

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN INDIA

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in India.

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

If a seafarer intends to arrest a ship in India, he is strongly advised to consult a lawyer qualified to practise in that country.

\*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. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?**
  - 1.1 A seafarer can arrest a ship for unpaid wages irrespective of his nationality or flag of the ship.
- 2. What is the time limit within which a seafarer must start a claim for unpaid wages?**
  - 2.1 A seafarer's claim for unpaid wages should be initiated within the three year period as stipulated in the Indian Limitation Act 1963. Under the Indian Merchant Shipping Act 1958 in computing the period of limitation the period or periods during within the seaman has been a serving on board the vessel, and if the seaman has died while he was a serving seaman, the period from the date of his death to the date on which his next of kin were first informed of his death shall be excluded.
- 3. What documents are required to obtain an arrest of a ship?**
  - 3.1 In an event the documents are not in the English language it would be preferable to have them translated into English.
  - 3.2 It would be preferable to have the following documents for a seafarer's claim for unpaid wages:
    - (1) crew agreement/ employment contract/ articles of agreement;
    - (2) salary slip;
    - (3) power of attorney, (in the event that the seafarer is not present in India. The power of attorney is required to be notarised and legalised by the Indian High

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Commission in the country where the seafarer has executed the power of attorney).

### **4. What are the costs of the arrest, including court expenses and other expenses?**

4.1 Ordinarily, the arresting party would be required to make a deposit in court towards court fees which varies from court to court. For example, in Bombay the maximum court fees payable is INR 3,00,000 (\$6,000), for a claim which is more than INR 23,900,000( USD \$478,000). Court fees have to be paid in advance. In certain exceptional circumstances, court fees could be paid after obtaining a decree from the court. The lawyers' fees for obtaining an arrest over a vessel can range from USD 5,000 to USD 10,000 depending on the lawyer who is instructed. Lawyers may at times also work on a percentage of recovery or *pro bono*.

### **5. Does the arresting party have to lodge counter security against wrongful arrest?**

5.1 There would be no requirements to require counter security for crew claims.

5.2 The court, in some instances, can join two claims together in order to settle the claims against the vessel.

5.3 Claims in relation to wages can in principle be jointed together. There have been instances in which seafarers have filed class actions suits against a single shipowner when they have been working on the same vessel.

### **6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**

6.1 The court will as a general rule have jurisdiction over the substantive claim for wages unless there is an arbitration agreement in the employment contract or a clause in the employment contract where parties would agree to submit to the exclusive jurisdiction of a particular court. Even in such cases, the court will only refer the parties to arbitration or an alternative judicial forum if either party to the dispute makes an application to the court for the same.

### **7. Will the crew and vessel be maintained/supported during the arrest?**

7.1 There is no settled law on this issue. As a general rule the onus is cast on the owners of the vessel to do so.

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### **8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?**

10.1 There is no requirement for the crew to be present on board the vessel at the time of moving the arrest. The crew can reside in their country of origin and peruse/pursue the litigation proceedings in India by issuing a power of attorney in favour of an Indian citizen at the time of moving the arrest. The crew may however have to come physically to court to furnish oral evidence unless the court allows evidence to be tendered by way of video conferencing.

### **9. Do the seafarer's wages continue to accrue during the arrest?**

9.1 The wages continue to accrue during the arrest.

### **10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?**

10.1 Approximately between six months to one year for the sale of a vessel. As a general rule seafarers would only be entitled to encash the sale proceeds of the vessel after obtaining a decree from the court. The court may however take a humanitarian approach and issue directions paying 50% of the wages prior to obtaining a decree. The seafarers could obtain a decree within a one to one and half years of filing their suit.

### **11. How are the lawyer's fees for arresting the ship paid?**

11.1 The seafarer will on his own bear the costs of his legal counsel. However, in certain circumstances, the legal counsel may be willing to charge his fee on a percentage basis only when the seafarer has encashed his wages from the sale proceeds of the vessel. The legal costs incurred by the seafarer cannot be recovered from the sale proceeds of the vessel unless the court specifically awards costs. Indian courts occasionally award legal costs in very limited circumstances which as a general rule are a fraction of the costs actually incurred.

### **12. Are there any other procedures to enforce a seafarer's wage claim?**

12.1 The seafarer may: (1) arrest the vessel; (2) institute a civil suit; (3) claim before the Commissioner under Workmen's Compensation Act 1923, section 19; or (4) file a claim before the Magistrates Court.