

THE SHIPPING LAW
REVIEW

SEVENTH EDITION

Editors

George Eddings, Andrew Chamberlain and
Holly Colaço

THE LAWREVIEWS

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PREFACE

The seventh edition of this book aims to continue to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues and decommissioning. A new chapter on ship financing is also included, which seeks to demystify this interesting and fast-developing area of law.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US\$380 billion in terms of global freight rates, amounting to about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's MEPC 72 in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement has led to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

George Eddings, Andrew Chamberlain and Holly Colaço

HFW

London

May 2020

UNITED ARAB EMIRATES

Yaman Al Hawamdeh and Meike Ziegler¹

I INTRODUCTION

The United Arab Emirates (UAE) is a vibrant region that continues to thrive, despite the global downturn and the drop in the oil price. The UAE holds approximately 6 per cent of the world's proven oil reserves, of which roughly 98 per cent are located in Abu Dhabi. In addition, the UAE ranks as the seventh largest holder of natural gas reserves worldwide.²

The economic free zones also have an important economic role, as they permit 100 per cent foreign ownership of companies that would otherwise have to have an emirati majority shareholder. There are 36 free zones in the UAE.³ Jebel Ali Free Zone, with around 6,000 companies, is the largest of all by company size.⁴

Dubai is to the Middle East what Singapore is to Asia, a flourishing maritime hub with global reach. Dubai is purpose-driven and aims to grow and cement its role as one of the major players in the maritime industry by, for example, improving investors' confidence in the market. For this purpose, Dubai set up its first Maritime Advisory Council (of which HFW partner Yaman Al Hawamdeh is a member) a few years ago, which aims to facilitate exchanges between regulators and maritime businesses within the private sector. However, to turn the region into a true competitor, the emirates recognised that they also had to improve dispute resolution facilities for maritime disputes. The Emirates Maritime Arbitration Centre (EMAC) was therefore launched in 2016. It is the first specialised maritime arbitration centre in the Middle East and is expected to further the ability of parties to resolve maritime disputes by having them determined by a specialist maritime tribunal.

UAE courts remain ahead of others in the Middle East in enabling claimants to successfully enforce foreign arbitration awards. In this regard, HFW's Dubai team has been successful in a number of landmark judgments in the past few years and has recently obtained a particularly significant judgment from the Dubai Court of Cassation, recognising a London arbitration award under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), despite the underlying charter party not having been signed, which in the past would have resulted in the recognition and enforcement being rejected. With supportive courts and new maritime institutions, Dubai and the UAE are securing their place as a leading global maritime hub.

1 Yaman Al Hawamdeh is a partner and Meike Ziegler is an associate at Holman Fenwick Willan Middle East LLP. The information in this chapter was accurate as at May 2018.

2 www.eia.gov/countries/cab.cfm?fips=tc.

3 www.uaefreezones.com.

4 www.uae-embassy.ae/Embassies/uk/Content/579.

II COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The UAE is the shipping centre of the Middle East, with 14 operating commercial ports. The key ports include Jebel Ali in Dubai, Abu Dhabi, Sharjah and Fujairah, which is one of the biggest bunkering hubs.

Jebel Ali Port and its free zone area is also the biggest logistics hub within the Middle East. It is ranked in the top 10 of the world's largest sea ports, and has the world's largest man-made harbour.

The UAE's ports contribute significantly to the UAE gross domestic product, with thousands of companies currently working in the maritime sector; these include all leading container shipping lines that have offices in the UAE. Most multinational shipping agents operate out of the UAE in relation to their Middle East business and we have seen an increasing number of ship managers moving to Dubai and Fujairah from Asia and Europe. The marine sector includes offshore operators serving their operating fleets from Abu Dhabi for the entire region. It also includes all marine support functions, such as top offshore consultants, surveyors, marine insurance brokers and leading law firms within the marine industry.

III GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

The UAE was founded in 1971 and is a federation formed of seven emirates. The UAE civil law system was influenced by the Egyptian legal system, which was based on French and Roman law.

The oil boom in the 1970s kick-started the development of the UAE's modern legal system, as *Shari'a* law was not designed to regulate international trade. The Commercial Maritime Law (Federal Law No. 26 of 1981 (the Maritime Code)) was enacted in 1981. This was influenced by Kuwait's maritime law, which in turn was influenced by international maritime conventions, and Italian and French maritime law. The Maritime Code includes sections dealing with various maritime issues from the registration of vessels and ownership, mortgage and arrest, crews and their contracts, charter parties and contracts of carriage, towage and pilotage, collisions and salvage to general average and marine insurance.

IV FORUM AND JURISDICTION

The UAE has two parallel court systems, comprising a federal judiciary that runs at the UAE federal level. This was adopted by Ajman, Fujairah, Sharjah and Umm Al Quwain, whereas Abu Dhabi, Dubai and Ras Al Khaimah have each retained their local court system.

i Courts

Federal courts are spread within each emirate (except those that retained their local court system) with a court of first instance and court of appeal. Appeals from a court of appeal are heard by the High Federal Supreme Court in Abu Dhabi. Appeals from the local courts of appeal in Abu Dhabi, Dubai and Ras Al Khaimah are heard by their own courts of cassation (known as the Supreme Court in Abu Dhabi).

There is an automatic right to appeal for all cases with a value of above 200,000 dirhams, which can prolong court proceedings as no leave to appeal is required. There is also no duty

of disclosure on the parties other than the documents a party seeks to rely on, or in limited certain circumstances as directed by the court. This can reduce the cost and duration of legal proceedings significantly, in particular in comparison to legal proceedings in England.

However, in 2004, Dubai expanded its existing court system, in its drive to attract business and increase investors' confidence in the region, by setting up what so far appears to be a successful 'international' court system in the Dubai International Financial Centre (DIFC).

The DIFC court system mirrors the English court system and procedures. The UAE Civil Procedure Rules do not apply and as a result the DIFC provides an independent administration of justice system that has its own laws and regulations, and where these do not legislate for a particular issue, the law defaults to English common law. Unlike the local court system, there is no automatic right to appeal and costs are recoverable. This and a proven track record of DIFC court orders and judgments being enforceable in onshore Dubai and abroad, have made the DIFC courts a very popular option for litigation in Dubai.

There is no equivalent in the UAE to the English Admiralty Court. All maritime disputes are heard by the civil courts of the relevant emirate. As mentioned in Section I, for that reason the UAE set up EMAC in 2016. Parties now have the option to make their contracts subject to EMAC and have disputes determined by specialist maritime arbitrators. The default seat of EMAC arbitrations is the DIFC, which allows smooth enforcement of EMAC arbitration awards onshore in Dubai and the region.

Similar steps have been taken in Abu Dhabi with the creation of the Abu Dhabi Global Market Courts in 2015, which was broadly modelled on the English judicial system.

ii Jurisdiction

The UAE courts will seize jurisdiction in a number of circumstances, including where:

- a* one or more of the defendants is domiciled or has its place of business in the UAE;
- b* the loss or damage was suffered in the UAE; or
- c* the contract was concluded or performed, or was supposed to be performed fully or partly in the UAE.⁵

The Civil Procedures Law (CPL) invalidates any agreed clause between the parties that gives jurisdiction to a foreign court in circumstances where the UAE courts would have jurisdiction over the dispute. On this basis, the UAE courts readily accept jurisdiction regardless of the existence of a foreign jurisdiction clause. The position is slightly different in relation to arbitration clauses, which the courts do recognise, provided the arbitration clause is in writing, clearly set out and was signed by both parties.⁶

iii Limitation periods

The following limitation periods apply to maritime claims in the UAE:

- a* three years for claims in tort;⁷
- b* one year for charter party and cargo claims and 90 days for third-party recourse actions;⁸
- c* two years for salvage and collision claims;⁹

5 Article 31 of the Civil Procedure Code (CPC) of Federal Law No. 11 of 1992 as amended (the CPL).

6 Article 203 CPC.

7 Article 298 of the Civil Code (Federal Law No. 5 of 1985).

8 Articles 224 and 287 of the Maritime Code.

9 Article 326 of the Maritime Code.

- d* two years for marine insurance claims;¹⁰
- e* two years for passenger claims relating to death or personal injury;¹¹
- f* six months for claims for delays;¹²
- g* one year for claims for the carriage of luggage;¹³
- h* two years for compensation claims arising out of collisions; and
- i* one year for rights of recourse of a defendant ship against another ship for settled claims for death or personal injury;¹⁴

The UAE did not adopt the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules), the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules) or the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules), and their limitation periods therefore do not apply. Terms similar to the Hague-Visby Rules are, however, incorporated into the UAE Maritime Code.

iv Arbitration and ADR

Some basic requirements relating to arbitration procedures are set out in Articles 203 to 218 of the CPL. To further cement the UAE's role as a global maritime centre, the Dubai Maritime City Authority established the aforementioned EMAC. EMAC is based offshore in the DIFC and has its own arbitration rules based on the rules of the London Maritime Arbitration Association and the Singapore Chambers of Maritime Arbitration. Accordingly, the CPL does not apply to EMAC arbitrations. It is expected that EMAC will solidify Dubai's role as a global maritime centre and will provide greater certainty and an improved service for parties wishing to resolve maritime disputes in Dubai.

There are four other arbitration centres, namely the Dubai International Arbitration Centre (DIAC), the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC), the International Chamber of Commerce UAE and the Dubai International Financial Centre and London Court of International Arbitration (the DIFC Arbitration Centre). Except for the ADCCAC, these arbitration centres are based offshore in the DIFC.¹⁵

In May 2018, the UAE legislature enacted a federal arbitration law based on the UNCITRAL Model Law.

v Enforcement of foreign arbitral awards

The UAE is a signatory to the New York Convention. Although there has been some uncertainty in the past with regard to the UAE courts enforcing local requirements for the recognition and enforcement of awards under the New York Convention, the UAE courts of cassation have made it clear that foreign arbitration awards are enforceable. It is also possible,

¹⁰ Article 399 of the Maritime Code.

¹¹ Article 299 of the Maritime Code

¹² *id.*

¹³ Article 302 of the Maritime Code.

¹⁴ Article 326 of the Maritime Code.

¹⁵ The DIAC is currently still located onshore, but its seat will be moved to the DIFC once its new arbitration rules come into force in 2018.

in certain circumstances, to seek recognition of foreign arbitration awards through the DIFC offshore court system, thereby circumventing some of the uncertainties still associated with enforcement in the UAE.

Procedure for recognising and enforcing foreign arbitration awards through the civil courts

Articles 235 to 238 of the CPL set out the process of recognising and enforcing foreign arbitration awards in the UAE.

The first step is to file an application with the court of first instance for recognition of the foreign arbitration award.¹⁶ The application will be served on the defendant and will be considered in a series of hearings and submissions by the parties. The judgment recognising the foreign arbitration award can be appealed to the court of appeal and subsequently to the court of cassation or the High Federal Supreme Court.

If recognition is approved, the second step involves an application to the execution judge, who will notify the judgment debtor to settle the awarded amount, plus interest and court fees, within 15 days, failing which the court will proceed with the enforcement in the form of attaching and enforcing against the debtors' assets.¹⁷

Procedure for recognising and enforcing foreign arbitration awards through the DIFC

The DIFC Arbitration Law No. 1 of 2008 (the DIFC Arbitration Law) is based on the UNCITRAL Model Law. Articles 42 to 44 cover the process for recognising and enforcing foreign arbitration awards. The process is in line with the New York Convention and provides a straightforward way of recognising foreign arbitration awards.

The grounds for refusing recognition are limited to:

- a* incapacity of the arbitration agreement;
- b* the judgment debtor was not properly informed of the arbitrator's appointment;
- c* the award is addressing points not covered by the submissions;
- d* the arbitral procedure was not in compliance with the arbitration agreement; or
- e* the award is not yet binding, as it is subject to appeal.¹⁸

Defendants wishing to challenge the DIFC court's jurisdiction in favour of the onshore UAE courts will face difficulties, as case law has confirmed that (1) the question of the DIFC courts' jurisdiction is determined by its own laws and not by the CPL, and (2) the DIFC Arbitration Law does not require there to be a connection with the DIFC for the DIFC to have jurisdiction.

However, defendants to recognition proceedings might under certain circumstances be able to rely on Decree No. 19 of 2016 concerning the establishment of a judicial tribunal for the Dubai and DIFC courts (the Decree). Pursuant to the Decree, a party can refer disputes to a judicial tribunal to ascertain whether the DIFC or the Dubai court has jurisdiction to hear a matter. The orders issued by the tribunal thus far appear to confirm that the DIFC can

16 Article 235 CPL.

17 Article 239(2) CPL.

18 Article 44(1)(a) of the DIFC Arbitration Law.

still be used as a conduit jurisdiction for seeking recognition of foreign arbitration awards and arbitration awards issued in offshore Dubai, but not for onshore Dubai arbitration awards, which have to be enforced via the onshore Dubai courts.

Recognising and enforcing foreign judgments through the UAE courts

The UAE courts will recognise and enforce foreign judgments, provided:

- a the UAE courts did not have jurisdiction over the dispute;
- b the judgment or order has been issued by a court having jurisdiction under the law of the country in which it was issued;
- c the defendants were properly summoned and represented;
- d the judgment or order acquired the force of *res judicata* in accordance with the law of the court that issued it; and
- e the judgment or order is not in conflict with existing UAE judgments.¹⁹

This makes recognition and enforcement of foreign judgments difficult, as in accordance with Article 31 of the CPL, 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.

The UAE is, however, a party to treaties for the reciprocal enforcement of judgments, such as the 1996 GCC Convention and the 1983 Riyadh Arab Agreement for Judicial Cooperation. The UAE has also entered into treaties with France, India, China and Tunisia for the enforcement of judgments issued in these jurisdictions.

Recognising and enforcing foreign judgments via the DIFC court

A claimant might be able to circumvent the onshore UAE court system by seeking recognition of a foreign judgment through the DIFC courts.

Article 7(6) of the DIFC Judicial Authority Law²⁰ sets out that judgments and orders rendered by any court other than the UAE courts shall be executed within the DIFC. Therefore, in theory, a claimant should be able to use the DIFC courts as a conduit jurisdiction to enforce foreign judgments. The DIFC court confirmed this position in *DNB Bank ASA v. Gulf Eyadah Corporation & Gulf Navigation Holding PJSC* (CA/007/2015).

However, in 2016 the Judicial Tribunal (JT) for the Dubai and the DIFC Courts was established by Dubai Decree No. 19 of 9 June 2016. The JT's purpose is to determine conflicts of jurisdiction between the Dubai and DIFC Courts where there are (1) competing invocations of jurisdictions or (2) competing judgments from both courts.

Although there have been decisions where the JT held that the DIFC Court did not have jurisdiction to hear the recognition of a foreign judgment,²¹ these decisions have not changed (1) the statutory basis on which the DIFC Court recognises the foreign judgments and (2) the enforceability of DIFC Court orders in the Dubai Court.²²

19 Article 235 CPL.

20 Law No. 12 of 2004 in respect of the Judicial Authority at Dubai International Financial Centre, as amended.

21 Cassation No. 3 of 2018 – *Farkehad Teimar Bely Akhmedov v. (1) Tatiana Mikhailovna Akhmedova (2) Straight Establishment with Ruling*. Cassation No. 4 of 2017 – *Endofa DMCC v. D'Amico Shipping*.

22 2009 Memorandum of Understanding Between Dubai Courts and DIFC Courts.

Although DIFC orders recognising foreign judgments are being enforced in the Dubai Courts we have not yet received first-hand confirmation that the Dubai onshore courts are in fact actively enforcing such a DIFC order. Seeking enforcement of a foreign judgment therefore remains difficult, unless it falls under one of the above-mentioned conventions.”

V SHIPPING CONTRACTS

i Shipbuilding

Although there are several shipyards in the UAE, the Maritime Code provides little guidance on how shipbuilding contracts are dealt with, except that (1) they are void unless in writing, (2) ownership does not pass until delivery of the vessel after sea trials, and (3) the builder guarantees the vessel is free of latent defects.²³ Claims for latent defects are time-barred one year after discovery or two years after delivery of the vessel.²⁴

ii Contracts of carriage

As previously stated, the Hague, Hague-Visby and Hamburg rules have not been ratified by the UAE, but Articles 256 to 302 of the Maritime Code deal with contracts of carriage by sea. These articles are loosely modelled on the Hague-Visby Rules and achieve a similar result.

Contracts of carriage are defined as those undertaken by the carrier for the carriage of goods from one port to another in consideration of freight, and the carrier is responsible for the goods from the time of taking receipt of the goods until delivery to the consignee.²⁵

The carrier's duties under the Maritime Code mirror those of the Hague-Visby Rules. The vessel has to be seaworthy before and upon the commencement of the voyage, and the carrier has to take care when loading, stowing, carrying and discharging the cargo.²⁶

Likewise, a carrier can limit liability under the Maritime Code for loss of or damage to cargo resulting from unseaworthiness, provided the carrier can prove the vessel was seaworthy prior to and at the commencement of the voyage.²⁷ Article 276(1) permits a carrier to limit liability to a sum not exceeding 10,000 dirhams for each package or unit, or a sum not exceeding 30 dirhams per kilogram per gross weight of the goods, whichever is the higher. These limitations shall not apply if the shipper declared the value of the goods.²⁸ The Maritime Code does not incorporate a provision akin to Article IV.5(e), explicitly excluding the carrier's ability to limit liability if loss or damage resulted from an act or omission committed with intent to cause damage, or recklessly with the knowledge that damage would probably result. However, the general principles of the UAE Civil Code and practice exclude the party's ability to limit liability when the loss or damage arises out of gross negligence or fraud.

23 Articles 67 to 68(1) of the Maritime Code.

24 Article 68(2) of the Maritime Code.

25 Articles 256(2) and 282 of the Maritime Code.

26 Article 272 of the Maritime Code.

27 Articles 275 and 272 of the Maritime Code.

28 Article 276(3) of the Maritime Code.

Liens

To exercise a lien over cargo, a party must obtain a court order and, provided the order is granted, store the cargo in a bonded warehouse. The carrier has a duty to discharge the cargo and cannot exercise the lien on board.

Pursuant to Article 222 of the Maritime Code, an owner has a right to withhold cargo for unpaid freight. However, as the Article refers only to freight, it is unclear whether it includes hire. Further, reference to the 'civil court' in Article 222 causes 'urgent matters' judges to be reluctant to accept jurisdiction and therefore refer lien applications to the civil courts when a notice of the application must be served on the defendant. As a result, although the right to withhold cargo exists, in practice an application to withhold cargo is likely to fail.

Article 360 of the Maritime Code grants a vessel's master the right to refuse delivery of goods until the receiver has provided security for general average.

iii Cargo claims

Liabilities of carriers and shippers that frequently form the basis of cargo claims are set out in Articles 258 and 272 of the Maritime Code, which are modelled on Articles III.1 and III.3 of the Hague-Visby Rules.

Although the Maritime Code does not deal with the issues regarding which party has title to sue, the UAE courts consider the lawful holder of a bill of lading or the ultimate endorsee to have title to sue.

Likewise, the Maritime Code offers limited guidance in identifying the carrier, except for defining the carrier as the party who uses the vessel on his or her own account in his or her capacity as owner or charterer.²⁹ The UAE courts will 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. Shipping lines are usually recognised as carriers on their traditional form liner bills. Bills of lading using the CONGENBILL form are usually more challenging and do create uncertainty when issued on behalf of the master. There have been different approaches to these bills before the UAE courts in various emirates.

A contract of carriage must be evidenced by a signed, dated bill of lading that identifies the goods, their condition and quantity. The bill of lading is conclusive evidence of the condition of the cargo and proof to the contrary is not permissible if the bill of lading has been transferred to a third party acting in good faith.³⁰

Unlike Article III.5 of the Hague-Visby Rules, under the Maritime Code the shipper does not guarantee the accuracy of the contents of the bill of lading, but merely states that the shipper is responsible to the carrier for any inaccuracies in the information provided.³¹ Arguably this shifts the burden of proof from the shipper to the carrier.

Articles 282 to 303 of the Civil Code set out the circumstances in which a party can pursue a claim in tort for loss of or damage to goods. The loss suffered can be direct or indirect, whereby the indirect loss or damage must have arisen out of a wrongful or deliberate act.³² Compensation will be assessed according to the level of harm suffered and can include loss of profit.³³

29 Article 135.

30 Articles 258 and 259(1).

31 Articles 259(4) and 266.

32 Article 283 CTL.

33 Article 292 CTL.

It can be inferred from Article 263(2) of the Maritime Code that charter party terms can be incorporated in a bill of lading by way of express reference. In practice, however, UAE courts may find the holder of the bill of lading had insufficient knowledge of the charter party terms to be bound by them and a party seeking to incorporate a law and jurisdiction clause into the bill of lading by express reference thereto may therefore fail. Likewise, the UAE courts frequently disregard terms on the reverse of the bill of lading for the same reason, that the holder of the bill of lading had insufficient knowledge of the terms.

iv Limitation of liability

Articles 138 to 142 of the Maritime Code entitle an owner, charterer or operator to limit liability with reference to the tonnage of the vessel. These provisions are based on the 1957 International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships. In 1997, the UAE ratified the Convention on the Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976).³⁴

Notwithstanding any contractual arrangement, maritime claims that are subject to limitation may differ in the UAE depending on whether limitation of liability is sought under the LLMC Convention or the Maritime Code. Very broadly, however, under either the LLMC Convention or the Maritime Code:

- a* maritime claims that can be limited usually include claims arising out of:
 - loss of life, personal injury and property damage arising out of the operation of a vessel; and
 - salvage or wreck removal operations; and
- b* the persons who may usually limit their liability include vessel owners, charterers, managers and operators, P&I clubs, as well as salvors.

The UAE has ratified the LLMC Convention without reservations. In theory, therefore, liability for maritime claims can be limited in the UAE. However, in practice, this may not always be straightforward. For example, there does not appear to be any UAE judgment upholding limits of liability under the LLMC Convention: this may be because few disputes in this respect are litigated, as opposed to the fact that local courts are reluctant to uphold the terms of the LLMC Convention. For instance, the Dubai Court of Cassation overruled a Court of Appeal judgment that ignored the limits under the LLMC Convention.³⁵ This seems indicative of a willingness at the highest levels of the judiciary to implement the LLMC Convention. The case was then returned to the Court of Appeal for retrial. However, the dispute settled before the Court of Appeal could potentially confirm the right to limit under the LLMC Convention. Accordingly, although the right to limit under the LLMC Convention is likely to be upheld, there remains some uncertainty in this respect.

There is also uncertainty on whether limitation funds can be created. These are defined by Article 11(1) of the LLMC Convention:

Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be [in the limitation amount], together with interest thereon from the date of the

34 Federal Decree No. 118 of 1997.

35 Dubai Court of Cassation Judgment No. 24 of 2008 dated 13 May 2008.

occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

In theory, a legal person seeking to limit its liability under the LLMC Convention can apply to court to create a fund against which all valid claims would be settled, up to the applicable limitation amount.

Article 14 of the LLMC Convention adds, however, that 'the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connexion therewith, shall be governed by the law of the State Party in which the fund is constituted'.

The issue is that the UAE has not yet enacted legislation to regulate the creation or distribution of limitation funds. This could explain why local courts have usually rejected applications for the creation of limitation funds.

On 15 January 2018, however, in a collision case in which HFW was acting as a co-counsel for one of the parties, the Dubai World Tribunal (DWT) issued a judgment accepting the creation of a limitation fund. It also decided that the limitation fund could take the form of a P&I club letter of undertaking (LOU) placed with the DWT. Although this judgment is a first in the UAE, whether it will have any wide-reaching influence is questionable. Some of the reasons for this are that:

- a* the DWT is a specialist court, which only has jurisdiction over claims by or against Dubai World entities;
- b* it is not clear whether other UAE courts will adopt the DWT's approach. There is currently no indication that they would and they are not bound by decisions of the DWT. If they did, they would be unlikely to accept P&I club LOUs for the constitution of a limitation fund, as a matter of UAE court practice. A limitation fund would be likely to take the form of cash security or bank guarantee; and
- c* even if a limitation fund was created in a specific UAE court (in this case the DWT), it is unclear whether and how this would be recognised and upheld by other courts in the UAE. In other words, where a limitation fund is created in one court, there currently appears to be no legal basis upon which all claims must be brought against it. In theory, a claimant could still bring its claim in the courts of any other relevant emirate as if there were no limitation fund.

Before the UAE adopted the LLMC Convention, the approach of the Federal Supreme Court was that the local limitation regime under the Maritime Code was not mandatory, unless incorporated into a contract between the parties.

The UAE has not yet ratified the 1996 Protocol amending the LLMC Convention and the increased limits, which came into force on 8 June 2015.

VI REMEDIES

i Ship arrest

Obtaining an order for the arrest of a ship in UAE waters is straightforward and effective. It is even possible to arrest ships for a charterer's maritime debt. It is at the discretion of the courts whether counter security is required. In this regard, the courts of Abu Dhabi and Dubai usually do not request counter security, whereas those of other emirates may request

counter security, usually between 50,000 and 200,000 dirhams. Although P&I club LOUs are widely accepted in most jurisdictions, UAE courts will only accept a bank guarantee or a cash payment into court as an alternative security to release a vessel.

The UAE did not ratify International Convention Relating to the Arrest of Ships 1952, but the corresponding sections of the Maritime Code³⁶ are based on its provisions.

It is not possible to obtain an arrest order for security only as the arresting party has to file substantive proceedings with the relevant UAE court to maintain the arrest order. However, it is possible to stay the proceedings in the UAE courts pending the outcome of an arbitration or to give effect to the law and jurisdiction clause in the contract.

Article 115 of the Maritime Code confers the right to arrest a vessel calling at any UAE port to secure a 'maritime debt', which has broadly been defined as any amounts due for supplies made to the vessel and contracts relating to the use of the vessel.³⁷

Alternatively, under Article 84 of the Maritime Code, a vessel can be arrested for 'priority debts', which include port charges, dues, taxes and pilotage fees, damage to the port, wreck removal, salvage and collision claims, contracts of employment of the master and crew, contracts 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. Priority debts attach to the vessel and the vessel can be arrested even if it has been sold to a third party.

Procedure for ship arrests

To obtain an order for the arrest of a vessel an *ex parte* application is made to the Urgent Matters Judge and, provided the arrest order has been granted, a substantive claim has to be filed with the relevant UAE court immediately, otherwise the arrest will be null and void.³⁸ An application can be made to the relevant UAE court for a stay of the substantive proceedings pending the outcome of existing arbitration proceedings, or to give effect to the contractual law and jurisdiction clause.

Sister ship and associated arrests

A sister ship can be arrested, provided the vessel was owned by the debtor at the time the debt arose.³⁹ Strong evidence, such as evidence of fraud, is required to persuade UAE courts to lift the corporate veil to effect an associated ship arrest, as the UAE courts 'respect the concept of legal independence of single ship-owning companies'.⁴⁰

Wrongful arrest claims

The Maritime Code does not define or contain any provisions in relation to wrongful arrest. There is, however, an argument that an arrest is wrongful if the arrest order was malicious and obtained in bad faith or with the intention to cause harm. The burden of proof is on the party claiming wrongful arrest. In practice, however, to the best of our knowledge, no party has yet been able to succeed with a claim for wrongful arrest.

36 Articles 115 to 134 of the Maritime Code.

37 Article 115(2), Paragraphs (a) to (o) of the Maritime Code.

38 Article 225 CPR.

39 Article 116 of the Maritime Code.

40 *The Maritime Laws of the Arabian Gulf Cooperation Council States*, Volume I by Richard Price, 1986, Graham & Trotman, p. 197.

Arrest by helicopter

The arrest by helicopter of a vessel at anchor in territorial waters, but not yet at berth, is not applicable in the UAE. Vessels are usually arrested by the coastguard and the relevant port authority even if the vessel is at anchor.

Bunker arrest claims

There have been hundreds of cases of bunker arrests during the past few years following the collapse of the Danish marine fuel company OW Bunker.

The Maritime Code does not include express provisions granting physical bunker suppliers the right to arrest for unpaid bunkers. Nevertheless, the courts consider contracts relating to the use of a vessel to include contracts for the supply of bunkers. Physical bunker suppliers can therefore arrest a vessel for unpaid bunkers, regardless of the bunker supply contract having been entered into with the owner, charterer or another trading or contractual supplier. This has made the UAE a very effective jurisdiction to pursue claims for unpaid bunkers, although the position may differ from emirate to emirate. For example, the Dubai court found that although the shipowner was not liable to the physical bunker supplier, the bunker supplier could nevertheless arrest the vessel and the security to release the vessel from arrest responded to the physical bunker supplier's claim. Ras Al Khaimah has taken the same approach as the Dubai courts.

ii Court orders for the sale of a vessel

Under UAE law, the enforcement process following the arrest of a vessel is only possible through a court order.

Once the court has ordered a judicial sale, it will fix an opening bid price and publicise the time and place of the sale in the local newspapers. The judicial sale 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, otherwise the debtor can apply for the arrest to be declared null and void.⁴¹ The judicial sale is conducted in three separate auctions at seven-day intervals and the highest bid at each session forms the base price for the next.⁴² The successful bidder must pay the funds into court within 24 hours, failing which the vessel will be resold. Appeals against an order for sale must be filed within 15 days of the date of the order and can only be made on the ground of a defect in form.⁴³

VII REGULATION

i Safety

The UAE has ratified most of the international conventions relating to ship safety,⁴⁴ including:

- a* the International Convention for the Safety of Life at Sea 1974 (SOLAS), as amended;
- b* the Protocol of 1978 relating to the SOLAS;

41 Article 126 of the Maritime Code.

42 Article 127 of the Maritime Code.

43 Article 130 of the Maritime Code.

44 International Maritime Organisation, www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx.

- c the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 1979);
- d the International Convention for Safe Containers 1972, as amended; and
- e the International Convention on the Tonnage Measurement of Ships 1969 (the Tonnage Convention), as amended.

Conventions that have not been ratified by the UAE are often dealt with in similar terms by local laws. Broadly, these deal with the following.

- a Ship Safety Documentation: Ships are required to carry on board a basic set of safety certificates in compliance with international conventions in force in the UAE.
- b Ship Inspection Procedures: the National Transport Authority controls and inspects ships inside UAE territorial waters.
- c Administrative decisions and penalties for breach of the applicable laws and conventions.⁴⁵

In addition, as of 1 September 2014, the UAE adheres to the GCC Code implementing safety regulation for ships that are not covered by the international convention.⁴⁶

ii Port state control

Port state control is governed by Commercial Maritime Law No. 26 of 1981 and the provisions of the Riyadh Memorandum of Understanding on Port State Control in the Gulf Region (the Riyadh MOU).

The Riyadh MOU was signed in June 2004 by Bahrain, Kuwait, Oman, Qatar, the Kingdom of Saudi Arabia and the UAE. It commits the maritime authorities of the six Gulf States to a unified system of port state control measures. The relevant port state control authority is the National Transport Authority (NTA).⁴⁷

Further to the Riyadh MOU, the NTA has the power to:

- a inspect ships to check the validity of certificates, and more generally to satisfy itself that the crew and the ship are up to the required standard;⁴⁸ and
- b detain vessels that it considers hazardous to safety, health or the environment until the hazard is remedied.⁴⁹

The NTA must inspect annually approximately 10 per cent of the estimated number of foreign merchant ships entering UAE waters⁵⁰ and must provide appropriate safety training programmes.⁵¹

45 Richard Price, *The Maritime Laws of the Arabian Gulf Cooperation Council States*, Volume 1.

46 www.tasneef.org.

47 International Maritime Organisation, www.imo.org/blast/blastDataHelper.asp?data_id=28163&filename=6-Annex1-FlagStates-31Mar10.pdf.

48 Riyadh MOU, Article 3.1.

49 Riyadh MOU, Article 3.14.

50 Riyadh MOU, Article 1.3.

51 Riyadh MOU, Article 6.

iii Registration and classification

The registration of vessels in the UAE is governed by the Maritime Code and the competent authority is the Marine Affairs Department at the Ministry of Communication.

A 'vessel' is defined as any structure normally operating at sea, without regard to its power and tonnage; hovercraft and drilling rigs can therefore be registered. However, pursuant to Article 18(1) of the Maritime Code, fishing and pleasure boats, lighters, barges and those vessels not exceeding 10 tonnes are exempted from registration.⁵² Oil and gas tankers that are more than 10 years old require permission from the Council of Ministers to be registered.⁵³

Only UAE nationals are able to register a vessel in the UAE. In the case of companies, the majority shareholder must be a UAE national.⁵⁴ Vessels still under construction may not be registered for the purpose of registering a mortgage.

The first UAE classification society, TASNEEF, was established in 2012. It is the only classification society in the Arab region.

Although in theory a shipowner might be able to sue a classification society if its negligence causes damage, it is difficult to predict how the UAE courts would assess such a case.

iv Environmental regulation

Law No. 24 of 1999 for the Protection and Development of Environment (the Environment Law) outlines the regulations relating to environmental protection and development in the UAE. The objective of the law includes controlling all forms of pollution and ensuring compliance with international and regional conventions ratified by the UAE regarding environmental protection.

Articles 21 to 34 of the Environmental Law deal with pollution from marine transportation. The master or officer in charge must take sufficient measures for protection from the effects of pollution of oil. In addition, the responsibility of notifying the authorities and carrying out immediate measures to control any oil spill lie with the master or officer in charge. Vessels transporting oil are further required to be equipped with the necessary equipment to undertake combating operations in the event of pollution.⁵⁵

The matter of air pollution is addressed in a number of articles, including Article 48, which stipulates that establishments producing air pollutants must not exceed the acceptable permissible limits specified in the Executive Order.

v Collisions, salvage and wrecks

Collisions

The UAE has not ratified the Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels 1910 (the Collision Convention 1910); however, Articles 1 to 6 and 8 of the Collision Convention 1910 are contained in Articles 318 to 326 of the Maritime Code. The Convention on the International Regulations for Preventing Collisions at Sea 1972, as amended (COLREGs), has been ratified by the UAE. The collision provisions of the Maritime Code apply to all collisions that occur between seagoing vessels,

52 Article 18 of the Maritime Code.

53 Article 19 of the Maritime Code.

54 Article 14 of the Maritime Code.

55 Articles 22 to 24 of the Environment Regulation.

to compensate for damage occasioned by a vessel to another vessel, object or person on board if the damage arises out of the manoeuvring, negligence or failure to observe national legislation or international agreements.⁵⁶

Questions of liability, as set out in Articles 3 to 5 of the Collision Convention 1910, are essentially provided for in Articles 320 to 322 of the Maritime Code.

Although the UAE did not ratify the International Convention for the Unification of Certain Rules relating to Civil Jurisdiction in Matters of Collision 1952 (the Collision Convention 1952), provisions regarding jurisdiction are set out in Article 325 of the Maritime Code.

Salvage

The Brussels Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea 1910 (the 1910 Salvage Convention) has not been ratified by the UAE, but like other conventions, the main sections of it are contained in the Maritime Code. The UAE is a party to the International Convention on Salvage 1989 (the 1989 Salvage Convention). Pursuant to Article 12 thereof, 'salvage operations which have had a useful result give right to a reward'.

The Maritime Code also recognises the salvor's right to a reward. Articles 328 to 335 reflect the wording of Articles 2 to 8 of the 1910 Salvage Convention, which outline that acts of salvage must have achieved a useful result giving rise to a claim for fair salvage, the amount of which is to be agreed by the parties. Failing this, the relevant civil code will determine the salvage award to be paid. Factors that the court should take into account under the Maritime Code when determining the salvage award reflect those of Article 8 of the 1910 Salvage Convention.⁵⁷ The duty of a master to assist any vessel or person in danger at sea, and punishments for failure thereof, is set out in Articles 336 and 337.

The Maritime Code does not prescribe a mandatory form of salvage agreement and, in principle, freely negotiated salvage agreements will be upheld by the local courts. However, where the salvage operation takes place in UAE waters and the salvaged and salvaging vessels are UAE-flagged, any agreement purporting to confer jurisdiction on a non-UAE court or arbitration tribunal is null and void and the local courts will assume jurisdiction.⁵⁸ Further, where the party against whom the salvor may wish to enforce an arbitration award has assets located in the UAE, a UAE law and jurisdiction clause may be more appropriate than, for example, an English law and arbitration clause incorporated in the Lloyd's Open Form. Lastly, Article 334 reflects the wording of Article 7 of the 1910 Salvage Convention, permitting the courts to annul or vary the terms of the salvage agreement.

Wreck removal

The UAE has not ratified the Nairobi International Convention on the Removal Wrecks (the Nairobi WRC 2007), which came into force on 15 April 2015, nor are its provisions incorporated in the Maritime Code. The only two references to wreck removal are that (1) the costs of removing obstacles to navigation caused by a vessel rank as priority debts,⁵⁹ and

56 Article 318 of the Maritime Code.

57 Article 335 of the 1910 Salvage Convention.

58 Article 339 of the Maritime Code.

59 Article 85(a) of the Maritime Code.

(2) the relevant maritime authority has the right to seize a wreck as security for the removal costs and may carry out an administrative sale of the wreck to recover its debts.⁶⁰ No federal body exists to deal with wreck removal in the individual emirates.

Ship recycling

The UAE has not signed up to the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships 2009 (the Hong Kong Convention). No similar provisions exist in other UAE codes.

vi Passengers' rights

The UAE is not a party to the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention), but Articles 288 to 302 of the Maritime Code cover contracts of carriage of passengers.⁶¹ In addition, Article 162 stipulates that the master is required to take necessary steps to protect the interests of passengers and, if the need arises, perform any urgent act required for the safety of lives. The carrier will be held liable for death or personal injury arising out of any fault of the carrier or failure to make the ship seaworthy. The level of compensation is determined by the amount of 'blood money' defined by *Shari'a* law in the criminal code and any attempts by the carrier to limit its liability below such sums are void.⁶² Under Article 84(d), compensation due for bodily injuries to passengers and crew are considered priority debts.

vii Seafarers' rights

The UAE has not ratified the Maritime Labour Convention 2006 and instead UAE seafarers' rights are set out in Articles 169 to 198 of the Maritime Code. The Code mainly deals with seafarers' remuneration, working hours and treatment in the event of illness and death. UAE laws governing labour relations, workers and social security also apply to maritime labour contracts.⁶³

60 Article 95 of the Maritime Code.

61 Articles 288 to 302 of the Maritime Code.

62 Articles 290, 295, 296 and 297 of the Maritime Code.

63 Article 169(2) of the Maritime Code.

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