

United Arab Emirates

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1. CONTRACTS OF CARRIAGE

1.1 Jurisdiction/Proper Law

The United Arab Emirates (UAE) courts will exercise jurisdiction under the provisions of Federal Law No. 11 of 1992 (as amended), the 'Civil Procedures Law'. Article 20 of the Civil Procedures Law provides that, with the exception of suits involving real estate abroad, the UAE courts have jurisdiction to hear actions filed against UAE citizens and foreigners who are domiciled or who have a place of residence in the UAE. Where action is instituted against a foreigner who is not domiciled within the UAE or does not have a place of residence in the UAE, the provisions of article 21 provide the instances in which the UAE courts will exercise jurisdiction. Articles 21(3) and (7) are of particular relevance and unofficial translations are reproduced below:

Article 21(3)

'If the action involves an obligation made or executed or conditionally executable in the state or associated with a contract which needs to be authenticated in the state or if the action is connected with an incident which took place in the state or with an act of bankruptcy declared in a court of the state'

Article 21(7)

'If any of the defendants has a domicile or place of residence in the state'

Ordinarily the UAE courts assume jurisdiction and will apply UAE law in cases regarding bills of lading for cargo loaded or discharged in the UAE and will, as a matter of practice, ignore any provision to the contrary in the bill of lading.

1.2 Foreign jurisdiction

A foreign jurisdiction clause is not necessarily recognised. As noted above, should any of the defendants be domiciled or resident in the UAE, the UAE courts will assume jurisdiction.

An arbitration clause, however, will be recognised, provided that an objection regarding the jurisdiction of the courts due to the presence of an arbitration clause is taken up at the first hearing of the case.

1.3 Foreign orders

The recognition of foreign orders in the UAE depends on the existence of a treaty for judicial cooperation and enforcement of judgments between the UAE and the country from which the order emanates. There are a number of treaties in existence, for example with France and India. There are no treaties in place with the United Kingdom or the United States.

1.4 Arbitration clauses

As noted above, foreign jurisdiction clauses are not necessarily recognised in the UAE. In the case of arbitration clauses, the courts in the past have recognised clauses set out in an incorporated document, provided that it is done so in a prominent and identifiable manner. The courts tend to ignore fine print clauses on the reverse of bills of lading. It should be noted however that there is no system of binding precedent in the UAE. Ordinarily, the arbitration agreement must be signed.

1.5 Provisions of a charterparty

The provisions of a charterparty incorporated into a bill of lading may not be recognised in an action by a consignee who is not party to the charterparty. While it is not necessary for the incorporating words to make express mention of the arbitration clause, it would be prudent to do so. In any event, the courts will generally ignore fine print incorporating words and require the charterparty to be identified with sufficient particularity.

1.6 Parties to the bill of lading contract

The named vessel is generally regarded as the carrier. There are no clear rules on the relationship between statements on the face of the bill and/or the signature by or on behalf of the Master and demise clauses/identity of carrier clauses. The concept of 'Non-Vessel Owning Common Carriers' is not fully understood in this jurisdiction. The fact that a person may have signed a document without authority is not looked at seriously, and it is therefore possible that instances arise in which the vessel owner is held liable, even though the party issuing or signing the bill of lading is not.

1.7 Consignees

The named consignee or the ultimate endorsee for value is entitled to sue for loss or damage arising out of the carrier's alleged default. Rights under the contract of carriage are transferred by way of endorsing the bill of lading. Any such transfer should not affect the liability of the original shipper.

1.8 Liability regimes

The legal regime is contained in Federal Law No. 26 of 1981 the 'Federal Maritime Law'), which contains provisions similar to the Hague Rules. The Rotterdam Rules haven't been ratified and Hague/Hague-Visby Rules do not apply to straight bills of lading.

1.9 Lien Rights

Article 223 of the Federal Maritime Law provides that a '*disponent owner shall have a lien over goods loaded on board the vessel and such lien shall include the freight of the vessel and appertunances*'. Liens arising out of General Average are recognised under article 360 of the Federal Maritime Law. While dead freight is recognised as a concept, liability is imposed on the charterer, and not the goods (article 230 of the Federal Maritime Law). A lien for freight is possible, provided a freight collect bill is issued. If a freight paid bill of lading

is presented for delivery of the cargo, the owner would have no lien over the cargo.

There is no concept of owner registration in the UAE.

2. COLLISIONS

2.1 1910 Collision Convention

The 1910 Convention has not been ratified by the UAE. However, there are some provisions in the Federal Maritime Law based on the convention. The UAE has acceded to the Collision Regulations 1972.

2.2 Jurisdiction

Article 325 of the Federal Maritime Law provides for the following grounds upon which jurisdiction is to be founded:

- (i) residence of the defendant;
- (ii) jurisdiction in which the defendant vessel is registered;
- (iii) jurisdiction in which the defendant vessel or a sister vessel is arrested or where security has been offered; and
- (iv) jurisdiction in which the collision occurred if it took place within the ports, docks or other inland waters;

Article 325 of the Federal Maritime Law must be read with Federal Law No. 19 of 1993 on the Determination of the Marine Territories of the United Arab Emirates, which extends the sovereign jurisdiction to the Exclusive Economic Zone of the UAE (200 nautical miles measured from the base line) in certain instances.

Articles 318 and 320 of the Federal Maritime Law provide that compensation must be for the actual damage caused. This may include a claim for pure economic loss. However, it must be noted that the provisions of the Federal Maritime Law are applicable only to powered ocean going vessels. In the event of non-powered vessels (eg, barges), the provisions of UAE Federal Law No. 5 of 1985, the Civil Transactions Code will apply. Article 292 of the Civil Transactions Code provides that *'in all cases compensation shall be assessed on the basis of the amount of harm suffered by the victim, together with loss of profit, provided that it is a natural result of the harmful act'*.

3. SALVAGE

3.1 Salvage conventions

The International Convention on Salvage was ratified by the UAE in 1993.

The rules on non-contractual salvage are contained in articles 327 to 339 of the Federal Maritime Law. A sampling of the rules follow:

- (i) any act of assistance or salvage shall give the right to remuneration if it achieves a useful result;
- (ii) remuneration cannot exceed the value of the things saved;
- (iii) remuneration is payable even if the act of salvage is effected between vessels under common ownership;
- (iv) no remuneration is payable if the assisted vessel has expressly forbidden assistance for reasonable cause;
- (v) no payment for towage or pilotage unless exceptional services outside

the bounds of custom in operations of towage and pilotage have been rendered;

- (vi) the parties shall fix the amount of the remuneration otherwise it shall be fixed by the relevant court; and
- (vii) no remuneration is payable in respect of saving of persons.

3.2 Limitation periods

Article 337 of the Federal Maritime Law provides that in *'the event of denial and in the absence of lawful excuse no claims for remuneration for recompense for assistance or salvage shall be heard after the expiry of a period of two years from the date on which such actions were performed'*. As a practical measure, the salvor may withhold the ship/cargo until the salvage claim has been satisfied.

4. GENERAL AVERAGE (GA)

4.1 Federal Maritime Law

Articles 340 through 365 of the Federal Maritime Law sets out the law on GA in the UAE. Article 340(2) provides that the provisions of the Federal Maritime Law will apply unless there is a specific agreement to the contrary between the parties.

4.2 Time bars

Article 363 of the Federal Maritime Law provides that *'no claim for participation in settlement of the General Average shall be accepted in respect of losses sustained by goods unless the master has been notified in writing of the claim within 30 days from delivery of the goods and if the claim is in respect of losses sustained by the vessel the cargo owners must be notified thereof within the said period from the date of the termination of the voyage'*. In addition, article 365 of the Federal Maritime Law provides that in *'the event of denial and in the absence of lawful excuse no claim for the participation in the GA shall be heard after the expiry of two years from the date of the arrival of the ship at the port specified as its destination or to the port in which the maritime voyage ended'*.

4.3 General Average Adjustment

Article 357 of the Federal Maritime Law provides that the GA adjustment shall be made by one or more experts agreed to by the parties, or in the absence of such agreement, appointed by the court. If the parties do not accept the adjustment, provision is made in article 358 for the matter to be referred to court. Once the judgment is rendered final (after the exhaustion of appeals), it is binding.

5. LIMITATION

5.1 Tonnage limitation regime

The tonnage limitation regime of the Federal Maritime Law is set out in articles 138 and 141. Article 141 sets out the limitation on the owner's liability as follows:

- (i) AED 250 (approximately US\$79) per tonne where only physical damage is caused;

- (ii) AED 500 (approximately US\$137) per tonne where only bodily injury is caused; and
- (iii) AED 750 (approximately US\$237) per tonne where both physical damage and bodily injury is caused.

By Federal Decree No. 41 of 1983, the UAE acceded to the International Convention on Tonnage Measurement of Ships 1969 ('Tonnage Convention'). By Federal Decree No. 118/97 issued on 4th August 1997, the UAE has ratified the Convention on Limitation of Liability for Maritime Claims, 1976 ('the 1976 Convention'), and together constitute the tonnage limitation regime in the UAE. However, you should note that the language used in the Arabic text of the 1976 Convention (which is the applicable version in the UAE) uses permissive, as opposed to mandatory language, and accordingly, it is difficult to predict how these provisions will be applied by a UAE court.

As a practical matter, it should be noted that limitation of liability as a concept is not well grasped by the UAE courts.

5.2 Limiting liability

As per article 138 of the Federal Maritime Law, the owner/s of the vessel may seek to limit liability. Additionally, ship owners, as defined in the 1976 Convention, and salvors may limit their liability as per the 1976 Convention.

5.3 Tonnage limitation

Tonnage limitation is not possible where liability arises as result of the ship owner's personal error. Liabilities arising from rescue and assistance, GA liabilities toward the crew or personnel or their heirs and claims arising out of nuclear damage against the owner of a nuclear vessel may not be limited.

5.4 Limitation provisions

Limitation provisions do not found jurisdiction in the UAE.

5.5 Liability

Article 276 of the Federal Maritime Law provides that *'the liability of the carrier in all circumstances for loss or damage suffered by the goods shall be limited to a sum not exceeding AED 10,000 (approximately US\$ 2,739) for each package or unit'*.

6. POLLUTION AND THE ENVIRONMENT

The UAE approved the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969 (Civil Liability Protocol) and the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Fund Protocol). Approval of the two 1992 Protocols were achieved through the issuance of UAE Federal Decree No. 82 of 1997.

7. SECURITY AND ARREST

7.1 Conventions

The UAE is not party to the arrest conventions. However, the provisions on arrest of the Federal Maritime Law are broadly based on the 1952 convention.

7.2 Maritime debts

The concept of maritime liens is not recognised in the UAE law. However, the concept of ‘maritime debts’ is recognised which is somewhat akin to the concept of maritime liens and gives rise to the right to arrest a vessel.

7.3 Mortgagees

Articles 84 and 105 of the Federal Maritime Law read together provide that mortgages shall rank directly after the following priority debts:

- (a) judicial costs incurred in protecting and selling the vessel, distributing the proceeds thereof, loading, lighthouse and port charges and similar taxes and dues, costs of removing obstacles to navigation caused by the vessel, costs of towing and maintenance of the vessel from time of its arrival at the last harbour;
- (b) Debts arising out of contracts of maritime employment;
- (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; and
- (e) Debts arising out of the contracts made by the Master.

The UAE courts in the past have not necessarily found substantive jurisdiction pursuant to an arrest claim. However, given the absence of a system of binding precedent, this possibility cannot be ruled out.

7.4 Arrest of sister/associated ships

Article 116 of the FML is relevant in this regard. An unofficial translation of article 116 provides as follows:

‘Any person seeking to recover the debts referred to in the preceding article may arrest the vessel to which the debt relates, or any other vessel owned by the debtor if such other vessel was owned by him at the time the debt arose even if the vessel is ready to sail.’

Accordingly, it must be established that the vessels were owned by the same debtor at the time the debt arose in order to arrest a sister vessel.

7.5 Arrest arising from MOA

Article 115 of the Federal Maritime Law provides that a vessel may be arrested in order to satisfy a maritime debt. Article 115(2)(d) and (e) provides that contracts relating to the use or exploitation of the vessel, and contracts relating to the carriage of goods respectively qualify as maritime debts. Article 115(2)(j) provides that the construction and repair of vessels qualifies as maritime debts.

7.6 Security and arrests

Anticipated bail bonds are not available in the UAE, and there is no provision for the lodging of security in advance.

7.7 Securing the claim

The arresting party cannot insist on such a measure, however, generally a bank guarantee from a bank domiciled in the UAE is required to secure the

release of an arrested vessel. The court won't accept a letter of guarantee from a protection and indemnity club. The guarantee has to be provided by a bank in the UAE. No other forms of guarantee are generally accepted by the UAE courts.

7.8 Judicial measures

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

Although various laws permit judicial measures to be undertaken, the single law that captures the judicial measures available for plaintiffs is set out in the Civil Procedures Law (CPL). 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 that apply to attachments are articles 252 and 257.

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 that grants the court authority to order provisional attachments against movables of the debtor, as set out in or article 257 of the CPL where assets are 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.

8. CONTRACTS OF SALE OF GOODS

8.1 Arbitration clauses

An arbitration agreement must be evidenced in writing and may be contained as part of the basic contract itself, or be agreed via a supplementary agreement to the basic contract, as per article 203 of the CPL.

8.2 Passing of title/property/risk

The concepts of passing of title, property and risk separately are not expressly recognised in the UAE. Ownership of the goods sold is transferred to the purchaser as soon as the sale is concluded, as provided for in article 511(1) of the "Civil Transactions Code". Federal Law No. 5 of 1985.

As per article 522 of the Civil Transactions Code, when *'the seller validly delivers the goods sold to the purchaser, the latter is no longer liable for the goods'*. It should also be noted that in the event foreign law applies to the contract, the substance of the foreign law will be treated as a question of fact by the UAE courts.

8.3 Description and quality

Article 543 of the Civil Transactions Code provides that *'a sale shall be deemed to have been concluded on the basis that the goods sold are free of any defects, save*

as such are within the customary tolerance'. Where the sale is by sample, the goods must conform to the sample, as per article 492 of the Civil Transactions Code.

Performance

Article 530 of the Civil Transactions Code provides that the seller is obliged to deliver the goods sold at the place where they are at the time the contract is made. If custom or the provisions of the contract provide that the goods should be sent to the purchaser, delivery will occur only when the goods reach the purchaser, unless there is an agreement to the contrary, delivery may be via actual delivery; by the purchaser already being in possession of the goods prior to the sale; or through constructive delivery. The relevant law is set out in articles 525 through 529 of the Civil Transactions Code.

Acceptance of goods

Ordinarily, acceptance occurs when goods are delivered. However, no consequences flow from acceptance.

Payment of goods

The purchaser must pay for the goods when the contract is made and before the delivery of the property and before a claim is made for it, in absence of agreement to the contrary, as per article 556 of the Civil Transactions Code.

Other terms

There is no explicitly defined distinction between these two types of contractual terms.

Intermediate terms

There is no comparable concept in the UAE to the English law's concept of intermediate (or innominate) terms.

8.4 Exemption clauses

Force Majeure is also provided for in the Civil Transactions Code. However, exemption clauses are upheld very rarely.

To rely on an exemption clause, it will have to be demonstrated that the exemption clause was agreed to between the parties. However, as noted above, they are rarely enforced by the UAE courts. The courts may choose to disregard an exemption clause altogether if it is included in the fine print of a contract.

8.5 Remedies

Article 557 of the Civil Transactions Code provides that the seller may retain the property until the price is paid, provided the seller has not agreed to defer payment. The buyer may seek rescission of the contract, and/or claim damages.

The UAE law distinguishes between damages payable for 'direct' loss and damages payable for 'consequential' loss. While damages for consequential

losses is theoretically possible, awards rarely include compensation for consequential loss.

8.6 Limitation periods

Limitation periods are not dealt with in any one particular statute. Instead, they are discussed in various statutes. In general, a claim is time-barred after 15 years, unless a specific provision states otherwise.

The UAE courts have in the past upheld shorter limitation periods. However, it should be noted that there is no system of binding precedent in the UAE.

8.7 Finance

The UAE courts are reluctant to interfere with letters of credit or prevent payment under performance bonds.

8.8 Security

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:

- (i) an order to prevent the debtor from leaving the country,;
- (ii) attachment of debtor's movables;
- (iii) attachment of debtor's debts in possession of third parties even if they are deferred or conditional;
- (iv) attachment of debtor's stocks, securities, income and shares;
- (v) sale of attached real property; and
- (vi) imposition of 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.

8.9 Attachments

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

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.

8.10 Substantive proceedings

An order for provisional attachment of assets may be obtained prior to the substantive case being initiated.

8.11 Remedies for litigation claims verses to arbitration claims

While there is no distinction, in each case the order for security must be obtained via the courts.

8.12 Attachments

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:

- (i) the likely interest in the claim; and
- (ii) the 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 less stringent than that of a claim on the merits of the case.

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.

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:

'Without prejudice to the provisions of any other law, the creditor may request that the court hearing the case or the judge of the summary proceedings, as the case may be, to place the interlocutory garnishment against the movables of the debtor in the following cases:

1. *Any case in which he fears the loss of the guarantee of his right, as for example:
 - a) *If the debtor has no permanent residence in the state.*
 - b) *If the creditor fears that the debtor will face, or will smuggle out or conceal his properties.*
 - c) *If the securities of the debt are under threat of loss.**
2. *The lease holder who is engaged in a suit against the sub-lessee over movables, fruits and crops in the leasehold as a surety for the right of lien due to him by the law may invoke interlocutory attachment. He may do so also if the movables, fruits and crops have been removed there from without his knowledge, unless a period of one month has passed since their removal or unless enough properties have remained in the leasehold to arrant the discharge of the lien due to him.*
3. *If the creditor holds a formal or informal unconditional deed of debt due for payment.*
4. *If it appears to the judge from the papers attached to the application of garnishment that a serious claim is filed by the plaintiff against the defendant.*
5. *In all cases, and before it responds to the garnishment application, the court may request any details, evidences or affidavits it considers necessary.*

In all cases, and before it responds to the garnishment application, the court may request any details, evidences or affidavits it considers necessary.'

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.

8.13 Guarantees

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.

The counter security, where required, will be required in the form of a UAE bank guarantee.

8.14 Exposure to damages

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:

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

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.

8.15 Enforcement

The UAE acceded to the New York Convention in 2006. In view of the recent adoption of the Convention, there are very few cases of enforcement to date. The UAE is not a signatory to the Vienna Convention.

9. GENERAL FORMALITIES

9.1 Power of attorney

A formal power of attorney is required for lawyers to appear in court (bearing in mind that only local Arab lawyers have the right of audience in courts in the UAE) and is frequently called for in representing a client before various government authorities. Claim documents and their translation do not require notarisation.