

Callidus News

ADVOCATES, CONSULTANTS & NOTARY

BRANCHES: DUBAI | SINGAPORE | DELHI | MUMBAI | KOLKATA | CHENNAI | COCHIN info@calliduscmc.com

Dubai

Business Avenue Building
Office # 713, Port Saeed Road,
P.O. Box # 90992, Dubai, UAE.
Tel: +97142956664
Fax: +97142956099

Singapore

20 Maxwell Road
#04-02 D, Maxwell House
Singapore - 069113
Tel: +65 6221 4090

Delhi

D 1st 145 Basement (Rear)
Lajpat Nagar R 1
New Delhi - 110 024
Tel: +91 11 4132 1037

Mumbai

8-B, Dariya Building
2nd Floor, In between American
Dry Fruits & Zara, Dr. D.N.Road
Fort, Mumbai 400 001
Tel: 022-22853371

Chennai

Old No. 123, New No.255,
3rd Floor, Hussiana Manzil,
Ankapanaiken Street,
Parrys, Chennai - 600 001
Tel: +91 98 40 844463

Cochin

Near St. Joseph's High
School Chittoor Road,
Cochin - 12, India
Tel: +91 484 2391895
office@callidusindia.com



MARITIME CODE AND SHIP ARREST IN THE UAE



INTRODUCTION

In the UAE, Federal Law No. 26 of 1981 on commercial maritime law, as amended by Federal Law No. 11 of 1988 (Maritime Code) is the governing legislation for all maritime matters. Although the UAE has not ratified the 1952 Arrest Convention nor is a party to other international maritime conventions related to the arrest of ships, maritime disputes have been effectively resolved through the provisions contained in the Maritime Code.

Article 115 of the Maritime Code enumerates the grounds which can give

rise to a claim with respect to maritime debts, which can be broadly defined as any outstanding due for the supplies made to the vessel and the contracts relating to the use of the vessel. It is pertinent to note that Article 116 of the Maritime Code also confers the claimant with the right to arrest any other vessel owned by the defendant at the time when the claim arose.

DEFINITION OF A VESSEL

Article 11 of the Maritime Code defines the term 'Vessel' as follows: 1) 'Vessel' shall mean

any structure normally operating, or made for the purpose of operating, in navigation by sea, without regard to its power, tonnage or the purpose for which it sails.

- 2) In applying the provisions of the Code, hovercraft used for commercial or non-commercial purposes shall be deemed to be vessels.
- 3) All the appurtenances of a vessel necessary for the operation thereof shall be deemed to be part of the vessel and of the same nature.

PROCEDURE FOR ARREST
An ex-parte application



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for the MONTH**

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A to B. Imagination will
take you everywhere

ALBERT EINSTEIN

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needs to be made by the claimant in the competent civil court having jurisdiction over the port where the vessel is located along with prima facie evidence establishing the maritime debt against the defendant. In furtherance of the same, the court may seek additional documents/information or appoint an expert to conduct its own investigations to ascertain whether there is a prima facie maritime debt.

The vessel must be within the port limits and the Dubai Courts under several instances in the past have enquired with the port authorities to affirm the same and that the defendant is the owner of the vessel in question. The claimant needs to also prove to the court that unless and until an arrest is not effectuated, the vessel is likely to leave the jurisdiction of the court which effectively underlines that the claimant cannot claim for the maritime debts afterwards.

Furthermore, the court will also

obtain undertakings from the claimant:

- a) To pay all expenses related to the arrest of the vessel, including amounts due to the crew.
- b) To compensate the owners of the vessel for any delay or damage as a result of the arrest of the vessel, if the arrest is proved to be a wrongful arrest.

Upon an order for arrest, the claimant is obligated to file a substantive claim within a period of eight (8) days, failing which the arrest will lapse and shall be considered null and void. The court shall issue a summons to the defendant to attend the court and the hearing will take place within thirty days of the date of the arrest.

Under Article 118 (2) of the Maritime Code, the arrest order shall be lifted upon submission of a security or bank guarantee by the ship owner which needs to be equivalent to the claim amount in dispute, and such an act would not be treated as an

admission of liability by the ship owner.

Wrongful arrest claims

An arrest will be considered a wrongful arrest only if the arrest was malicious and obtained in bad faith or with the intention to cause harm to the defendant. The Maritime Code does not contain any provision related to wrongful arrest. Security for wrongful arrest claims is mandated in certain Emirates in order to obtain an arrest order.

Power of Port Authorities

Further to the powers of arrest conferred by the Maritime Code upon the UAE courts, the port authorities are also granted powers of arrest and detention. The port may refuse to grant outward clearance, and may also impose fines and penalties in cases of breach of regulation ■

CHENNAI VLADIVOSTOK MARITIME CORRIDOR

The Chennai Vladivostok Maritime Corridor is a dream project that can transform India as a Maritime hub for Marine business. The Minister of Port Shipping and waterways on 23rd April 2023 visited Chennai to inaugurate the project on Augmentation of Port Capacity both in Chennai and Kamraj Port to address the press on several aspects and one of the issues that was addressed by the Minister was that of Chennai Vladivostok Maritime Corridor, the Minister of Port, shipping and waterways informed that *"....India is in talks with Russia to open up Chennai-Vladivostok Maritime Corridor to further the special relationship between the two countries while unlocking the huge trade potential in blue economy...."* The idea is yet another step initiated by the Government of India, towards its vision on Blue Economy 2030.



The Minister of Port Shipping and Waterways further added that The Maritime Corridor will serve the purpose of Growth and Investment in the east

connecting India and Russia. The Minister who had visited Chennai port further added that the ports have been performing well for the past 4 years

and the Government is giving special emphasis on Transformational initiatives in sectors like ports, airways and railways.

The said talks by the government is

great initiative as it is the need of the hour for the India and its economy. Once the dream project succeeds in becoming a reality, the India will become the next

maritime hub as all the trade will pass through India, thereby there will be an increase in trade and investment ■



A FOSSIL FUEL FUTURE



Perhaps, among all the rhetoric about “net zero” and carbon neutral industry, the magnitude of the task and the timescales have started to sink in. It was not many years ago that a major tanker owner suggested, with a degree of certainty, that the ships he was then bringing into service would be part of the last generation of their type, as oil usage declined in favour of all the greener alternatives. And out in the real world, where ships carry around humanity’s necessities every day of the year, the approach to the phasing out of fossil fuels has had to be more nuanced. Indeed, the world might be thought of as already divided between those nations where their governments have taken what they regard as principled attitudes to the phasing out of fossil fuels and the more pragmatic, which acknowledge that they must remain a significant part of their economies for the foreseeable future. They maybe do not shout about what they consider to these realities, but just get on with capitalizing on their oil and gas reserves, regardless of the attitudes of others. Thus, on the one hand, we have states that have taken

“courageous” decisions to achieve net zero (there is some debate about its exact definition) by a certain date, even writing this into their laws, and prohibiting the further exploitation of offshore oil and gas fields within their waters. Probe a little deeper into even their policies and much of the emissions which they so deplore will be “exported” to other countries, just to keep their lights on and industries ticking over. Their virtue, it might be thought, is only skin deep. But even as these decisions are taken, there remains an actual increase in global drilling activity around the world throughout the waters of countries that take a less equivocal attitude to the climate emergency. And included here are offshore fields which have been identified with the potential to become some of the world’s largest, with many decades of use in them. Guinea, Angola, Namibia, Mozambique, India, Indonesia, Brazil and China, are just a selection of states that are seeing increased offshore activity, demonstrating that the “phaseout” of fossil fuels is an aspiration that will remain illusory for many years.

www.seatrade-maritime.com

Address: Near St. Joseph’s High School, Chittoor Road, Cochin- 12, India, T: +91 484 2391895, office@callidusindia.com

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