

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN NORWAY

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

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

If a seafarer intends to arrest a ship in Norway, 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 in Norway to secure a claim for unpaid wages irrespective of the nationality of the claimant or the ship. This is so whether the claim is secured by a maritime lien or not.
  - 1.2 It is important to distinguish between 'maritime claims' and 'maritime liens'. Not all maritime claims are secured by maritime liens. If the maritime claim is not secured by a maritime lien (either because it is not the 'right' sort of claim or because the lien has expired, which under Norwegian law it does after one year), the maritime claim can still serve as a basis for arrest, but the claimant will have to convince the arresting court that there is a risk of dissipation of assets and that, barring the arrest, the claimant will have serious problems in enforcing the claim by ordinary legal means.
  - 1.3 There is an automatic right of arrest for a maritime claim that is secured by a maritime lien. A seafarer's claim for wages is a maritime claim which is secured by a maritime lien.
  - 1.4 A maritime claim that is not secured by a maritime lien will not prime registered mortgages in the ship.
  - 1.5 A claim which does not even qualify as a maritime claim cannot be secured by the arrest of a ship in Norway.

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1.6 The Norwegian rules on arrest are to be found in Chapter 4 of the Maritime Code of 1994 ('the MC') and Chapter 33 of the Disputes Act of 2005 ('the DA'). The rules on maritime liens are to be found in chapter 3, sections 51 - 64 of the MC.

### **2. What is the time limit within which a seafarer must start a claim for unpaid wages?**

2.1 The right to arrest for a claim for wages ceases when the claim becomes time barred in accordance with the law governing the employment contract, which is not necessarily Norwegian law. Under Norwegian law, a claim for wages becomes time barred three years after it arose.

2.2 The right to invoke a maritime lien to secure the claim expires one year after the claim arose, unless before that the vessel has been arrested by the claimant.

### **3. What documents are required to obtain an arrest of a ship?**

3.1 If the arrest claim is secured by a maritime lien, the claimant needs to demonstrate to the court the likelihood, on the balance of probabilities, of an existing unpaid claim for wages. There are no formalities in that regard and it is normally not difficult to prove a claim for wages. A written employment contract would be needed, which will normally have to be translated to the court only if it is not in a Scandinavian language or English. Documents submitted in support of an alleged claim do not normally have to be notarised or legalised, unless contested by the owner of the ship.

3.2 If there is 'danger in delay', that is, a risk of the vessel disappearing if its owner is being made aware of an imminent arrest, an arrest decree can be made *ex parte*, without hearing the owner. In such a case, the owner will be given an opportunity to dispute the validity of the claim after the arrest has been effected. If, for example, the owner is able to prove to the satisfaction of the court that the wages in question have actually been paid, the arrest will be lifted. If there is no 'danger in delay' the owner will be given the opportunity to state its case and adduce counter evidence, possibly in an oral hearing if deemed necessary and convenient by the court.

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

4.1 The arresting party or the arrestor (here the seafarer) has to pay a court fee in order for the arrest application to be considered by the court. The relevant court fee is adjusted annually and today amounts to NOK 2.150. If the application is successful, that is the arrest granted, the defendant (here the owner) will normally have to pay

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the claimant's legal costs, including the court fee as well as the claimant's reasonable costs for legal assistance.

4.2 The claimant/arrestor does not assume any financial obligations as a result of a lawful arrest.

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

5.1 Whether and to what extent security has to be posted as a condition for arrest is entirely in the discretion of the court. Any security will be in respect of the potential liability on part of the claimant/arrestor for wrongful arrest. That liability is strict to the effect that the claimant/arrestor will be liable for all reasonably foreseeable losses incurred by the owner as a result of the arrest in case it should turn out that the claim for which the arrest was made was not a valid claim at the time of the arrest.

5.2 Generally speaking, in exercising its discretion as regards security from the claimant/arrestor, the court is more likely to request security if it considers the arrest claim to be relatively unclear or unsupported by evidence than if it is a clear cut and undisputed. As a result, a court is not likely to request security from a seafarer who purports to arrest a vessel as security for what on the basis of the evidence submitted clearly appears to be a bona fide claim for wages.

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

6.1 Once a vessel is arrested, the court will usually accept jurisdiction over the substantive claim unless the contract on which the claim is founded has a valid arbitration or jurisdiction clause.

6.2 However, even if the contract incorporates for example an arbitration clause providing for arbitration in a far flung place, the Norwegian court may still assume jurisdiction if in reality the jurisdiction or arbitration clause is likely to deprive the claimant of his rights.

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

7.1 There are no particular rules regarding maintenance/support of crews on arrested vessels, but the crew members will be treated as any other foreign visitors to Norway. They may be entitled to social welfare and, depending on nationality, other similar supportive measures, but are as non-resident visitors in principle outside the general welfare system that applies to residents.

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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?**

- 8.1 There is no requirement in the rules on arrest or forced sale that the crew is present on board. It may however follow from the employment contract or otherwise that the crew (or part of it such as the 'security crew') has a contractual obligation to stay on board. If so their claim for wages, including wages earned whilst the vessel is under arrest, will continue to be secured by a high ranking maritime lien.
- 8.2 There are no reasons from the point of procedural law governing the forced sale why the crew cannot be repatriated before the vessel is actually sold. However, repatriation also has a contractual side, a social side as well as a 'safety' side.
- 8.3 The contractual side is governed by the law of the employment contract, but arrest as such would not normally mean that the employment contract is automatically terminated. However, if the arrest is not lifted for a long time and it appears that the ship is going to be the subject of a forced sale, the result under the law governing the employment contract may well be that the contract is terminated. Another aspect of the contract is that it will normally entitle the seafarer unilaterally to terminate the employment contract if wages are not paid (which, of course, often happens in a protracted arrest situation).
- 8.4 As to the social side of repatriation, there are no specific rules in Norway on the funding of the repatriation of foreign crews on foreign vessels arrested in Norway.
- 8.5 The safety side of repatriation of a crew is that virtual abandonment of a vessel may prejudice the safety not only of the vessel but also of the port and the environment generally. Although there are no rules in Norway which will physically prevent an entire crew, including what may be termed the minimum safety crew, from leaving an arrested vessel, a master may in certain circumstances be considered to be in violation of his duties by leaving a vessel which thereby becomes a safety hazard.

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

- 9.1 The arrest as such has no effect on the accrual of wages under Norwegian law as long as the crew members are at the disposal of the ship/owner. However, accrual of wages is a matter of the law which governs the employment contract, which is typically not Norwegian law where crew, ship and owner are not Norwegian.

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### **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 There are very few forced sales of ships in Norway, most cases being settled long before that stage has been reached.
- 10.2 However, given the time limits provided for by law and the practicalities required, the time from an arrest of a ship to a forced sale may easily be four to eight months. Since the basis for a forced sale must be an enforceable instrument such as an unappealable court judgment in favour of the claimant, it may take much longer if the seafarer needs first to obtain a judgment. Although the arrest court will in principle have jurisdiction to decide on the merits of the arrest claim/claim for wages, it may easily take a year before a judgment is given, and more if it is appealed.

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

- 11.1 Lawyers normally charge by the hour for time used in handling the arrest case. Norwegian lawyers are not permitted to work on a straight contingency fee basis (that is, no cure/no pay with an inflated success fee), but may agree to defer payment of legal fees, for example, until the outstanding claim has been paid by the owner or out of the proceeds of a forced sale of the ship. However, the fees must still be 'normal' and not inflated.
- 11.2 If an arrest is granted, the court will normally decide that the defendant shall refund the legal costs incurred by the claimant/arrestor. If the matter proceeds to a forced sale, the legal costs incurred by the claimant in that regard will be recoverable with highest priority from the proceeds of the sale.

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

- 12.1 In case the claimant/arrestor wishes to invoke a maritime lien, only the particular vessel in relation to which the claim arose (where the seafarer worked) can be arrested. If, however, the claimant is not invoking a maritime lien but is relying merely on the existence of a maritime claim, any ship owned by the debtor/employer in question can be arrested (if the more stringent arrest rules are satisfied), whether it be the ship in relation to which the claim arose or a so-called 'sister ship.'
- 12.2 If a vessel cannot be found in the jurisdiction, but other assets of the debtor, such as a bank account, are located there, this may present an alternative to the arrest of the vessel. The claimant will in principle compete with all of the debtors' unsecured general creditors, whatever type of claim they may have.