

United Arab Emirates

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Part I. Arrest of Vessels

*This chapter has been reviewed by the Authors
and is up-to-date as of March 2024*

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List of Abbreviations

AGCC	Arab Gulf Co-operation Council
CPC	Federal Decree-Law No. 42/2022
IMO	International Maritime Organization
Maritime Law	Federal Decree-Law No. 43/2023
UAE	United Arab Emirates

Part I. Arrest of Vessels

1. SOURCES OF NATIONAL LAW

The United Arab Emirates (the UAE) was established in 1971 as a Federation of the Emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain and Fujairah. In 1972, the Emirate of Ras Al Khaimah joined the Federation, with the result that the UAE presently comprises the seven named Emirates.

The UAE is strategically located on the north-eastern tip of the Arabian Peninsula, having its shores along the Arabian (Persian) Gulf and the Gulf of Oman where it joins the Arabian Sea. Previously forming part of the Trucial States, the region is imbued with a long maritime tradition, and several of its maritime customs continue to play an important role in the UAE shipping laws. The Constitution of the UAE (the *Constitution*) proclaims Islam as the official religion of the State. Accordingly, Islamic Law, the *Shari'a*, plays a vital role in the UAE legislature. The Constitution specifically provides that the *Shari'a* shall be a main source of legislation, and the *Shari'a* may thus be described as the common law of the UAE.

Under the Constitution, the individual Emirates ceded certain elements of their sovereignty to the Federation, retaining the remainder for themselves. Thus, each Emirate may promulgate its own laws, which are issued by a Decree of the Ruler of the Emirate (or any person authorized by the Ruler) in question. These laws apply to the individual Emirates and do not operate in other Emirates or in the Federation unless specifically adopted. In September 2023, the UAE introduced a new maritime law Federal Decree Law No. 43/2023 (the *Maritime Law*), which replaced the 1981 Federal Maritime Law (the *1981 Law*). The Maritime Law came into effect on 29 March 2024. Prior to the enactment of the 1981 Law, certain Emirates had their own laws governing maritime matters (*Local Maritime Laws*) which were not repealed at the time. In practice, however, UAE Courts has relied solely on the 1981 Law, which is now replaced with the Maritime Law.

The question of arrest of vessels is governed by the Maritime Law; however, a distinction is made between 'provisional' or 'precautionary' arrest and 'executory' arrests: laws relating to the former are set out in Articles 53–60 of the Maritime Law, while the latter are set out in Articles 61–67. Where no provisions of law exist, the UAE Courts may apply maritime customs provided such do not conflict with provisions of the Maritime Law, and general principles of justice where no maritime customs apply (Article 3 of the Maritime Law).

This contribution deals with the position as provided for in the Maritime Law, but it will also attempt to draw a distinction between theory and practice wherever it may appear to be appropriate.

2. APPLICABLE INTERNATIONAL CONVENTIONS

Article 2 of the Maritime Law provides that the Maritime Law shall not derogate from international agreements ratified by the UAE.

The UAE is not a signatory to the International Convention regarding the Immunity of State-Owned Vessels signed in Brussels in 1926, or the International Convention relating to the Arrest of Sea-Going Ships signed in Brussels in 1952. The principal provisions of these Conventions are, however, given effect to by the Maritime Law as will be discussed in a later section. The UAE is not currently a signatory to the Arrest Convention. The International Maritime Organization (IMO) Conventions ratified by the UAE may be found on the IMO website.

The UAE is a member of the Arab Gulf Co-operation Council (AGCC). The AGCC was formed in 1981 between Saudi Arabia, Kuwait, Bahrain, Qatar, the UAE and Oman, and it seeks to achieve some uniformity in laws regulating various matters, including maritime law.

3. COMPETENCE OF COURTS OR OTHER AUTHORITY

Maritime matters are governed by the Maritime Law and are dealt with by the civil courts in the Emirates. There are no specialized maritime courts in the UAE. An order of arrest for a provisional remedy must be made to the civil court of the Emirate in whose jurisdiction the vessel is located. In the case of an executory arrest, the order for arrest may be obtained from the courts of the Emirate which issued the judgment. Such an order of arrest must then be served on the vessel through the courts of the Emirate where the vessel is located.

Article 60 of the Maritime Law provides that, without prejudice to any arbitration agreement, the civil court in whose area of jurisdiction the provisional arrest took place shall be competent to decide on the subject matter of the claim in any of the following circumstances (in addition to those set out in the procedural laws of the UAE), even if the vessel does not fly the UAE flag:

- (a) if the claimant's habitual residence or head office is in the UAE;
- (b) if the maritime debt arose in the UAE;
- (c) if the maritime debt arose during the voyage during which the vessel was arrested;

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- (d) if the maritime claim arose out of a collision or an act of assistance over which the court has jurisdiction; and
- (e) if the claim is secured by a maritime mortgage over the arrested vessel.

3.1. Procedural Laws in Force Within the UAE

Until 1992, the only Emirate which had a codified Civil Procedure Law was the Emirate of Abu Dhabi. In 1992, a Federal Civil Procedure Code was promulgated for the first time. The current iteration of the civil procedure laws is contained in (Federal Decree Law 42/2022). Although this law does not contain any provisions specifically referring to the arrest of vessels, it does contain extensive provisions relating to provisional measures, which would include arrests.

The CPC confers jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter. Article 20(2) of the CPC states that the courts of the UAE shall be competent to hear a suit against a foreign defendant who has no domicile or residence in the UAE if the case concerns ‘property’ in the state. The Arabic word for ‘property’ used in this provision is not the word used for land or real estate, but has a wider meaning, which includes any item or right of value. This should include, for example, funds held in a bank account or a vessel within the territorial waters of the state.

Article 21 of the CPC provides that the courts of the UAE shall be competent to order urgent or protective measures to be executed in the UAE, even if the said courts are not competent to hear the original case.

3.2. Claims Arising out of Collision

Article 240 of the Maritime Law lays down certain provisions as to the jurisdiction of courts in cases involving collision and provides that a claim arising out of a collision may be raised before any of the following courts:

- (a) the court in whose area of jurisdiction the defendant is domiciled;
- (b) the court having jurisdiction over the port of registration of the vessel;
- (c) the court within whose jurisdiction the collision took place;
- (d) the court within whose jurisdiction the arrest of the defendant’s vessel took place, or of another vessel owned by the same party (if the arrest of such a vessel is permissible), or the court within whose jurisdiction the arrest could have been made, and the defendant has provided a guarantee or other security in accordance with Article 57.

Pursuant to Article 240 (2), the parties may agree to assign the jurisdiction to a different court, or to refer the matter to arbitration. The law prohibits concurrent proceedings by prohibiting a party from asserting a claim in other jurisdictions without first withdrawing its initial claim.

Even though the UAE has ratified the 1976 Convention on the Limitation of Liability and the 1996 Protocol, the concept of limitation of liability is not applied consistently.

3.3. Claims Based on Contract

Ordinarily, with the exception of agreements to arbitrate, any provision in a contract which attempts to exclude the jurisdiction of a court in the UAE, or attempts to confer exclusive jurisdiction on a foreign court, will not be recognized by the UAE courts. The application of Article 240(2) of the Maritime Law, which permits the parties to agree to the jurisdiction to a different court, is yet to be seen.

An arbitration clause in an agreement is enforceable by the courts in all the Emirates pursuant to the provisions of the Federal Arbitration Law No. 6 of 2018 and Article 4 of the Maritime Law. The courts will normally decline jurisdiction if a suit is filed in respect of a contract containing a valid arbitration clause, provided that the defendant relies on the arbitration clause before submitting its defence on the merits.

Article 2(2) of the Maritime Law provides that the provisions of the Commercial Transactions Code (Federal Law No. 50 of 2022) shall apply to all business relating to maritime navigation which are deemed to be commercial business in respect of matters which are not explicitly addressed under the Maritime Law.

3.4. Port Authorities and Powers of Arrest

In addition to the powers of arrest conferred by the Maritime Law upon the UAE courts, the port authorities of each Emirate also have certain powers of arrest and detention. In general, these powers include the power to refuse to grant outward clearance and to impose fines and penalties in cases of breach of regulation. If such fines or penalties are not paid, then the port authority has the power to detain or arrest the vessel. It must be borne in mind that in cases involving port authorities there is little scope for an appeal against a decision to detain as administrative law remedies are not currently recognized/developed in the UAE.

Furthermore, the AGCC has published a set of rules and regulations for seaports. These rules allow port officials to detain vessels if they are found to be unsafe, or loaded above the load line as shown in a vessel's load line certificate. They may detain the vessel until she is, in their opinion, seaworthy.

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The regulations also provide that the authorities may detain a vessel until all accounts regarding services rendered to the vessel while in port are settled.

4. IMMUNITY OF STATE-OWNED VESSELS

Article 2(1) of the Maritime Law provides that the Maritime Law shall apply to all marine crafts, ships, and units engaged in activities associated with transportation and marine navigation, in a manner consistent with the provisions of pertinent international agreements, treaties, and protocols ratified by the UAE. Pursuant to Article 2(3) of the Maritime Law ships and marine vessels designated for military purposes, and government-owned vessels and marine vessels designated for non-commercial purposes, shall be excluded from the application of the provisions of the Maritime Law.

5. TYPES OF CLAIMS FOR WHICH AN ARREST OR ATTACHMENT MAY BE REQUESTED

A provisional arrest of a vessel may be sought as security for a maritime claim. Article 53 defines the term ‘maritime debt’ as being a claim arising out of any of the following:

- (a) loss or damage resulting from the operation of a vessel;
- (b) loss of life or personal injury occasioned by the vessel and arising out of the use thereof;
- (c) salvage operations or agreements including where the vessel or its cargo cause imminent damage to the environment;
- (d) damage caused by the vessel to the environment or the coastal strip or the interests in connection thereto, and any costs or expenses arising from avoiding, mitigating or eliminating such damages;
- (e) costs arising from salvaging of a sunken, wrecked, stranded or abandoned vessel and the costs arising from its transportation, recovery, preventing its harmful effect or the destruction thereof;
- (f) any contract relating to the use of a vessel under a charterparty or other document;
- (g) any contract relating to the carriage of goods or passengers onboard the vessel under a charterparty, bill of lading, travel ticket or other document;
- (h) loss or damage to goods or luggage transported by a vessel;
- (i) general average;
- (j) towing;
- (k) piloting;

- (l) supply of goods, materials, fuel, tools or containers and services necessary for the operation of the vessel, its management, preservation or maintenance;
- (m) building, rebuilding, repairing, converting or equipping the vessel;
- (n) port, canal, harbor and other waterway charges;
- (o) wages and any other amounts due to the master and crew members on account of their work onboard the vessel, including their repatriation expenses and payable social insurance contributions;
- (p) amounts paid on behalf of the owner of the vessel or its operator;
- (q) insurance premiums of the vessel and its Takaful insurance contributions that are payable by owner of the vessel, its charterer or their representative;
- (r) any commissions, brokerage, or agency expenses payable by the owner of the vessel, charterer, or their representative;
- (s) any dispute over ownership of the vessel or possession thereof;
- (t) any dispute between joint owners of the vessel relating to its use and distribution of the profits thereof;
- (u) maritime mortgage or any other real estate insurance over the vessel; and
- (v) any dispute arising from a contract for the sale of a vessel.

Article 53 of the Maritime Law specifically provides that an order for provisional arrest of a vessel may only be made with respect to a maritime debt.

6. DOCUMENTARY PRE-CONDITIONS TO AN ARREST

In addition to the conditions set out in the preceding sections being satisfied, the court will require a financial guarantee to be provided by the party requesting the provisional arrest of a vessel. The financial guarantee is provided to cover the basic necessities required for the safety and security of the vessel and its crew throughout the period of arrest. Any amounts spent from such financial guarantee are considered judicial expenses upon the distribution of proceeds recovered following execution.

7. DEFINITION OF ‘SHIP’, ‘MARINE CRAFT’ AND ‘MARINE UNIT’: WHAT OBJECTS OR PROPERTY MAY BE ARRESTED?

Article 1 of the Maritime Law defines the terms ‘Ship’ ‘marine unit’, and ‘marine craft’ as follows:

- (1) ‘Ship’ shall mean any craft that operates or is equipped to operate for marine navigation, regardless of the profit-making purpose for which

it sails. All essential appurtenances required for the ship's operation are considered integral part thereof.

- (2) 'Marine Craft' refers to any man-made object designed for use in the marine environment, which is capable of floating.
- (3) 'Marine unit' is any marine craft or unit, operational or ready for operation in the territorial waters and water canals of the Emirates for purposes such as personal, commercial, sports and tourism, irrespective of its type or shape.

The AGCC rules and regulations for ports define a vessel as follows:

The word 'vessel' shall include every description of ship, boat, raft or water craft of any description, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, irrespective of its means of power, and shall include in its meaning the term 'owners, operators and mortgagees thereof'.

8. EVIDENCE NECESSARY TO SUPPORT AN ARREST APPLICATION

In order to obtain an order for the arrest of a vessel, a plaintiff must provide documentary evidence establishing a *prima facie* maritime claim against the defendant. The granting of an arrest order under the Maritime Law is at the discretion of the court and the court may request additional information or appoint an expert to conduct its own investigations to ascertain whether there is a *prima facie* maritime claim against the vessel/defendant. The plaintiff must prove that the debt is a 'maritime debt' pursuant to Article 53 of the Maritime Law. It must allege that unless an arrest order is made, the vessel is likely either to leave the Emirates permanently or otherwise may prejudice the plaintiff's rights.

9. SISTER SHIPS

Under the provisions of Article 54 of the Maritime Law, a claimant may arrest not only the vessel to which the claim relates but also any other vessel owned by the defendant at the time of filing the application for a provisional arrest. The UAE courts are not generally inclined to lift the veil of corporate personality, and therefore sister ships owned by the subsidiaries of the defendant cannot be arrested.

However, there is no right to arrest other vessels owned by a defendant in the following circumstances (*see* Article 54 and 55):

- (a) in a dispute regarding ownership or possession of a vessel;

- (b) any dispute between joint owners of the vessel relating to its use and distribution of the profits thereof in a dispute between joint owners of the vessel, or relating to the use or the right to profits arising out of the use thereof;
- (c) in a claim arising from a maritime mortgage or any other real estate insurance over the vessel;
- (d) in a dispute arising from a contract for sale of a vessel; or
- (e) where the vessel was chartered by demise (*see* section 10).

10. DEMISE-CHARTERED VESSELS

When a claim against a vessel is not created by the owner but solely by a demise-charterer, the claimant may arrest either the chartered vessel or any other vessel owned by the demise-charterer. However, the claimant may not arrest any other vessel owned by the owner of the chartered vessel.

11. FORM OF APPLICATION

The claimant must make a written application to the civil court accompanied by copies of all relevant documents relating to the claim.

The application and the supporting documents must be in Arabic (with translations of documentary evidence prepared by translators licensed by the UAE Ministry of Justice) and the court will examine such documents and decide whether or not to grant a provisional remedy.

12. MUST THE ARRESTING PARTY PROVIDE SECURITY?

Under the Maritime Law, there is a requirement for a financial guarantee to be provided by the arresting party. The arrest order cannot be obtained unless the court accepts the financial guarantee in order to ensure the safety and security of the vessel and its crew during the arrest period. Any amounts used from the guarantee will be considered as ‘judicial expenses’ upon distribution of the proceeds of execution on the vessel.

13. REPRESENTATION BY COUNSEL: POWER OF ATTORNEY

Arabic is the official language of the UAE and its courts. All proceedings are conducted in Arabic and all documents that are filed must first be translated into Arabic by a translator licensed by the UAE Ministry of Justice. Lawyers licensed to practice in the courts must be retained in order to institute

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proceedings in court. A notarized power of attorney in favour of counsel is required in all the Emirates. If the power of attorney is executed outside the UAE the power of attorney must be legalized and consularized. Obtaining a legalized and consularized power of attorney may be time-consuming thereby resulting in practical difficulties in filing an arrest application on an urgent basis.

14. COURT HEARING

There is limited oral advocacy in the UAE and applications to the civil courts are determined through written submissions. The civil courts of the UAE examine the documentary evidence submitted (as described in section 11) to determine whether or not attachment should be ordered.

15. PROVISION OF SECURITY BY DEFENDANTS

Under Article 57 of the Maritime Law, the competent civil court shall order that the arrest order be vacated if security or other surety is offered which is sufficient to meet the claim. A notable change introduced under the new Maritime Law is that courts may vacate an arrest based on letters of guarantee issued by Protection & Indemnity Clubs (P&I) or recognized financial institutions.

A vessel will not, however, be automatically released from arrest upon the provision of security if the arrest has been affected in connection with either of the following matters:

- (a) a dispute as to the ownership or possession of the vessel;
- (b) a dispute between joint owners of the vessel, relating to its use or the right to profits arising out of the use thereof.

In such cases, the court may permit the person in possession of the vessel to use it if he provides sufficient security and may use its discretion to entrust 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 is not to be construed as an admission or acknowledgement of the claim (Article 57.4).

16. PROCEEDINGS FOR MAINTAINING AN ARREST

Under Article 250 of the CPC, if a substantive suit is not filed within eight days of a provisional order being granted, the provisional order is cancelled.

Until relatively recently, the practice of the UAE courts was to follow the provisions of the CPC with respect to the arrest of vessels by filing a substantive suit within eight days, notwithstanding that this was not a requirement under the previous Maritime Law. The Maritime Law (current) provides that a substantive suit must be filed within five days by the successful applicants. In circumstances where the underlying contract contains an arbitration clause, evidence that arbitration proceedings in relation to the substantive dispute have been commenced within eight days by the successful applicants is often produced notwithstanding that it is not strictly required following the enactment of the Federal Arbitration Law No. 6 of 2018.

17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

17.1. *Court Fees*

Court fees payable for instituting an action before the Court of First Instance depend on the value of the claim. In Dubai, the maximum cap on court fees is AED 40,000. An application for provisional relief, such as an arrest order, will attract a fee of 50% of the court fees paid in the Court of First Instance, which is capped at AED 20,000. In the federal courts, the fee payable for instituting an action before the Court of First Instance is capped at AED 45,000.

This fee for the provisional relief is payable on the application for the arrest order. If a matter goes to appeal, further fees are payable by the appellant. The fees payable in the Court of Appeal are generally 50% of the court fees paid in the Court of First Instance, and a fixed fee of AED 4,000 for a petition to the Court of Cassation (or AED 5,500 if a request is also made to stay the execution proceeding). Court fees are payable in their entirety in advance but may be waived in cases where the crew seek an arrest of a vessel for non-payment of their wages. Court fees are usually awarded to a successful plaintiff and are recoverable from the unsuccessful defendant.

17.2. *Lawyers' Fees*

Emirati advocates licensed to practice in the UAE courts charge a proportion of the amount claimed as their fees. This is usually near the 10% mark but may decrease as the amount of the claim increases. Customarily, at least one-half of the fees must be paid in advance, although it is not unusual for the entire fee to be paid in advance. Legal expenses are not recoverable except in a token sum which generally does not exceed USD 500.

18. SERVICE OF THE ORDER OF ARREST

Once issued, the order for the arrest of a vessel is served by the court bailiff, with the assistance of the port authority. The Maritime Law requires copies of the arrest order to be served on the master of the vessel or his deputy, and on the port authority at the place where the vessel is arrested. Copies of the arrest order may be served by other technological means, provided it is accompanied by an acknowledgment or receipt. If the vessel is registered in the UAE, a copy of the arrest order must also be delivered to the Registration Bureau of the port where the vessel is arrested. The arrest order must also contain the summons to appear before the competent civil court. If the arrest is imposed on a foreign vessel, the competent authority may notify the registration office of the vessel's flag state of the arrest.

19. ENFORCEMENT OF THE ORDER OF ARREST

There is no Admiralty Marshal in the UAE. The arrest order is served by a court bailiff and the harbour master. Upon service of an order, it is not unusual for the port authorities to take possession of the vessel's documents and the seamen's books or the passport of the master and the crew.

20. TIME ELEMENT

The court issuing the order of arrest also issues a summons to the defendant to attend court and the hearing must be listed within (15) fifteen days of the date of the arrest. The court is required to deal with such cases promptly, but in practice, such matters may be long drawn out. All the courts provide for two appeals.

21. APPEAL BY THE DEFENDANT

Although it is possible for a defendant to make an interlocutory appeal against an order of arrest, successful appeals are rare. Such an appeal could take up to three to four weeks to come up for hearing, during which period the order of arrest issued against the vessel would remain in force. Consequently, the usual course is to provide security in order to obtain the release of the vessel.

22. FORCED SALE IN THE ARREST PROCEDURE; PRIORITY OF CLAIMS IN REM

22.1. *Order for Sale of the Vessel*

An order for the sale of a vessel is made once 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 is to be sold, as well as the date on which the sale is to take place. Prior to the court fixing the price of the vessel, 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, the court fixes the price of the vessel, the conditions of sale and the date on which the public auction is to take place in accordance with Article 64 of the Maritime Law and the executive regulations (which are yet to be issued). The sale takes place after the expiry of fifteen days from the date of publication of the notice.

Claims concerning ownership of the vessel or contesting the executionary arrest thereof must be communicated to the court conducting the auction sale 48 hours before the auction, and supporting evidence must be submitted within three working days thereafter.

22.2. *Priority of Claims Against the Sale Proceeds*

The Maritime Law broadly stipulates the priorities according to which sale proceeds are to be distributed (*see* Articles 29 and 44). The order is as follows:

- (1) the statutory dues, court expenses and expenses relating to the sale of the vessel;
- (2) crew wages;
- (3) general average claims;
- (4) damages for collision;
- (5) contracts entered by the master within the scope of his authority outside the vessel’s port of registration for a ‘real need required for the maintenance of the vessel on its continued passage’;
- (6) debts arising from loading, unloading, pilotage and towing operations;
- (7) mortgages;
- (8) compensation payable to charterers arising out of breakdowns and damage; and
- (9) insurance premiums.

Priority rights arising from any one voyage shall precede the priority rights arising from any previous voyage, but debts arising from one maritime

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employment contract for a number of voyages shall be of equal status with debts of the last voyage (Article 35).

Usually the courts determine the priority rights of claimants. In the Emirate of Dubai, it is not unusual in cases involving complicated accounts for the courts to appoint an expert to determine the order of priority in which the sale proceeds are to be distributed, and the expert so appointed may be a person who does not have qualifications in law.

23. CLAIMS FOR DAMAGES BY THE OWNER OF THE ARRESTED VESSEL

An arrest will generally be regarded as wrongful, if it is subsequently held by the court that the plaintiff obtained the arrest order maliciously, in bad faith and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the defendant who claims damages for wrongful arrest. Financial guarantee is required to be provided in order to obtain an arrest order. The UAE courts do not ordinarily award damages for wrongful arrest; however, we are aware of one judgment of the Dubai Court which awarded a sum of AED 10 million as damages for wrongful arrest.

24. SPECIAL REMARKS

The seven Emirates, steeped in tradition, emerged as a nation only in 1971. They have largely used the legislative process to adapt to the modern needs of commerce, and several laws have been codified. Islamic *Shari'a*, the common law system, the civil law system and the laws of other Arabian countries have influenced the development of law in the Emirates and the varied nature of this influence is not without impact on the system.

