

# Ship arrest, maritime liens and ship mortgages in the UAE

While the subjects of maritime liens and ship arrest are areas of divergent approaches by different legal systems, they are also persistent areas of controversy when the two subjects are to receive simultaneous treatment in the United Arab Emirates (UAE). This paper seeks to discuss the possibility for a creditor to arrest and enforce a contractually agreed maritime lien over a ship in the UAE jurisdiction.

Relevant to our following discussion is that the UAE has yet to ratify any of the major international maritime conventions related to maritime liens, mortgages, and arrest of ships, which aim to establish certain uniformity within different legal systems that would reconcile the divergent approaches, such as the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967, the International Convention on Maritime Liens and Mortgages of 1993 and the International

shall not be given, by way of mutual agreement with the shipowner, priority to their debts other than the eight classes listed in articles 84 and 105 of the CML, read together.

The two said articles read together classify the eight classes of priority debts in the below order of priority:

1. court costs and custodia legis, 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 her arrival at the last harbour;
2. master's wages and seamen's emoluments;
3. salvage and share of the vessel in general average;

the cargo was carried can fall under the class set forth in article 84(d) of the CML.

2. A creditor may have a priority debt, such as the court costs and custodia legis, pilotage fees or compensation for damage caused to port installations however, the same creditor cannot arrest the wrongdoer vessel for the simple reason that these priority debts are not considered as maritime debts because they are not listed in article 115 of the CML.
3. A priority debt is merely a priority of a particular debt, whether maritime or not, over other debts on the vessel.
4. A contractually agreed lien cannot be enforced in the UAE where the same circumstances would not give rise to a priority debt under the CML. In light of the aforesaid, although a ship mortgage is a contractually agreed lien, it will be treated in UAE as a priority debt which is stipulated by agreement and will rank in the sixth position after the ones that precede ship mortgage.

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Convention on Arrest of Ships of 1999.

For ship arrest, the UAE adopted a ‘closed-list’ approach for the definition of a ‘maritime claim’, where a list consists of limited numbers of maritime debts defined and based on which only a ship could be arrested. These are reduced to 15 classes of maritime claims listed in article 115(2) of the UAE Federal Law of No. 26 of 1981, as amended by Federal Law No. 11 of 1988, concerning the Commercial Maritime Law (CML).

As for the concept of ‘maritime lien’, although it seems that the provisions of the CML on priorities were imported from the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967, the concept of ‘maritime lien’ as applicable internationally is not recognised in the UAE. Rather, another concept termed ‘priority debts’ is in place. Contractually agreed maritime liens are thus not recognised by the CML and as a result, creditors

4. damage caused by a ship due to collision and any other accident such as oil pollution and damage to carried goods;
5. ship supply contracts and repair such as bunkering;
6. ship mortgage;
7. claims under charterparty;
8. premiums for hull and machinery insurance.

Based on the above classification, we may draw the following conclusions:

1. Although, cargo claims are considered by article 115(2) of the CML as maritime debts which give right to arrest the ship however, they do not give rise to priority debt as considered in other jurisdictions. It should be noted that only cargo claims that are filed against the shipowner or the charterer of the ship that has collided with the vessel on which

On the other hand, creditors should note that the meaning of the ‘shipowner’ as defined by article 135 of the CML, was, to some extent imported from article 4(1) of the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967, which defines it as: ‘[t]he word “owner” mentioned in this paragraph shall be deemed to include the demise or other charterer, manager or operator of the vessel’.

Therefore, while a priority debt attaches to the vessel from the moment a claim arises, it attaches all the same whether the debt arises while the vessel is operated by either the shipowner or a charterer as set forth in article 94 of the CML, and travels with her even in the change of her ownership, as long as the said priority debt is not time-barred.

Nonetheless, it is necessary for a claimant to file an action in personam against the shipowner or the charterer. The claimant should be careful not to proceed in rem against the wrongdoer ship as pursuant to articles 11 and 12 of the CML the ship can neither sue nor be sued in rem and cannot be arrested for certain priority debts such as the class of priority debts listed in article 84(a) of the CML as explained above.

Furthermore, even if creditors are entitled to arrest a vessel for any maritime debt listed in article 115(2) of the CM, a writ in rem may not be issued against her in the same way as in other jurisdictions. The creditors must wait until she calls at any UAE port where they could arrest

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her regardless of whether she is operated by the shipowner or the charterer as explained above. In case of arrest pursuant to a ship mortgage, the creditor mortgagees have no right to take possession of the ship, but they may only request the court to arrest and sell her.

While contractually agreed liens, *prima facie*, appear to serve as a practical tool in the hands of the creditor in several international jurisdictions where they are recognised, in the UAE, mandatory CML’s provisions shall apply. In this regard, until the latter are amended so that contractually agreed liens are recognised, a creditor may not rely on such liens.

Furthermore, it goes without saying that maritime creditors are most concerned with obtaining security for their debts by way of arresting the wrongdoer vessel. One may then question the significance or benefit of having his/her debt sitting at the top of the list of the priority debts while he/she cannot exercise a fundamental right of arrest, as is the case for the priority debts listed in article 84(a) of the CML.

Overall, the laws surrounding ship arrest, maritime liens and ship mortgages remain areas of ambiguity and challenges in light of the current CML’s provisions which put the UAE out on a limb from the rest of the world. The author opines that after 40 years since its enactment, some of the CML provisions may be deemed anachronistic and are in need of reforms which will keep the UAE’s progress in the legal development for the maritime sector abreast with international standards. It remains to be seen whether any changes will be made to the provisions. While awaiting those amendments, creditors are strongly advised to seek skilful guidance to mitigate their risks.



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