

Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

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Shipping

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Contributing editors**Kevin Cooper and Nico Saunders****MFB Solicitors**

Lexology Getting The Deal Through is delighted to publish the 14th edition of *Shipping*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on India.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Kevin Cooper and Nico Saunders of MFB Solicitors, for their continued assistance with this volume.



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NEWBUILDING CONTRACTS

Transfer of title

- 1 | When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

The parties may agree on when title in the ship will pass. If there is no agreement, the title in the ship will pass from the shipbuilder to the shipowner when the ship is delivered to the shipowner and the delivery is accepted. A shipbuilding contract that is not in writing is void. Any variation to the shipbuilding contract must also be in writing.

Refund guarantee

- 2 | What formalities need to be complied with for the refund guarantee to be valid?

The guarantee by the shipbuilder is in respect of latent defects and is applicable even if the purchaser accepts the ship after testing. A refund guarantee will generally form part of the shipbuilding contract. Federal Maritime Law 18/1981 does not refer to a refund guarantee or set out formalities that must be complied with for the refund guarantee to be valid, other than the fact that claims for latent defects must be made within one year from the discovery of the defect or two years from the delivery of the vessel.

Court-ordered delivery

- 3 | Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Injunctive relief is generally not available in the United Arab Emirates. Article 105 of the Commercial Code permits a party to seek an order of specific performance if the yard fails to deliver the vessel after being served with a notice from the purchaser or to seek compensation.

Defects

- 4 | Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

By law, the shipbuilder will be liable for a latent defect provided that a claim for latent defects has been made within one year of the discovery of the defect or within two years of the delivery of the vessel. Claims for defects and damages may also lie in contract.

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

- 5 | What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Vessels that exceed 10 gross tonnage must be registered to sail under the UAE flag. Oil or gas tankers that are over 10 years of age can be registered only with the approval of the cabinet of ministers. Lighters, barges, tugs, cranes, dredges, diving boats and other floating structures working in UAE ports need not be registered.

Vessels under construction may also be registered in the Register of Ships.

- 6 | Who may apply to register a ship in your jurisdiction?

A vessel may be registered in the United Arab Emirates only by the owner. However, the following limitations apply with respect to who may own a vessel:

- a sole owner must be a UAE national;
- where the vessel is owned by a partnership, all partners must be UAE nationals;
- where the vessel is owned by a limited liability company, at least 51 per cent of its capital must be owned by UAE nationals and all directors must be UAE nationals; and
- where the vessel is owned by a joint stock company (a listed company), at least 51 per cent of its capital must be owned by UAE nationals and the chair and majority of directors must be UAE nationals.

Documentary requirements

- 7 | What are the documentary requirements for registration?

The application for registration should contain the following information or documents:

- the name of the vessel;
- the former names of the vessel and the last port of registration, together with an official certificate of deletion of the registration of the vessel on the foreign register on which it was formerly registered;
- the date and place of construction of the vessel and the name and address of the yard of construction;
- the type, tonnage and dimensions of the vessel, together with an official certificate from the Federal Transport Authority (FTA) Maritime Inspection Department setting out the total net tonnage;
- the names of the owner or co-owners and their occupations, religion, nationalities and places of residence, together with the share of each co-owner and the adopted majority to be followed in all matters relating to the mutual interests of the partners;

- the name, type and head office of the owning company, and the names and nationalities of the members of the board of directors, managers and speculators therein;
- the name, nationality, address and maritime qualifications of the master of the vessel;
- the name, nationality and address of the operator of the vessel;
- information on the mortgagee if the vessel is mortgaged; and
- attachments that have been affected on the vessel and all information related thereto.

Dual registration

- 8 | Is dual registration and flagging out possible and what is the procedure?

Dual registration and flagging are not permitted in the United Arab Emirates.

Mortgage register

- 9 | Who maintains the register of mortgages and what information does it contain?

A mortgage must be registered in the register of vessels maintained in the office of the port where the ship is registered or before a UAE consulate if the vessel is mortgaged while overseas.

This information is also available to the ship registrar of the FTA Maritime Affairs Department. This would also apply to a vessel that is mortgaged during its construction.

LIMITATION OF LIABILITY

Regime

- 10 | What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Articles 138 to 142 of the Maritime Law provide for a limitation regime based on the International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships 1957, which allows an owner, charterer or operator to limit liability based on the tonnage of the vessel.

The United Arab Emirates is also a signatory to the Convention on Limitation of Liability for Maritime Claims 1976, which was ratified in 1997 without reservations. Pursuant to the Convention, shipowners and salvors may limit their liability. In 2020, the United Arab Emirates ratified the 1996 Protocol, which amended the limits of liability.

The applicable limitation regime will depend on whether limitation is sought under the Convention or the Maritime Law. The claims that can be limited in the Convention and the Maritime Law are similar, and include:

- death, personal injury or loss or damage to property arising out of the operation of the vessel or salvage operations;
- loss of cargo, passengers or luggage due to delay;
- loss suffered due to a violation of rights other than contractual rights, in direct relation with the operation of the ship or salvage operations;
- the raising, removal or destruction of a vessel that is sunk, wrecked, stranded or abandoned; and
- the removal or destruction of goods in the vessel.

Procedure

- 11 | What is the procedure for establishing limitation?

Although the United Arab Emirates has ratified the Convention on Limitation of Liability for Maritime Claims 1976, there has been no instance in which a limitation fund has been constituted. In a recent

case before the Fujairah Court, the defendant argued that the competent authority to establish the fund was the Federal Transport Authority (FTA) and that the Fujairah Court did not have jurisdiction to constitute the fund. The FTA, which was included as a party to the case, submitted to the court that the Fujairah Court did not have jurisdiction to establish a fund since such jurisdiction lies with the FTA. The FTA also argued that since there is no legal framework or legislation to constitute a limitation fund, the FTA cannot constitute such a fund. This position was accepted by the court.

Break of limitation

- 12 | In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

A shipowner cannot limit its liability arising out of personal error.

Passenger and luggage claims

- 13 | What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

The United Arab Emirates is not a party to the Athens Convention. However, articles 288 to 302 of the Maritime Law cover contracts of carriage of passengers. The carrier will be held liable for death or personal injury arising out of any fault of the carrier or failure to make the ship seaworthy. Compensation is determined by the amount of 'blood money' defined by Sharia law and any attempts by the carrier to limit its liability below such sums are void. The passenger may agree to limit the carrier's liability, but such limitation will not be applicable if it is established that there was fraud or unardonable error on the part of the carrier.

PORT STATE CONTROL

Authorities

- 14 | Which body is the port state control agency? Under what authority does it operate?

The Maritime Inspection Department can carry out inspection of both national and foreign vessels in any UAE port.

Sanctions

- 15 | What sanctions may the port state control inspector impose?

The Maritime Inspection Department may:

- refuse to grant a navigation licence or a certificate of safety;
- prohibit a ship from sailing;
- impose six months' imprisonment or a fine not exceeding 25,000 dirham, or both for:
 - failure to obtain a navigation licence or a certificate of safety;
 - failure by the master to notify the Maritime Investigation Department of damage or alterations to the vessel;
 - sailing without a sailing permit; or
 - sailing despite an order prohibiting sailing; and
- impose one month's imprisonment or a fine not exceeding 5,000 dirham, or both, for:
 - obstructing officers that are authorised to inspect vessels;
 - operating a vessel without medical and health services; or
 - contravening the regulations and resolutions of the Maritime Inspection Department.

Appeal

16 | What is the appeal process against detention orders or fines?

An appeal may be filed to the minister in charge of the Federal Transport Authority within 10 days from the date of communication of the Maritime Inspection Department decision. The minister must provide a decision within 10 days, failing which the appeal is deemed to be allowed.

CLASSIFICATION SOCIETIES

Approved classification societies

17 | Which are the approved classification societies?

The approved classification societies are:

- the American Bureau of Shipping;
- Bureau Veritas;
- the China Classification Society;
- DNV;
- Germanischer Lloyd;
- Lloyd's Register of Shipping;
- the Russian Maritime Register of Shipping;
- the Korean Register of Shipping;
- Emirates Classification Society (TASNEEF);
- Hellenic Register of Shipping LLC;
- Indian Register of Shipping;
- Oilfield Inspection Services Middle East LLC;
- Nippon Kaiji Kyokai; and
- RINA.

Liability

18 | In what circumstances can a classification society be held liable, if at all?

There have been no instances of a classification society being held liable.

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

19 | Can the state or local authority order wreck removal?

The relevant maritime authority may order that a wreck be seized as security for the cost associated with removing it. The authority may conduct an administrative sale of the vessel by public auction and recover its debt out of the proceeds, in preference to the other creditors.

International conventions

20 | Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

Collision

The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 has not been ratified by the United Arab Emirates. However, the Maritime Law provisions relating to collisions are largely based on the convention. Articles 1 to 6 and article 8 of the convention are mirrored in articles 318 to 326 of the Maritime Law. The collision provisions of the Maritime Law apply to all collisions between seagoing vessels. The United Arab Emirates has ratified the Convention on the International Regulations for Preventing Collisions at Sea 1972.

Salvage

The United Arab Emirates ratified the International Convention on Salvage 1989 in 1993.

Pollution

The United Arab Emirates is a signatory to:

- the International Convention for the Prevention of Pollution from Ships 1973 (as amended by the 1978 protocol);
- the International Convention on Civil Liability for Oil Pollution Damage 1992; and
- the Fund Convention 1992.

Wreck removal

The United Arab Emirates has not ratified the Nairobi International Convention on the Removal of Wrecks 2007.

Salvage

21 | Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory local form of salvage agreement. Therefore, any form of agreement can be utilised.

SHIP ARREST

International conventions

22 | Which international convention regarding the arrest of ships is in force in your jurisdiction?

Collision

The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 has not been ratified by the United Arab Emirates. However, the Maritime Law provisions relating to collisions are largely based on the Convention. Articles 1 to 6 and article 8 of the Convention are mirrored in articles 318 to 326 of the Maritime Law. The collision provisions of the Maritime Law apply to all collisions between seagoing vessels. The United Arab Emirates has ratified the Convention on the International Regulations for Preventing Collisions at Sea 1972.

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- the International Convention for the Prevention of Pollution from Ships 1973 (as amended by the 1978 protocol);
- the International Convention on Civil Liability for Oil Pollution Damage 1992;
- the protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships (MARPOL)73/78;
- the Annex (VI) of the Convention on the Regulations of Prevention of Air Pollution from Ships;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; and
- the Fund Convention 1992.

Wreck removal

The United Arab Emirates has not ratified the Nairobi International Convention on the Removal of Wrecks 2007.

Claims

23 | In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

A vessel can be arrested as security for a maritime claim. A 'maritime claim' is defined in the Maritime Law as being a claim arising out of:

- damage caused by a vessel as a result of a collision or other accident;
- loss of life or personal injury occasioned by the vessel and arising out of its use;
- assistance or salvage;
- contracts relating to the use or exploitation of the vessel under a charter party or otherwise;
- contracts relating to the carriage of goods under:
 - a charter party;
 - a bill of lading; or
 - other documents;
- loss of or damage to goods or luggage transported by a vessel;
- general average;
- towage or pilotage of a vessel;
- supplies of products or equipment necessary for the use or maintenance of a vessel, in the place in which the supply is made;
- building, repairing or supplying a vessel and dock dues;
- sums expended by the master, shippers, charterers or agents on account of a vessel or its owner;
- wages of the master, officers, crew and other persons working on board a vessel under a contract of maritime employment;
- disputes over a vessel's ownership;
- disputes in connection with the co-ownership, possession or use of a vessel, or with the right to the profits arising out of its use; or
- a maritime mortgage.

A claimant may arrest not only the vessel to which the claim relates, but also any sister vessel owned by the defendant at the time that the claim arose. The UAE courts are not generally inclined to lift the veil of corporate personality, therefore, ships owned by subsidiaries of a defendant cannot be arrested.

There is no right to arrest other vessels owned by a defendant:

- in a dispute regarding the ownership of a vessel;
- in a dispute relating to the co-ownership, possession or use of a vessel, or the right to profits arising out of its use;
- in a claim arising from a maritime mortgage; or
- where the vessel was chartered by demise.

A bareboat (demise) chartered vessel may be arrested for a claim against the bareboat charterer, provided that such a claim falls within the definition of a 'maritime debt'. A claimant may arrest either the vessel in respect of which the claim arose (ie, the chartered vessel) or any other vessel owned by the demise charterer. However, the claimant cannot arrest other vessels owned by the owner of the chartered vessel.

Maritime liens

24 | Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

The concept of the maritime lien is not recognised in the United Arab Emirates. However, the Maritime Law identifies certain debts that follow the vessel in the hands of different owners. These debts are classified as priority debts and include:

- judicial costs incurred in the protection and sale of the vessel (including port charges);

- debts arising out of a contract for the employment of the master, crew and any other person employed by a contract of maritime employment on board the vessel;
- monies due for assistance and salvage;
- compensation due for collisions; and
- debts arising out of contract made by the master.

Wrongful arrest

25 | What is the test for wrongful arrest?

Neither the law nor the courts have set a test for wrongful arrest. On occasion, as a condition for granting an arrest, the court may require the claimant to provide security in the form of a bank guarantee or an undertaking of indemnification. The court may also use its discretion to compensate the defendant in the event that it determines that the arrest was wrongful.

Bunker suppliers

26 | Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

The supply of bunkers may be considered a maritime debt since it relates to supplies necessary for the use or maintenance of a vessel. There has been at least one case in which a UAE court upheld the right of a bunker supplier to arrest a vessel for a claim for the supply of bunkers to the vessel, even though the supplier's contract was with the charterer.

Security

27 | Will the arresting party have to provide security and in what form and amount?

The Maritime Law does not specifically require an arresting party to provide security. However, the court may at its discretion require the plaintiff to provide some form of security in arrest cases – usually in the form of a bank guarantee from a UAE bank. In some cases, where the plaintiff is a UAE national, they will be permitted simply to provide their own written undertaking, in lieu of a bank guarantee. A protection and indemnity letter of undertaking will be accepted only if the defendant and the court agree to such a form of security.

28 | How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

The amount of security is determined at the court's discretion. The court will usually order that the arrest be vacated if security or other surety is offered and is sufficient to meet the claim. However, a vessel will not be automatically released from arrest if the arrest has been affected in connection with a dispute as to the ownership of the vessel or the co-ownership, possession or use of the vessel, or the right to the profits arising out of its use.

In such cases, the court may permit the person in possession of the vessel to use it if they provide sufficient security and use its discretion to charge a person with the management of the vessel during the period of the arrest.

An application for the release of a vessel under the foregoing provisions will not to be construed as an admission or acknowledgement of the claim.

Formalities

29 | What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

Lawyers who are licensed to practise in the UAE courts must be retained to institute proceedings in court and a notarised power of attorney is required in all UAE jurisdictions. If the power of attorney is executed outside the United Arab Emirates, it must be legalised and consularised at the UAE consulate in the country of execution. The power of attorney must then be legalised through the UAE Ministry of Justice.

Arabic is the official language of the United Arab Emirates and its courts. All proceedings are conducted in Arabic and all documents that are filed must be translated into Arabic by a translator licensed by the Ministry of Justice. Consequently, all underlying documents supporting the arrest must be translated into Arabic. Actions cannot be filed without a power of attorney and the translated supporting documents. In cases before the Dubai or Abu Dhabi courts, relevant documents may be filed electronically.

Ship maintenance

30 | Who is responsible for the maintenance of the vessel while under arrest?

The claimant must provide an undertaking that it will maintain the vessel while under arrest. This undertaking includes the payment of port fees.

Proceedings on the merits

31 | Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Upon an arrest order being issued, UAE courts will assume jurisdiction over the substantive dispute, unless the underlying contractual documents contain an agreement to arbitrate. The claimant must file its substantive claim within eight days of the arrest order being issued. Where a claimant wishes to rely on the agreement to arbitrate, evidence that arbitration has been initiated must be submitted within eight days of the arrest order being issued.

Article 122 of the Maritime Law provides that the civil court in whose area of jurisdiction the arrest took place will have jurisdiction to adjudicate on the subject matter of the claim in any of the following circumstances (even if the vessel does not fly the UAE flag):

- the claimant's usual address or main office is in the United Arab Emirates;
- the maritime claim originated in the United Arab Emirates;
- the maritime claim arose during the voyage on which the vessel was arrested;
- the maritime claim arose out of a collision or an act of assistance over which the court has jurisdiction; or
- the claim is secured by a maritime mortgage over the arrested vessel.

Injunctions and other forms of attachment

32 | Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Attachment orders may be issued at the court's discretion pursuant to article 252 of the Civil Procedure Code. Article 252 of the Civil Code provides that a court may issue an attachment order in the following circumstances:

- the debtor has no permanent residence in the United Arab Emirates;
- the creditor fears that the debtor will escape or conceal its assets; or
- the creditor holds a formal or informal unconditional deed of debt.

Delivery up and preservation orders

33 | Are orders for delivery up or preservation of evidence or property available?

Although article 18 of the Evidence Law provides for the disclosure of documents and evidence, in practice, the UAE courts do not issue orders on the disclosure of documents or evidence.

Bunker arrest and attachment

34 | Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

The Maritime Law defines the term 'vessel' as 'any structure normally operating, or made for the purpose of operating, in navigation by sea, without regard to its power, tonnage or the purpose for which it sails'. Hovercrafts used for commercial or non-commercial purposes are also deemed to be vessels.

A vessel that is not self-propelled is not considered to be a 'vessel'. Therefore, petroleum installations are not viewed as vessels and cannot be arrested.

However, an attachment over bunkers may be sought under the Civil Procedure Code.

JUDICIAL SALE OF VESSELS

Eligible applicants

35 | Who can apply for judicial sale of an arrested vessel?

The claimant may apply for an order for a judicial sale of an arrested vessel. An order for the sale of a vessel is made when a final judgment has been rendered against the vessel and an order for the arrest of that vessel has been confirmed. The order stipulates the price at which the vessel will be sold, as well as the date on which the sale will take place.

Procedure

36 | What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The court will appoint an expert to value the vessel. This value will constitute the reserve price in an auction for the sale of the vessel.

If the court orders a vessel to be sold, it will provide:

- the price of the vessel;
- the conditions of sale; and
- the date on which the public auction will take place.

The sale is advertised in one of the widely circulated local newspapers – usually an Arabic daily. The notice of sale is also served on the Registrar of Ships and at any other place specified by the court.

The notice of sale must specify:

- the name and domicile of the person arresting the vessel;
- the legal instrument in accordance with which the implementation of the arrest order will be carried out;
- the amount of the claim for which the arrest was made;
- an address for service of the arresting party within the area of the court in which the vessel lies;

- the name and domicile of the owner of the vessel;
- the name and domicile of the defendant against which the arrest order was affected;
- a description of the vessel and its port of registration;
- the name of the master;
- the place in which the vessel is located;
- the basic price and the conditions of sale; and
- the day, place and time at which the sale will take place.

The auction takes place after the expiry of 15 days from the date of publication of the notice. If the creditor fails to complete the required formalities relating to the publication of the notice within 90 days of the issue of the court order for the sale of the vessel, the court may order the arrest order to be discharged if the debtor so wishes.

Three auctions are held at intervals of seven days for the sale of any given vessel. The court sets a price, which is referred to as the 'reserve price'. The first auction takes place and the highest offer is taken as the new reserve price for the second auction. In the second auction, the highest offer above the reserve price already established is taken as the new reserve price for the third auction, and in the third auction, the highest bidder above the established reserve price obtains the vessel.

Claim priority

37 | What is the order of priority of claims against the proceeds of sale?

Articles 89 and 105 of the Maritime Law broadly stipulate the priorities according to which sale proceeds must be distributed. The order is as follows:

- the statutory dues, court expenses and expenses relating to the sale of the vessel;
- crew wages;
- general average claims;
- damages for collision;
- contracts entered into by the master within the scope of their authority outside the vessel's port of registration for a 'real need required for the maintenance of the vessel on its continued passage';
- mortgages;
- compensation payable to charterers arising out of breakdowns and damage; and
- insurance premiums.

Priority rights arising from any one voyage must precede the priority rights arising from any previous voyage. However, debts arising from one maritime employment contract for a number of voyages must be equal to the debts of the last voyage.

The court usually determines the priority rights of claimants. In cases involving complicated accounts, Dubai courts often appoint an expert to determine the order of priority in which the sale proceeds are to be distributed. The expert may be a person who is not qualified in law.

Legal effects

38 | What are the legal effects or consequences of judicial sale of a vessel?

All priority rights are extinguished on the sale of a vessel consequent to a judicial sale.

Foreign sales

39 | Will judicial sale of a vessel in a foreign jurisdiction be recognised?

The judicial sale of a vessel and subsequent change of ownership in a foreign jurisdiction will be recognised in the United Arab Emirates.

International conventions

40 | Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

No.

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

41 | Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

The Hague Rules, Hague-Visby Rules, Hamburg Rules nor the Rotterdam Rules have been ratified by the United Arab Emirates.

Although the United Arab Emirates is not a signatory to the Hague-Visby Rules, the relevant provisions of the Maritime Law are largely based on these rules.

Under the Maritime Law, carriage of goods at sea begins when the carrier of goods (or its representative) takes delivery of the goods and ends at the time that the goods are delivered.

Multimodal carriage

42 | Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

Chapter VIII (articles 272 to 370) of the Commercial Code applies to a multimodal bill of lading. This chapter sets out the rights, obligations and responsibilities of the carrier.

Title to sue

43 | Who has title to sue on a bill of lading?

The following have the right to sue on a bill of lading:

- the party named in the bill of lading;
- the party that takes lawful delivery of the goods; and
- a party that has had the bill of lading endorsed or assigned.

Charter parties

44 | To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

The charter party may be expressly incorporated into the bill of lading.

A jurisdiction clause or arbitration clause in a charter party will be binding on a third-party holder or endorsee of the bill. A third-party holder or endorsee will be considered to have agreed to the terms incorporated.

The Arbitration Law provides that an arbitration agreement should be in writing and may be contained in a document signed by parties or in exchange of correspondence or referenced in any document containing an arbitration clause.

Demise and identity of carrier clauses

45 | Is the 'demise' clause or identity of carrier clause recognised and binding?

There is no express provision in the law recognising or prohibiting the demise clause. UAE law recognises freedom of contract. Therefore, if the parties have agreed to the demise clause, it would usually be recognised and binding on the parties.

Shipowner liability and defences

46 | Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

As a matter of law, shipowners will not be liable under UAE law for cargo damage if they are not the contractual carrier unless such damage is due to a fault in the vessel. However, it is not unknown for vessels to be arrested even in situations where the shipowner is not the contractual owner.

Deviation from route

47 | What is the effect of deviation from a vessel's route on contractual defences?

The responsibility of delivering the goods to the specified port is the shipowner's responsibility. Where there is an unjustifiable deviation, the shipowner will be liable to the charter for the losses.

Liens

48 | What liens can be exercised?

The concept of the maritime lien is not recognised in the United Arab Emirates. Priority debts will follow the vessel in the hands of different owners.

Delivery without bill of lading

49 | What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

Article 267 of the Maritime Law requires the carrier to deliver the cargo on the production of the bill of lading. The delivery of cargo without the production of the bill of lading may result in the carrier being liable for the value of the cargo.

Shipper responsibilities and liabilities

50 | What are the responsibilities and liabilities of the shipper?

The shipper is responsible for:

- signing an original bill of lading for retention by the carrier;
- providing accurate information on the goods to be shipped and placed in the bill of lading;
- providing the carrier with the characteristics, quantity and weight of the goods; and
- the visible condition of the goods.

SHIPPING EMISSIONS

Emission control areas

51 | Is there an emission control area (ECA) in force in your domestic territorial waters?

No.

Sulphur cap

52 | What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

The UAE ratified the MARPOL protocol (Annex VI) on 20 February 2019 (effect on 20 May 2019) and therefore, the provisions of the MARPOL protocol (Annex VI) will apply to the sulphur content of fuel oil.

SHIP RECYCLING

Regulation and facilities

53 | What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

There are no domestic or international ship recycling regulations that apply in the United Arab Emirates. However, there are a number of ship recycling companies in the territory.

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

54 | Which courts exercise jurisdiction over maritime disputes?

There are no specialised maritime courts in the United Arab Emirates. Therefore, the civil courts exercise jurisdiction over maritime matters. Action is first initiated before the court of first instance and appeals are permitted to the court of appeal and thereafter to the court of cassation.

Service of proceedings

55 | In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

Service on parties domiciled abroad may be affected through email or facsimile and if service cannot be so effected, process will be served through diplomatic channels. Service is deemed to be affected on the date of sending the email or facsimile message and on the date on which a voice or video call was made. Only process served by facsimile is deemed to have been served on the date of receipt.

Arbitration

56 | Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

Yes. The Emirates Maritime Arbitration Centre (EMAC) is a domestic arbitral institution that specialises in maritime arbitration and has a panel of maritime arbitrators. The EMAC is relatively new. However, it frequently holds seminars and talks on maritime matters.

Foreign judgments and arbitral awards

57 | What rules govern recognition and enforcement of foreign judgments and arbitral awards?

The United Arab Emirates is a party to the New York Convention and has ratified the convention without reservation. Therefore, a foreign arbitral award rendered in a member country will be recognised and enforced in the United Arab Emirates, subject to the terms of the Convention.

Foreign judgments will be enforced in the United Arab Emirates on the basis of reciprocity. Therefore, a party attempting to enforce a foreign judgment must provide evidence that a UAE judgment has been enforced in that jurisdiction. Reciprocity is usually evidenced by the existence of a bilateral treaty for the enforcement and recognition of judgments.

Asymmetric agreements

58 | Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

In theory, asymmetric jurisdiction and arbitration agreements are valid and enforceable in the United Arab Emirates and are frequently incorporated in agreements, particularly by banks. The Arbitration Law is silent on the application of asymmetric jurisdiction and arbitration agreements. However, whether the UAE courts have recognised the validity or enforceability of such clauses is unknown.

Breach of jurisdiction clause

59 | What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

If the parties have agreed to arbitration, a UAE court will refuse to hear the case provided that the defendant has objected to the court hearing the dispute before it submitted its defence on the merits of the case.

If the parties have agreed to a foreign court having jurisdiction to hear the dispute, a UAE court will disregard such an agreement and proceed to hear the case if it is satisfied that it has jurisdiction under the law. Under UAE law, a court is permitted to assume jurisdiction in the following circumstances:

- the defendant is registered or domiciled in the United Arab Emirates;
- the claim relates to an asset which is located in the United Arab Emirates;
- the claim relates to a contract that was executed or performed (even partially) in the United Arab Emirates; or
- the claim relates to payments that were made from or to the United Arab Emirates.

60 | What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

If the contract contains an arbitration agreement and court proceedings are initiated, the court will refuse to hear the dispute if the defendant objects to the court hearing the dispute before it submitted its defence on the merits.

In the event of a foreign jurisdiction clause, there are no remedies available in the United Arab Emirates. A defendant may attempt to obtain an anti-suit injunction from a foreign court that has jurisdiction. However, the enforcement of such an injunction may not be possible in the United Arab Emirates, as it will be contrary to public policy.

LIMITATION PERIODS FOR LIABILITY

Time limits

61 | What time limits apply to claims? Is it possible to extend the time limit by agreement?

The following limitation periods apply to maritime claims:

- three years for claims in tort;
- one year for charter party and cargo claims and 90 days for third-party recourse actions;
- two years for salvage and collision claims;
- two years for marine insurance claims;
- two years for passenger claims relating to death or personal injury;
- one year for claims for the carriage of luggage;
- two years for compensation claims arising out of collisions; and
- one year for rights of recourse of a defendant ship against another ship for settled claims for death or personal injury.

Court-ordered extension

62 | May courts or arbitral tribunals extend the time limits?

No. Time limits set by law cannot be extended by agreement, the courts or the tribunals.

MISCELLANEOUS

Maritime Labour Convention

63 | How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

The Maritime Labour Convention is not ratified in the United Arab Emirates. However, the territory is working on ratifying this.

Relief from contractual obligations

64 | Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Article 249 of the Civil Code provides that in the event of an 'exceptional event of a public nature', the courts may excuse the performance of an obligation or reduce the onerous obligations to a reasonable level. Therefore, in theory, if the economic conditions can be considered an exceptional event of a public nature, a party may use article 249 to seek relief from the strict enforcement of a shipping contract.

That being said, in 2012 a Dubai court held that the 2011 global financial crisis did not constitute an 'exceptional event of a public nature' and refused to apply article 249 of the Civil Code.

Other noteworthy points

65 | Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

No.

UPDATE AND TRENDS**Key developments of the past year**

- 66 | Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

The United Arab Emirates is in the process of enacting a new maritime law. The new law is expected to incorporate provisions in many of the maritime conventions and provide for specialised maritime courts. A draft of the law is not yet available; however, it was expected to be enacted in 2020 but is likely to be delayed due to the impact of the coronavirus.

Coronavirus

- 67 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Currently, in the United Arab Emirates, there is no emergency legislation, relief programmes or other initiatives for the shipping industry related to the pandemic.

AFRIDI & ANGELL
L E G A L C O N S U L T A N T S

Bashir Ahmed

bahmed@afриди-angell.com

Chatura Randeniya

crandeniya@afриди-angell.com

Mevan Bandara

mbandara@afриди-angell.com

Jumeirah Emirates Towers
Office Tower, Level 35
Sheikh Zayed Road
PO Box 9371, Dubai
United Arab Emirates
Tel: +971 4 330 3900
www.afриди-angell.com

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