

Saudi Arabia: ship arrest in practice

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Introduction

As Saudi Arabia is an Islamic state, its judicial system is based on Islamic law ('Shari'ah') for criminal, civil and commercial matters. Although Islamic laws encompass all aspects of life, some have opined that the judicial and legal systems are not ready for the world of modern and international commerce.

In 2007, the Saudi government announced a set of support packages for the judicial system and a series of legal reforms, and among these reforms is the passing of the Commercial Maritime law issued by way of Cabinet Resolution No. 197 of 1440H - Royal Decree (M/33) of 1440H in 2019 (the 'Maritime Law').

The Maritime Law is wide-ranging and covers effectively all possible aspects of the industry that requires regulation, including maritime debts and the rights of arrest. As a result, a claimant's rights to arrest vessels to secure its maritime debt is now guaranteed by law, thereby providing companies trading in Saudi Arabia with more confidence to continue operations. A vessel arrest is effected by way of an Arrest Warrant, which is granted by the Court no more than three days from the date of application. Further, an Arrest Warrant can be served upon any sister ship of the errant or wrongful ship. Sister ships under the Maritime Law, are defined as ships sharing the same registered owner.

Maritime Debt and Vessel Arrest under KSA Maritime Law

The term "Maritime Debt" is defined in Article 75 of the Maritime law, which stipulates that a debt is a "maritime" debt if it arises out of one or more of the following:

1. damage caused by a ship by reason of collision, or pollution or other similar marine casualties;
2. loss of human life or bodily injury caused by the ship or arising out of the exploitation thereof;
3. contracts pertaining to the use or chartering of the ship;
4. contracts relating to the carriage of goods under a charter party or bill of lading;
5. loss of or damage to goods and luggage being carried by the ship;
6. salvage;
7. general average;
8. towage of the ship;
9. pilotage;
10. supplies of materials and equipment necessary for the exploitation or maintenance of the ship;
11. the building, repair or equipping of the ship, and the costs of it being in dock;
12. the wages of the master, officers, crew and maritime agents;
13. sums expended by the master, shippers, charterers or maritime agents for the account of the ship or the account of the owner thereof;
14. disputes as to the ownership of the ship;
15. disputes as to the ownership of a co-owned ship, or as to the possession or exploitation thereof, or in

- connection with the rights of co-owners to amounts arising from the exploitation;
16. maritime mortgage;
 17. fees and dues of ports and waterways;
 18. insurance of the ship;
 19. costs of rescuing, raising and removing the wreck or goods.

The definition of a Maritime Debt in Article 75 of the Maritime Law is exhaustive. Therefore, it is not possible to obtain an Arrest Warrant for debts of any other nature, and the competent court will not grant the Arrest Warrant if the debt claimed is not one of those listed in Article 75 of the Maritime Law.

Besides satisfying the definition of a “Maritime Debt”. it is important that claimants possess supporting documents that will convince the court of the grounds on which to arrest the vessel, together with proof that the debtor has little or no intention of settling the debt.

Therefore, once a claimant has satisfied the criteria of a Maritime Debt and has the relevant supporting documents, the claimant will be in a position to seek the Arrest Warrant from the Court.

It is important to note that the commercial court has jurisdiction over all the maritime activities except for maritime labour contracts, pursuant to Article 2 of the Saudi Commercial Law which states that:

“The commercial activities include the following:

E- Any action related to establishment, repair, sale, or purchase of the commercial and sailing vessels inside and outside. The commercial activities include also rental, lease, sale, and purchase of the equipment, instruments, and gears used on the board of such vessels, in addition to the wages of the workers, the salaries of the crew, and servants. That’s to be added to any lending or borrowing action or shipment carried out on the vessel or as well as all related guarantee contracts and all contracts related to the other matters of maritime trade.”

Legal procedures in practice

The claimant seeking an Arrest Warrant is required to file the arrest application through the Court’s online portal, and the Court is required, by law, to respond within three days from the date of the application, without the need to give reasons for its decision. There are two possible outcomes:

1. the Court grants the Arrest Warrant, which the claimant then brings to the port authority, to be served upon the vessel and the master of the vessel, to prevent the vessel from leaving the port; or
2. the Court rejects the vessel arrest application, and the claimant may then submit a grievance to the Appellate Court. The decision of the Appellate Court will be final.

The Court hearing the vessel arrest application has the discretionary power to either accept or reject the vessel arrest application. However, if the Court orders a vessel to be arrested, the vessel will subsequently be detained by the port authority, and will be unable to leave Saudi territorial waters unless the Court orders the arrest to be lifted, which is achieved in one of the following ways:

1. deposit an amount of security sufficient to cover the value of the claim, by way of bank guarantee or cash, as well as the interim relief application; or
2. file grievance proceedings before the competent court. However, this option is not usually recommended as the vessel will remain under arrest until the such proceedings are complete. In the meantime, port dues and vessel expenditure continue to accrue.

Conclusion

The judge, considering the ship arrest application, has the right to accept or reject the application without giving his reasons. Therefore, it is paramount for any ship arrest application to be supported with sufficient documentary evidence, which should be the original copies. Further, it is recommended that the claimant complete the execution and legalisation of its power of attorney prior to the vessel entering the Saudi territorial waters, as formalization of the power of attorney may be time consuming.

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