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AL TAMIMI & CO.

Middle East Shipping & Logistics Report

Edition 1 (2023)

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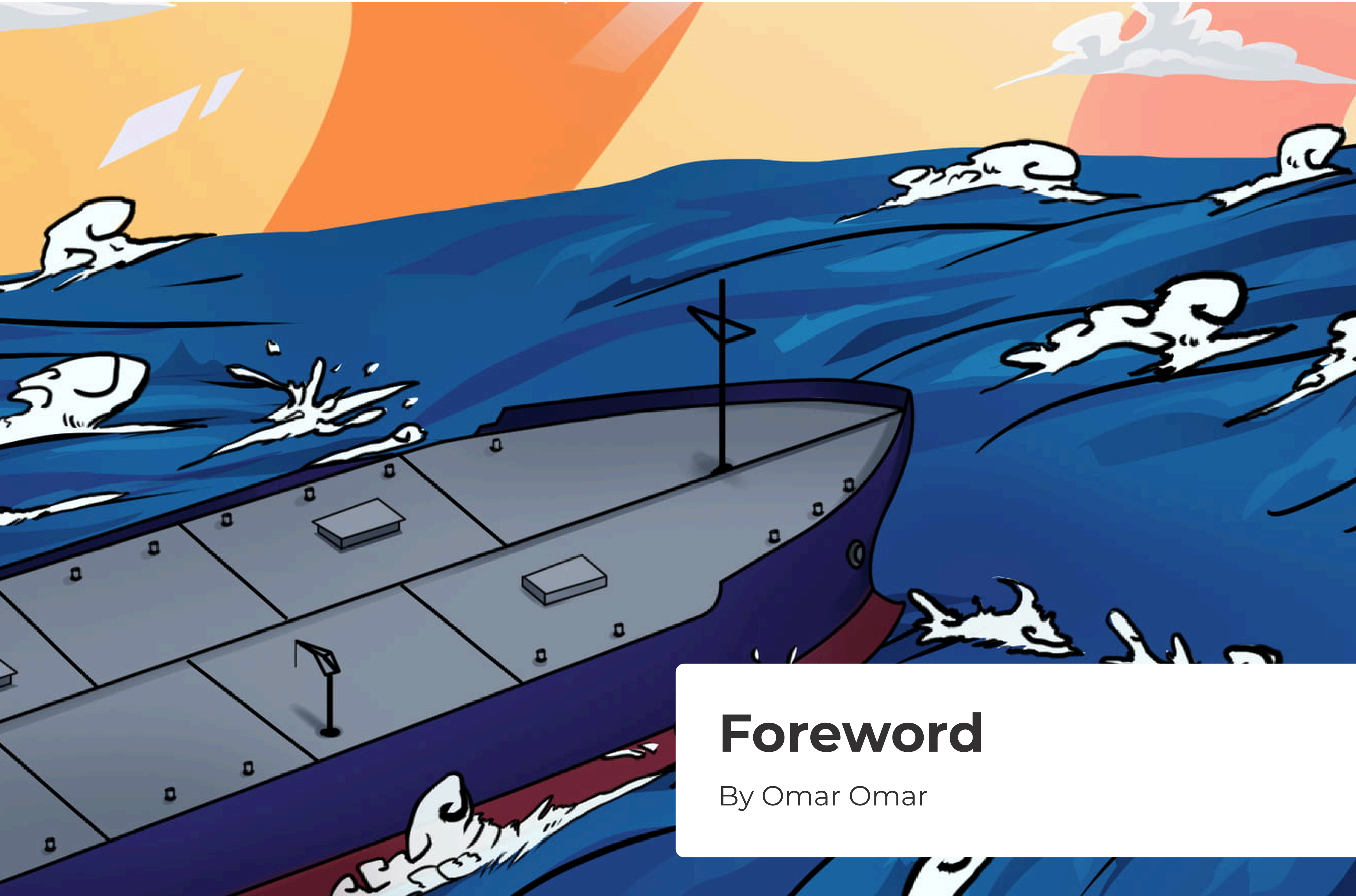


Foreword

By Omar Omar

Welcome from Omar Omar

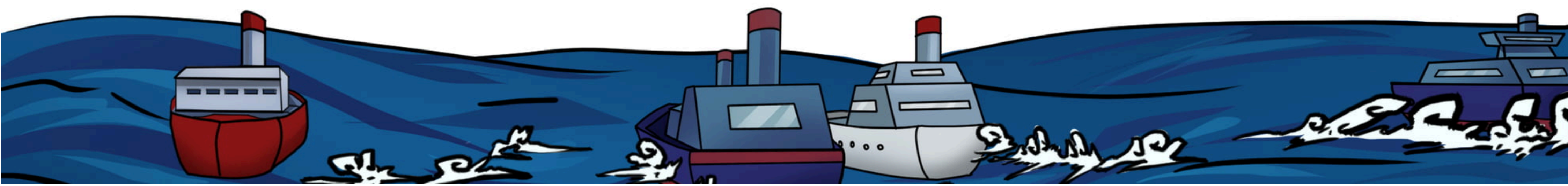
I am proud to welcome you to our first edition of “Al Tamimi & Company: Middle East Shipping & Logistics Report”. As it is the norm it is always exciting legally speaking in the Middle East. There have been many noteworthy cases and regulatory changes involving shipping in recent years in the Middle East, and the industry continues to push the boundaries guaranteeing the development of this critical field of law. This pattern has remained unabated in 2021-2022, and our gifted team has taken advantage of the chance to compile a summary of the most important market trends that we think will be informative to

Our Middle East Shipping & Logistics Reports will provide valuable insights for our clients through our editions for those involved in shipping or logistics-related businesses. Some of the benefits of these Middle East Shipping Reports will be:

- Updates and guidance on procedural, regulatory and policy changes affecting our shipping clients in the region. Our intention is that our clients are prepared to adapt and comply with new requirements and restrictions.
- Insights into local market conditions.
- Discussion on hot topics in the industry
- Reports on judicial cases and developments in court practice, including a look to the future.

Omar Omar
Partner, Head of Shipping & Logistics

Overall, our Middle East Shipping & Logistics Report aims to equip and arm our clients with knowledge and awareness to make informed decisions about their shipping and logistics operations. We all remain at your disposal as always for any further questions or follow ups. Subscribe on our website to receive future editions of the Middle East Shipping & Logistics Report and other updates.



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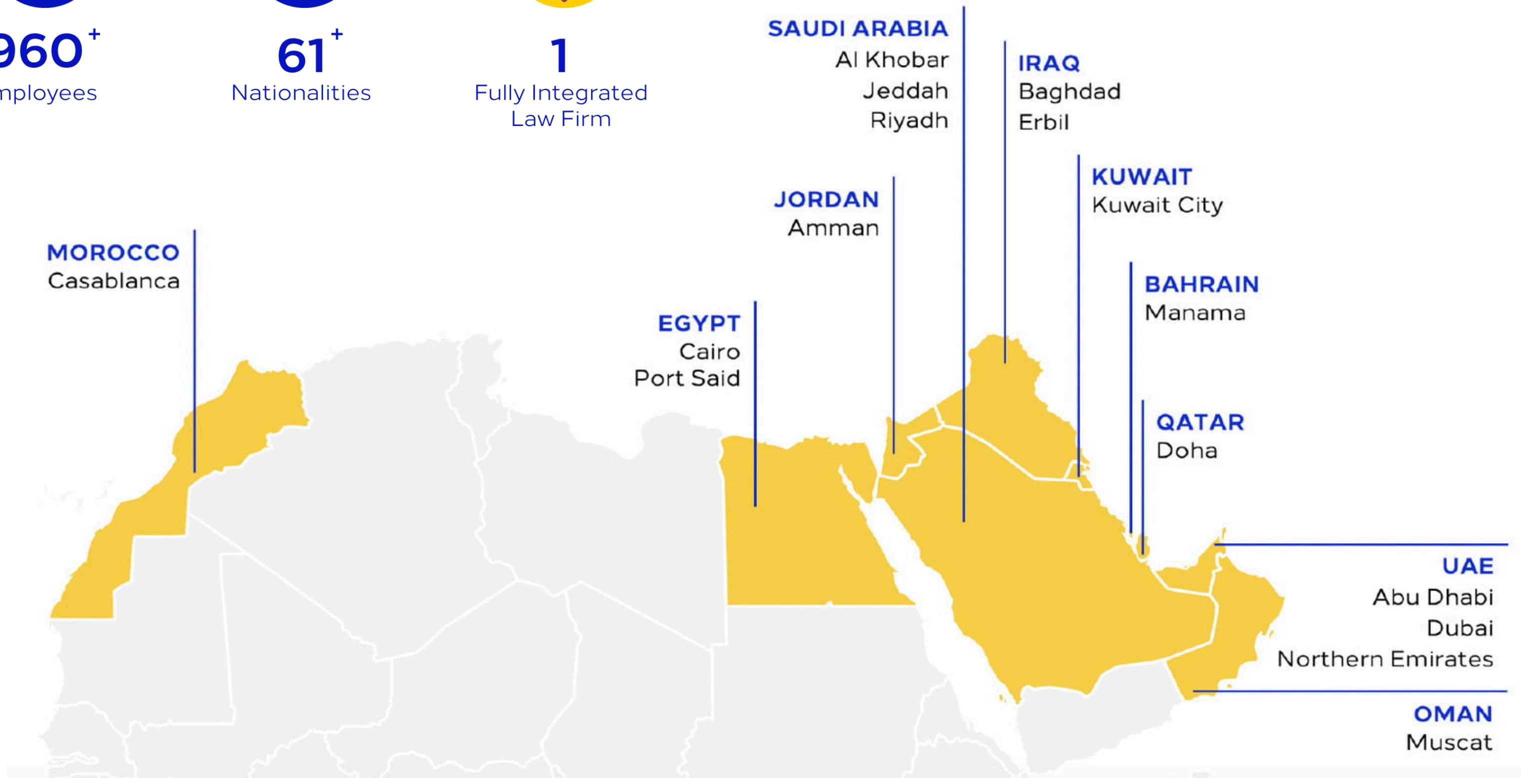

Editorial

By Adam Gray

We are delighted to present this inaugural edition of the Middle East Shipping & Logistics Report. Whilst a report of this nature is not a new concept, the Al Tamimi Shipping & Logistics Team recognised that there is a knowledge gap for the Middle East shipping community and those connected to it.

The purpose of this first edition and the ones that follow is to drawdown upon the vast experience that the Al Tamimi Shipping & Logistics Team boasts across the Middle East region. We have offices in ten countries spanning MENA and this report gathers and shares legal insights, know-how, developments, opinions and thought leadership with our clients. We have also attempted to include content which will be relevant and of interest to our clients situated beyond the Middle East.

Voyaging from west to east and proceeding with utmost despatch to Suez, Egypt, **Hany Mamoon** and **Karim Marouny** discuss pollution and grounding events in Egyptian waters. Obtaining clearance into Saudi Arabian waters, **Ahmed Hashem** and **Jamal Natto** provide a useful overview of the E-process for imported products. Berthing briefly in Kuwait, **Ahmed Rezeik** was in the Kuwait Court of Cassation arguing about the proper application of an owner's fire defence under the Hague Rules. Steaming further eastward, **Wesley Wood** reviews some recent changes in the UAE's Civil Procedure Code, including the possibility of the UAE courts adopting the English language in proceedings. I also discuss the increased prospect of English court judgments and orders being recognised and enforced in the UAE for the first time. Dry-docking in Oman, **Wael Elgouhari** reports on a recent case in which he creatively arrested a cargo in Sohar.

In addition, and of more general application across the region, **Sakher Alaqaileh, Bassam Al Azzeh** and **Ameen Kim** have conducted a comprehensive overview of the new Common Customs Law and 'rules of origin' across the entire Gulf Cooperation Council. **Shaima Berri** and I have discussed the recent and rapid withdrawal of war risk insurance by P&I Clubs. I have commented on the sanctions landscape in the Middle East and how owners might best protect themselves from becoming unwittingly embroiled in sanctioned activity. Lastly, for our clients in trading and operations roles, we have produced guidance on the variation of contracts and the pitfalls to avoid.

I trust this Middle East Shipping & Logistics Report will be informative and useful. I take this opportunity to thank our clients across the region and from afar for their support. We are committed to your success and look forward to working with you in the future. As a final word, I would like to express my appreciation for my talented colleagues across the Middle East, without whom this report would not be possible.

Adam Gray
Senior Counsel, Shipping & Logistics

Introducing Wesley Wood

Partner, Shipping & Logistics

Welcome
Wesley Wood

"I am delighted to have joined Al Tamimi & Company and I look forward to working with my colleagues across the Middle East and North Africa to maintain the firm's leading reputation."

"The transport and logistics sector in the region is a fundamental economic pillar that is constantly evolving, particularly from a regulatory perspective. Our Shipping, Aviation & Logistics team is at the forefront of these updates, it has the network and footprint to advise across the entire region and this is what excites me about joining the region's preeminent law firm".

Specialist Shipping Lawyer Joins Al Tamimi & Company to bolster the firm's Shipping, Aviation & Logistics team in Dubai

Al Tamimi & Company has hired Wesley Wood, a specialist shipping lawyer, to join its Shipping, Aviation & Logistics department as Partner, and he brings with him over 13 years of experience advising on a wide range of shipping and international trade matters.

Wesley has spent the last five years working in the United Arab Emirates, during which time he has built a leading reputation across the region's shipping and maritime legal market and has been recognised by Legal 500 as a Next Generation Partner.

Wesley will be based at the firm's Dubai office, with a remit to integrate and offer advice to Al Tamimi & Company's clients in its 17 offices across 10 countries. The hire strengthens the firm's capabilities in its Shipping, Aviation & Logistics practice and takes the total number of Partners, at the Middle East and North Africa's leading law firm, to over 90.

Al Tamimi & Company's Shipping, Aviation & Logistics practice is an integral part of the dynamic transport and logistics sector in the Middle East and North Africa. The practice has been developed to cater for the needs of clients who require a global legal perspective with a strong understanding and appreciation of the specific requirements of local and regional law.

The Shipping, Aviation & Logistics team provides a full range of legal services to the Aviation, Shipping and Railway industry. This includes airlines, owners, charterers, shipyards, agents, maintenance organisations, insurers and banks.

Articles

Egypt: Pollution Incidents and Consequent Claims

[Hany Maamoon](#)
Senior Counsel,
Shipping & Logistics

Pollution has been one of the most dreaded accusations by Ships' operators and P&I Clubs for many years, because of the harsh penalties and consequences involved, especially when the adverse parties are usually sovereign entities.

Marine pollution is a significant environmental issue especially in Egypt due to the country's economic reliance on its coastline for tourism and fishing. In recent years, the country has taken steps to address this issue of marine pollution and enforce penalties on individuals and organisations that contribute to the problem.

In this article, we address the issue of pollution in Egypt. Pollution which is deemed by ship owners to be one of the most serious accusations due to the criminal charges it can attract. In addition, such incidents can give rise to large claims from multiple entities, including but not limited to:

- The port authorities
- The Egyptian Environmental Affairs Agency ("**EEAA**")
- The Egyptian Naval Forces
- The Suez Canal Economic Zone ("**SCEZ**").

To address this problem, the government implemented several laws and regulations to prevent marine pollution and impose penalties on violators. The EEAA is the body responsible for monitoring and enforcing these regulations, which includes The Egyptian Law on the Protection of the Environment, No. 4 of 1994 (the "**Environmental Law**").

The Environmental Law outlines regulations for the prevention of marine pollution, including the discharge of pollutants into the sea. It outlines penalties for violations of environmental laws, including fines and imprisonment. Pursuant to this law, ships of any nationality are forbidden from discharging oil or oily mixtures in the territorial sea or the exclusive economic zone of Egypt. The law also stipulates that the ship or any person responsible for the ship is responsible for notifying the administrative authorities of any oil spill with a description of the incident, the type of oil or pollutant involved, and the measures taken to stop or reduce the spill. The administrative authorities need to notify the EEAA the incident promptly. This applies as well to pollution by harmful substances and black water.

The law empowers the relevant administrative authority to detain any ship which fails to pay the levied fines and compensation. Such detention is lifted when the due payments are made, or an unconditional financial guarantee is accepted by the administrative authority.

Applicable penalties for unlawful discharging or disposing of oil, oily mixtures, harmful, polluting substances or garbage in the territorial sea or the exclusive economic zone. In case of violation, failing to use safe procedures that prevent damage to the marine environment or failing to comply with the required treatment of the discharged waste and polluting substances discharged.

The above will be fined in the sum of:

- not less than EGP 300,000 and;
- not more than EGP 1,000,000.00, and
- in case of recidivism, the penalty shall be both imprisonment and fine and;
- in all eventualities the violator has to resolve the effects of the pollution within the predetermined deadline deemed appropriate by the authority.

On some occasions the EEAA has confused discharge of oily mixtures with black water and levied a fine.

According to the Environmental Law , failure to take precautions to avoid pollution can result in a fine between EGP70,000 – 300,000. The fine could be doubled in the case of multiple offences, or potential imprisonment with potential with a further fine of EGP 300,000-500,000.

In all cases, the offender shall be required to remedy the damage within a time frame determined by the authorities, failing which the authorities may proceed with the removal at the expense of the offender. The highest penalty for pollution is imprisonment and/or a fine of EGP 1,000,000 - 5,000,000, which is aimed at compensating the cost of environmental damage-reversal and other claims.

However, Article 54 of the Environmental Law lists several exemptions from the penalties outlined above, namely pollution resulting from:

1. Securing the safety of a ship or the lives of those on board.
2. Discharge resulting from damage to a ship or its equipment, provided such damage was not caused by the master or the person in

charge, to disable or destroy the ship or as a result of negligence. In all cases, the master of the ship or the person in charge thereof must have all necessary precautions to prevent or reduce the effects of pollution and must have immediately notified the authority.

3. A sudden break in the pipeline carrying oil or oily mixtures during the operating, drilling, exploring or testing of oil wells, without any negligence in supervising or maintaining the pipelines, provided sufficient precautions to supervise the operation of the pipeline and immediate measures to control the pollution and its sources have been taken.

The above exemptions are without prejudice to the right of the authority to recover the costs of removing the effects of pollution from the party responsible and to claim damages for losses incurred and injuries sustained resulting from such pollution.

"Article 54 in our opinion is one of the significant articles the carrier may lean on in defending some of the pollution claims, especially in the case of incidents escalated to legal actions, and in our opinion could have been used by the Owners of the Ever Given in refuting the allegations of discharging polluted ballast waters in the waters of the Canal which were raised by the Fishermen Society".

One of the significant articles in practice is Article 79 of the Environmental Law, which permits the master or other person under investigation for pollution, to leave the port against acceptable security not less than the minimum fine applicable to the violation, pending resolution of the investigation. This provision applies without prejudice to the International Convention on Civil Liability for Oil Pollution signed in Brussels in 1969.

That being said, it is possible to negotiate a settlement with the relevant port authority or administrative party concerned, before the matter is referred to the EEAA, to allow the vessel to depart immediately.

Pollution Claims Handling is Becoming Increasingly Challenging

In our experience of defending shipowners and charterers in pollution claims throughout the years, we have observed an emerging trend by the authorities to limit the ability of owners and charterers to defend pollution claims. A few examples of this are expounded below.

Historically, the authorities used to collect samples from both the polluted seawater and the vessel's tanks in order to identify the source of pollution. Recently however, the authorities have only collected samples of the polluted water located in the vessel's vicinity to build their case and seek compensation correlating to the nature of the pollutant.

Shipowners and charterers should be mindful of this practice and appoint experienced lawyers to approach the appropriate authority to demand proper sampling from the vessel too. This often leads to more consistent and accurate outcomes and will enable owners to file for recovery of overpayments to the EEAA or the port authorities.

Additionally, the EEAA used to obtain arrest orders against the vessels they accused of pollution. As is usually the case in jurisdictions across the world, an arrested vessel can be released against a suitable guarantee and a defence, objection or grievance can be filed in the local court. However, for the past couple of years, the EEAA has opted to only send a formal request to the concerned port authority requesting them to arrest the vessel pending further notice. Consequently, the vessel owners have no commercial or legal alternative but to negotiate with the EEAA from a weak position, or to achieve a quick release they must adhere to their full demands.

In other instances, owners have been met with unexpected allegations by the port authority for trivial pollution incidents, leading to requests for immediate settlement of fines to allow the vessel to sail. Often, we advise that a pragmatic approach is taken and a quick negotiation seeking a reduction is conducted to settle the fine and release the vessel.

As described above, in many cases owners will find themselves bound to settle pollution claims from government bodies to release their vessels from detention. In the past, owners employed a practice whereby a written protest to settling a claim was made by embedding it into the content of a covering letter. That letter was appended to the cheque for the claim amount and handed to the authority. The authority's acknowledgment stamp on a copy of the cover letter was sufficient to allow owners to initiate recovery actions in the courts. That practice has since been extinguished by additional due diligence and authorities routinely refuse to sign covering letters containing reservations.

Where owners feel that they are under economic duress or undue pressure to settle fines, in some circumstances it may be appropriate to file a police report or compile evidence of pressure applied by authorities to settle.

Additionally, it is usual for the port authority's participation in the claims attributed to pollution was confined to the pollution fighting costs and/or the damages suffered by the port authority as a result of the alleged pollution. Additionally, claims for the environmental compensation were always issued by the EEAA. However, recently the SCEZ has been issuing claims for environmental damages as well. However, this is challengeable because, in our opinion, there is no legal basis for SCEZ to advance environmental claims.

Finally, understanding the locally landscape is vital when an owner's vessel is under arrest. Advice may differ depending on the parties or entities involved. In some situations, we have advised clients to resist settling immediately in order to achieve better reductions on the claims made. This may involve leaving the vessel under arrest for a few days. In other situations, negotiating may be uneconomical and paying the fine immediately is deemed the best outcome.

Conclusion

The Egyptian government's efforts to enforce environmental regulations and impose penalties on offenders are an important step in protecting the country's marine ecosystems and the livelihoods of those who depend on them. However, for owners, navigating pollution claims is becoming increasingly challenging and stressful in a complex claims landscape. Owners and charterers should seek legal advice at the earliest opportunity once a pollution risk is identified in order to ensure their interests are properly protected.

Groundings in the Suez Canal – Law and Liability

Hany Maamoon
Senior Counsel,
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Karim Marouny
Senior Associate,
Shipping & Logistics

The Suez Canal is one of the most important and busiest trade routes in the word being the shortest link between the east and the west due to its unique geographic location if compared with the Cape of Good Hope, which makes it of special importance to the world and to Egypt as well.

The Suez Canal's significance to global trade was clearly manifested during the grounding of the Ever Given on March 2021, the mega box vessel which blocked the Canal for six days causing global disruption in shipping and keeping plus 400 ships stranding at both ends of the Canal.

The truth that is well known to the Suez Canal Authority/SCA and some of the regular customers of the SCA is that groundings in the Canal are not seldom taken place, but to the contrary, tens of groundings take place each year. But the majority of those incidents are being dealt with efficiently and in a timely manner by the SCA and with absolute discretion. In its recent history, the SC has encountered grounding incidents of a more severe nature but were not highlighted by the international media or posed a threat to international trade because of their grounding locations, which coincidentally in take place in one of the SCA's bypasses. One of the major untold incidents is the 170,000 dwt bulker NEW KATERINA which suffered multiple hull breaches and ran on Feb 25, 2016, and remained aground for twelve days, and was not able to clear the canal before the 30th of April of the same year after discharging its cargo of iron ore which was already damaged by the ingress of water.

Groundings across the Suez Canal do raise legal questions as to who is responsible for grounding incidents under Egyptian law. The main points of concern are:

1. Are vessel owners & operators liable in the event of grounding?
2. Would vessels' owners & operators respond to a fault committed by the master;
3. Would pilotage shifts liability if an incident occurs as a result of the pilot's negligence;
4. Are waterway authorities liable in the event of vessels running aground?

This article provides some clarity regarding who is responsible for what and when.

The Relevant Legal Framework

With respect to liability, Egyptian Maritime Law (EML) recognizes the application of the regulations issued by the administrative authorities with respect to Pilotage. In the cases of the groundings, the rules of navigation issued by SCA should apply.

Articles 286 and 287 of the EML delineate liability for incidents that take place while the vessel is under pilotage. In line with most maritime legislations, the aforementioned articles state that:

1. The management and command of the vessel remain the master's responsibility during navigation.
2. The ship's operator shall be held solely liable for damage caused to a third party as a result of faults committed by the pilot in the implementation of the pilotage process.

Article 4 of the SCA rules of navigation, provides further detail regarding the above mentioned principles with respect to navigation through the Suez Canal. In accordance with said article, owners, operators, and/or charters of a vessel are responsible for any direct or indirect damage and/or consequential loss caused by a vessel to itself, SCA properties, personnel, or obstructing navigation in the Canal, even if the fault attributed to the vessel or its crew is not intentional. It further outlines that owners, managers, charterers, and/or operators hold themselves responsible for any mistakes resulting from the pilot's advice or SCA personnel.

Likewise, Article 11 of the same rules states that masters are solely responsible for all direct or indirect damages or accidents of any kind resulting from the navigation or handling of their vessels and that the pilot is merely an advisor and is not held responsible for any damages sustained during transit as the master is solely responsible for the vessel.

According to Article 103 of the SCA rules of Navigation, when a vessel stops in the Canal as a result of an accident other than collision, engine troubles, auxiliary and steering gear troubles, the SCA will ensure speedy clearance of the waterway and assist with the necessary tugs to afloat the vessel in question, free of charge.

Notwithstanding the above, Article 103 of the Rules is in practice obsolete in cases of groundings, as the SCA requires vessels to submit a request to hire tugboats and other equipment to tow and re-float vessels for any reason.

Said request is made via a fixed form application form provided by the SCA, to be submitted by the vessel agents to the SCA to hire tugboats as well as equipment and personnel necessary for re-floating and if necessary towing the vessel in accordance with the SCA's standard published tariff.

Although the SCA enjoys extensive sole powers for the operation of the Canal, including the valuation of costs and compensation that may result from incidents taking place in the Canal, including grounding incidents. However, according to the various legal precedents rendered by the Egyptian Court of Cassation - the SCA has the powers that guarantee the smooth running of the facility and it implements it without being bound by government regulations. Therefore, the SCA, according to its own regulations when an accident occurs in the Canal, has the right to establish the elements of responsibility and estimate the damage in the manner it deems appropriate by its technical departments. It may conduct any inspections it deems appropriate to establish the elements of liability in the manner prescribed in the law, whether in terms of error, damage, causation, and claiming the offender to compensate for the damage. Nonetheless, all this is then subject to the discretion of the trial court when resorting to the judiciary. consequently, vessel owners/ operators are entitled to resort to litigation to challenge the SCA's claim in cases where they can prove that their vessel should not be held liable for the incident giving rise to the claim. Or in cases, they deem the SCA's respective claims are somehow exaggerated.

Lessons learned from major grounding incidents that took place in the Canal

1. The master is the ultimate commander on board his vessel and should not refrain from taking all necessary decisions that would insure the safety of the vessel under his command, even if they lead to financial losses. Like, such as refraining from commencing the Canal transit, if he foresees that bad weather may affect commanding/steering the vessel through a relatively narrow waterway such as the Suez Canal.
2. Vessel masters should use the authority granted to them to dismiss the pilot if they foresee that his guidance is not accurate or risky. They are to then immediately request that the SCA substitute the pilot.
3. The SCA should issue a navigation protocol for giant vessels including the procedures and instructions to be followed for their safe navigation, including suspending navigation of said vessels during windstorms. Or proceeding with extreme caution in the sectors of the Canal where there are no duplications/bypasses.

4. The SCA should upgrade its tugboat fleet to ensure availability with higher towing capacities that are adequate for the size of modern vessels. The SCA should also ensure the availability of tugboats at both entrances of the waterway. Bearing in mind that the SCA is already taking steps in that direction, expansion and deepening works of the southern sector (where the famous Ever Given incident occurred) are already taking place. Duplication is also underway in the Bitter Lakes located at approximately the middle of the canal to be linked to the new 37 Km bypass opened in August 2015.

Kuwait: Carrier Defence for Fire

[Ahmed Rezeik](#)
Senior Counsel, Head of Shipping - Kuwait, Shipping & Logistics

In the Kuwait jurisdiction, Law No. 39 of 1980 concerning the Evidence in Civil And Commercial Matters ("**Evidence Law**") provides that the claimant must prove his allegations, and the defendant must dispose of it. This means that the burden of proof for any allegation is on the claimant, and if he fails to prove his claim, the claim shall be denied.

However, the Kuwaiti Maritime Trade Law No. 28 of 1980 ("Maritime Law") and International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules"), ratified by Kuwait in 1969, does not reflect this general rule. An exception is made for marine carrier liability, and there is a presumption of liability against the carrier in any claim raised against them.

This is demonstrated by findings in several Kuwait Court of Cassation judgments. One example is a 1998 judgment in which the judge said:

"It is determined in the judgment of this court that the marine carrier is obliged according to the transport contract (Bill of Lading) to transport the goods from the loading port in the original condition in which they were delivered to it to the consignee at the destination port by the scheduled date. The contract does not terminate and the liability of the marine carrier for the shipped goods does not end unless by delivering them in full and intact to the consignee or its representative actually. The liability of the carrier is assumed and its liability is only eliminated if it proves that the non-performance of its obligations is attributed to foreign reason in which it has no control such as an unforeseen accident, force majeure, the shipper fault, or fault of third party or consignee."

Despite the rebuttable presumption of liability of the marine carrier, there is an exception in cases of “fire on board” a vessel in the Maritime Law and the Hague Rules, which specifies the following:

"the marine carrier is not accountable for the shortage, damage or delay of delivery of the goods if arising from one of the following reasons:
1. …
2*. Fire, unless it is caused by the act or a fault of the carrier.*
3. …”

Further, the Hague Rules, stipulates that:

"the carrier or vessel is not accountable for the destruction or damage resulting or arising from:
1. …
2*. Fire, unless it is caused by the act or a fault of the carrier.*
3. …”

At Kuwaiti law, fire is not a defence if it arises from the act or the fault of the carrier or its servants. Equally, if the fire was not caused by an act of the carrier, or was its fault, then the defence is available, whenever causation can be proven otherwise.

However, where the fire broke out as a result of the carrier's act or fault, the burden of proof falls on the owner of the consignment to discharge that burden. This is an exemption from the rule which assumes the marine carrier's liability if damage occurs during the period between the loading and discharge of the cargo.

This rule is supported in a 2002 Kuwait Court of Cassation judgment, in which the court said:

“It is determined in the judgment of this court that the provision of Article 192/2 of the Maritime Law and Article 2-4 of Hague Rules stipulate “the carrier or vessel is not responsible for the shortage or damage resulting or arising from…B. Fire unless it occurs by the act or fault of the carrier”, indicates that the carrier is discharged from the liability whenever it proves that there is no causal relationship between the damage suffered by the goods and the fire taking place. However, there is no grounds for discharging him of the liability if the fire occurred due to its act or fault. The burden of proof in case of discharge of liability for the fire falls on the shipper who may, if he wishes to charge the carrier with the liability, prove that the fire is attributed to the act and fault of the carrier”.

Moreover, the Supreme Court of Appeal in Kuwait has applied this same principle. It found in a 1983 judgment:

“Whereas the [shipper/consignee] has not submitted evidence that the fire was attributed to the act and fault of the carrier – and that it bears the burden of proof as indicated by the case papers – hence, the liability of the carrier, represented by the appellant company, is non-existent. Whereas the appealed judgment breached this view and ruled for obliging the appellant with compensation, hence it has deviated from the proper law and should be revoked."

We recently appeared before the Kuwait Cassation Court regarding a fire that broke out on a laden vessel in Kuwaiti waters. The above-mentioned Court of Cassation judgments were submitted to the court. The court found in favour of the carrier because, it held, the claimant failed to prove causation between the damage suffered by the goods and the fire taking place or that the fire was attributed to the act or fault of the carrier.

In view of the above, we may conclude that when a cargo owner fails to prove that a fire causing damage to its cargo was caused by an act or the fault of the carrier, the Kuwait court will most likely dismiss the claim.

This was significant decision because it developed the understanding and application by the highest courts in Kuwait of the owner's fire defence under the Hague Rules. It affirms the rule that, in incidents of losses arising from fire, the burden of proof falls to the claimant to prove that the owner caused the fire leading to loss, or the fire resulted from an act or fault of the owner.

Oman: Cargo Arrest in Sohar

Wael Elgouhari
Senior Associate,
Shipping & Logistics

Introduction

It is trite law that the consignee under a bill of lading has the right to arrest a vessel for non-delivery of the cargo at the discharge port described under the bills. However, where the lawful cargo owner of the cargo is not the consignee under the bill of lading, the cargo owner does not have the right of vessel arrest. This article considers a recent case where Al Tamimi & Company acted creatively and successfully to secure a cargo claim for a lawful cargo owner, without the right of vessel arrest.

Background

A Yemeni-based buyer ("**Claimant**") and a UAE-based seller ("**Defendant**") entered into a sale and purchase contract for 30,000 MT (+/- 10% seller's option) of Motor Gasoline 92 RON ("**Contract**"). Subsequently, 30,273.194 MT of motor gasoline under the Contract (the "**Cargo**") was loaded onto a Vietnamese-flagged product tanker (the "**Vessel**") after the Claimant fully paid for the Cargo against the Defendant's invoice of AED 23,038,061.24 ("**Invoice Amount**").

The problem arose when the Defendant, as the time charterer of the Vessel, issued a set of bills of lading erroneously describing itself as the consignee of the Cargo. The Defendant explained that it was a clerical error. To rectify the error, the Defendant agreed to have the complete set of bills of lading, endorsed to the Claimant before discharge operations at Hodeidah Port. However, the Vessel was not granted inward port clearance by the Arab Coalition at Hodeidah, and while waiting for clearance to be granted, demurrage in an amount exceeding AED20,000,000 accrued, which the Claimant paid in full. To avoid further demurrage accruing, the Claimant instructed the Defendant to discharge in Fujairah instead of Hodeidah.

Instead of complying with the Claimant's voyage instructions, the Defendant wrongfully and abruptly terminated the Contract and sought to sell the Cargo by way of STS operation in Oman to a third party buyer. The Defendant's motive was almost certainly due to a rapidly rising market value for the Cargo during the port clearance wait OPL at Hodeidah.

The Defendant continued to rebuff all the Claimant's orders to deliver the Cargo in Fujairah and declared its intention to sell the Cargo. The Defendant even offered to settle the dispute by sharing the sale proceeds with the Claimant, but this would have involved depriving the Claimant of significant profits it would have otherwise made.

The Legal Obstacle

Ordinarily, the circumstances described above would fall within the scope of a particular provision of the Maritime Law of Oman, which provides that "*[e]very claim or right or debt the source thereof is attributed to one of the following reasons shall be considered a maritime debt: … Contracts relating to the transporting of goods on a ship under a charter party, bill of lading or otherwise.*"

However, in the present instance an unconventional solution under Omani laws was required because the subject of the claim did not qualify as a maritime debt under the Maritime Law of Oman, because the Claimant was not named as consignee, but a notifying party in the bills of lading. Consequently, the Claimant was not, on the documents, party to the transportation contract. The upshot was that the Omani Courts were highly unlikely to grant a vessel arrest on cargo mis-delivery grounds.

The Legal Solution

In light of the above legal obstacle, the Claimant arrested the Cargo on board the Vessel by virtue of a provision of the Law of Civil and Commercial Procedure, which provides that: "*[t]he movable property owner and any person having material right therein or right to detain the same may request for levying precautionary attachment on the said property with the person who possesses it*".

In order to establish entitlement to levy a precautionary attachment over the Cargo, the Claimant has to evidence title in the Cargo. The Claimant submitted the commercial invoice, the Cargo payment proof and surrounding correspondence.

While the Vessel was preparing for the unauthorised and unlawful sale, Al Tamimi successfully obtained a precautionary attachment order on behalf of the Claimant from the Sohar Court of First Instance. The court order was forwarded to the port authorities, and consequently the Coast Guard promptly ordered the Vessel to abort the ship-to-ship operation. The Coast Guard subsequently confiscated the Vessel's documents preventing her from sailing from the port limits. Ironically, the effect of the precautionary attachment on the Vessel was substantively the same as a vessel arrest under the Oman Maritime Law, which the Claimant was not legally entitled to pursue.

The Claimant subsequently commenced substantive arbitral proceedings as required under Omani law and to sustain the Cargo arrest. The Claimant sought a declaratory relief as to ownership of the Cargo, an order for redelivery of the Cargo, damages arising from the Defendant's refusal to follow legitimate orders, overpaid demurrage and all sums paid to the Defendant under duress, arising from or in connection with the Contract.

In response, the Defendant sought a settlement and agreed to transfer the Cargo to the Claimant.

Takeaway Point

In the Gulf region, the courts will assess the issues based on the documents alone. There is very limited opportunity for oral advocacy. This practice, combined with an absence of specialist maritime courts, results in rigidity and inflexibility when the documents do not fit squarely with the requirements of the applicable legal provisions. Whilst this can result in challenging legal obstacles to protecting rights and interests, solutions are there to be found with creative application of the law. Here, a vessel arrest would be the ordinary course a cargo owner would take in the circumstances, but the Defendant's deceitful practices obstructed that course. Fortunately, the solution was found outside of the Oman Maritime Code and the cargo owner received their cargo back. We believe this to have been the first cargo arrest in Oman.

English in the UAE Courts?

Wesley Wood
Partner,
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On 2 January 2023, Federal Decree-Law No. 42 of 2022 Promulgating the Civil Procedure Code (the "**Civil Procedure Code**") came into effect in the United Arab Emirates ("**UAE**"). The Civil Procedure Code repealed and replaced Federal Law No. 11 of 1992, which had itself been amended a number of times in recent years by various Cabinet Resolutions and Decree-Laws. The Civil Procedure Code will be welcomed by legal practitioners as a consolidated law covering all procedural matters before the local courts.

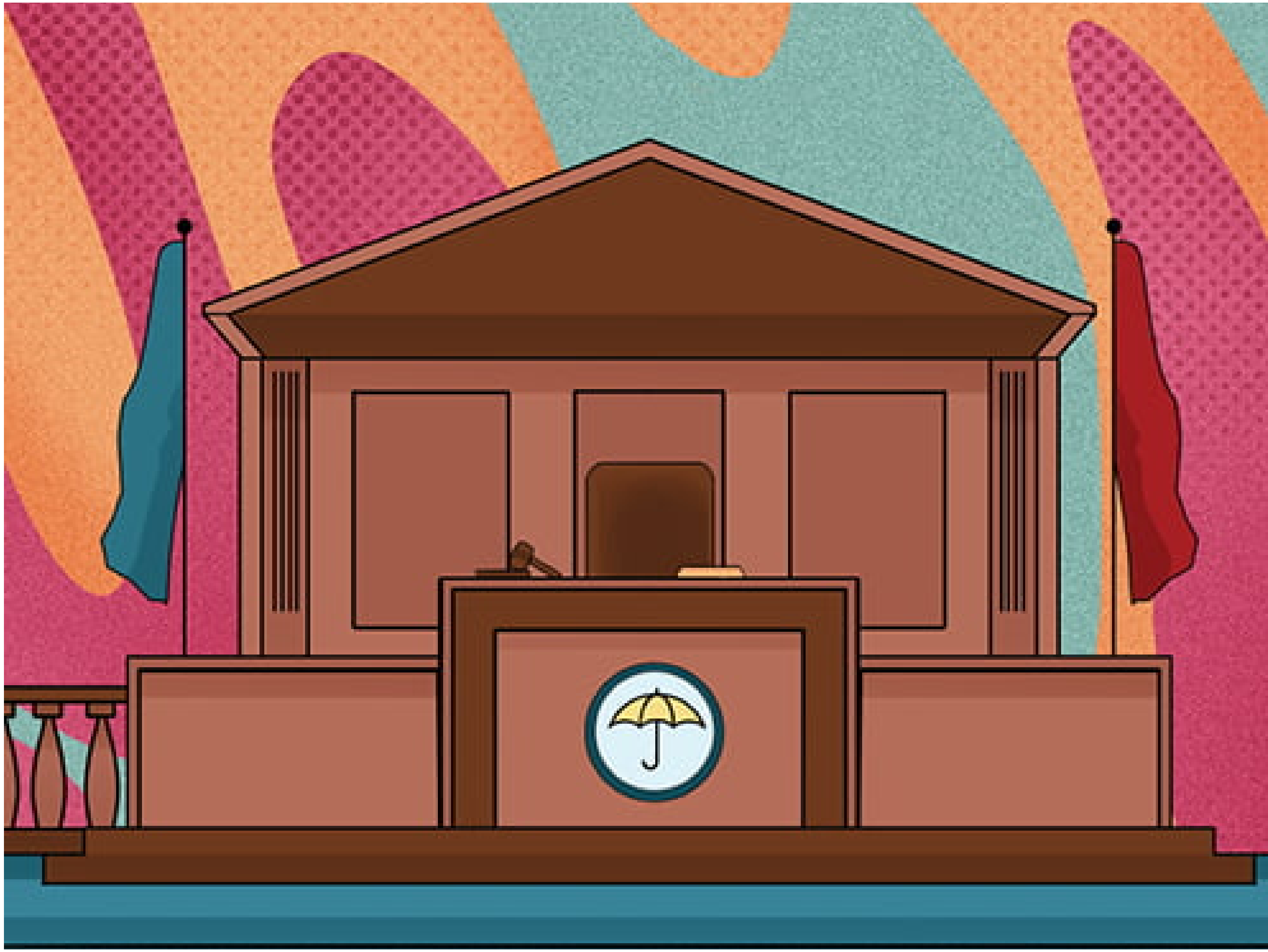
There are a number of provisions in the Civil Procedure Code which will also be welcomed by both foreign and domestic litigants involved in proceedings before the local courts, including those who may be either claimants or defendants in shipping, commodities and international trade disputes.

Of particular relevance is the provision which now permits the Federal Judicial Council or the Head of the local judicial body to exercise a discretion to permit English to be the language of trials, procedures, judgments and decisions in respect of certain tribunals that are assigned to hear specialised matters, specific cases or particular proceedings. Where the discretion is exercised in favour of allowing English to be the language of the proceedings, then statements of the litigants, witnesses or lawyers, shall be heard in English and statements, pleadings, applications and other documents shall be submitted in English. Additionally, the Court shall hear statements of non-English speaking litigants, witnesses or other persons through an interpreter after the relevant individual takes the oath.

Whilst Arabic remains the official language of the courts, these changes represent a significant departure from the historical position in which all pleadings and hearings were to be submitted and conducted in the Arabic language and will dispense with the need to have documents translated into Arabic by a Ministry of Justice approved translator, sparing litigants both time and cost.

Not only does this signify the UAE's willingness to adapt which has also been evident from a raft of legislative amendments in recent years, but it is likely to have practical benefits for litigants who use English as their primary language of business.

Time will reveal exactly in which circumstances and to what extent the Courts exercise their discretion to permit trials to take place in the English language, and it is possible that there may not necessarily be uniformity in the exercise of that discretion across the various courts of the individual emirates but the inclusion of such a provision in the Civil Procedure Code is certainly a positive development.



Enforcement of English Judgments in the UAE

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Ministry of Justice Opens the Door to Recognition of English Judgments in the UAE

On 13 September 2022, the UAE Ministry of Justice sent a letter to the Dubai Courts in which it raised a request upon the latter to *"take the relevant legal actions regarding any requests for enforcement of judgments and orders issued by the English Courts, in accordance with the laws in force in both countries, as a confirmation of the principle of reciprocity initiated by the English Courts"*.

This request was made further to the enforcement by the Supreme Court of England & Wales of the Dubai Court judgment in Lenkor Energy Trading DMCC v Puri (2020) EWHC 75 (QB) (Lenkor). The UAE Ministry of Justice informed the Dubai Courts in its letter that it considered that the principle of reciprocity had been "achieved" by the UK Supreme Court and it consequently recommenced that the Dubai Courts reciprocate and at the next opportunity to recognise and enforce a judgment of the English Courts before the Dubai Courts. The Ministry of Justice made specific reference to the UAE Civil Procedure Code, in which the doctrine of reciprocity is set out as a ground for recognition and enforcement of foreign judgments.

At this point, however, it would be premature to say that it is now possible for English court judgments or orders to be recognised and enforced in Dubai, or in the other Emirates of the UAE. The Ministry of Justice's letter was a mere request or recommendation, and it has no binding effect on the courts. However, it is likely to be persuasive and carry some weight. The legal community are now eagerly awaiting news of the first recognition and enforcement attempt by the holder of a final and unappealable English court judgment. It still needs to be tested and the letter does not constitute a change in UAE law and practice in and of itself. It merely represents a significant step in a new direction.

There is particular interest in how the UAE courts will treat an English court judgment which could have ordinarily had its merits decided by a UAE court. The current interpretation and application of the UAE Civil Procedure Law by the UAE courts is that it endows the UAE courts with jurisdiction despite the presence of a foreign law and jurisdiction clause, where the subject of the dispute would have otherwise fallen within the jurisdiction of the UAE courts according to its laws. The UAE courts routinely seize jurisdiction of the substantive claim regardless of an extant English law and jurisdiction clause in the subject contract.

Additionally, it is unclear how foreign court orders granting interim or declaratory relief will be enforced in the UAE where no direct equivalent order exists under the civil law system. For example, a 'World-Wide Freezing Order' is typically wider in scope than its closest equivalent, a precautionary attachment. Will the UAE courts apply the closest available remedy, or seek to apply the full terms of the English court order? Equally, it remains to be seen whether the UAE courts make any distinction between 'orders' and 'judgments. The Ministry of Justice's letter references English "judgments and orders" but it does not elaborate on whether, for example, "interim final orders" is intended to be included within that meaning.

It is also quite possible that the UAE courts would require evidence of reciprocity, regardless of the Ministry of Justice's letter confirming, in its opinion, that the principle of reciprocity has been achieved by the UK Supreme Court. Furthermore, it was a Dubai Court judgment that the English Courts enforced. The UAE comprises seven Emirates, some of which have independent judiciaries whilst others form part of a federal judicial system. Domestically, for example, Ras Al Khaimah, Abu Dhabi, and Dubai Courts will not be bound by each other's judgments. It is not inconceivable then, that one Emirate may recognise and enforce an English judgment and another not. It remains to be seen whether the principle of reciprocity will be deemed applicable to Dubai Court judgments only, some or all judgments of the UAE courts.

What this means for the Maritime Industry

From an international maritime law perspective, this is nothing short of a major development. As our readers will be aware, the UK is arguably the leading forum in which maritime disputes are heard, regardless of the origin of the parties to the maritime dispute. Such is the reach of English law within the sphere of maritime disputes, and it is unlikely to change any time soon. Equally true is that the UAE is an ever-growing maritime hub, with substantial cargo traffic running through its ports, a healthy community of shipping companies registered onshore and in its free-zones comprising shipowners, charterers, traders, freight-forwarders, importers, and exporters. The Emirate of Fujairah is also home to the region's busiest bunkering outpost. The UAE is undoubtedly the maritime leader within the Middle East region.

Yet there is a sharp contrast between the English and UAE legal systems. The former is built on hundreds of years of common law precedent and boasts specialist maritime courts. The latter is a civil law system with its roots in French and

Egyptian law. The UAE Federal Maritime Code dates back to 1981 (with a new code expected), there is no specialist maritime court, and its judges are from various MENA jurisdictions, each with their own nuanced understanding and application of the law. The result has been that there has been little cooperation historically between the two maritime powers and their respective laws and practices are not easily harmonised.

No other Gulf State has established reciprocity with the UK courts. If the UAE and UK press ahead and establish a practice of mutual enforcement of final judgments, the UAE courts, or perhaps more narrowly the Dubai courts, will open a corridor between two maritime nation-leaders, which will enhance judicial connectivity and increase accountability of the international maritime community. The UAE's maritime players regularly include English law and jurisdiction clauses in their contracts and judgment debtors would no longer be able to avoid enforcement of English judgments in the UAE. English judgments would enjoy the same treatment and carry the same force in the UAE as foreign arbitration awards presently do under the New York Convention 1958. Claimants could seek security in the UAE in aid of English court proceedings without the challenge of enforcing against that security at the conclusion of the main proceedings. We often have enquiries from parties seeking to arrest a vessel in the UAE in aid of English court proceedings, however, our advice is that the claimant would not be assisted, even if the vessel arrest were obtained, because the UAE court would not recognise the final judgment and execute it against the secured vessel. Considering the Ministry of Justice's letter in September 2022, this hitherto obstacle may soon be removed.

KSA: Provisional Admission of Leased Heavy Machinery and Equipment – How Does it Work in Practice?

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Due to the increasing number of business opportunities in the Kingdom of Saudi Arabia ("**KSA**"), many projects require smooth delivery practices to meet the project needs on time. Therefore, the logistics sector plays an important role in determining whether a project succeeds or fails. Among the most prevalent practices in the logistics sector is that of temporary entries of shipments into the KSA, legally termed "provisional admission". This article outlines its purpose and describes the process of obtaining provisional admissions for the temporary import and export of heavy equipment and machinery into KSA.

Project owners are keen to ensure that their projects are adequately supplied and equipped with advanced technologies to meet their objectives. In large projects in heavy industries where heavy equipment is required, maintaining this heavy equipment will be the responsibility of the project owners/consignors. To reduce costs, project owners tend to lease overseas equipment for a temporary period, which must be handled according to particular legal procedures. In doing so, importers / lessors navigate a myriad of legal challenges. In what follows, we outline the procedure and identify practice for the mitigation of risk.

The regulatory body for customs matters in KSA is the Zakat, Tax and Customs Authority ("**ZATCA**"). Since KSA is part of the GCC, its customs regulations are also governed by the Common Customs Law, issued by the cooperation council for the Arab States of the Gulf. (the "**Customs Law**").

The Customs Law provides for provisional admission which permits entry of shipments on a temporary basis, with no tax imposed, and they can then be re-exported once their purposes have been fulfilled and the time limit for their stay in the country has expired. The provisional admission facilitates the temporary entry of shipments that are specified in the law including heavy equipment, and ensures that the inbound shipments are utilised for the same purpose declared to the competent authority prior to import. The provisional admission procedure involves several legal requirements stipulated in the Customs Law for the importer (lessor) and the consignee (lessee) to consider. *Inter alia*, they must ensure that the shipped heavy equipment is not available on the local market, and that it remains in KSA for six months, renewable for a similar period not exceeding three years unless it is a lengthy project. A shipment type may not be changed without the approval of the customs admission. It must be temporarily admitted for the completion of government projects or investment projects requiring the admission of such heavy equipment.

Lessors and lessees should also provide; a copy of the underlying contract agreement with either a governmental or private entity;fill in and submit the customs declaration form; and either a bank guarantee or cash deposit equal to the amount of the customs tax duties. Lessors and lessees should also provide; a copy of the underlying contract agreement with either a governmental or private entity; a completed customs declaration form; and either a bank guarantee or cash deposit equal to the amount of the customs tax duties.

Accordingly, the lessor and lessee of the shipment are required to ensure the entry and exit of temporary shipments are conducted legally, while minimising the risks associated with transport. For example, whenever equipment is imported on a temporary basis, it must be used for the specified project, and may not exceed the timeframe of the project. Also, the importer must declare the full specifications of the shipment to ZATCA, failing which the procedure will be delayed or denied.

To ensure compliance with the requirements of the provisional admission procedure, both parties should prepare and sign a lease agreement that identifies the roles and responsibilities according to the Customs Law and best practices. The lease agreement should provide for responsibilities in respect of the provisional admission application, importation, re-exportation, and penalties for failure or delay in re-exportation.

We recommend that our clients prepare a lease equipment agreement which systematically and methodically addresses all the requirements under the Customs Law and KSA practice. For example, the lease agreement should allocate responsibility for compliance with KSA laws and the KSA end-user's requirements (usually allocated to the lessee). The allocation of liability for fines should be clearly identified (it is usually at the risk of the lessee).

Another common inclusion in the lease agreement is that the lessee is obligated to perform and comply with the Customs Provisional Admission requirements as per the relevant KSA laws, specifically:

1. Use the equipment during the legal period and re-export it to the Lessee
2. Use of the equipment shall be dedicated for the appointed projects
3. Submit all the required documents and

declarations to the KSA authorities

4. Obtain all the required approvals related to this transaction
5. Submit a bank guarantee or cash deposit to the competent authority
6. Fill in the customs declaration form and submit it to the customs authority.

Furthermore, it is important to note that the lessor is entitled to apply at any time for a writ of attachment on leased equipment. This usually becomes relevant when the lessee fails to return the equipment, often due to overruns, disputes or poor logistical management. Where there is a serious risk the property will not be returned, the lessor may file a request to the court to attach the equipment.

Finally, a lease agreement must be attested before the competent authority to ensure it is deemed valid before the KSA courts.

For those concerned with the import and re-export of heavy machinery and equipment in the context of a project, the provisional admission procedure allows for a regulated, zero- tax way to facilitate this. Notwithstanding the presence of the provisional admission option in the Customs Law, the procedure is best executed by the parties pursuant to a carefully worded, and properly attested, lease agreement. In the absence of such an agreement, a plethora of problems may still arise.

KSA: The E-process Requirements for Imported Products

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The Kingdom of Saudi Arabia is focusing on progressing towards an improved method of accelerating the stages of development related to Digital Transformation. Amongst these transformations, automation of the import process had important consequences for the operational efficiency of markets; increased computational speed that allowed easy handling of the containers and getting the proper approvals in a short time.

With the above outlook, it leads us back to the questions “The E-process requirements for the imported products in the KSA and what are its key challenges?” To give a concise answer we will highlight the E-process requirements in Saudi Arabia and the legal consequences in case of non-compliance.

As a rule of thumb, before a consignee places an order to the exporter, the products to be imported in KSA must already be registered. Product registrations are facilitated through several e-platforms such as SABER, ECOSMA or FASEH, and may take up months to complete depending on the availability of the requirements. Such registration platforms are linked to FASAH to maintain electronic processing and validation of conformity assessments.

Meanwhile, one of the main challenges on the clearance process is occurred due to the failure to comply with the legal requirements where it explicitly requires certain documents to be prepared and provided before the relevant authorities, as well as registration before relevant electronic platforms. In such cases, non-conforming shipments may be subjected to demurrage as charged by customs, detention as charged by the shipping lines, re-export upon request before the item is auctioned, or auctioned at worst.

Overview of the relevant E-platforms requirements

- Any products entering the Saudi Market are well regulated and undergoes a safety check from product registration to assessment through the SALEEM program which is managed by Saudi Standards, Metrology and Quality Organization (SASO).

In Arabic, SALEEM indicates that the product is safe, secure, and free of flaws that may harm individuals, society, or the environment (QIMA, 2022). SALEEM program aims to ensure that the products entering the Saudi Market are safe and in compliance with relevant standards.

Under SALEEM is SABER. SABER is an electronic platform that helps the local supplier and factory to electronically register the required conformity certificates for consumer products to enter the Saudi market and aims to develop the highest standards of efficiency to speed up the registration procedures (SASO, 2022). All importers and local manufacturers with Saudi Commercial Registration are required to register in SABER. The platform has no subscription fee and the opening of such account is free.

For importers and local manufacturers to obtain Certificates of Conformity which comes in two forms – Product Certificates of Conformity (PCoC) and Shipment Certificates of Conformity (SCoC) – they shall request it through SABER system as per the three steps that follows.

The first step in SABER system is product registration. Here, the user inputs the details of the products into SABER and the system verifies, based on the item’s HS code or product category, if the item is regulated or not.

- HS Code refers to the international coding system for the classification of products which are imported or sold in the Saudi Market. It standardizes product identity and it could be obtained by visiting the e-platform of Zakat and Customs Authority official website. The international HS Code is a six digits code whereas comparatively, the Unified Gulf Cooperation Council's HS code has eight digits. With a universal structure in mind, the Saudi customs created a new HS code integrating both the international system and the Gulf system, concluding at a twelve digits HS code where the first six digits matches the World Customs Organization's HS Code.

As per SASO announcement, the Product needs to be registered based on HS Code in:
a. SABER for Regulatory Products (through TUV / Intertek / SGS Outsource only)

b. SABER for Non-Regulatory Products
c. ECOSMA for Cosmetic Products

Points “b” and “c” above can be generated in house or outsourced.

The second step in SABER system is product categorization based on risk level. Risk level is driven by two variables, HS code and product categorization. Non-regulated products, a.k.a. low risk products, are items that are not regulated by Saudi Arabian Technical regulations that needs to only submit Self Declaration with document supports according to the approved forms of SASO.

- On the other hand, Regulated products, a.k.a. Medium/High risk products, are those that needs to obtain Product Certificates or Type Approval Certificates which are issued by SABER system after proving compliance with relevant standards. Power driven machineries are part of regulated products and Product Certificates are valid for one year.
- For products exporting from Asia, Australia, Europe, America, Middle East, and North African Countries, QIMA is one of the approved conformity Assessment Bodies authorized to issue Product Certificate of Conformity (PCoC). Different Conformity assessment types are required determining which activities are required. The relevant activities include product testing, inspection, factory inspection, audit, surveillance factory audit.

The third step in SABER system is to obtain Shipment Certificate of Conformity (SCoC). This applies to all products, regulated or not, and is valid per consignment. It requires self-declaration, for non-regulated items, or Product certificates, for regulated items. It also requires shipment documents such as invoice, bill of lading etc. In the absence of SCoC, any shipment to Saudi Arabia is required to be re-exported. Re-export means that the products shipped to KSA need to be sent back to its source location or the original shipper and that the consignee who needs to re-export the container shall write a letter to the port for re-export.

The unified digital platform for the import and export system which aims to facilitate international services by automating the import and export procedures is called “FASAH” (FASAH, 2019). On 1 July 2020, the SABER platform was linked with the FASAH system and with such integration, there is no longer needed to print a SCoC as it will automatically be in the FASAH system.

Consequences of non-compliance

Contrary to the notion that the clearance process starts upon the container’s arrival at the port, close communication for clearance purposes shall start once the shipment departs from the port of loading. This means that to facilitate speedy clearance, once the shipment departs from port of loading, the supplier shall provide a copy of the documents to let the consignee prepare for customs clearance. In case there are missing documents, consignee shall submit an undertaking letter to avoid moving the container in customs to Abandoned Area. The ports have the right to move containers to Auction Area automatically without a need to provide any notice from 15 to 30 days after vessel arrival in case of insufficient documents and untimely submission of the requirements. Given these, the consignee shall be ready with all the proper and complete documents four to five working days before the vessel arrival to avoid destruction or auction and ensure that there will be no business interruptions.

Conclusion

In summary, there is a structured procedure to be followed in importing to KSA and the primarily challenge in import is the non-compliance to legal requirements. To minimize the financial exposure associated with importation, and to ensure a smooth clearance and absence of avoidable costs, the exporter and consignee shall ensure that the product is registered before shipping, and that requirements are dealt with accordingly in a timely manner.

Shipping and international trade: “Woops, I modified my contract!”

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The contract is signed, the terms and conditions are agreed, English law applies. However, as is so often the case in the fast-paced world of shipping, trading and logistics, when the contract gets underway, laycan deadlines are missed; financing delays jeopardise the deal; the consignee is refusing to take delivery of the cargo and the demurrage bill has become larger than expected without any security or guarantee; or the deposit due under the Norwegian Sale Form Memorandum of Agreement should have been paid already. The list of possible departures from the contractual terms and conditions in an array of circumstances is endless.

Invariably in such situations, a party is found in breach and often the contracting parties get on the phone or call an emergency meeting to iron-out the details and keep the transaction alive. They strike a new agreement, or so they think. A few vague emails are exchanged, littered with ambiguous messages which, to the objective onlooker, could reflect a new agreement or not. The deal continues based on the telephone call, their conduct at least would suggest so, but problems persist and the deal collapses and becomes a bitter dispute. The lawyers get involved and try to piece together what was agreed and when. More importantly, they are tasked with advising on the legal implications.

This is an all-too-common occurrence. Legally, a mutually agreed amendment to a contract is termed “variation”. Variation has the effect of creating a new binding side-agreement which modifies the existing agreement. Technically, there are not two agreements, but one original modified contract.

Variation may be made in writing (such as an addendum) or orally (such as during a phone call or in a physical meeting). But the original contract will often contain a clause outlining the procedure for how variation may be validly achieved between the parties. For example, it may require that variation be agreed in writing. The Supreme Court confirmed in a 2018 judgment that the law does give effect to a contractual provision requiring specified formalities to be observed for a variation. Therefore, the effect would likely be that any new agreement made orally is not validly binding where the original contract requires an amendment to be agreed in writing.

Conversely, where variation by writing is not required, variation of the contract may be made orally, supported by evidence of the oral agreement and subsequent action by the parties consistent with the purported oral variation. Additionally, even informal email exchanges can evidence the intention of the parties to vary the original contract, despite the absence of a formal addendum or side agreement.

Our observation though is that often parties do not create written records of the content of phone calls or physical meetings. This makes it difficult to subsequently establish that a new agreement was reached, especially where a 'no oral variation' clause exists. This trend is particularly prevalent amongst traders because the negotiations and agreements are often pursued via telephone, leaving gaps in the written record.

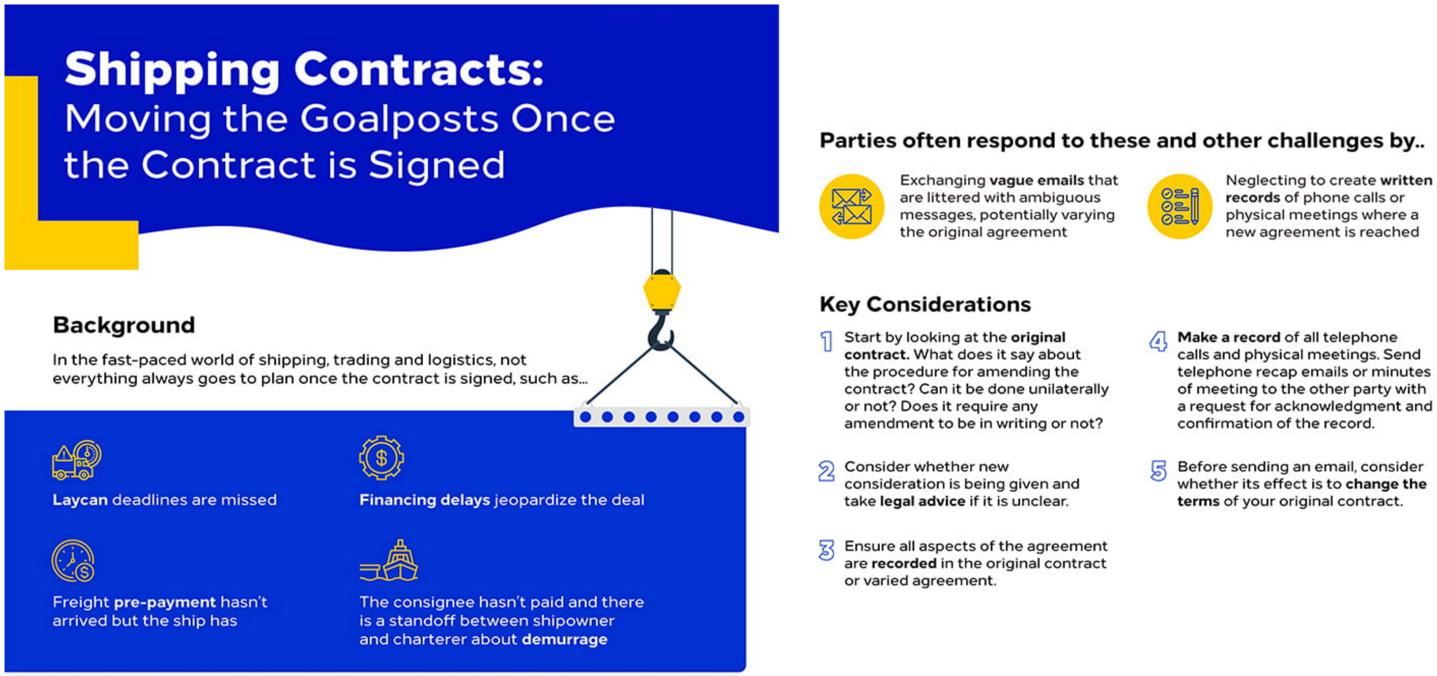
In some circumstances, parties go ahead and act upon an invalid oral agreement. In such situations, the party who has acted on the invalid new agreement to their detriment may argue that the other party is prevented, or 'estopped', from relying on the original terms. However, the ability to rely on estoppel is limited and there is a high evidential bar to clear for the party seeking to rely on it. Additionally, generally estoppel can only be used as a defence to a claim rather than the ground upon which to advance a claim, or in other oft-quoted words, "as a shield not a sword".

Additionally, an agreement varying the terms of an existing contract must either be supported by consideration (something of value in the eyes of the law) or be executed as a deed. Consideration can be problematic to establish, especially where one party takes on an additional obligation and the other simply promises to do what it already promised to do. Consideration does not have to be adequate or even monetary, but it does need to be present. If unsure, it is important to take legal advice on the validity of any consideration before you attempt to vary the original contract. Without good consideration, the agreement may be unenforceable.

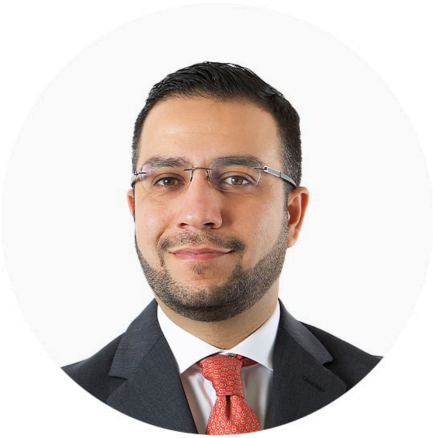
Lastly, our clients sometimes inform us of discussions and agreements which occurred prior to execution of the contract. Further, parties often believe such discussions or prior agreements form operative parts of the contract even though the contract is silent on that particular content. Usually, a contract will include an 'Entire Agreement' clause, the effect of which is to ensure that the terms and conditions of the contract preclude all prior agreements, whether made orally or in writing. English law will uphold these clauses, even if the outcome feels unfair or as a result of 'bad faith' intentions by one party.

We suggest parties wishing to vary the terms of their contracts consider the following points which are frequently overlooked:

1. Start by looking at the original contract. What does it say about the procedure for amending the contract? Can it be done unilaterally or not? Does it require any amendment to be in writing or not?
2. Make a record of all telephone calls and physical meetings. Send telephone recap emails or minutes of meeting to the other party with a request for acknowledgment and confirmation of the record. This will ensure that any evidence of agreement between the parties to vary the terms of the contract is secured in the event of a dispute. It's also good practice generally to keep records of inter-party communications.
3. Consider whether new consideration is being given and take legal advice if it is unclear.
4. Before sending an email, consider whether its effect is to change the terms of your original contract. If it departs from the original agreement, are you content for that departure to be permanent even if the intended consequences of that variation do not play-out as expected?
5. Ensure all aspects of the agreement are recorded in the original contract or varied agreement. Otherwise, an 'Entire Agreement' clause would likely render any previous agreements as unenforceable.



The New Common Customs Law of the Gulf Countries Council of 2021 and the GCC Unified Tariff List of 2022



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The GCC Customs Union is one of the main aims of the GCC Economic Agreement of 2001 (the "GCC EA"). The GCC Customs Union was established on 1 January 2003, and as stated in article (1) of the GCC EA, it works to achieve, at a minimum, the following:

1. Unified standard customs tariff towards the outside world (non-GCC member states);
2. Unified standard custom rules and regulations;
3. Single point of entry where customs duties are collected;
4. Free transit of goods between GCC member states without any custom or non-custom restrictions subject only to usual veterinary and agricultural quarantine regulations and any banned/restricted goods regulations; and
5. Goods produced in any member state shall be treated on an equal basis with national products.

The major achievement of the GCC Customs Union is the issuance of the 2003 GCC Common Customs Law which was repealed by the GCC Supreme Council and a new amended version in

2021 was issued (the “Amended GCC Common Customs Law”). The Amended GCC Common Customs law does not make any material alterations but it introduces legal instruments to enhance the trade environment in the region. For example, article (29 repeated) of the Amended GCC Common Customs law introduces a new concept; called advanced ruling which is a manual issued by the GCC in order to provide importers/exporters with guidance and clarification on vague customs-related matters (the “Advanced Ruling”) which helps traders/investors to protect their tenders/contracts against unexpected future changes. The customs authority may, at the request of the person concerned, issue an advance decision/ruling relating to the classification of goods and the basis of calculating the value for the customs purposes mentioned in the executive regulations. The Advanced Ruling enables investors/traders to have a wider certainty on the future changes in the goods classifications and the relevant customs tariff. Abu Dhabi Customs is one of the first customs authorities in the UAE that offers Advanced Ruling to its customers.

The Amended Common Customs Law comprises (17) sections and (188) articles containing comprehensive provisions which mostly cover all aspects of customs processes, operations, requirements, obligations, violations and related penalties, including but not limited to the following:

1. Customs control, i.e., customs procedures at all points of entry (land, sea and air).
2. Import and export operations.
3. Application of customs tariffs and the collection mechanism.
4. Clearance process and requirements for goods.
5. Exemptions and temporary admission of goods.
6. Treatment of free zones and duty-free shops treatment.
7. Customs brokerage and clearing agents.
8. Smuggling offenses.

The Amended Common Customs Law became more up-to-date in the sense that it allows accepting electronic copies instead of original documents, in support of this, article (17) of the Amended Common Customs Law states:

“The administration may accept electronically the required clearance documents, in line with the applied conditions, and the electronic copies enjoys the same validity of the original documents”

The Amended GCC Customs Law includes new flexibilities for violators compared with the 2003 GCC Customs Law, such as waving penalties that do not exceed AED1,000 for smuggling offenses and penalties in case of voluntary disclosure of the violation. Article (141) of the Amended GCC Customs Law encourages voluntary disclosures by granting the customs general manager or the authorized officer a flexible authority to waive penalties; completely or partially, in case of voluntary disclosure of the violation related to customs declarations so companies which choose to follow the voluntary disclosure approach will be subject to reduced exposure of liability and penalties, compared with the usual approach followed by the relevant customs authority in the event of any violation, a fine in the range of 10 % (over the total value of the goods/products/commodities) will be implemented in addition to the applicable customs duty which falls in the range of 0% -100%.

In addition, the Amended GCC Customs Law includes directions in article (150) in which customs authorities are to issue new guidelines for available conciliation requests, which can be read in the favor of the offenders as this may create new flexible tools offered to the offenders by the customs authorities.

At this time, only the UAE and Saudi Arabia have ratified and implemented the Amended GCC Customs Law, while the other GCC states, namely Bahrain, Kuwait, Oman and Qatar, are yet to publish any ratification for the Amended GCC Customs Law.

The GCC Unified Tariff List

Goods imported into a country are subject to the customs taxes “duties” (or “tariffs”) specified in the Unified Customs Tariff, and the other applicable service fees, excluding those exempted under the provisions of the Amended GCC Customs Law.

In its efforts to enhance the GCC Customs Union, the GCC issued a Unified Tariff List that includes a list of goods and classification codes (HS Codes) in line with the Harmonized Classification System.

In 2017, the GCC issued a version of the Unified Tariff List; in 2022, a new edition was issued in line with the Amended GCC Customs Law. The new list includes new/modified HS Codes, and it cancels some old HS Codes.

The purpose of the Unified Tariff List is to provide a list of the agreed rates of customs tariffs, prohibited goods, and special goods. The rates of customs tariff vary from up to 100% exemption of the value of the shipment. The majority of the rates of customs tariff are 5%. The Unified Tariff List includes unified rates of customs duties among goods except for those, which are classified as “special goods”, for which each GCC member state may apply a different rate.

In summary, the Amended GCC Customs Law keeps pace with the technological developments and contributes to creating an investment environment in the region as it supports the stability of the domestic trade sector which depends mainly on import and export operations in line with international trade standards, in a way that enhances the investment orientation and attracts investments to the region.

Sanctions in Shipping – Which Sanctions Clause Should I use?

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The use of sanctions as a diplomatic tool of pressure, particularly by the West, seems here to stay. Those in the maritime industry have grown accustomed to enhanced screening and due diligence. The fear of becoming unwittingly embroiled in sanctioned activity and being "designated" or "blacklisted" by the US, UK, EU, or UN, permeates through the industry. The implications of engaging in sanctioned activity or servicing sanctioned entities are serious and disruptive. Reputational damage is inevitable. Credit lines with the Western banking system evaporate overnight and dollar transactions are made near impossible. Financial losses usually follow and can compound rapidly.

The governments of Gulf States will only recognise and enforce UN sanctions according to their obligations at international law. Iran is subject to UN sanctions whilst Russian is not. However, with respect to US, UK, and EU sanctions (applicable to Iran and Russia to varying degrees), Gulf States have taken a neutral position, and they do not have the force of law domestically. That is not to say that maritime businesses in the Gulf region avoid the implications of unenforced Western sanctions for the reasons set out above. In a globalised world, sanctions are sticky and for that reason, largely effective.

In the Middle East, it is well documented that nation-states in the East, particularly China and India, are regularly importing Russian and Iranian oil. Shippers, receivers, and vessels involved in its export employ a variety of tactics to evade sanctions, including falsifying cargo documents, AIS spoofing (or "going dark"), regularly changing flags and ownership, reporting false flags, and undertaking multiple STS transfers to cover their tracks. These practices heighten the risk of shipowners in the region becoming inadvertently involved in sanctioned activities if they do not conduct proper due diligence.

We expect that the EU 60$ oil price cap, which came into force on 5th February 2023 and targets Russian oil revenues, will lead to another wave of sanction-evasion incidents, inevitably involving the falsification of cargo origin and price by way of fraud and STS transfers.

But it must be recognised that the very purpose of sanction-evasion practices is to avoid detection, obfuscate voyage data and conceal the origin of cargo and the sanctioned entities behind it. It has become a sophisticated operation, underpinned by lucrative rewards for those who succeed in executing it. Diligent and alert shipowners may not be able to prove a connection to sanctioned entities or activity despite reasonable efforts and often enter into charterparties before the first suspicions arise.

In 2022, we saw multiple instances of unsuspecting shipowners being approached by Chinese or Russian motherships seeking to charter their vessels to perform STS transfers in the Arabian Gulf. A typical Iran operation involves the loading of cargo in Iran by Chinese-owned motherships whilst spoofing the AIS. The legitimate AIS is then resumed from a legitimate position, and a daughter-vessel (often an innocent vessel) loads the cargo via STS. The daughter-vessel is often told the cargo originates from Basrah-Iraq or some other neighbouring state, and may be supported by forged cargo documents, or not supported at all. The daughter-vessel then usually proceeds to Singapore-East anchorage for another STS with a new daughter-vessel, or directly to China where she discharges her Iranian cargo. This process has been thoroughly documented by institutions like United Against Nuclear Iran with satellite imagery and detailed AIS tracking. A similar operation is undertaken in respect of Russia-related sanctions avoidance in the Caspian Sea and off the coast of the UAE.

In our experience during 2022, we were approached by clients wanting to exit charterparties under which they had an obligation to load cargo via STS transfer from a mothership and carry it to the Far East. Usually, suspicions were aroused when the mothership failed to produce valid or consistent cargo and ship documentation. The presence and choice of a sanctions clause in the charterparty or bill of lading was key to options available to the shipowner.

Consider the BIMCO Sanctions Clause for Voyage Charter Parties 2020, which provides that the innocent party may terminate the charterparty (or possibly the bill of lading) if the other party, either owner or charterer, is found to be in breach of a warranty that they, or those closely connected with them (including shippers and receivers), are not a sanctioned party. Furthermore, if the proposed activity, service, carriage, trade or voyage is subject to sanctions imposed by a sanctioning authority, then the party not in breach may either cancel the charterparty prior to loading or refuse to proceed with orders and discharge at a safe port or place of their choice. A similar BIMCO clause exists for time charterparties, with logical differences.

Although the BIMCO clauses are described as "balanced", the problem shipowners face is that they must prove on the balance of probabilities (assuming it is governed by English law) that a breach has occurred In other words, if a charterer sued a shipowner for terminating a contract on the grounds of the BIMCO sanctions clause, the court or tribunal would ask "Have owners established that it is more than 50% likely that they would have become involved in a sanctioned activity had the charterparty been performed?". The test would not be whether there was a *risk* of being involved in a sanctioned activity or even a *reasonable belief* that shipowners would become involved in a sanctioned activity. The test would be whether shipowners *would have been involved* in a sanctioned activity.

As mentioned above, the practice of avoiding sanctions means that it is not often straightforward for shipowners to obtain evidence that the charterer is in breach of warranty or that continuing with a proposed activity, such as loading via STS transfer, would more likely than not constitute a sanctioned activity. The objective test to be applied is an unfortunate departure from the earlier 2010 version of the clauses which entitled the shipowner to terminate the charterparty based on its "reasonable judgment".

It is more common for shipowners to have a reasonable judgment, a strong suspicion, or an educated guess about sanctioned activity, but not any tangible evidence. This leaves shipowners who have already entered into a charterparty in the difficult position of having to decide whether to accept the sanctions exposure, or to wrongfully refuse orders or terminate the charterparty, resulting in a potentially large damages claim for breach of contract. Even if there was a reasonable judgment, it would take time for shipowners to investigate and gather evidence of their reasonable suspicions and a charterer would not be expected to wait for shipowners to complete an investigation whilst paying for use of the vessel. In the author's opinion, the BIMCO sanctions clauses (2020) do not account for this blind spot which leaves shipowners vulnerable in such circumstances where they have reasonable grounds to suspect sanctions exposure, but no readily available evidence. It is not owner friendly.

Compare the abovementioned BIMCO clauses to the INTERTANKO sanctions clause 2011 which provides shipowners with "absolute discretion" to refuse orders and request alternative orders where any trade employed by the vessel *could* expose its Owners, Managers, crew, or insurers to *a risk* of sanctions imposed by a specified sanctioning authority. Shipowners are given much more discretion and flexibility to manage sanctions exposure under this clause.

Shipowners may wish to incorporate a more favourable clause than the clauses referenced above or draft their own to ensure they have sufficient flexibility to exit charterparties where sanctions exposure is identified once the contract has become operative.

Shipowners looking to take additional precautionary steps should consider incorporating the BIMCO 'AIS SWITCH OFF CLAUSE 2021' which limits AIS handling to the IMO Revised Guidelines for the Onboard Operational use of Shipborne Automatic Identification Systems, Resolution A.1106(29).

The Impact of Withdrawn War Risk Insurance

Adam Gray
Senior Counsel,
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What is War Risk Insurance?

War risk insurance ("**WRI**") provides protection to individuals or companies that have suffered loss or damage as a result of acts of war, which can include rebellion, malicious damage, insurrection, and invasion.

In the shipping industry, WRI is tailored by use of specific clauses to meet the industry's needs. For example, WRI can be tailored to ensure a ship owner is provided with full compensation in the event that a government seizes the vessel. Generally, there are two prongs to WRI:

1. War risk liability, which provides protection to individuals and commodities on the vessel; and
2. War risk hull, which covers the vessel itself. However, the premium for such coverage varies based on which country the ship travels to.

Recent Cancellation of War Risk Insurance by P&I Insurers

With the on-going Russia and Ukraine war, several insurers have stopped providing WRI for vessels, specifically in and around both regions, including Belarus, from January 2023. Out of the thirteen P&I Clubs that insure 90% of the world's tonnage, twelve have stopped providing war risk coverage due to reinsurers pulling renewals of WRI at the beginning of 2023. Lloyd's of London expected losses in excess of GBP 1 billion from WRI liabilities. The Swedish Club acted early in withdrawing WRI by promptly issuing a notice of cancellation under Circular No. 435/2022, which took effect from 1 March 2022. The effect of the withdrawal of WRI from the market is that charterers and owners will be at a significant disadvantage trading in the affected region. They will either undertake uninsured voyages or absorb inflated premiums charged by insurers that remain. Many will avoid the affected regions altogether, despite business they would usually secure through the carriage of oil and grain cargoes. It is understood that premiums have increased as much as 20% in 2023 already.

Japanese insurers plan to raise premiums for war-related risks to ships sailing in waters around Russia and Ukraine by up to 80%. Non-life insurers, specifically Tokyo Marine & Nichido Fire Insurance, SOMPO Japan and Mitsui Sumitomo Insurance, plan to implement these new premium prices in March 2023. Insurers and shipping companies in Japan are considering the option of using a sovereign liability guarantee, which was used to cover shipments of Iranian oil to Japan in 2012 after Western insurers cancelled coverage for applicable ships due to the sanctions imposed on Iran. The Japanese government and shipping companies signed insurance contracts in which the shipping companies would pay a premium directly to the government in exchange for insurance coverage as a guarantee. However, if this was to be replicated again in respect of the Russian / Ukraine conflict, it would require legislation to be passed locally which could be a lengthy process.

Others have exited completely. Global reinsurance companies such as Hannover Re, Munich Re, Swiss Re and syndicates in the Lloyds of London market all cancelled war risk reinsurance.

Reinsurers typically renew these contracts with insurers annually on the first of January. However, many reinsurers took the opportunity to opt-out in 2023. Consequently, the American, North, UK and West discontinued WRI for liabilities in the affected region from 1 January 2023.

Circular 19/22 was issued by the UK P&I Club on 23 December 2022, notifying Members of cancellation of WRI. The Club's reinsurers informed them that they will no longer be able to provide WRI for exposure to Russian, Ukrainian and Belarus territorial risks. Consequentially, the Club felt it had no option but to change the scope of insurance coverage for all its non-mutual business provided to charterers or ship owners to henceforth exclude all loss, damage, liability, cost and expense arising from or in connection with the Russia-Ukraine conflict; in any area where Russia's army or authorities is in conflict (in and around Ukraine) or arising from capture, seizure, arrest, detainment, confiscation, nationalization, expropriation, deprivation or requisition for title or use, or the restraint of movements on vessels and cargo in the territories of Russia, Belarus, Ukraine, the Crimean Peninsula and Moldova.

Even if additional WRI provided by the P&I clubs has been withdrawn or restricted, it may be possible for owners to make a claim under the standard mutual cover, such as under the 'Omnibus Rule'.

Alongside the increase in WRI premium costs, charter rates for tonnage around the Black Sea have risen by over 20% during the last year, consequentially contributing to the increase of WRI rates. These increases are harmful to grain and oil industries.

Final Word

Although the essence of WRI is to protect vessel owners and charterers against risks such as detention, expropriation of property, seizure or damage to vessels arising from acts of war, all of which have occurred during the Russia-Ukraine conflict, we have observed an exodus of insurers and reinsurers due to the financial losses they would incur if coverage was continued. Consequentially, as the Russia and Ukraine war continues, a significant portion of ships that are trading in and around the Black Sea are doing so with uninsured risks or are not engaging in carriage of cargoes in the area at a time when it is necessary to do so Underwriters are left with the difficult task of finding a workable solution and are under not insignificant pressure from the maritime industry to do so. Absent a solution, a more appropriate term for "war" risk insurance may be appropriate.

Customs Law in the GCC: Rules of Origin

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Senior Associate,
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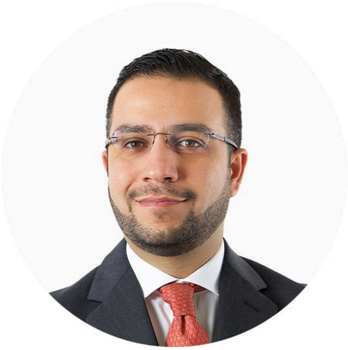

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The rules that apply to determine the country of origin for an imported good, are now more controversial than ever before in the Gulf Cooperation Council member states (the "**GCC Member States**"). This is because of the differences between the governing systems in each member state and the enforcement of bilateral or multilateral agreements between them. The GCC Member States constitute a regional economic union in the Middle East, and the pillars of this union reside in the GCC Economic Agreement of 1981 and 2001. One of the aims of the GCC Economic Agreement is to unify the trade policies between the GCC m, and the rest of the world. Nevertheless, there is no harmonization between the GCC Member States over the rules of origin.

When considering the export and import of foreign goods across borders into GCC Member States, it is important to determine the country of origin for a given product for a variety of reasons. This includes quantitative restrictions or tariff quotas, anti-dumping measures, determining whether the products enjoy preferential or non-preferential treatment, or for administrative purposes such as determining trade statistics. It is also necessary to determine the nationality of a given product, and not to confuse it with the last country that it passed through.

According to the Common GCC Customs Law of 2021 (the "**GCC Customs Law**"), the Country of Origin is defined as the country where the goods are produced, whether it be natural resources, agricultural crops, minerals or industrial products. The GCC Customs Law further implies that two types of rules of origin are implemented:

1. The **Preferential Rules of Origin** relate to trade agreements that determine whether the goods qualify for preferential tariff treatment (reduced or zero customs duty) under contractual or autonomous trade agreements between one country and one or more others.
2. The**Non-preferential Rules of Origin** relate to laws, regulations, and administrative determinations of general application applied by a country to determine the country of origin of goods. It does not lead to reduced tariffs for a product but is instead used for determining trade statistics, quantitative restrictions, anti-dumping, labelling and government procurement.

Products of origin from one of the GCC Member States, enjoy preferential treatment when passing to another GCC Member State, and customs duties are exempted by virtue of the GCC Economic Agreement for 2001.

While the GCC Member States have ratified the GCC Customs Law through their respective implementation of domestic regulations, the general rule under the GCC Customs Law on the proof of origin is subject to the international and regional economic agreements in force. GCC Member States are additionally signatories to the Revised Kyoto Convention of 2006 on the Simplification and Harmonization of Customs Procedures (the "**Revised KyotoConvention**"). The Revised Kyoto Convention stipulates that the country of origin of goods is the country in which the goods have been produced or manufactured, according to the criteria laid down for the purposes of applying the Customs Tariff (Chapter 1, Annex K). Over and above this, the above-mentioned rules of origin are based on the below two criteria:

1. Wholly obtained products: goods produced wholly in a country shall be taken in that country (i.e. live animals born and raised in the country, vegetable products harvested in that country, mineral products extracted from that country).
2. Substantial transformation: This test is used where two or GCC Members States have taken part in the production of the final product. Three criteria are considered: (1) the change of tariff classification; (2) added value percentage criterion; and (3) the manufacturing or processing operation.

To implement the rules of origin, the GCC Member States evaluate imported goods in accordance with the aforementioned 'wholly obtained products' criterion or the 'substantial transformation test'.

Below is a synopsis of the specific regulations and practices that each GCC Member State implements to determine a goods through the non-preferential Rules of Origin, in accordance with the GCC Customs Law and the Revised Kyoto Convention, to determine the country of origin for a given product.

United Arab Emirates (the "**UAE**")

The UAE Ministry of Industry and Advanced Technology ("**MOIAT**") is the institution that defines and governs the meaning of 'country of origin' for a given good. This is executed by virtue of the UAE Federal Law No. 11 of 2019 on the Rules and Certificate of Origin (the "**UAE CoO Law**") and the Executive Regulation No. 43 of 2022 on the Implementation of the CoO Law (the "**Regulation of CoO Law**").

The UAE CoO Law states that to determine the country of origin for a product that has been processed or manufactured in different jurisdictions (e.g. mixing, assembling, packaging, etc.), the country of origin of a product is the country in which the product underwent the last major operation or processing (Article (4)).

Article (5) of the Regulation of the UAE CoO Law further states that products shall be deemed to have been processed, operated on or manufactured (in order to determine the non-preferential origin), if the last major operation or processing underwent, meets the criteria below.

The processing, manufacturing or operation must:

1. be economically justified;
2. take place inside a facility that is equipped for the purpose;
3. result in the manufacture of **a new product** or **represent an important stage of manufacturing**, through a change in the customs HS code; and
4. not be among those stipulated in Article (4) of the UAE CoO Law.

The UAE's locally manufactured products are required by virtue of Article (4) of Cabinet Resolution No. (25) of 2017 regarding the regulation of the "Made in UAE" marking, to achieve at least 40% of the value of the product through local processing, manufacturing or operation.

Kingdom of Saudi Arabia (the "**KSA**")

The Saudi Ministerial Decision No. 8352 for 1442 H (corresponding to 2020) on the Country of Origin (the "**Saudi CoO Law**") regulates the country of origin for products that are manufactured in the KSA and imported from the GCC Member States. According to the Saudi CoA Law, a product is deemed of KSA origin if the value-added ratio is 40%,, provided that at least 25% of the employees of manufacturing facilities are KSA citizens. This is unlike the GCC Economic Agreement, which does not require a minimum percentage of nationals to work in the manufacturing facility.

KSA is yet to enact domestic regulations that determine the rule of origin of foreign products imported from outside the GCC Member States. However, KSA has ratified the Revised Kyoto Convention by virtue of Royal Decree No. 23 M of 1432 H (corresponding to 2011), and it applies the Revised Kyoto Convention in testing the rules of origin where it deems it necessary.

Notably, a Certificate of Origin for foreign goods attracting non-preferential treatment is not requested by the Customs Authority, unlike all other GCC countries. Needless to say, that some local authorities, such as the Saudi Food and Drug Authority, require a Certificate of Origin for all shipments.

Kuwait

In Kuwait, there is no specific law that governs the rules of origin. Instead, Kuwait relies on a collective set of laws and conventions in order to determine the rules of origin. More specifically, the rules of origin in Kuwait are governed by the provisions of the Revised Kyoto Convention, the GCC Economic Agreement, and the Kuwaiti Ministerial Decision No. 193 of 2020 regarding the General Rules for Issuing a Certificate of Origin at the Ministry of Trade and Industry (the "**Kuwaiti Certificate of Origin Law**"). Most notably, Kuwait requires a ratio of 40% for the value-added percentage of the final value of the product in line with Article (3) of the GCC Economic Agreement.

Article (5) of the Kuwaiti Certificate of Origin Law lists a number of rules that determine which products cannot be considered to be wholly produced in Kuwait, and it also lists operations that do not constitute a sufficiently substantial manufacturing transformation of the product, such as roasting and grinding coffee beans.

Qatar

The Minister of Finance's Resolution No. (7) of 2020 on the Rules of Origin of Imported Goods (the "**MOF's Resolution**") is the primary legislative instrument that regulates the rules of origin in Qatar. The MOF's Resolution emphasises the provisions that refer to the regional and international conventions for determining the rules of origin. It further states that if goods are manufactured in a country other than the country in which the raw material used in manufacturing is produced, and the cost of workforce and additives in the country of manufacture equals 40% or more of gross production cost, then the origin of such goods will be deemed the country of manufacture.

The MOF's Resolution also provides that goods imported from a state that has a trade agreement with the State of Qatar, which stipulates a preferential treatment in the percentage of the customs duties, shall be subject to the rules of origin set forth in the relevant agreement. Qatar has ratified the Revised Kyoto Convention and it applies its provisions where applicable.

Oman

Oman does not have a standalone law that regulates the rules of origin. Instead, it adheres to and applies a value-added percentage requirement of 40% on local products, and local producers are required to achieve a requirement of 50% local ownership. This is in line with the GCC Economic Agreement.

Oman also applies bilateral agreements for preferential rules of origin. For example, US and Singaporean goods are required to achieve only 35% value-added percentage. On another side, for non-preferential rules of origin, Oman applies rules of origin as stated in the Revised Kyoto Convention.

Bahrain

Much like in Oman, Bahrain applies the Revised Kyoto Convention to determine the rule of origin for foreign products and non-preferential rules of origin. Locally, Bahrain considers that the industrial product of national origin shall mean the product in which the added value resulting from manufacturing the good in a GCC Member State is not less than 40% of its final value when its production is completed.

In conclusion, not all GCC Member States have local legislation that determines the rules of origin for a given product. Nonetheless, all agree to apply a threshold value-added percentage criterion of 40% on local products and are all signatories to the Revised Kyoto Convention, which determines the rule of origin of foreign products and non-preferential rules of origin.

Meet the Team

Meet the Team

Omar Omar
Partner, Head of
Shipping & Logistics,
Dubai, UAE

Omar joined Al Tamimi & Company in 2008. He is a Partner, Head of the Shipping & Logistics sector group and Head of the Insurance practice in the UAE. Omar is also a core member of the Projects sector group.

Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. With a multinational team covering all the GCC countries, Egypt, Iraq and Jordan, his team advise many governmental bodies on the establishment and development of maritime and land transport laws, regulations and policies. In addition, Omar has distinctive experience in laws related to logistics and customs in the GCC.

Omar regularly advises on cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sales and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He has also drafted and advised on various types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover.

Omar is ranked in Band 1 by Chambers & Partners and ranked as a Leading Individual by Legal 500 EMEA for Shipping UAE. He is also an author of the UAE Vessel Registration and Mortgage Section in the internationally renowned Kluwer International Maritime Law Handbook.

Yazan Al Saoudi
Partner,
Dubai, UAE

Yazan Al Saoudi is a Partner of the Transport and Insurance practice in Dubai. Yazan is also a member of the Projects group. Yazan joined Al Tamimi & Company in 1997.

Yazan is named in band 1 by the Legal 500 and is a ranked lawyer by Who is Who Legal in the Aviation section. In addition, Yazan is a ranked individual by the Chambers & Partners for the Insurance practice.

Supported by a team covering the GCC countries, Yazan's aviation experience includes providing advice for airlines and other transport companies, maintenance organisations and aviation insurers in relation to passenger, cargo, third party and hull claims, aviation insurance, recovery actions and contractual arrangements. He also provides advice as UAE counsel in connection with various sale, purchase, lease and operating transactions, along with associated financing transactions. He is listed as an Arbitrator at Shanghai International Aviation Court of Arbitration.

On the Insurance sector, Yazan advises clients on a wide range of policy coverage related matters on both the general insurance and life insurance sides. Yazan advises both local and international insurance companies on UAE and GCC laws and regulatory compliance issues. Yazan is a very experienced lawyer in both the contentious and non-contentious sides of the insurance industry.

Wesley has over 13 years experience advising on a wide range of shipping and international trade matters focused primarily on contentious matters. He has significant experience acting for clients in ship arrests and attachments relating to charterparty disputes, bunker, cargo, mortgage and crew claims amongst many others.

Wesley also specialises in large complex international trade and commodity disputes. He is a member of the Transport & Logistics group.

Wesley has spent the last five years working in the United Arab Emirates, during which time he has built a leading reputation across the region's shipping and maritime legal market and and has been ranked by Chambers & Partners and recognized by Legal 500 as a Next Generation Partner.

Wesley Wood
Partner, Dubai, UAE

Adam Gray
Senior Counsel, Dubai, UAE

Adam is a UK-qualified solicitor having trained at an International Group P&I Club in London. He is a Senior Counsel in the Shipping & Logistics team based in Dubai, where he has lived for 9 years. Adam specialises in maritime dispute resolution. He regularly assists clients by litigating, arbitrating and settling complex contentious cases across a wide spectrum of shipping matters. Whilst his focus is on dry-shipping disputes, he has recently advised clients on a wreck removal in a Middle-Eastern port and the total loss of a container ship in the Gulf region. Adam is pleased to advise on English and local GCC law. Adam is regularly instructed by P&I Clubs, London / UK law firms, local owners and charterers, cargo owners, freight forwarders and commodity traders.

Ahmed Hashem is a Senior Counsel, Head of Shipping - KSA, at the Transport department is located in Jeddah office and heading the practice in Kingdom of Saudi Arabia. Prior joining Jeddah office Ahmed was a Senior associate in Kuwait office for almost three years. Before that Ahmed was a Head of legal in Gulf Agency (Egypt) Ltd.

He has extensive experience, which is over twelve years in Maritime law in the Middle East including freight forwarder disputes, agencies, customs and insurance.

Ahmed is skilled litigator, he has handled hundreds of cases either on Maritime cases or commercial, labor, Civil and arbitration.

Being a head of legal and Senior lawyer, he is responsible for providing specialist legal advice in respect of commercial, corporate, customs and Maritime law that's includes providing legal oversight and legal risk analysis in respect to the development of rules as well as negotiating, reviewing, coordinating, drafting and revising all contracts/ agreements / tenders.

Drafting all legal documents (memos, notifications, and statements) that are relevant to running or potential claims to be submitted to the competent court. Negotiating, reviewing, coordinating, drafting and checking of contracts/agreements, which clearly reflect the commercial, technical and financial objectives of GAC. Draft and review other documents and materials where there may be legal implications and responsible for ensuring dual language drafting accuracy in documentation with legal implications.

Ahmed Hashem
Senior Counsel,
Head of Shipping - KSA,
Riyadh, Saudi Arabia

Ahmed Rezeik
Senior Counsel,
Head of Shipping - Kuwait,
Kuwait City, Kuwait

Ahmed is an experienced bi-lingual litigator. He is able to handle all legal procedures including preparing and reviewing commercial documents and written pleadings, as well as drafting and reviewing claim writs and memorandums.

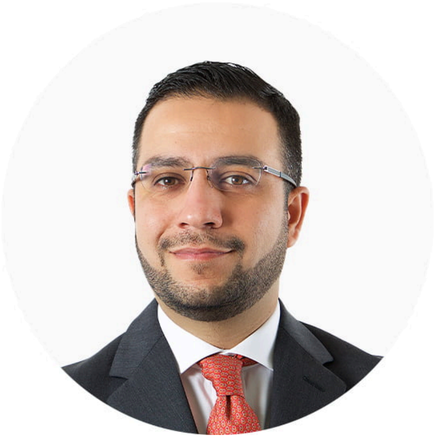
In his work, he has acted as a representative for several Protection and Indemnity Clubs (P&I CLUB), and has been involved in a wide range of P&I related work such as cargo claims, personal injury claims, fixed object damage claims, collision liability claims, arresting vessels, pollution liability claims, assisting marine agent enquires in all legal obstacles occurring at the ports and advising on charter party issues.
Ahmed also has vast experience in all aviation aspects, in particular, the claim which relate to the passenger, such as, the cancelation and delay of the flight, loss of luggage and other cargo claims.

In addition, he has been involved in numerous, mediated and litigated disputes on behalf of global insurance companies, (re) insurers/underwriters and brokers, with regards to product liability, public liability, workers compensation, professional indemnity and health insurance requirements.

He covers all phases of litigation including trials and appeals before tribunals and first instance courts, preparing the courts documents including memoranda, evidence files, research and drafting of legal opinion in respect of Maritime, Insurance and Aviation industry.

Sakher is a Senior Counsel of the Transport and Insurance team based in Dubai. He is highly involved in shipping, maritime and insurance matters.

Sakher's experience as Marine and Insurance lawyer is focused on the litigation and dispute resolution aspects. He has represented prominent insurance and insurance related companies, major P&I Clubs, vessels owners, freight forwarders and marine agents in litigation matters from inception through trial, including before courts and insurance/marine experts. Advising on Insurance liability, cargo claims, marine debts and insurance claims. Acting for numerous shipping and aviation companies and insurance, brokers and underwriters' companies in litigation concerning cargo claims, personal injury claims and aircraft damage claims, support regarding seizure and arrest of regionally based assets. This requires the preparation of pre-litigation advice, reviewing and filing powers of attorney, statements, petitions, motions, notices, pleadings. Analyzing legal claims and litigation and developing strategies for successful outcomes. Taking part in due diligence exercises on major insurance and insurance related companies which involve reviewing their corporate documents, insurance policies and agreements. Advising on all complex matters related to commercial agreements, criminal actions, corporate insurance and shipping. Advising clients on full range of ship finance including enforcement of mortgages over vessels.



Sakher Alaqaileh
Senior Counsel,
Dubai, UAE

Hany Maamoun
Senior Counsel, Cairo, Egypt

Hany is a qualified lawyer with over 19 years of extensive legal experience. He is based in Port Said Office and he maintains excellent relationship with governmental bodies in Port Said and Alexandria.

He is specialized in maritime law, and he deals with a wide range of high profile casualties, including collisions, oil pollution and groundings cases. He also deals with total loss, damage to ports' properties claims, stowaways and cargo claims. Hany handles international disputes for P&I Clubs and for a wide variety of clients worldwide in the shipping, insurance and international trade fields.

He is specialized in marine cases, shipping, arbitration and commercial litigation. His primary area of expertise and experience is wet and dry shipping.

Yasser is a Senior Counsel and has a particular interest in commercial litigation, who specializes in handling disputes and claims relating to all types of bills of lading and charter-parties, as well as the custom and insurance policy disputes. He has been involved in numerous incidents in a broad range of shipping sectors including the pollution, collisions, grounding, salvage, and general average cases.

Yasser primarily focuses on shipping, inland transportation and insurance matters. He is regularly consulted by clients on commercial, civil law matters and dispute resolution and with regards to the drafting/reviewing commercial contracts.

Yasser handles international disputes for P&I Clubs and for a wide variety of clients worldwide in the shipping, insurance and international trade fields.

Yasser Madkour
Senior Counsel, Dubai, UAE

Wael Elgouhari
Senior Associate, Dubai, UAE

Wael Elgouhari is a Senior Associate in the Transport & Insurance team.. Wael has many years of experience advising on shipping and aviation. He has particular expertise in cargo claims, B/Ls related disputes, logistics, charter-parties, cargo mis-delivery claims, maritime and land transport.

Wael also specialises on aviation liability practice with focus in defending airlines and their insurers. He mainly assists airlines in baggage, cargo and personal injury claims. His major clients in UAE include Emirates and Dnata.

Prior joining Al Tamimi & Company, Wael worked with a UAE law firm with particular exposure to criminal, breach of trust and bounce cheques cases. Additionally, he worked as in-house legal at a multinational company in oil & gas sector in Qatar. Wael has experience in working on contentious and non-contentious matters.

Karim is a bilingual litigator, who specializes in civil, commercial and Labor cases. He gained valuable experience before courts in the Middle East. He primarily focuses on shipping, aviation, inland transportation and insurance matters.

Karim has been involved in a number of shipping disputes and casualties. His clients include P&I Clubs, P&I Club correspondents and agents, ship-owners, shipping lines, freight forwarders, bunker suppliers, shipbuilders, terminals, insurance companies, banks, oil companies and airlines. On the contentious side, he advises clients on carriage of goods by sea, ship arrests, bunkers, pollution, general average, salvage, grounding, customs disputes and insurance claims.

He is regularly consulted by clients on commercial, civil law matters and dispute resolution and with regards to the drafting/reviewing commercial contracts and commercial disputes including termination and deregistration of the agency agreement, disputes arise from facility investment agreements.

Karim Marouny
Senior Associate, Cairo, Egypt

Jamal Nato
Associate,
Riyadh, Saudi Arabia

Jamal worked at a local law firm in Jeddah for three years prior to joining Al Tamimi & Company in 2022. He has particular experience in commercial transactions and corporate matters. In his previous role, he was involved with reviewing and drafting of various local and international commercial agreements as well as complying corporates internal policies under the KSA laws.

To mention but a few of previous experiences: Draft a Share Purchase Agreement (SPA) between a Saudi company and a Belgian company in the field of maritime shipping.

Review of a Commercial Agency Contract in the business of pharmaceuticals in English in coordination with the contract parties outside Saudi Arabia.

Review and negotiate an agreement related to a main international sport event for Automobile & Motorcycle racing in Saudi Arabia.

Draft Terms and Conditions for a Saudi electronic platform specialized in the retail trade, including regulating the legal positions between the platform and its customers, suppliers, and retailers.

Draft a Franchise Agreement in English, with the drafting of its Franchise Disclosure Document (FDD).

Draft a Joint Venture Contract (JV) in English between a Saudi company specialized in the field of information technology infrastructure and an American company specialized in the same activity.

Amir Fathalla is a bilingual Associate in the transport and insurance practice in Bahrain and KSA. Prior to joining Al Tamimi & Company Amir was a Senior Legal Counsel in Gulf Agency Company (Egypt) Ltd. For almost 6 years. Before that Amir was a Legal Advisor at a Medical and insurance company in Qatar.

Amir has extensive experience, in maritime and commercial litigations, and specializes in handling disputes and claims relating to all types of bills of lading, ship arrests, freight forwarders, marine agencies, inland transportation, and charter parties, as well as customs and insurance policy disputes.

He has been involved in numerous incidents for P&I Clubs in a broad range of shipping sectors including pollution, collisions, grounding, shortage, salvage, crew injury, and general average cases.

He also has drafted and advised on different types of maritime documents such as agency agreements, Bills of lading, LOIs, and charter parties as well as all the commercial agreements, he drafted all legal documents (memos, notifications, and statements) that are relevant to running or potential claims to be submitted to the competent court.

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Passant is an experienced bi-lingual litigator. Prior to joining Al Tamimi & Company in January 2018, Passant was a legal consultant at the Ministry of Health in Kuwait.

Passant handles contentious and non-contentious legal matters, in addition to drafting and reviewing statement of claims and memorandums. Passant regularly advises on corporate matters relating to the establishment of branches of foreign insurance companies in Kuwait and on matters related to cargo claims, settlements, personal injury claims, fixed object damage claims, collision liability claims, arresting vessels and pollution liability claims.

Passant has a strong experience in the aviation sector, especially in claims relating to the passenger, such as cancellation and delay of flight, loss of luggage and other cargo claims. Additionally, she has been involved in numerous disputes on behalf of global insurance companies, covering all phases of litigation including court of first instance and court of appeal and preparing the courts documents including memoranda, evidence files, research and legal opinion in respect of Maritime, Insurance and Aviation Law.

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