

NEW UAE MARITIME LAW – WHAT YOU NEED TO KNOW

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The UAE government has recently released the much anticipated and long-awaited new federal maritime law (UAE Federal Maritime Law, No. 43 of 2023, the “New Maritime Law”), which will repeal and replace the existing maritime law (Federal Law No. 26 of 1981 Concerning Commercial Maritime Law, the “Old Maritime Law”) when it comes into force on 29 March 2024. The New Maritime Law has the potential to significantly change the UAE maritime sector, though much will depend on how it is implemented in practice.

In this article, we summarise some of the key developments in the New Maritime Law, both from a commercial and operational perspective as well as a litigation and arbitration viewpoint.

OWNERSHIP OF A UAE REGISTERED VESSEL

What’s new?

Article 12(3) of the New Maritime Law gives the Cabinet the power to grant UAE nationality to a vessel owned by a legal entity owned pursuant to an international agreement between shareholders from different jurisdictions but including the UAE.

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What’s changed?

Article 13(1)(b) of the New Maritime Law provides that a vessel may be registered in The Ministry of Energy and Infrastructure’s (the “Ministry”) Ship Register (the “Ministry’s Ship Register”) if the majority of the shares in the owning entity are held by either (i) an individual who is a national of the UAE or another GCC country or (ii) a company that has a domicile, business centre or ship management office in the UAE.

On the contrary, under Article 14 of the Old Maritime Law a vessel’s ownership was restricted to (i) individuals holding UAE nationality or (ii) companies where all or a majority of its shareholders and directors hold UAE nationality depending on the company type.

What’s next?

With a large influx of new ship operating and management companies in the region in recent months, it will be interesting to see if there is much uptake on UAE vessel registrations. We anticipate that:

- whilst the free zones remain exempt from the UAE corporate tax (subject to certain requirements), shipping companies wanting to have a base in the UAE will likely incorporate in a free zone and continue to flag their vessels in another jurisdiction; and
- until there is an optional tonnage tax exempting mainland UAE-incorporated vessel owners from tax income, mainland UAE owners will likely continue to flag their vessels with more established flags or flags of convenience.

It will be interesting to see what impact Article 12(3) of the New Maritime Law will have and what international shipping deals, mergers or joint ventures may arise or be contemplated by this new addition to the law.

REGISTRATION OF A VESSEL IN THE UAE

What's new?

Article 24 of the Old Maritime Law briefly touched upon the requirements for registering a newbuilding vessel in the UAE whereas Articles 9, 10 and 11 of the New Maritime Law deal with the registration of vessels under construction by registering the relevant shipbuilding contract. Article 9(1) provides that the specifications of a newbuilding vessel must be approved by the Ministry and that the Ministry will create a special register (the "Under-Construction Ships Register") in which shipbuilding contracts are to be registered (Article 9(3)). Interestingly, under Article 9(4) it is the shipbuilder, rather than the "shipbuilding seeker" (buyer), who records the shipbuilding contract in said register.

Articles 10 and 11 briefly deal with transfer of title, payment and guarantees for defects terms which are usually thought of as being commercial items and will likely be dealt with in the shipbuilding contract itself.

What's changed?

Age of vessels: Article 13(1)(c) of the New Maritime Law provides that a vessel shall not be more than 20 years old from the date of its completion under its shipbuilding contract, other than passenger ships which must not be more than 10 years old, in order for it to be registrable in the Ministry's Ship Register. Under Article 19 of the Old Maritime Law, an oil or gas tanker could not be registered if it is more than 10 years old on the 1st of January in the year in which registration was effected. There was no age restriction on any other type of vessel.

"Relevant authority": Articles 7(2) and 7(3) of the New Maritime Law state that the Ministry shall create a "Ship Register" to record ships and other maritime transport and that the Cabinet may entrust the creation of the register to any of the competent authorities within the limits of its jurisdiction. Under Article 20 of the Old Maritime Law, The Maritime Inspection Department at the Ministry of Communications had the jurisdiction to register vessels.

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Registration procedure: Articles 27 to 34 and 43 of the Old Maritime Law set out a reasonably detailed procedure for the initial registration of a vessel in the UAE whereas under the New Maritime Law the registration procedures have not yet been provided and, in accordance with Article 13(3) will be specified in the Executive Regulations yet to be published.

What's next?

Registration: The registration procedure for vessels already appears to be easier with much of the process being done through the Ministry's website. A slight oddity is that an applicant must have a UAE One Pass to login to the application page on the Ministry's site which are assigned to individuals and not companies. It will be interesting to see, once the Executive Regulations are published, what exactly the procedure will be for registration and whether submissions can be made in the name of the ship owning/management companies rather than individuals.

Newbuilding vessels: Given that the specifications of any newbuilding vessel registered in the UAE must be approved by the Ministry and that it is the shipbuilder who is to register the shipbuilding contract, it will be helpful to see the exact procedures which will be specified by the Ministry for this because, if too onerous, it may prove hard to persuade a shipbuilder to fully co-operate in the process.

BAREBOAT CHARTERING

What's new?

Bareboat charter in: Article 18(1) of the New Maritime Law enables as charterer of a ship registered abroad that meets the registration requirements for a UAE flag vessel (as per Article 13), to request to register the ship with the Ministry if (i) the chartered ship is 'not equipped' and (ii) the charter period is at least six months. The mechanism and procedure for registering an 'unequipped' chartered ship are to be determined by the Ministry (Article 18(2)).

Bareboat charter out: Article 19(1) of the New Maritime Law may grant a licence to the owner of a UAE flagged ship to fly the flag of another country if that owner wishes to rent it 'unequipped' to a charterer who requests its registration abroad. The mechanism and procedure for chartering a ship registered in the Ministry to fly the flag of another country are to be determined by the Ministry (Article 20(4)) but at a minimum the licence application must be accompanied with (i) the unequipped ship charter and (ii) a letter issued by the ship's registration office abroad stating that the charterer's state has approved the registration of the ship and the flying of its flag.

What's changed?

The description of what constitutes a charter of an unequipped ship remains largely unchanged under Article 137(1) of the New Maritime Law compared to Article 252 of the Old Maritime Law. However, under Article 137(2) of the New Maritime Law there is an additional provision which states that *"a ship contract that ends with ownership or is accompanied by a promise to sell may be a Charter contract of an unequipped ship"*. This suggests that a time charter which contains a purchase option or obligation may be categorised by the Ministry as a bareboat charter. This may not be entirely helpful and could lead to confusion in the market as to whether said time charters might, from a UAE law perspective, be re-characterised as a bareboat charter.

Article 255 of the Old Maritime Law requiring the charterer to indemnify a freighter against any action taken against him by third parties attributable to the use of the vessel has been removed in the New Maritime Law.

What's next?

It will be interesting to learn if a bareboat chartered-in vessel flying the UAE flag pursuant to Article 18(1) of the New Maritime Law will still be considered a 'foreign ship' for the purposes of Article 15(1). This latter requires the approval of the Ministry for said foreign ship to carry out marine transportation in the country's ports or to engage in fishing, towing, piloting, excursion, supply and fuelling, or other maritime activities.

It will be helpful to have clarified what is the intention of Article 137(2) and if there are any situations where a charter may be re-categorised to a bareboat charter through operation of this provision.

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LIENS

What's new?

Chapter IV – Articles 29 to 40 expressly refer to liens, and the fact that a “*lienholder may track the ship under whichever hand it is, in order to fulfil his right according to its arrangement*”.

Liens can arise in eight different categories (Article 29(1) to (8)) and whilst they are not subject to formal procedure or a special requirement of proof (Article 30(1), in the case of liens related to failure and damage that requires compensation for the

ship's charterers (Article 29(7)) and insurance premiums (Article 29(8)) they can be registered in the ship Register, provided that the contract is notarized (Article 30(2)).

The preferred debts (i.e. liens) set out in Article 29 are due on the ship and the transportation fare for the voyage during which the debt arose (Article 31(1)) and Article 37 confirms that liens are subject to a one year timebar, or six months in the case of liens relating to debts arising from contracts concluded by the ship's agent on behalf of the operator or concluded by the captain (Article 29(5)). However, the time limit can be extended up to three years if it is not possible to seize the vessel on which the lien is granted within UAE waters. The extension of time only applies to persons holding UAE nationality, having a domicile in the UAE, or holding the nationality of a country which treats UAE nationals on the basis of reciprocity (Article 37(4)).

Pursuant to Article 36, lien rights on the ship expire upon (1) the judicial sale of the vessel, and/or (2) the voluntary sale of the vessel, provided that the requirements in Article 36(2)(a) to (c) are met before the price is paid. These requirements cover registering the purchase contract of the ship Register, publishing a statement of the sale and price through the Ministry's website, and publishing a summary of the purchase contract including the price, name of the buyer and identifying the buyer's domicile. The summary of the purchase contract must be published twice, eight days apart, in a widely circulated local daily newspaper. The lienholders/preferred creditors have 30 days from the latest date on which the summary was published to transfer their claim to the purchase price.

VESSEL ARREST

What's new?

Whilst the substance of vessel arrest in the UAE is similar in the Old Maritime Law and the New Maritime Law, a few key changes have been included in the New Maritime Law which should bring vessel arrest in the UAE in line with established international standards.

What's changed?

Easily navigable text: The Old Maritime Law required parties to jump between different provisions to establish rights to arrest and the order of priority of those rights. For example, in the Old Maritime Law Article 115 defined maritime debts that give rise to a right to arrest, Article 84 sets out the order of priority for those rights, and Article 105 specifies where mortgages sit within the order of priorities in Article 84. In contrast, the New Maritime Law is more streamlined with Articles 53(2)(a) to (v) listing maritime debts, which give rise to a right to arrest the vessel, in the relevant order of priorities.

Sister ship arrest: Article 54 confirms that an arresting party may arrest both the vessel to which the maritime debt relates as well as any other ship owned by the debtor at the time that the arresting party submits its arrest application. However, Article 54(2) excludes associated ship arrest where the arresting party's claim is based on the maritime debts listed in Articles 53(2)(s) to (v) – i.e. claims relating to the ownership of the vessel, a mortgage over the vessel, or the sale of the vessel. In such cases, the arresting party can only arrest the vessel that relates to the debt.

Arrest of time-chartered vessels: Article 55 confirms that where a vessel is chartered to a charterer “*with the right to manage it navigationally*” (i.e. under a time charter) and where the charterer alone is responsible for a maritime debt related to the vessel, the arresting party may arrest the relevant vessel during the time charter as well as any other vessel owned by the charterer. The arresting party will not however be entitled to arrest any other vessel owned by the “*chartering owner*” (i.e. the owner of the vessel).

Lifting arrest through provision of security/guarantees: Perhaps one of the most important changes to vessel arrest in the UAE is contained in Article 57. Article 57(2) confirms that a vessel's arrest can be lifted if the non-arresting party puts up security, and Article 53(3) confirms that this security can be provided in the form of letters of guarantee issued by a P&I club or by a financial institution that is approved by the competent court. The provisions for the acceptance of the letters of guarantee shall be specified in the Executive Regulations. As is the case in other jurisdictions (e.g. Saudi Arabia), a non-arresting party can only lift the arrest by providing security where the relevant dispute does not concern the ownership of a vessel. Where a vessel's ownership is in dispute (i.e. maritime debts in Article 53(2)(s) and (t)), the vessel will remain under arrest until the Court has dealt with the substantive claim.

As with the Old Maritime Law, when a party files an arrest, it must provide security. However, Article 56 of the New Maritime Law states that the arresting party must provide a financial guarantee to meet “*the necessary needs for the security and safety of the ship and its crew during the seizure period*”. Amounts that fall within that description are judicial expenses with priority over any proceeds of sale where the vessel is sold by court auction. Article 56 does not specify the form the “*financial guarantee*” must take, but given the contents of Article 57, it may be that a letter of guarantee from a P&I club or recognised financial institution will suffice.

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Procedural aspects: Under the Old Maritime Law, the arresting party was obliged to commence substantive proceedings for its maritime debt within eight days of the arrest being granted. Under Article 59 of the New Maritime Law this has been changed to “five working days”. Although not a major change, arresting parties should ensure that they abide by this new deadline.

Finally, Article 60 provides that without prejudice to any arbitration agreement, the relevant UAE court has the authority to adjudicate the substantive claim if certain criteria are met including where the maritime debt arose in the UAE (Article 60(2)) or if the debt is secured a maritime lien on the arrested vessel.

What's next?

We look forward to reviewing the executive regulations when they become available to see what further clarification can be provided on the above provisions. However, for now we note that the New Maritime Law does appear to bring vessel arrest within the UAE in line with some international standards, particularly in respect of the ability to lift an arrest by posting a letter of guarantee from a P&I club or approved financial institution.

Although strictly speaking outside the scope of both the Old and New Maritime Laws, there are several practical issues that can affect the speed with which arrests can be done. Parties should be aware that when bringing a claim before the onshore UAE courts, parties will have to instruct UAE counsel to appear before the courts which will require the party to issue a POA to that counsel. In the case of a non-UAE based entity, that POA will have to be notarised and legalised which can be quite a lengthy process. Further, all documents submitted to the court have to be translated into Arabic for use by the courts. That translation process can take a considerable amount of time.

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