

## SEAFARER SUBJECT GUIDE

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### MARITIME LIEN FOR SEAFARERS' WAGES IN FRANCE

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of French flagged ships, and foreign ships which are in the ports of France. These rights can be enforced in the Labour Court, where they are secured and preferred by maritime liens and enforced by the arrest and forced (judicial) sale of the ships.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to claim his wages, he is strongly advised to consult a lawyer qualified to practise in France.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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#### **1. What is the maritime lien for seafarers' wages? How is it enforced?**

- 1.1 The maritime lien for wages gives seafarers a high priority claim over the ship they are serving on in order to secure their unpaid wages. Their right to wages is secured by the arrest and judicial sale of the ship either under local French law or the 1952 Convention.
- 1.2 The maritime lien for wages is designed to improve the prospects of claims for wages being paid. The maritime lien travels with the ship into the possession, control, or ownership of a third party, into whosoever hands it may pass.

#### **2. Which courts have jurisdiction over seafarers' wage claims?**

- 2.1 The French judicial system has recently undergone changes which will affect seafarer claims. With the entry into force of the new Code des Transports, it seems that litigation involving seafarers and masters, relating to their employment, will now be heard by the Labour Court (the Conseil de Prud'Hommes), which hears the claims of all other workers in France.
- 2.2 As yet, there are no precedents and it is not certain that the Commercial Courts and Tribunaux d'Instance will deal with the claims of seafarers for wages.

#### **3. Can the courts refuse to hear seafarers' claims for wages?**

- 3.1 French courts will hear the rights of seafarers of any nationality regarding French registered ships or foreign ships in French waters.

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- 3.2 Ships can be arrested either under domestic law or the 1952 Convention, depending on the circumstances. This is relevant to whether the court will refuse to hear the case. Under the 1952 Convention the claimant is not required to prove that his claim is valid or well-grounded, whilst the domestic rules require the claim to be apparently grounded, for the ship to be arrested.
- 3.3 If the seafarer is domiciled in France, domestic rules will apply. If the seafarer is domiciled abroad, the 1952 Convention will apply. If the seafarer has a lien over a vessel flagged to a 1952 Convention state, the convention will apply. If the vessel is flagged to a non-contracting state, the domestic French laws on arrest will apply.
- 3.4 A maritime lien is one of the only exceptions to the strict French law stating that while a ship may be arrested for any claim, it is absolutely necessary to prove that the owner of the ship is indeed the debtor of the claim. It is usually difficult to evidence this last condition. The debtor of the claim, for example, the seafarer's employer, will have to be the same entity as the registered owner of the arrested ship.

### **4. Who can claim seafarers' wages?**

- 4.1 French courts will hear claims from seafarers of any nationality serving either on French ships or foreign ships in France. Persons who are entitled to maritime liens are the master, crew, and other persons hired on board.

### **5. Which ships are subject to the jurisdiction of the courts?**

- 5.1 French ships and foreign ships in France fall within the jurisdiction of the French courts.

### **6. What is included in the maritime lien for seafarers' wages?**

- 6.1 There is no statutory definition of seafarers' wages. A French court has ruled that, 'the term 'wages' in the Brussels Convention [the 1952] should be understood as a generic term covering all claims relating to the employment contract.' Wages have been held to include: vacation holidays with pay; dismissal pay; unemployment allowances; social security claims since they are an accessory to the contract of employment; legal minimum wages; housing, water and food or equivalent allowances during service; and wages for overtime in respect of working contracts or collective agreements.
- 6.2 The maritime lien covers the vessel, the freight for the voyage during which the claim giving rise to the lien arises, and the accessories of the vessel and freight accrued since the commencement of the voyage.

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### **7. Can seafarers' wages be claimed if there is no written contract of employment?**

- 7.1 The existence of a contract of employment is a condition for entitlement to a maritime lien. The contract of employment of seafarers on French ships must be written and in a prescribed form, setting out the terms and conditions of employment.
- 7.2 There may also be collective agreements incorporated into individual agreements and the relationship between such contracts may be complex and complicated.

### **8. Must seafarers' services have been rendered on board the ship?**

- 8.1 Seafarers are entitled to wages and to a co-extensive maritime lien if they render services appropriate to their rank as part of the crew of the ship. They need not always render the services in or aboard the ship, or live aboard the ship.
- 8.2 The service must refer to the ship, and the service must be rendered during a period when the seafarers can be said to be part of the crew of the ship.
- 8.3 Seafarers can earn wages while on shore leave, waiting in a hotel for their ship or during sick leave.
- 8.4 There is ongoing uncertainty in French law about persons who may work aboard a ship but who are not employed as a member of the crew, for example, a shipyard worker. It is unclear whether an external worker working temporarily aboard is entitled to a maritime lien.

### **9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?**

- 9.1 When the ship is sold maritime claims for wages have high priority amongst the claims. The law enumerates a list of claims: the first rank claims and the second rank claims. Claims for wages are considered to be first rank claims and prevail over claims in respect of the cargo, the freight, and their accessories.
- 9.2 Wage claims come just after the court fees to pay for the sale of the ship, the rights of ports, public taxes, pilotage fees, and guard and conservation fees since the vessel entered the last port.

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9.3 Article L.5114-8 of the French Code des Transports provides for the ranking of claims relating to the same voyage as follows:

- (1) law costs, that is, the costs for the sale of the ship and fees incurred by the sale of the ship;
- (2) public taxes and costs of preservation of the ship;
- (3) claims for wages and other sums due to the master, officers and other members of the ships;
- (4) claims for reward for the salvage of the vessel;
- (5) damage from collision to harbours etc., personal injury and cargo and/or baggage loss or damage; and
- (6) necessities required to preserve the ship or to continue the voyage, if ordered by the master within his authority while he is away from the ship's home port.

9.4 Maritime liens for wages are thus prioritized over any mortgage.

### **10. Can wages be claimed if the employer is not the shipowner or acts illegally?**

10.1 Given that the personal liability of a shipowner is not necessary for the creation of a seafarer's maritime lien, it would appear in the absence of any clear law that the maritime lien comes into existence even where the employer of the seafarer is not the owner of the ship; or the employer is in unlawful possession of the ship; or the employer has fraudulently obtained possession of the ship; or the employer has mere possession of the ship but not ownership of the ship.

10.2 Even where the master uses the ship to commit a crime, it would appear that seafarers have the right to their unpaid wages as well as a reasonable and proper amount for compensation for the damages they may have suffered due to the acts of the master.

10.3 However, it would also appear that seafarers are only entitled to a maritime lien if they are not guilty of illegality or otherwise blameworthy, such as being privy to a fraud on the shipowner, or complicit in stealing the ship, or knowing that they are not entitled to board the vessel to carry out the work, or to act in the capacity of a particular rank on board to which they are not entitled, or to force their ship to sail to a particular port, even if for the purposes of claiming their wages.

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### **11. Can the seafarer's maritime lien for wages be abandoned or waived by agreement?**

11.1 A right which is future and hypothetical cannot be waived. However, waiver is possible when the seafarer has already gained the right to a maritime lien. The waiver of the right must be unequivocal.

### **12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?**

12.1 A maritime lien may be forfeited if the claimant delays or behaves inconsistently with the stipulations of the lien. The departure of the ship from the location where the lien arose will not affect the lien.

12.2 Destruction of a ship will extinguish the maritime lien. It is recommended that seafarers who are owed wages should behave expeditiously to enforce their right against the ship.

12.3 Maritime liens are extinguished after a period of six months unless, prior to the expiry of that period, the ship has been arrested or seized and such arrest or seizure leads to a forced sale.

12.4 After the expiration of six months from the date of the enforceability of a seafarer's claim arising out of the contract of engagement, the maritime lien ceases to exist. Arrest of the ship will suspend this time limit.

12.5 Furthermore, the maritime lien for wages is extinguished by the confiscation of the ship pursuant to conviction for an offence under police regulations or safety and customs regulations; the judicial sale of the ship; the transfer of ownership two months after the publication of the deed of transfer; or after the establishment of a limitation of liability fund.