

# Some Aspects Of Litigation Under The Maritime Law

Mohamed El Hawawy  
m.elhawawy@tamimi.com

The rules of litigation relating to maritime disputes are different, the maritime claim is urgent by its nature and most of the legislators are keen to adopt the laws accordingly.

The UAE civil procedures law and the commercial maritime law stipulate special procedures for maritime claims.

Article 43 (paragraph 2) of the UAE civil procedures law states that, "The time for appearing in urgent matters shall be twenty four hours and it shall be permissible in the case of necessity to curtail that period and to make it from hour to hour provided that the summons is served on the opponent in person unless the claim is a maritime claim".

The UAE civil procedures law establishes a special rule for the date of the hearing if it relates to a maritime claim, as it could be one hour following the time of notifying the defendant with the case. There is no need to prove the necessity for such short notice nor to notify the defendant in person one hour prior to the time of the hearing as long as the subject of the case is a maritime dispute. For other cases, the plaintiff should prove the urgency and the necessity for the short notice as well as to notify the defendant in person with a case in order to curtail the time for appearing before the court and to make it one hour following the time of notifying the defendant with the case.

Attachment against vessels is also different. There are several conditions for placing attachment against any assets with the most familiar condition being when it is feared that the debtors' assets may be lost as security for the creditor's right.

However, there is only one condition for attaching vessels, which is the "maritime debt", the attachment against vessels shall not be unless it is a maritime debt.

According to the UAE commercial maritime law the maritime debts are:

- damage caused by reason of a collision or otherwise;
- loss of life or personal injuries;
- salvage claims, contracts relating to the use or exploitation of the vessel under a charterparty or otherwise;
- contracts relating to the carriage of goods;
- loss of or damage to goods or chattels being carried on board;
- general average claim, towage or pilotage, supplies of products or equipment necessary for the utilization or maintenance of the vessel;
- construction, repair or fitting out of the vessel;
- sums expended on account of the vessel wages of the crewmembers;
- a dispute as to the ownership, the co-ownership, the possession or use of the vessel and the maritime mortgage.

The UAE law balanced two interests, the first is that the vessels should not be stopped from operation in support of a non maritime debt which may hinder the flow of the shipping trade, the second is to protect the interest of the creditor who directly deals with the vessel given that vessel is always the sole security for his/her debt.

If the debt is not a maritime debt, it is not allowed to place an attachment against a vessel even if it is feared that the debtor's assets may be lost as security for the creditor's right, and in the interim the law

allows the creditor to attach the vessel without proving that it is feared that the debtors' assets may be lost in case the debt is a maritime debt.

On a second note, contrary to the general rules of the procedures of the preservative arrest and attachment of debtor's assets in the hands of third parties under the civil procedures law, the commercial maritime law allows the creditor to attach a vessel not owned by the debtor in case the charterer or the operator of such vessel is solely responsible for a maritime debt connected with such vessel. Article 117 of the commercial maritime law stipulates that: “

If the vessel has been chartered to a charterer together with the right of navigational management thereof, and he alone is responsible for a maritime debt connected therewith, the creditor may arrest the said vessel or any other vessel owned by the same charterer, and he may not, in respect of that debt, arrest any other vessel of the disponent owner.’

‘The provisions of the foregoing subsection shall apply in all cases in which a person other than the owner of the vessel is liable for a maritime debt.’

There are special procedures for selling vessels by a public auction, as the UAE commercial maritime law states for particular procedures in this respect, starting from placing the executory arrest against the vessel to the process of the auction. For instance, it is noted that it should not be permissible for the hearing scheduled to hear the order for selling the vessel to be fixed earlier than fifteen days nor later than thirty days from the date of the arrest; also the sale shall be affected after three sessions held at intervals of seven days, the highest bid made at the first session shall be taken as the provisional basic price for the auction at the second session and likewise for the third auction session at which shall be finalized the sale to the bidder who has made the highest offer.

The legislator always considers any procedures that would be taken in connection with the shipping industry to be finalized on urgent basis and to be compatible with the characteristics of such industry.