

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN CYPRUS

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

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

If a seafarer intends to arrest a ship in Cyprus, 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 Cyprus regardless of the nationality of the seafarer, and regardless of the flag of the ship, provided the ship falls within the jurisdiction of the Cyprus courts and the debtor is not in a position to claim sovereign immunity.
- 2. What is the time limit within which a seafarer must start a claim for unpaid wages?**
  - 2.1 There is no prescribed time limit for a claim of unpaid wages of a seafarer. The relevant provisions under Cypriot employment law do not apply.
  - 2.2 The Limitation Law provides that for a contractual claim, the limitation period is six years. The court may, upon application, extend the limitation period for up to two years where this is deemed fair and just under the circumstances.
- 3. What documents are required to obtain an arrest of a ship?**
  - 3.1 The documents which need to be presented, together with necessary copies, are as follows:
    - (1) writ of summons;
    - (2) application for the arrest of a vessel; and
    - (3) affidavit in support of the application for arrest.
  - 3.2 The service of the writ must be on the property against which the action is filed and must be effected at least 20 days before the date named in the writ for appearance of the parties before the court.

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- 3.3 The party applying for the arrest of property should file an affidavit in which it describes the nature of the claim and asserts that the claim remains unsatisfied requiring the court's aid for execution. The court will not necessarily look into the merits of the case.
- 3.4 In relation to an application for arrest for unpaid wages the affidavit must further state the nationality of the vessel and that notice of the action has been served on a consular officer of the state to which the vessel belongs (if there is one in Cyprus).
- 3.5 All court documents must be filed in one of the official languages of Cyprus (Greek and Turkish). The exhibits in support of the affidavit may be in the English language.
- 3.6 There is no need for documents to be notarized or legalized.
- 4. What are the costs of the arrest, including court expenses and other expenses?**
- 4.1 For a claim between Euros500 and Euros100,000, the court fees in an action *in rem* for the arrest of a vessel should be funded in advance (to include the issue of the writ of summons and the issue of a warrant of arrest) and usually range between Euros150-350.
- 4.2 An order may be made for security to be lodged for the costs of the arrest. This is in the discretion of the court and the court will consider the facts of the case. The Cyprus Admiralty Jurisdiction Order 1893, provides for the security for costs in an admiralty action. The only exception to the rule is that of a seaman suing for wages or for the loss of his clothes and effects in a collision. However, even if the claim falls under the exception, the court may still consider ordering that security is lodged.
- 4.3 There is no hard and fast rule for the amount ordered. The court will exercise its discretion having regard to all the circumstances of the case. It is not the practice, however, to order security on a full indemnity basis.
- 4.4 In addition, an advance payment in respect of the lawyers' fees and disbursements is usually requested. This is subject to the agreement between the seafarer and his lawyers.
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
- 5.1 The arresting party does not have to lodge security against wrongful arrest.

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

- 6.1 The matter of the court's jurisdiction may be examined at any point during the course of the action, whether by application by any of the parties or by the court on its own motion.
- 6.2 With the issuance of the arrest warrant the court will accept jurisdiction to hear the substantive claim. However, this does not preclude the court from subsequently examining whether it has jurisdiction under the above general rule if the circumstances demand it.

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

- 7.1 Upon arrest, the maintenance and support of the vessel and the crew will fall under the supervision and responsibility of the Admiralty Marshal.

### **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 The crew's presence is necessary only until the warrant for the arrest of the vessel is issued.
- 8.2 From that point onwards, unless there is a need for their presence (for example, to secure the safety of the vessel), the crew can be repatriated any time before the sale of the ship.
- 8.3 The court can order payment of the repatriation expenses. The Admiralty Marshal will usually, with the leave of the court, arrange for the repatriation of the crew members and all disbursements will be included in his account of costs and expenses.

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

- 9.1 Provided the contract of employment is not otherwise terminated and/or repudiated and the claim is in respect only of wages and other moneys, the seafarer's wages will continue to accrue during the arrest.
- 9.2 Where the claim for unpaid wages includes a claim for breach of contract and damages on that basis, then the court may consider such contract of employment as terminated and wages would cease to accrue as of the termination date.

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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 If all information is available, then a vessel can be arrested in one day.
- 10.2 Regarding judgment and sale of the ship, in a straightforward case (subject always to the particular facts of each case) the sale usually takes up to two months and another two months for distribution of the proceeds of sale. It is not dependent on judgment.
- 10.3 The vessel may be sold pending final judgment.

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

- 11.1 A seafarer will have to fund from his own means the action and his lawyers' fees.
- 11.2 In a successful claim, the claimant may be awarded the costs and expenses incurred in accordance with the court's scale of expenses. The court may direct that these are paid either by the owners or from the proceeds of the sale of the vessel.

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

- 12.1 A seafarer can claim unpaid wages against a sister or associated ship.
- 12.2 Also, in appropriate cases, the seafarer may seek to obtain a Mareva injunction stopping the defendant from making himself 'judgment proof'. Such injunction, however, operates *in personam*.