



# **The Legal 500 Country Comparative Guides**

## **United Arab Emirates SHIPPING**

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in United Arab Emirates.

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# UNITED ARAB EMIRATES SHIPPING



A new law is just released and will be enforced on March 2024, the updated chapter will follow shortly.

## 1. What system of port state control applies in your jurisdiction? What are their powers?

The Riyadh Memorandum of Understanding on Port State Control in the Gulf Region (the **"Riyadh MOU"**) signed in 2004 by six Gulf states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE) under the auspices of the International Maritime Organization, is an agreement to achieve safe, secure and efficient shipping in the maritime jurisdictions in the Gulf region and establishes a unified system of port state control measures in the region.

The Riyadh MOU together with the UAE Commercial Maritime Law No. 26 of 1981 (the **"Federal Maritime Law"**) governs the Port State Control inspection of ships in UAE ports.

Port State Control Inspections are carried out in UAE by inspectors assigned by the Federal Maritime Authority (**"FMA"**) including by the Harbour Master or his representatives. Under the Riyadh MOU, approximately 10 per cent of the estimated number of foreign merchant ships entering UAE waters each year must be inspected by the Port State Control in UAE.

Under the Riyadh MOU, the FMA has the power to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with convention standards. In the case of deficiencies which are clearly hazardous to safety, health or the environment the FMA has the power to detain the ship till the vessel is compliant or the hazard is removed.

## 2. Are there any applicable international conventions covering wreck removal or

## pollution? If not what laws apply?

### Wrecks

The UAE has not ratified the Nairobi International Convention on the Removal Wrecks and wreck removal is presently dealt with by the Federal Maritime Law in the UAE, as well as national circulars and federal decisions. The UAE has issued Cabinet Resolution No 71 on Marine Wrecks and Non-Compliant Ships, which came into force on 15 September 2021, and which applies to all national and foreign ships located in the waters and ports of the UAE and requires a financial guarantee issued by a bank or financial institution to cover responsibility for the removal of wrecks.

### Pollution

UAE courts apply the Federal Law No. 24 of 1999 for the Protection and Development of the Environment (the **"Environmental Law"**), which in Articles 21 to 34 deals with pollution from marine transportation but in general terms and therefore does not provide the full/entire protection.

The UAE has ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 under which all UAE-flagged ships, including oil tankers over 1,000 gross tonnage, are required to obtain a Bunker Convention Certificate from the FMA. Further, all foreign-flagged ships on UAE waters and calling at UAE ports will be required to present a valid Bunker Convention certificate issued by its flag or a flag of a country that has been ratified by the Bunker Convention.

Additionally, UAE courts will refer to the International Convention on Civil Liability for Oil Pollution Damage, in addition to the Environmental law (where applicable).

### 3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

As of 1 January 2020, all fuel oil on board any UAE and foreign-flagged vessel entering UAE territorial waters must not have sulphur content “*exceeding 0.50% m/m*” and such vessels “*without an approved alternate means of compliance (such as Exhaust Gas Cleaning System)*”, are prohibited from carrying non-compliant fuel oil, unless such fuel complies “*with the required emission levels*”.

### 4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

The UAE has ratified the Convention on the International Regulations for Preventing Collisions at Sea 1972, as amended (COLREGs). Chapter 5 of the Federal Maritime Law deals with collisions and provides (at Article 318) that compensation is to be made for damage (arising from the movement or the negligent performance of a movement, or the failure to observe the provisions of national legislations or the ratified international conventions) caused by a vessel to another vessel or object or persons onboard. In general terms, a fault-based liability regime applies, the details of which are set out in Articles 320 to 322 of the Federal Maritime Law.

The UAE is a party to the International Convention on Salvage 1989 (the 1989 Salvage Convention). Article 327 to Article 339 of the Federal Maritime Law deal with salvage and provides for the right to a fair remuneration should the assistance rendered achieve a useful result with the amount of remuneration to be agreed between parties, failing which the Court will decide. While there is no mandatory form of a salvage agreement and parties are free to decide, Courts in the UAE also have the power to annul or amend the terms of a salvage agreement. If the salvage operation takes place in UAE waters and the vessels (salvaged and salving) are UAE flagged, any agreement conferring jurisdiction upon a foreign court or to refer such claims to arbitration outside the UAE shall be void and local Courts in UAE will assume jurisdiction.

Articles 340 to Article 365 of the Federal Maritime Law deal with the general average.

### 5. Is your country party to the 1976

### Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

The UAE has ratified both the Convention on Limitation of Liability for Maritime Claims 1976 as well as the 1996 Protocol on Limitation of Liability as amended in 2012 (which entered into force for the UAE on 23 May 2021). Therefore, the limitation of liability should be applied to any claim subject to limitation under the Convention and Protocol. Articles 138 to 142 of the Federal Maritime Law entitle an owner, charterer or operator to limit liability with reference to the tonnage of the vessel.

### 6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

The UAE is not a party to either the International Convention Relating to the Arrest of Sea-Going Ships 1952 (though this has to a large extent been incorporated into the domestic legislation i.e. the Federal Maritime Law), nor the International Convention on the Arrest of Ships 1999.

Arrests are on the basis of the relevant provisions of the Federal Maritime Law, which contains an entire section on the procedure for sequestration of the vessel. Vessels can be arrested for satisfaction of a “maritime debt”, which has been defined in the Federal Maritime Law (Article 115) as a claim in respect of a right arising from any of the following causes:

- Damages caused by the vessel by reason of a collision or otherwise.

- Loss of life or personal injuries caused by the vessel and arising out of use thereof.
- Assistance and salvage.
- Contracts related to the use or exploitation of the vessel under a charter contract or otherwise.
- Contracts related to the carriage of goods under a charter contract, bill of lading, or other documents.
- Loss or damage of goods or belongings carried on board the vessel.
- Common average.
- Towage or piloting of the vessel.
- Supplies of products or equipment necessary for the use or maintenance of the vessel, in any location of supply whatsoever.
- Construction, repair or fitting of the vessel, and costs at present thereof in docks.
- Sums spent by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof.
- Wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment.
- A dispute of ownership of the vessel.
- A dispute pertaining to the common ownership of the vessel, to the possession or use thereof, or to the right to the profits arising from the use thereof.
- A maritime mortgage.

The right of arrest is a provisional relief granted by way of an *ex parte* application and once granted, a substantive claim has to be filed with the relevant court within eight days from the date of the arrest order. Upon an arrest order being issued, the UAE courts will generally assume jurisdiction over the substantive dispute, unless the underlying contractual documents contain an arbitration agreement. Where a claimant wishes to rely on the arbitration clause, evidence that arbitration has been initiated must be submitted to the UAE Court within eight days of the arrest order being issued.

### **7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?**

The UAE is an arrest-friendly jurisdiction. However, there are certain procedural aspects to be kept in mind:

- the lawyers (who must be licensed to practise in the UAE courts) will need to produce an official Power of Attorney (POA) issued by the

arresting party – such POA needs to be notarised and, if issued outside the UAE, will need to:

(a) be attested i.e. legalised by the UAE embassy in the origin country; and

(b) legalised through the UAE Ministry of Foreign Affairs / Justice;

- all documents supporting the application, and which are to be filed have to be translated into Arabic by a sworn translator (i.e. licensed by the Ministry of Justice).

Arabic is the official language of the UAE (including its courts), all proceedings are conducted in Arabic. However, the UAE has on 3 October 2022 enacted a new Civil Procedures Law No. 42 of 2022 (due to come into force from 2 January 2023) which grants the head of the judicial authority (whether federal or local), the power to decide that some of specialty matters are to be tried **in English**. For such matters, pleadings, submissions, arguments, witness statements will be in English language and to the court will issue decisions and judgments in English language. It is however still unclear whether admiralty actions will be included in such special matters.

### **8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?**

The concept of the maritime debt is not recognised under UAE law. However, under Article 84 of the Federal Maritime Law, a vessel can be arrested for 'priority debts' (which are akin to maritime liens in that they attach to the vessel irrespective of change of ownership), and which include:

- judicial costs incurred in the protection and sale of the vessel (including port charges, dues, taxes and pilotage fees, damage to the port, wreck removal);
- debts arising out of a contract for the employment of the master, crew and any other person employed by a contract of maritime employment on board the vessel;
- monies due for assistance and salvage and the vessel's share of general average;
- compensation due for collisions and/or for

bodily injuries to the passengers and crew, and/or for loss or damage to goods and possessions;

- debts arising out of contract made by the master for the maintenance and continuance of the vessel;
- breakdown or damage giving rise to a compensatory claim in favour of the charterer; and
- claims for insurance premiums for hull and machinery.

### **9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?**

Under Article 117 of the Federal Maritime Law, either the bareboat (demise) chartered vessel (being the vessel in respect of which the claim arose) or any other vessel owned by the demise charterer may be arrested for a claim against the said charterer (provided that the claim falls within the definition of a 'maritime debt').

The general rule where a person other than the owner of a vessel is liable for the maritime debt (i.e. where say, a charterer is liable), is that the claimant cannot arrest other vessels owned by the owner of the chartered vessel.

### **10. Are sister ship or associated ship arrests possible?**

Under Article 116 of the Federal Maritime Law, not only the vessel to which the claim relates may be arrested but a claimant may also a sister ship owned by the debtor provided that the vessel is owned by the debtor at the time the debt arose.

However, a sister ship arrest cannot be obtained in the circumstances where the claim/ maritime debt arises out of:

- a dispute regarding the ownership of a vessel;
- a dispute relating to the co-ownership, possession or use of a vessel, or the right to profits arising out of its use; or
- in a claim arising from a maritime mortgage;

It is very difficult to obtain an associate ship arrest since courts in the UAE are generally reluctant to lift the corporate veil, absent strong evidence (such as that of

fraud) and thus vessels owned by subsidiaries of the debtor cannot be arrested.

### **11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?**

Generally, the Court requires the arresting party to submit a written undertaking to indemnify against any loss and damage arising out of the arrest in case the court discovers that the arrest application was filed without justification and the case was maliciously filed. Additionally, the court may at its discretion also ask for counter-security to be deposited by the arresting party. The amount of such counter-security will only be determined at the time of issuing the arrest order, and it will be according to the value of the claim but may go in excess of AED 500,000.

Any compensation to the defendant for wrongful arrest is at the discretion of the court but is generally difficult to obtain as the party alleging wrongful arrest would need to demonstrate to the Court that the arrest was obtained with an intention to cause damage.

### **12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?**

The court shall release the vessel upon presentation of a guarantee or other security sufficient to satisfy the debt. An application for the cancellation of sequestration/ arrest or the provision of a guarantee or security shall not be deemed an admission of liability for the debt nor a waiver of the right of the vessel owner to the legal limitation of liability.

The only accepted security is either cash or Manager's Cheque or a bank guarantee issued by a UAE licensed bank. A P&I letter of undertaking would not be accepted by the court and thus in such cases the arresting party must voluntarily accept such Club letter and on its basis requests the Court to release the vessel from arrest.

### **13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

Under UAE law, a vessel once arrested will only be sold upon the arresting party obtaining final judgement on the merits of the claim. However, the Cabinet Resolution

No 71 on Marine Wrecks and Non-Compliant Ships, which came into force on 15 September 2021 allows a ministerial committee to request the Court to serve a written warning on a violating ship (as defined in the Regulations) which is arrested and if such warning is not adhered to, to sell the ship through public auction.

Articles 126 to 130 of the Federal Maritime Law set out the procedure for judicial sale which cannot take place earlier than 15 days after the publication of the sale but no later than 90 days after issuance of the court order. Appeals against an order for sale can only be on the ground of a defect in form and must be filed within 15 days of the date of the order.

#### **14. Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

Under UAE law, a bill of lading evidences a contract of carriage and identifies the shipper, the carrier and the consignee.

Articles 258 and 272 of the Federal Maritime Law set out the liabilities of carriers and shippers (largely following Articles III.1 and III.3 of the Hague-Visby Rules).

The Federal Maritime Law provides, and UAE courts will generally recognise a party as being the carrier if that party has been identified as a carrier on the bill of lading (even if the bill of lading was signed by an agent on behalf of the carrier).

Courts in the UAE would consider the lawful holder of a bill of lading or the ultimate endorsee as having title to sue.

#### **15. Is the proper law of the bill of lading relevant? If so, how is it determined?**

Courts in the UAE will often disregard terms on the reverse of the bill of lading on the basis that the holder of the bill of lading had insufficient knowledge of the terms. Generally, therefore, courts in the UAE are reluctant to uphold a foreign jurisdiction clause or a foreign arbitration clause on the Bill of Lading as this is contained on the reverse of the bill and in such circumstances the UAE rules of jurisdiction, as set out in UAE Federal Law No. 11 of 1992 (**“the Civil Procedure Code”**) would apply to the dispute.

An arbitration agreement may be upheld if it was signed by both parties or agreed in a separate document (for example, a charterparty) and not simply printed on the reverse of the Bill of Lading.

#### **16. Are jurisdiction clauses recognised and enforced?**

See reply to Question 15 above. While arbitration clauses are generally recognised and enforced, foreign jurisdiction clauses are usually not if in contrast with UAE jurisdiction (which is very wide and usually applied if at least one of the parties is based in the UAE or the cause of action fully or in part arose in the UAE).

As a matter of practice, except for where the local offshore courts (say the DIFC courts or the ADGM courts) have jurisdiction over a dispute or where the contract has a specific arbitration clause, courts in the UAE will assume jurisdiction.

#### **17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

Article 263(2) of the Federal Maritime Law provides for incorporation of charterparty terms by express reference to the bill of lading. In practice, however, UAE courts frequently find that the endorsee or holder of the bill of lading (who is not the charterer) had insufficient knowledge of the charter party terms for these to be binding (see reply to Question 15 above). As between the Owner and Charterer, if the charterparty is identified on the face of the bill of lading and agreed between the parties, the arbitration clause would be found to be binding. It may therefore be difficult to persuade a local court in the UAE to uphold the incorporation of a law and jurisdiction clause into the bill of lading by express reference unless the holder of the bill of lading is also the charterer i.e. is party to the charterparty sought to be incorporated into the bill of lading.

#### **18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

No, the UAE is not party to and has not adopted international conventions such as the Hague Rules, the Hague-Visby Rules, or the Hamburg Rules. That said, the Federal Maritime Law incorporates provisions similar to the Hague-Visby Rules.



Under Article 275 of the Federal Maritime Law, the carrier shall be liable for losses or damages incurred to the goods during the period running from the receipt thereof at the loading port until delivery to the person entitled thereto at the discharge port unless it is established that said damages or destruction arose from causes such as the unseaworthiness of the vessel (provided that the carrier shall act with due diligence to put the vessel in a seaworthy state and in the loading, stowing, stacking, arranging, transporting, preserving, unloading and delivering of goods), errors in the navigation or management of the vessel by the master, crew, pilot etc., fire, (unless occurring through an act or fault of the carrier), perils of the sea, acts of God, perils of war, civil unrest and commotions, acts of public enemies, detention by the state or judicial arrest, quarantine restrictions, any strikes or layoffs etc., any act or omission on the part of the shipper or owner of goods, or the agent or representative thereof, latent defects or the nature of the goods giving rise to a shortfall in bulk or weight or any other shortfall, improper packaging or marking of the goods; rescue or attempted rescue of persons or property at sea and any deviation for this purpose or for any reasonable cause, latent defects not discoverable by ordinary examination, any other cause not arising from the failure of the carrier, his servants or agents.

The onus of proof shall be on the person alleging such cause to show that no failure on their part is instrumental in causing such losses or damages.

### **19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

The UAE ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 without any declarations/ reservations via Federal Decree No. 43 of 2006 and therefore UAE courts will generally enforce foreign arbitral awards unless the limited grounds to resist enforcement in the New York Convention are satisfied.

Thereafter the Cabinet Resolution No. 57 of 2018 concerning Civil Procedures Law (the “**Executive Regulations**”) was promulgated which set out the current procedure for enforcement of foreign arbitral awards in the UAE (excluding the financial free zones of the DIFC and the ADGM). Under Article 85(2) of the Executive Regulations, the test for recognition and enforcement of a foreign award is the same as that for a foreign judgement. Specifically, enforcement will be

allowed if (a) the UAE courts do not have exclusive jurisdiction over the dispute *[it is relevant to note that there have been instances where Courts in the UAE have held that this requirement has not been satisfied since under Article 31 of the Federal Law No. (11) of 1992 Concerning Issuance of the Civil Procedures Code (as amended in 2014), the UAE courts will have jurisdiction if the defendant is domiciled or has its business in the UAE, or the contract was entered into and performed in the UAE, or the loss or damage occurred in the UAE]*; (b) the judgment or order has been issued by a court in accordance with the law of the country in which it has been issued and duly certified; (c) the defendants were properly summoned and represented; (d) the judgment or order has acquired the legal effect of res judicata according to the law of the issuing court; and (e) the judgment neither conflicts with a judgment or an order previously issued by a court of the state and does not violate the public order, Sharia law or morality.

Further, Article 86 of the Executive Regulations states that “*the arbitration award must have been issued on a matter for which arbitration is permissible in accordance with the Law of the [UAE] and is enforceable in the State where it was issued*”. While the Executive Regulations provide for the procedural rules for the enforcement of foreign arbitral awards, the substantive conditions of enforcement of foreign arbitral awards will still continue to be governed by the New York Convention (Article 88 of the Executive Regulations).

Generally, the principles governing enforcement of foreign awards are now well-settled in the UAE and there is now a substantial body of case-law which sets out the limited powers of the courts to refuse enforcement.

Articles 42 to 44 of the DIFC Arbitration Law No. 1 of 2008 (which is based on the UNCITRAL Model Law) contain the procedure for recognizing and enforcing foreign arbitration awards through the DIFC, and the process is similar to that under the New York Convention.

Additionally, the UAE provides an easy method for enforceability of judgments or awards locally and in the wider Gulf region under the Riyadh Convention and GCC Treaty.

### **20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

- One year for claims arising from the maritime transport contract and bills of lading which starts from the date of receipt of merchandise or from the date on which delivery should have been completed.
- Ninety days for recourse lawsuits against third parties by persons against whom a claim is made which starts from the date of payment.
- One year for claims of restitution of undue payments which starts from the day of the knowledge, by the person seeking recovery, of his right to recover.
- Two years for passenger claims relating to death or personal injury.
- One year for claims for the carriage of luggage starting from the next day of departure of the vessel.
- Three years for claims in tort.
- Two years for salvage claims, marine insurance claims and compensation claims arising out of collisions

**21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?**

Article 273 of the UAE Civil Transactions Code (Federal Law No. 5 of 1985, as amended), which applies to commercial contracts governed by UAE law, provides that in mutually binding contracts, if a Force Majeure event takes place which renders the performance of the contractual obligations impossible, the corresponding obligation ceases and the contract is automatically cancelled.

Relevantly, in order for any given event to be considered a force majeure event, it must render an obligation impossible to perform. This is distinguishable from the doctrine of exceptional circumstances (under Article 249 of the UAE Civil Transactions Code), which does not render performance impossible, but only renders it onerous and excessive. As such, mere hardship or economic imbalance between the parties with respect to a contractual obligation will not qualify as force majeure so as frustrate the contract.

In such cases (of exceptional circumstances), courts may, having regard to the circumstances and keeping in mind the interests of both parties, vary the contract so as to reduce the burdensome obligation to reasonable limits.

As such therefore any relief due to COVID will depend on the facts and circumstances of the particular case.

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