuming other requirements are satisfied? To what extent may attachments be used as a basis for obtaining personal jurisdiction over a debtor? To what extent are attachments or similar orders intended to have extraterritorial effect?**

(a) Interlocutory Attachment under the Civil Procedures Law

The presence of the debtor's assets is a sufficient basis for obtaining an attachment order assuming other requirements as stated herein are satisfied because the mere presence of the assets in this jurisdiction grants the court's jurisdiction to govern and attach them whether or not a foreign

²² Similar to an injunction.

²³ Other measures may also be granted pursuant to these Articles.

²⁴ Federal Law No. 4 for the year 2002.

court has exclusive jurisdiction over the matter. The courts in the UAE may choose to ignore an exclusive choice of forum clause in a contract if a party proceeds in the UAE, particularly if the defendant is a UAE national or a foreigner who is resident in the UAE.²⁵ However, the local courts will usually give effect to an arbitration clause.

A summary judge,²⁶ execution judge²⁷ or a circuit judge,²⁸ may grant an attachment order. The jurisdictional basis for the application of an attachment and granting of same differs accordingly.

(b) Other Interlocutory Attachment

(i) Federal Maritime Law

The civil court through which the arrest order is made shall have jurisdiction to review the claim on its merits in any of the following circumstances even if the vessel under review 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 assistance over which the court has jurisdiction; and
- (e) If the claim is secured by a maritime mortgage over the arrested vessel.

Other jurisdictional issues are similar to (a) above.

²⁵ Article 20 of the CPL.

²⁶ Summary Judge: The jurisdiction of a summary judge is limited to urgent precautionary provisional attachment requests. The summary judge has no right or authority to judge on the merits of any claim and may grant an attachment order to goods not within his local jurisdiction.

²⁷ Execution Judge: The execution judge is only authorised to grant an order to execute the final judgment. Circuit Judge: The circuit judge is authorised to grant any provisional and/or precautionary attachment orders in the course of the suit. A circuit judge is not limited to where the assets actually lie within the UAE.

²⁸ A circuit judge will have the authority to hear a claim on its merits if the defendant has a residence within the jurisdiction of the court or if the cause of action of the claim arose within the jurisdiction of the court and with respect to claims related to subject matter within the jurisdiction of the courts.

(ii) Arbitration Law

In order for the Arbitration Law to apply, the arbitration must be seated in any one of the Emirates in the UAE (to the exclusion of any financial free zone) or must be adopted by the parties to the arbitration.

(iii) Intellectual Property Laws

The jurisdiction of UAE courts with respect to attachment orders pursuant to IP rights is of a more complex nature by virtue of the international treaties the UAE is a signatory to, namely the Berne, GATT, WIPO and WTO and its related agreements. However, the UAE courts will have authority to grant an attachment order if the infringing property and/or the infringing act is within its jurisdiction. Although, the court may have authority to grant attachment orders otherwise it is the effect of such orders that may be futile if the other jurisdiction in which the attachment order must be enforced (by reason of the infringing goods being there or damage occurring there) is not a signatory to the same treaties. However, although the attachment orders granted in this respect are intended to have extraterritorial effect at times such effect is limited to countries signatory to the relevant applicable agreements.

(iv) Banking and Finance Related Laws

From an international perspective, the law permits the judicial authorities of the UAE to pursue, freeze or provisionally attach property or proceeds or instrumentalities in the UAE pursuant to a request from the judicial authority of another state, on the basis of a treaty binding on both states or on condition of reciprocity if the offence in question is also punishable in the UAE. However, it is worth noting that there are to date very few reciprocal arrangements.

4. May an attachment be obtained in support of a proceeding on the merits in another country? If so, may the other proceeding be in court, arbitration or in another type of forum? Are attachments used as a mechanism in enforcing judgments or arbitral awards?

(a) Interlocutory Attachment under the Civil Procedures Law

An attachment may be obtained in support of a proceeding on the merits in another country so long as UAE courts have jurisdiction for

issuing the attachment order, for instance by presence of property within the UAE. In most cases, the courts in UAE will order provisional attachment if substantive claims are advanced in a foreign arbitration. It was held in a case in the Court of Cassation that under Article 22 of the CPL, assets may be attached in the UAE by virtue of an arbitral proceeding in another jurisdiction provided that the procedural requirements of the UAE are adhered to. The procedural requirements being that the request for attachment of assets is supported by filing a substantive suit to uphold the attachment proceedings within *eight days* of the order for attachment being issued without necessarily requesting the court to deal with the merits of the case. While in theory an attachment order can be obtained for foreign proceedings (subject to evidence that foreign proceedings have been initiated within eight days) we are not aware of the practical implementation other than those pertaining to a foreign arbitration.

Precautionary attachment orders may be granted as security for an arbitration award, however, upon the granting of the award the attachment may not be used as an enforcing mechanism. The enforcement of such an award is subject to further judicial proceedings independent from the provisional attachment order previously granted.

(b) Other Interlocutory Attachment

Please *see* (a) above.

5. What are the requirements for obtaining an attachment of property in your country? In support of a proceeding in another country, if different?

(a) Provisional Relief as per the CPL

Once the jurisdiction of the court to rule on the subject matter is established, then to obtain an attachment or provisional measure the plaintiff must show a *prima facie* case of the following:

1. likely interest in the claim; and
2. evidence of the claim.

With respect to the requirement to establish the plaintiff's right and interest in making the claim, the standard of proof required in provisional

matters is more stringent/rigid than that of a claim on the merits of the case/substantive case.

Evidence of the claim ought to be very straightforward, but it is up to the plaintiff to show valid grounds for the request of the attachment and the nature of the attachment required and assets to be attached as required in Article 252 of the CPL and Article 111 of the Regulations.

Article 252 of the CPL is the main provision granting provisional attachment rights and it sets the test that must be fulfilled for the application for and granting of the attachment. The provisions of Article 111 of the Regulations mirror the requirements set out in Article 252 of the CPL with the addition of court having the authority to require additional information in support of the facts set out in an attachment application.

In addition, although attachments are prescribed in law they are entirely within the realm of the judge's discretion and accordingly the plaintiff must establish the need for attachment. The evidence required is not exhaustive, but some reasoning must be presented in the application for attachment with respect to the imminent danger of assets being removed in such a way as to stultify any judgment that the applicant may obtain. The order of attachment will not be granted merely for the purpose of providing an applicant with security for a claim, the applicant must prove a need for a provisional attachment *i.e.* the debtor may flee or remove his assets from this jurisdiction.

(b) Other Interlocutory Attachment

(i) Federal Maritime Law

The granting of an attachment order under the FML, like all attachment orders, is in the discretion of the court. The applicant must prove the court's jurisdiction under the FML by showing that the debt is a "maritime debt" pursuant to Article 115 of the FML. It is also in the discretion of the courts whether to request a guarantee or not from the applicant and the value of same.²⁹

²⁹ This varies from Emirate to Emirate.

(ii) Intellectual Property Laws

In addition to (a) above, to apply for an attachment in the UAE pursuant to IP laws the following must be established:

- The applicant's right in the claim, status as author or registered owner of the infringed IP;
- The registration of the good/product/mark for which the protection is sought (this does not apply to copyrights);
- The good/product/design is protected under the applicable laws.

To establish a right in the claim, the applicant does not have to get into the merits of the case. All he/she/it need do is establish that he/she/it is the rightful person that may claim for infringement and this is possible by showing evidence of ownership or transfer of ownership or a license.

To grant a provisional attachment it must be established to the satisfaction of the court that:

1. the applicant has a right over the IP; and
2. an infringement has occurred.

6. May an attachment be obtained without notice to the debtor? If so, what are the requirements for notifying the debtor and what procedure is available to the debtor to challenge the *ex parte* attachment obtained? If not, what are the procedural requirements for obtaining an attachment on notice to the defendant?

(a) Interlocutory Attachment under the Civil Procedures Law

An attachment may be obtained without prior notice to the debtor. A "provisional" attachment order granted prior to raising a substantive claim will not require notice to the debtor. However, an application for precautionary attachment filed during the course of substantive proceedings might require notification to the debtor.

If the attachment order pertains to a bank account, the court will either direct such attachment order to the Central Bank that will give notice to other banks without notifying the debtor or notify a specific bank directly.

In the event the attachment order is implemented, the debtor may object by application to the court that issued the order.

(b) Other Interlocutory Attachment

(i) *Federal Maritime Law*

A preservatory arrest can be made by an order of the civil court having jurisdiction without prior notice to the debtor. If the vessel is arrested, it shall be forbidden to sail.

Article 119 of the FML describes the provisions for giving notice of the arrest to the master of the vessel and others. The notice of arrest shall contain a summons to attend before the civil court.

Under Article 118 of the FML the civil court having jurisdiction shall order the arrest to be set aside on presentation of a guarantee or other security sufficient to satisfy the debt, except in disputes concerning ownership or co-ownership or use of the vessel where other provisions concerning management can be imposed in addition to security.

(ii) *Intellectual Property Laws*

Upon obtaining a provisional precautionary attachment order on infringing goods and equipment used for the infringement, no notice is required to be given to the owner of such assets.

(iii) *Banking and Finance Related Laws*

In the case of suspected money laundering the Central Bank, or the public prosecution or the competent courts have authority to freeze the assets under question. This may also occur at any time and with respect to any suit and the notification requirement may be dispensed with at the court's discretion.

- 7. What are the elements that must be established to the satisfaction of the court for it to grant an attachment? E.g., likelihood of success on the merits, likelihood that the debtor is removing, or will remove, its assets from the jurisdiction, fraudulent activity**

by the debtor, need for the attachment as security, for an expected judgment or award?

See q.5, supra.

8. What is the procedure for obtaining an attachment? What is the nature and extent of the evidence that must be presented to the court and how must it be presented?

(a) Interlocutory Attachment under the Civil Procedures Law and the Arbitration Law

To obtain a provisional attachment the plaintiff must submit a request for such attachment to the court. The applicant must prepare a written application for the attachment of assets. The application will include a request for relief and the grounds for which this relief is sought. This application has to be presented to the court by the local advocate.

In order to appoint a local advocate to apply on the prospective plaintiff's behalf, the plaintiff must provide the local advocate with a notarized Power of Attorney which, if foreign, needs to be authenticated, legalised and consularized up to the UAE Consulate level. In consideration of the fact that it is imperative that the attachment order be confirmed by the court, it is common practice to empower local advocate to act on the substantive merits of the case as well, and thus enable local advocate to commence the proceedings to affirm the attachment order within the prescribed eight-day limit.³⁰

It is common practice to submit with the application a draft claim for the merits to preliminarily fulfill the application's requirement for establishing grounds of the request and other requirements.

It is not common practice for the court to require a statement from the applicant, however, it does have the authority to ask for an affidavit to be submitted.³¹

³⁰ The Power of Attorney might even include authority to represent the applicant before the judge in case of any objection and/or appeal.

³¹ Article 252/4 of the CPL.

(b) Other Interlocutory Attachment**(i) Federal Maritime Law**

The procedure for a precautionary attachment under the FML is similar to (a) above, with a few differences.

In relation to procedure, concerning Article 120(1) the courts in the Federal System (but not in Dubai) require the case confirming the attachment to be filed along with the precautionary attachment application itself. The practice in Dubai until recently was to follow the same procedure as set out in the CPL, i.e, for the substantive case to be filed within the eight-day period prescribed in the CPL. Recently however the Dubai Court has followed the procedure set out in the FML.

Under the FML, the burden to identify the assets requested to be attached and the nature of such assets falls heavily on the applicant. The applicant must establish the relationship between the debt to be covered and the assets to be attached. In some Emirates *e.g.* Dubai and Sharjah, recent experience suggests that arrest orders are not as easily obtained as in the past. In a recent case in Dubai, the court before granting the arrest order, insisted on written confirmation from the port that the vessel was within port limits and that it was owned by the defendant.

9. To what extent, and under what circumstances, is an undertaking, in the form of a third party bond or guarantee or a deposit, required in order to obtain an attachment? In what amount, in relation to the amount claimed, is the undertaking required? How are such undertakings generally obtained, as a matter of practice? How much do they cost?

(a) Interlocutory Attachment under the Civil Procedures Law and Arbitration Law

Details with respect to any guarantee from the claimant for the issuance of an attachment order is completely in the court's discretion. Urgent execution is necessary by force of law in respect of judgments issued in urgent matters. In practice, in Dubai, no guarantee is usually required for attachment pursuant to a maritime debt. Furthermore, in Abu Dhabi, a guarantee is rarely requested by the courts for the attachment of any asset.

(b) Other Interlocutory Attachment**(i) Federal Maritime Law**

See (a) above. The courts may at their discretion require the arresting party to provide undertakings to the court with respect to the costs of maintaining the vessel under arrest.

(ii) Intellectual Property Laws

The applicant filing for an attachment order under the Trademarks and Patent and Design Law must provide a guarantee with the application. The laws do not stipulate the amount of the guarantee neither independently of the claim nor in relation to amounts due or compensation claimed.

The guarantee under these laws remains intact until final judgment is issued, otherwise until all time provisions for appeal run out.

(iii) Banking and Finance Related Laws

See (a) above.

10. What does the undertaking secure? Damages to the debtor if the attachment is ultimately vacated? Do such damages include interest? Other elements? Legal fees? To what extent? Court costs? To what extent?

The counter security ordered, if any, secures a claim for damages for wrongful attachment, which in this jurisdiction is a cause of action for harm. However, whether counter security is granted or not, the court may subsequently hold the creditor responsible for wrongful arrest or attachment of assets pursuant to Article 282 of the Civil Transactions Code:³²

“Article 282

Any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm.”

Since this jurisdiction is a civil law jurisdiction not restricted as in some common law countries from awarding damages for pure economic

³² Federal Law No. 2 of 1987.

loss, if a party can prove that it has suffered harm from a wrongful attachment, it is easier for the affected party to prove that it is entitled to compensation. Therefore, although the courts will grant an attachment order without a counter security, the court may later grant compensation for wrongful arrest.

Nevertheless, the affected party must also establish malice on the applicant's part. An attachment order requested and granted to the applicant based on reasonable grounds does not give rise to compensation to those who suffered interference. Accordingly, although wrongful arrest may entitle the injured party to compensation, in the event of a *bona fide* mistake no remedy will be granted.

11. How specific must the application for an attachment be as to the nature, extent and location of the assets sought to be attached? How many potential garnishees may be served with an order of attachment?

(a) Interlocutory Attachment under the Civil Procedures Law

The CPL does not set out rigid requirements for the attachment application with respect to specifications of nature, extent and location of the assets sought to be attached. It is accepted and taken into consideration that in the case of a provisional attachment the claimant may not have all the facts necessary to provide a detailed application. However, the plaintiff must show that the debtor has assets that may be attached to fulfill the requirement for an attachment order. The plaintiff must also establish the location of the assets to establish jurisdiction of the courts and the judge to whom he applies. In attachment orders incidental to an existing substantive case a provisional request for attachment is subject to the jurisdiction of the case judge, in contrast to an attachment order sought on a precautionary level prior to claiming which must be undertaken in the jurisdiction where the assets are to be attached.

The creditor may apply for an attachment order even if the debt due is of an unspecified amount. In such a case the judge may provisionally estimate the debt due based on the creditor's application which must under these circumstances sufficiently specify the assets to be attached.³³

If the value of assets attached does not correspond to the amount of attested debt, then the debtor may request the judge to limit the attachment

³³ Article 254 of the CPL.

to only some of the assets. Accordingly, the order for the attachment of assets may be for a number of assets and can be for a specific asset but in all cases the exempted assets as set out under Article 247 of the CPL³⁴ and Article 106 of the Regulations may not be attached. Also, where the assets are in the possession of third parties alters slightly the above-mentioned requirements.

(b) Other Interlocutory Attachment

(i) Federal Maritime Law

See answers to q.2 and q.8, *infra*. Also, under the FML the important factor is to establish the relationship between the debt and the vessel to which the arrest order is requested. Without establishing this link the courts cannot and may not order any arrest of a vessel.

(ii) Intellectual Property Laws

The applicant may only attach the infringing goods and equipment used for the infringement.

(iii) Banking and Finance Related Laws

With respect to money laundering, all the debtor's accounts and assets will be frozen.

12. What are the obligations of a third party who is served with an order of attachment to report on the nature and extent of the assets of the debtor in his possession and the extent to which other persons, including the party served itself, have prior or competing liens on the property covered by the attachment order?

(a) Interlocutory Attachment under the Civil Procedures Law

Pursuant to Article 257 of the CPL and Article 116³⁵ of the Regulations the creditor is entitled to apply for the attachment of the debtor's movables and/or debts in possession of third parties. If the attachment order is not levied on any particular assets then all the debtor's assets in possession of third parties or debts due by the third party to the debtor

³⁴ Details of Article under q.16.

³⁵ Article 116 of the Regulations mirror Article 257 of the CPL.

are included until such time as the attached assets or debts are reported and/or accounted for.³⁶ This attachment extends to property in the possession of the debtor's legal representative. Notification of such an attachment order is dispensed with until the attachment is actually levied. With respect to an attachment order that relates to assets held by third parties, notification is presented by the executory representative and shall include the details described in Article 259 of the CPL:

“Article 259

The attachment shall be placed, without the need for prior notification to the debtor, under an order signed by the judge and notified to the person with which the attachment is placed, through the execution officer, which shall include the following details:

- (a) The amount for which the attachment is placed and the expenses.
- (b) Identifying the defendant in a clear manner if the attachment is placed on specific property, and to demand the party with which the attachment is made not to pay or deliver the funds subject of attachment to the defendant.
- (c) The claim or attachment application number, name, domicile and place of business of claimant in the State. In the case where the claimant does not have a domicile or a place of business in the State, he should designate a selected address at the court in which the execution is taking place.
- (d) To demand the party with which the attachment is placed to account for the assets/funds located with it and to inform the court which issued the attachment order within seven days from the date of notifying it with the attachment.”³⁷

Pursuant to attaching the assets with a third party the debtor has to be notified of the attachment, date of attachment, the judge's order by virtue of which the attachment was made and other particulars.³⁸

The third party may deposit the attached assets in his possession at the court's treasury and in the event such assets are comprised of immovable property it is permissible to request the assignment of a guardian for the

³⁶ Article 257(2) of the CPL.

³⁷ Article 259 of the CPL.

³⁸ Article 261 of the CPL.

third party or debtor. If the third party opts not to deposit the assets as aforementioned he is obliged to report to the court³⁹ what assets are in his possession within *seven days* of notification of attachment. The report must include the value of the debt and the reason such debt arose. If the third party is in possession of movable property, there must be attached to the report detailed information concerning such assets.⁴⁰

Article 263 of the CPL⁴¹ describes the form and detail required for such a report in the varying circumstances.

“Article 263

1. If the deposit is not made in accordance with the previous Article or with Articles 249 and 250, the party with which the attachment is made shall make a declaration to the authority which issued the attachment order on the amounts found with it within seven days from notifying it of the attachment. Such declaration shall include the amount of the debt, the cause thereof and the cause of its elapse, if any, and if the party with which the attachment is made has movable property, it shall submit with the declaration a detailed statement on such property.
2. If the attachment is under the hand of the government or any public corporation or authority or a bank, the declaration of the amounts located with them shall be made by a letter sent by the party with which the attachment is made to the authority which issued the attachment order within the said period, including the details of the declaration.
3. The party with which the attachment is made shall not be exempted from the duty of making a declaration on the property and funds found with it for the fact that it is not a debtor of the defendant, then a declaration may be made by a statement submitted to the authority which issued the attachment order, and the confidentiality duty does not exempt it from declaring the amounts found with it.”

The duty to report does not terminate if the third party in whose possession the attached assets are dies. This duty falls on the heirs of the deceased or whoever takes his place.

³⁹ Article 262 of the CPL.

⁴⁰ Article 263 of the CPL.

⁴¹ Which is mirrored in Article 120 of the Regulations.

(b) Other Interlocutory Attachment**(i) Federal Maritime Law**

The FML sets out in Article 84 what may be considered as a priority debt (please refer to q.18 *supra* for particulars of the Article).

Article 223 of the FML addresses the priority right granted to the disponent owner with respect to the goods carried. It provides that:

- “1. The disponent owner shall have a lien over goods loaded on board the vessel and such lien shall include the freight of the vessel and appurtenances. The lien shall remain in force for a period of fifteen days after delivery of the goods unless a third party acting in good faith has acquired a right in rem against the same.
2. The lien shall remain in force even though the goods may have become mixed with others of the same type.”

However, such priority granted over the goods carried expires after 15 days.

The necessary application can be made on an *ex parte* basis (reviewable on an *inter partes* basis on any application by interested parties).

(ii) Intellectual Property Laws

An attachment order granted pursuant to the IP laws is not based on debt(s) due to the applicant but on ownership of the IP that is entitled to protection.

13. To whom are such reports given and what is the form of such reports? To the court? To the attaching plaintiff? What is the form of such reports? In writing? Oral? Informal? Hints?

See q. 12, *infra*.

14. What kind of property of a debtor may be attached? Debts of third parties to the debtor? Claims of the debtor against third parties? Expectancies?

(a) Interlocutory Attachment under the Civil Procedures Law

All moveable and immoveable property including debts due to the debtor may be subject to an attachment order that may or may not include depending on the nature of the goods attached (perishable factor) the sale of assets with the exceptions of the assets listed in q.16, *supra*. This also extends pursuant to Article 257/1 of the CPL and as mentioned in q.12, *infra*, to the debtor's debts in the possession of third parties even if they are deferred or conditional.

The ambit of precautionary attachment also extends to a banker's safety deposit box.⁴²

(b) Other Interlocutory Attachment

(i) Federal Maritime Law

Vessels and goods.

(ii) Intellectual Property Laws

Infringing goods and equipment.

(iii) Banking and Finance Related Laws

Liquidated funds found in bank account(s) and/or securities.

15. What is the effect of the service of an order of attachment on assets of the debtor that came into possession of the garnishee after the time of the service of the attachment order? Are there any time limits on the effectiveness of the order of attachment? In particular, what is the effect of the service of the order of

⁴² Article 476 of the Commercial Transactions Code goes to great length to describe the procedure in this respect.

attachment on a bank that has issued or confirmed a letter of credit of which the debtor is a beneficiary?

Once an attachment order is granted, the debtor's assets and/or debts (as described in q.14, *infra*) are attached. However, the governing provisions are ambiguous with respect to assets that came into the debtor's possession or became due to the debtor after the attachment order is granted. *Prima facie*, it appears that the ambit of the governing provisions is arguably wide enough to include such assets and debts since the effectiveness of an attachment order is not subject to any time limits. Nevertheless, this may be subject to specific provisions set out in the attachment order which restrict this expansive approach to the attachment of all available assets.

16. Are there certain kinds of assets or property of a debtor that are immune, or in some other way protected from attachment, e.g., pension funds, salaries, wages, diplomatic property, other sovereign property, other property specified under consumer-protection laws?

(a) Interlocutory Attachment under the Civil Procedures Law

The assets of a debtor that may not be attached by means of a precautionary attachment are listed in Article 247 of the CPL⁴³ as set out hereinbelow:

“Article 247

Without prejudice to the provisions of any other law, the following may not be placed under garnishment:

1. Public or private properties owned by the state or by any of the Emirates.
2. A house that is considered an accommodation for the debtor or the adjudged party and whoever lives with him such as relatives legally supported by him in the case of his death.
3. Whatever is required by the debtor such as clothes and whatever is necessary for him and for his family, such as furniture and

⁴³ Which is mirrored in Article 106 of the Regulations.

kitchen utensils, and whatever is needed by them such as food and fuel for a period of six months.

4. Whatever is owned by a farmer or hunter by way of land or agricultural tools needed to earn his living and those whom he supports.
5. Granted or devised properties or their proceeds providing a temporary or life maintenance or salary, and whatever is decided by law such as the amounts stipulated or arranged temporarily for maintenance or for spending therefrom for a particular purpose, however, a quarter thereof shall be allocated for the discharge of a debt or prescribed maintenance.
6. Granted or devised properties provided that they are not garnishable, and provided that the garnisher is a creditor to the grantee or the devisee whose debt existed prior to the grant or the devisee except to discharge a maintenance debt to the limit of one fourth.
7. Whatever is required by the debtor such as books, tools and equipment to practice his profession by himself, unless the garnishment is placed for receiving their price or the expenses of their maintenance or for settlement of a due maintenance.
8. Movable property which has been categorized as real property provided that the placement of garnishment thereon is made apart from the real property intended for his service, unless the garnishment is required for the recovery of its price or the expenses of its maintenance.
9. Wages and salaries, except that half of the basic wage or salary should be placed under garnishment; however, upon lappage, priority shall be given to the debt of maintenance.

(b) Other Interlocutory Attachment

(i) *Federal Maritime Law*

Under the FML the plaintiff may seek to attach the debtor's vessel from which the debt arises or sister ship (as defined in the FML). It also applies to all commercial vessels owned and managed by the State directly or indirectly by a governmental department or public organisational

department but warships and other vessels under the service of the state are exempted from any such attachment/arrest order.⁴⁴

17. For how long may an order of attachment remain in effect? If the attachment order is in support of a proceeding in another forum, are there any requirements concerning when, in relation to the date of the issuance of the order of attachment, the proceeding in the other forum must be commenced? Completed?

(a) Interlocutory Attachment under the Civil Procedures Law

An attachment order remains in effect until successfully challenged⁴⁵ or the debt is collected by whatever means including the sale of the assets. If there is undue delay, the defendant could apply for the interlocutory attachment to be vacated and in the absence of a valid reason, the attachment could be vacated.

18. What rights in the plaintiff are created by the service of an order of attachment? Priority over creditors attaching later? Do banks and other garnishees have set-off or other priority rights superior to those of creditors attaching assets of debtors who are also debtors of such garnishees?

As per the CPL there is no priority in time for other creditors.

However, with respect to the FML, debts that are granted priority are codified in Article 84 of the FML and they are as follows:

“Article 84

The following and only the following debts shall be priority debts:

- (a) Judicial costs incurred in protecting and selling the vessel, and distributing the proceeds thereof, as well as loading, lighthouse and port charges, and other dues and taxes of the same type, pilotage fees, compensation for damage caused to port installations, docks and navigation lanes, the costs of removing obstacles to navigation

⁴⁴ Article 96 of the FML.

⁴⁵ The attachment order remains effective whilst under review pursuant to the debtor’s challenge and continues to be effective if challenge unsuccessful.

caused by the vessel, and costs of towing and maintenance of the vessel from the time of its arrival at the last harbour.

- (b) Debts arising out of a contract for the employment of the master and crew, and other persons bound by a contract of maritime employment on board the vessel.
- (c) Monies due for assistance and salvage, and the share of the vessel in general marine average.
- (d) Compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.
- (e) Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors.
- (f) Breakdowns and damage giving rise to a right of compensation in favour of the charterers of the vessel.
- (g) All premiums for insurance effected on the hull, equipment and fittings of the vessel due in respect of the last insured voyage, in cases where the insurance was effected for that voyage, or for the last period of insurance if the insurance was effected for a specified period, but provided that in either case the total does not exceed the premiums for one year.”

Priority debts that arise in a voyage rank in the order set out above and rank equally in each section.⁴⁶ Priority debts of a present voyage rank above those established in previous voyages and the priority debt shall remain attached to the vessel in whosoever’s possession.

⁴⁶ Article 89 of the FML.

19. How are attachments ultimately enforced as judgments? What is the procedure? What happens if multiple plaintiffs seek judgments against the same property at roughly the same time?

(a) Interlocutory Attachment under the Civil Procedures Law

A provisional attachment merely provides the creditor with interim relief. Such an order may not be used as a judgment to the claimed debts. In order to enforce such attachment order as a judgment, a hearing on the merits must proceed and the judges rule in favour of the creditor. Only then may an attachment order be enforced as a judgment. There is no priority in time for other creditors. Accordingly, unless a particular creditor has priority by virtue of the nature of his claim (*e.g.* as a mortgagee or in some other special capacity) the judgment creditors will share pro-rata.

(b) Other Interlocutory Attachment

(i) Federal Maritime Law

If the arrest was granted based on a maritime debt, then the FML requires notice to the master and others. For priority debts *see* q.18, *infra*.

20. What is the procedure for challenging or vacating an order of attachment?

(a) Interlocutory Attachment under the Civil Procedures Law

The debtor may object and appeal the attachment order by application to the court.

(b) Other Interlocutory Attachment

(i) Federal Maritime Law

The debtor may object and appeal the attachment order by application to the court.

The debtor can procure a release of the arrest of a vessel by providing a guarantee and/or third party bond. Such guarantee does not establish liability on the debtor.

(ii) Intellectual Property Laws

A person whose assets were attached may object to the attachment order before the court that issued same. Under Copyright Law this has to be done within 20 days of the issuance of the attachment order.

The person whose goods are attached has a mechanism to bring a suit against the applicant for compensation under both the Patent and Designs Law and Trademark Law within 90 days after the expiry of the eight-day period if the attachment is not confirmed or from the date final judgment is given.