

Maritime liens under UAE Maritime Code

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Maritime lien is a privilege that characterises certain maritime claims by virtue of the maritime laws applicable in a certain jurisdiction. Simply, such privilege is priority of the maritime debt over the non-maritime debt in respect of any claim against the property (vessel). However, maritime lien in English law is different from that of the UAE maritime law in many aspects. For instance, in UAE you may have a maritime lien but does not necessarily mean that you are entitled to arrest the vessel unless that debt is considered as maritime debt. While under English law if the claim is secured with maritime lien, the claimant may bring the action against the vessel as a wrong doer and arrest the vessel.

However, there are some similarities between both English law and UAE law is that if a claimant has maritime lien on the vessel, it attaches to the vessel from the moment the claim arose and travel with the vessel even in the change of her ownership but as long as that lien is valid and not time barred. In UAE maritime lien will extinguish in expiry of the time limitation of one year except in supply contracts the time limitation for lien is 6 months. The time limitation will extend to three years in circumstances where it was impossible to arrest the vessel in the territorial waters of the country where the applicant is domiciled provided that he holds the nationality of that country or another country which has the same legislations.

Time limitation has been dealt with in article 93 of UAE Commercial Maritime Law No. 26 of 1981 as amended by law No. 11 of 1988 (Maritime Code) provides:

“1. Upon there being an objection, and in the absence of a lawful excuse, no claims shall be heard in respect of priority rights against the vessel after the expiry of one year save claims relating to priority rights securing debts for supplies referred to in subparagraph (e) of Article 84, which shall not be permitted after the expiry of six months.

2. The period referred to in the foregoing subsection shall commence to run as follows:

- In relation to priority rights securing payment for assistance and salvage, from the day the said operations terminated.
- In relation to priority rights securing compensation for collision and other accidents, and bodily injuries, from the date the damage occurred.
- In relation to a priority right relating to loss of or damage to goods and chattels, from the day the goods or chattels were or should have been delivered.
- In relation to repairs, supplies and all other cases referred to in subparagraph (e) of Article 84, from the date the debt arose. In all other cases, the period shall commence from the day the debt falls due.

3. The fact of the master, the sailors and other persons bound by a contract of work on the vessel being permitted to receive sums in advance or on account shall not result in the debts referred to in subparagraph (b) of Article 84 being regarded as being due for payment before the time specified therefor.

4. The periods herein-before set out shall be extended up to three years if it is not possible to arrest the ship to which the priority right attaches in the territorial waters of the State in which the claimant has his place of residence or head office. Only such persons may benefit by this provision who are nationals of the State or who are nationals of a State the legislation whereof contains a similar provision.”

As said maritime Liens in both English law and UAE law attaches to the vessel even in the change of her ownership. Article 91 of Maritime Code provides:

“Priority debts shall follow the vessel in the hands of whomsoever it may be.”

The only way available for the new shipowner to get rid of the maritime liens is in the circumstances provided for in article 92 of Maritime Code. It will be noted that the protected shipowner must either be a buyer of the vessel pursuant to the judicial sale. Otherwise, in the usual circumstances of sale and purchase agreements, the buyer must follow the statutory steps provided for in sub-article 92/b.

Article 92 of Maritime Code provides:

“Priority rights over the vessel shall expire:

(a) Upon the judicial sale of the vessel

(b) Upon the voluntary sale of the vessel if, before the payment of the price, the purchaser has taken the following steps:

- he has registered the contract of sale on the Register of Ships.
- he has placed a notice on the notice board at the Registration Bureau of the vessel containing particulars of the sale, the price, and the name and residence of the purchaser.
- he has published a resume of the contract of sale, mentioning the price, and the name and residence of the

purchaser, which publication must be made twice with an interval of eight days, in a widely circulating local newspaper. Priority rights shall be transferred to the proceeds of sale if within thirty days of the last publication in the newspapers the priority creditors notify the old owner and the new owner of their objection to the payment of the price. Nevertheless, the creditors’ priority shall remain in force as against the price unless it has been paid or distributed.”

Under UAE law, if the maritime lien has extinguished pursuant to the sale of the vessel according to article 92 of the Maritime Code, priority of the creditors will be shifted to the price paid unless the same has been distributed among other creditors.

In English law there is no time limitation for Maritime liens but the person who has a claim secured with maritime lien must exercise his right and take the legal proceedings against the vessel as early as possible. If he fails to do so he may lose his right in the lien. Therefore he may proceed legally against the vessel and issue the writ in rem against the subject vessel and should not wait until she comes to the jurisdiction where he is taking the action. In the event that the writ has expired before the vessel is arrested, he may apply for renewing it. In UAE the arrest application may not be filed until the vessel has come into the UAE jurisdiction. The legal proceedings may be summoned upon the ship agent or the ship master.

In UAE, the maritime lien right could equally be exercised against the vessel whether the debt arose while the vessel is operated by the shipowner or a charterer and the vessel could be arrested whether during her operation by the owner or the charterer. However, if the shipowner loses the possession of the vessel by illegal act and the creditor (claimant) is acting in a bad faith, the shipowner may challenge the maritime lien, This has been provided for by article 94 of the Maritime Code

“The foregoing provisions shall apply to vessels operated by an owner-operator or an operator who is not an owner, or an original charterer. The said provisions shall not apply if the owner loses possession of the vessel through an unlawful act and the creditor is acting in bad faith”.

Unlike English law, under UAE law the legal action must be brought against party in debt (liable for the claim secured with maritime lien) (action in personum), namely the shipowner. It is also arguable that the action may be brought against the demise charterer, which the author of this article believes to be a well founded case since the demise charterer will be responsible for equipping and manning the vessel. In

English law the claimant has the option to bring the legal action against the vessel (action in rem) as wrong doing entity or he bring the action against the shipowner (action in personum). Action in rem concept is identified in Civil law jurisdictions including the UAE.

Under UAE law, if a claimant has a debt against the vessel which is secured with maritime liens, that does not necessarily mean that he is by default entitled to arrest the vessel. UAE law has provided for one article which designates the claims that are considered to be priority debts (secured with maritime liens) and the claims for which the claimant is entitled to arrest the vessel. Such claims are defined as maritime debts.

Article 84 of Maritime Code lists the claims that are privileged with maritime lien:

“The following and only the following debts shall be priority debts:

(a) Judicial costs incurred in protecting and selling the vessel, and distributing the proceeds thereof, as well as loading, lighthouse and port charges, and other dues and taxes of the same type, pilotage fees, compensation for damage caused to port installations, docks and navigation lanes, the costs of removing obstacles to navigation caused by the vessel, and costs of towing and maintenance of the vessel from the time of its arrival at the last harbour.

(b) Debts arising out of a contract for the employment of the master and crew, and other persons bound by a contract of maritime employment on board the vessel.

(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, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.

(e) Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors.

(f) Breakdowns and damage giving rise to a right of compensation in favour of the charterers of the vessel.

(g) All premiums for insurance effected on the hull, equipment and fittings of the vessel due in respect of the last insured voyage, in cases where the insurance was effected for that voyage, or for the last period of insurance if the insurance was effected for a specified period, but provided that in either case the total does not exceed the premiums for one year.”

Article 115 of Maritime Code lists number of claims which are defined as maritime debts for which the claimant may apply to arrest a vessel. It provides as follows:

“1. It shall be permissible to effect a preservative arrest against a vessel by an order of the civil court having jurisdiction. Such an arrest shall not be made save for the satisfaction of a maritime debt.

2. The expression “maritime debt” shall mean a claim in respect of a right arising out of any of the following causes:

a) Damage caused by the vessel by reason of a collision or otherwise.

b) Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.

c) Assistance and salvage.

- d) Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise.
- e) Contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents.
- f) Loss of or damage to goods or chattels being carried on board the vessel
- g) General average.
- h) Towage or pilotage of the vessel.
- i) Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.
- j) Construction, repair or fitting out of the vessel, and costs of it being in dock.
- k) Sums expended by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.
- l) Wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment.
- m) A dispute as to the ownership of the vessel.
- n) A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.
- o) A maritime mortgage”

It should be realized that the claimant who has a claim secured with maritime lien (priority debt) can only arrest the vessel if he presents his debt as one of the maritime debts listed in article 115 of the Maritime Code. This is an important difference between the maritime lien concept in UAE law and in English law where the claimant will be able to take the legal action against the vessel and may arrest her if he has a claim privileged with maritime lien. It is not understood, for what purpose had the UAE Maritime Code distinguished between the claims that are secured with maritime lien (priority claims) and the maritime debts. What is the benefit of having a privileged claim while the claimant may not exercise the basic right of securing his claim which is the action to arrest the vessel?

UAE Maritime Code does not recognise contractual agreed liens. The parties to the contract may not agree that either party may have lien over a particular property even if that property was the subject matter to which the services were rendered. This concept has been driven from the fact that priorities of debts are only identified by the law. As it is explained earlier, maritime lien in UAE is merely a priority of a particular debt over other debts on the vessel. Therefore, an owner of property including shipowners may not by way of an agreement give to any other party a priority to his debt other than what has been stipulated by the law. On the other hand, it is generally allowed in mutual contracts especially in (provision of service to a property by a contractor) to agree to retain the property in the possession of the contractor until the other party performs his obligation (i.e. pay fees). However, this will not change the priority of particular claims as stipulated by the law. However, mortgage registered on the vessel could be treated as exception, as the mortgage will be treated as priority debt which is stipulated by agreement.

In English law, it is common that parties to the contract agree that one party may exercise lien over a property to which a service is rendered. Usually this lien is in the form a possessory lien which the carrier can exercise on the cargo and the shipbuilder and ship repairers can exercise on the vessel. Such lien could be also exercised under the common law even in the scenarios where there is no such contractual agreement. Such lien will be lost once the party exercising it loses possession of that property (vessel).

UAE Maritime Code does not discern between the contractual liens and the damage lien in terms of

deciding priority issue over the vessel the way the English law does. Priorities have been set by the articles 89 and 90 of the UAE Maritime Code without giving consideration to whether the lien has arose from a claim respect of a contract or a claim in respect of damages.

Finally, it is Irrelevant whether the debt, which is privileged as priority debt under UAE Maritime Code, has arose inside the UAE or outside UAE jurisdiction. What really counts when a creditor is looking for exercising his priority is that the UAE Maritime Code considers his debts as privileged and that he vessel is in the UAE jurisdiction.