



ICLG

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Shipping Law 2017

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United Arab Emirates

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

Firstly, we have to clarify that in any marine incident, several laws and different governmental departments will be involved and that depends on the circumstances of each incident. This is a fact since any accident will create obligations and liabilities on one side and on the other side it creates rights to claim compensations without prejudice to any criminal investigation if injuries or death tolls resulted from the marine incident. In terms of civil liability, Articles 318–326 of the UAE Maritime Commercial Law No. 26 of 1981, as amended shall apply. In addition, the UAE has acceded to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972). In terms of criminal liability for damages in cases of death or injury, authorities such as the coast guards, Police stations, and the forensic laboratories shall intervene where the Penal Code rules apply.

(ii) Pollution

Federal Law No. 23 of 1999, on Exploitation, Protection and Development of living Aquatic Resources in the United Arab Emirates and Federal Law No. 24 of 1999, on the Protection and Development of the Environment. In addition, the UAE is a party to the following conventions and treaties:

- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969).
- Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973 (MARPOL).
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969).
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND 1971).
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended (LC 1972).
- Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution / Kuwait Convention 1978.

(iii) Salvage / general average

Articles 327 to 339 of the UAE Maritime Commercial Law as per the latest amendments, in addition to the International Convention on Salvage, 1989 (SALVAGE 1989).

(iv) Wreck removal

The rules of the UAE Maritime Commercial Law apply to wreck removal and confiscation of vessels' wrecks.

(v) Limitation of liability

Articles 138–142 and Article 276 of the UAE Maritime Law. In addition, the UAE has the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) which is yet to incorporate the rules thereof into UAE law.

(vi) The limitation fund

There are no legal rules that govern limitation funds in the UAE. However, the UAE Maritime Law has regulated the limitation of the Carrier's liability according to Article 276(1) of the UAE Maritime Commercial Law the liability of the Carrier for the loss or damage of goods may not exceed the limit of 10,000.00 UAE Dirhams for each package or unit, or 30 UAE Dirhams per kilogram per total weight of the goods, whichever is higher.

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

The coast guards and the competent police forces, such as Ports Police, Emirate's Police and Military Police as the case may be, are the authorities to respond to any marine incident that takes place within the territorial waters of the state in the first place. They are responsible for preparing police reports, inspecting the incident scenes, and receiving relevant reports and evidence. Upon completion of their mission, they refer the incident file to the Public Prosecutor which is the authority which handles the investigation phase. In case of marine incidents, the Public Prosecutor determines whether there is any criminal case which may ensue from such incidents, in the light of the evidence and witness statements available. Usually, the Public Prosecution refers the matter to the criminal court if the technical reports issued by the competent marine authorities indicated that there is negligence or violation committed by any person that led to the incident, or any death tolls, or property damages. With regard to any other compensations and civil claims, the competent court is the civil court and the applicable law shall be the UAE Maritime Law.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The UAE Maritime Commercial Law No. 26 of 1981 is the law governing marine cargo claims in the UAE.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

The basis of the Carrier's liability in cargo claims is contractual. The Carrier is fully liable for the loss or damage of any of the shipped cargos. An interested party may bring a claim into action against the Carrier on the basis of such principle. The burden of proof in such case lies on the Carrier. The UAE Maritime Commercial Law, however, has limited such liability by setting a cap. However, the Shipper and the Carrier may agree to a different cap to the liability of the Carrier provided that such value may not be less than the cap set by the law. Such liability may not be waived or mitigated except in limited instances.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

Under UAE law, the Shipper will be liable to the Carrier for any faults in the details of the goods provided in the bill of lading. The carrier may not rely on such faults against any third party other than the Shipper.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

The provisions of the UAE Maritime Commercial Law govern all kinds of liability in maritime passengers' claims. Pursuant to such law, the key principle of liability is the obligation of the Carrier to exercise due care to render and maintain the ship in proper condition to sail throughout the scheduled voyage; in addition to the Carrier's duty of care with regard to the security of the passengers. The liability of the Carrier may be limited by agreement but cannot be waived under any circumstances or limited below the permissible limit provided by the UAE Maritime Commercial Law.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Under UAE law, arrest may be enforced against vessels in a limited number of events defined by the UAE Maritime Commercial Law as: Maritime Debts, such as damages affected by the vessel as a result of collision or otherwise; death tolls and bodily injuries caused by the vessel or arising out of using it; and maritime mortgage. A person may obtain the order to arrest a vessel to which the debt is related or any other ship owned by the debtor provided that such vessel was owned by the debtor at the time the debt was created, and

such vessel was ready to navigate. However, the arrest may not be enforced against other vessels owned by the debtor in case the debt was related to any of the following: (1) a dispute over the ownership of the vessel; (2) a dispute over common tenancy, possession, use of the vessel or the rights to the profits generated by using the same; or (3) a maritime mortgage. The arrest bans the vessel from sailing. The competent court may order to set aside the arrest order if a guarantee is paid or any other form of security which is sufficient to repay the debt in certain events. The payment of a guarantee or a security in such case does not constitute an admission of the liability for the debt or a waiver of the right to plead the limit set by the UAE Maritime Law for the liability of the vessel's owner.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Under the UAE Maritime Commercial Law, debts arising out of contracts entered between the Captain of a vessel, whether being the owner thereof or otherwise, and suppliers are considered priority debts. The protection provided by the law to the suppliers expands to cover the operations conducted by the Captain outside the port where the vessel is registered so long as such operations are carried out within the legal capacity conferred on him and for an actual requirement for the vessel. Therefore, the bunker supplier's claims are governed by the UAE Maritime Law subject to the foregoing rules. In such case, the arrest rules provided under question 4.1 above shall apply. The statute of limitation for suppliers' claims is six months from the date the debt was created.

4.3 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

If a Charterer of a vessel with the right to manage the same, is liable for a maritime debt related thereto, in such case, the creditor may obtain an order to arrest such vessel or any other vessel owned by the debtor. The aforesaid rules shall apply in such case, the competent court may order to set aside the arrest if a guarantee/security is paid or any other form of security which will be sufficient to repay the debt in certain events. The competent court may order to set aside the arrest if a bail is paid or any other form of security which will be sufficient to repay the debt. The arrest in such case shifts from the vessel to the guarantee/security paid. Therefore, the charterer of the vessel will be entitled to continue using the vessel. In case the court renders a ruling in favour of the creditor to recover the indebtedness in question, the creditor will be entitled to recover his money from such paid guarantee.

4.4 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

The court orders the applicant for an arrest order over a vessel to submit an undertaking to guarantee disruption and damages, by which the applicant undertakes to guarantee any disruption and damages that may be caused to the Defendant, e.g. the Carrier, the owner of the vessel, the vessel Charterer, in case the claim is found to be malicious. In addition, in certain Emirates such as Fujairah and Ras Al Khaimah, the judge determines certain guarantee amounts the applicant has to deposit at the court before the arrest order is enforced. Such guarantee amount shall be refundable only when the substantive claim related to the arrest order is decided.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

When a marine incident occurs, the coast guards, or any other competent police forces, as the case may be, carries out the fact-finding process, the apprehension of offenders, and collecting the necessary information to commence the investigations. Upon completion of the foregoing proceedings in a manner deemed by the competent police officers to be sufficient for the Public Prosecution to proceed with investigations, the matter will be referred to the Public Prosecution. Starting from the foregoing process till the end of investigation, confidentiality is reserved under the UAE Criminal Procedures Law to avoid manipulation or distortion of evidence. Throughout the fact-finding and investigation phases, no party or concerned person may have access to evidence, documents, or statements made or collected during the investigations. The investigation authority, as the case may be, may not release any documents or statements related to the matter being investigated. Violating such rule shall amount to a criminal offence pursuant to the UAE Penal Code and the UAE Copyright Law.

After referring the matter to the competent court, a party to the case may be entitled to request that the court grants to it the right to access the relevant documents, information and details of evidence collected during the investigations. The Court in such case may grant to the requesting party such right to access.

5.2 What are the general disclosure obligations in court proceedings?

Disclosure is allowed in all courts proceedings so long as the disclosed information is required by the court and was provided before the court under the supervision of the judge. The disclosure of any confidential information before the court is legally valid as long as such information is required by the court and in connection with the subject of the dispute.

On the other hand, parties are not allowed to disclose any of the information of the proceedings, whether to the media or to the public, without special permission from the judge of the competent court. In case any of the parties discloses information related to any of the proceedings to the media, such party will be subject to criminal responsibility under article 378 of the UAE Penal Code, and subject to civil liability as well.

6 Procedure

6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

With regard to the proceedings before the national courts, under the applicable law in the UAE, the competent court of jurisdiction to hear any action brought against a vessel, is the court of jurisdiction over the port where the vessel is located.

The general rule, according to the UAE Maritime Law, the statute of limitation for maritime claims is one (1) year. Exception is given to debt claims arising out of any contracts concluded by the vessel's Captain or any of the transactions carried out by him, within the scope of his legal capacity, outside the port where the vessel is registered. The statute of limitation of such claims is six months from the date of the debt was created.

The procedures that take place in the events a civil claim is brought against a vessel are as follows:

- (1) To file for an arrest warrant against a vessel in order to attach the vessel and ban it from sailing outside the UAE, if it is located in any of the ports of the country. Such arrest warrant is a request to be raised before the summary court and usually the decision takes around 24–48 hours to be issued and a maximum of 72 hours to be enforced after notifying the competent authorities in the port where the vessel is located in the UAE territory and to place the attachment label on the vessel until the vessel clears all the amounts claimed by the creditors.
- (2) To file a substantive claim within eight days following the issue of the arrest warrant against the vessel. In the event the party granted the attachment order fails to bring the substantial claim within the foregoing period, the arrest warrant will be deemed not to have been ordered *ab initio* in accordance with article 255(3) of the UAE Civil Procedures Law. Bearing in mind that the applicant of the arrest warrant shall provide the court with a guarantee amount, along with a guarantee letter with a certain amount to be determined by the judge in this event.

Typically, the proceedings of marine claims take approximately 6–12 months.

Second, in cases of arbitration and other forms of alternative dispute resolution, if agreed by the Owner of the vessel, Charterer, or Captain as the case may be, and if such contract included provision that disputes shall be referred to arbitration, then the disputes cannot be referred to courts. Afterwards, the arbitral body issues its award. The courts may enforce such arbitral award so long as it does not contradict public order and morals in the UAE. In terms of the timescale, the arbitrator is obligated to decide the disputed matter within the time specified for him in the arbitration or arbitration agreement. On the other hand, in terms of action to be brought to enforce the arbitral award before the local court, there is no precise timescale but generally it takes 6–12 months.

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

As mentioned above, the applicant for any claim against a vessel under UAE law must make sure that such claim is genuine, i.e. not malicious, and all the evidence provided to the court is true and valid and evidences the claims because the procedure of attaching a vessel will cause high costs and expenses such as court fees, delays and contractual obligations towards any of the contract parties.

Therefore, the advantage of filing a civil claim along with an arrest warrant to arrest the vessel pursuant to the UAE Maritime Commercial Law is very useful and effective in the event of serious claims, grounds, and valid supporting documents. On the other hand, the downside is that if the court finds that there is any falsification in the evidence produced, the counterparty may bring an action to claim compensation.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

According to article 235 of the UAE Civil Procedures Law, an order or judgment issued by a foreign court may be enforced in the UAE on the same conditions provided by the law of such country. An application for an order to enforce the foreign order or judgment shall be submitted before the Court of First Instance in the jurisdiction where the party wishes to have such order or judgment enforced. The foreign order or judgment in such case shall go through a verification process as to whether:

- the Courts of the UAE do not have jurisdiction over the dispute in which the foreign order or the judgment was issued;
- the foreign Courts issuing such order or judgment had jurisdiction over the dispute in which it has been issued in accordance with the international judicial jurisdiction rules laid down in their law;
- the foreign judgment or order was issued by a Court having jurisdiction in accordance with the law of the country in which it was issued;
- the parties to the action in which the foreign judgment was issued were summoned to attend, and were properly represented;
- such foreign judgment or order has gained the *res judicata* power in accordance with the law of the issuing Court thereof; and
- such foreign judgment or order does not conflict with a judgment or order already issued by a Court in the UAE, and does not contradict the morals or the public order in the UAE.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

The UAE Civil Procedures Law applies to the recognition of arbitration awards. An arbitration award may not be enforced unless recognised by the competent court. The competent court in such case shall be the court with which the recognition request is deposited for review. The court peruses the arbitral award, the arbitration instrument, and confirms that no impediment hinders the enforcement of such arbitral award. The judge's role in such process is limited to verifying the procedural aspect of the arbitral award. The judge may not issue any decisions in relation to the validity of the arbitral award. Upon completion of the foregoing process, the execution judge shall have the power to execute such award.

The rules laid down in article 235 of the UAE Civil Procedures Law, mentioned in question 7.1 above, apply to foreign arbitral awards so long as the arbitrators' award is issued in an issue that may be arbitrated under UAE law, and is enforceable in the country where it was issued.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

Marine incidents that take place in high seas/international waters raise arguments and controversy in respect of the jurisdiction to resolve disputes arising out of such incidents. Typically, each party would seek to vest the jurisdiction in the local courts of its country. Therefore, we recommend establishing an international judicial body with a territorial jurisdiction limited to high seas/international waters. Such body may have the power to hear both civil and criminal cases related to such incidents. If not feasible, such body may become a neutral consultancy organisation that provides technical reports regarding the circumstances, the reasons, and the damages resulting from such incidents.



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Dr. Ghandy Abuhawash has over 15 years of experience in legal services. He has represented clients in both contentious and non-contentious matters. Dr. Ghandy Abuhawash specialises in company law, advising on shareholder agreements, compliance issues, labour law, intellectual property law, criminal disputes, commercial disputes and corporate matters. In addition to private and in-house practice, Dr. Ghandy Abuhawash is a leading arbitrator and has handled various high-profile cases within the UAE and abroad. Moreover, Dr. Ghandy Abuhawash is an accomplished academic and holds a Ph.D. in Law and Legal Studies, as well as a published thesis.

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