

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN EGYPT

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Egyptian flagged ships, and foreign ships which are in the ports of Egypt. These rights can be enforced in the Admiralty 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 Egypt.

*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.

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

- 1.1 The Egyptian Commercial Maritime Law (No. 8/1990) addresses the issue of maritime liens.
- 1.2 A maritime lien is a claim involving predominantly marine units, most often vessels, but may also be extended to personal property involved in maritime transactions such as cargo.
- 1.3 This kind of maritime lien grants the lienholder exceptional rights; first, the lienholder will have the right to track the vessel no matter under which ownership it has been transferred, even if the new owner is not involved with the debt (bona fide). Second, the lienholder will have the right to extend his tracking to the vessel in other provinces and countries. Third, the maritime lien also provides that the lienholder's claim will be privileged at the time of execution over the vessel's other debts for other creditors. Fourth, the maritime lien is extremely useful to seafarers because it allows them to claim for unpaid wages and to follow and arrest the ship wherever it goes, whether the owner is bankrupt or not, and even if the owner is untraceable.
- 1.4 However the matter is left entirely to the discretion of the court to consider whether:
 - (1) the claim constitutes a claim giving rise to maritime lien;
 - (2) there is a requirement for security; and
 - (3) the evidence submitted is sufficient.

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- 1.5 A seafarer enforcing his lien in order to secure the settlement of his wages, is entitled to either sue the vessel and/or its operator, or to apply to court for an arrest order against the vessel. The Egyptian Commercial Maritime Law gives a seafarer the right to arrest, sue and even sell the vessel if his claim is not satisfied.

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

- 2.1 According to the Egyptian Civil and Commercial Procedures Law, the Egyptian Courts (including the courts of urgent matters) will have jurisdiction over any urgent/temporary procedures even if the Egyptian court does not have jurisdiction over the subjective claim.
- 2.2 To answer any question concerning the jurisdiction of the court over seafarers' wages, any jurisdiction clause in the employment contract must first be checked. If no jurisdiction is provided in the contract, the Egyptian court will apply the local jurisdiction rules to answer the question of jurisdiction. The Egyptian court will, however, have jurisdiction in the following cases.
- (1) if the vessel is of Egyptian nationality; or
 - (2) if the vessel is of a foreign nationality but has a local agent in Egypt.

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

- 3.1 The Egyptian court may refuse to hear a seafarer's claim if the claimant is a foreign concern as per the Civil and Commercial Procedures law No. 13/1986. If the defendant does not attend, or is not represented before, the court, the Egyptian court may rule that it has no jurisdiction over the dispute.
- 3.2 Under Egyptian Law, the Egyptian court would be competent to give orders of a conservatory nature even if the Egyptian Court is not competent to decide on the merits of the case.

4. Who can claim seafarers' wages?

- 4.1 Egyptian seafarers can claim wages before the Egyptian courts if the vessel in question is an Egyptian vessel. Moreover, Egyptian and foreign seafarers can claim wages before the Egyptian courts if the vessel in question is a foreign vessel which has a local agent in Egypt.

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

- 5.1 The vessels against which wages claims may be filed in Egypt are both Egyptian vessels and foreign vessels having local agents in Egypt.
- 5.2 The Egyptian Commercial Maritime Law provides that the vessel's agent is considered to be the owner's/operator's representative for lawsuits brought by or against the latter in Egypt. Also, the domicile of the agent in Egypt is to be considered as the owner's/operator's domicile where service of judicial or extra-judicial documents may be effected.

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

- 6.1 Masters' and seafarers' wages, as well as all other workers bound under a marine employment contract to work on a ship, are entitled for maritime lien for wages. Wages include the salary and its supplements (including over-time and different allowances).

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

- 7.1 The Egyptian Commercial Maritime Law provides that the employment contract shall only be evidenced in writing. However, the law gives seafarers the right to prove their contracts using other means of evidence. This means that the seafarer can call witnesses to prove the existence of a contract with the employer. The wording of this article does not, however, give this right to the employer.

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

- 8.1 To claim for a maritime lien, seafarers' services must have been rendered on board the ship.
- 8.2 It is not necessary that the work rendered must be related to the navigation of the ship. The main criterion is that the work must be rendered on board a ship even if it does not relate to the navigation of the ship. The doctor and cook of a ship are contracted with the ship's operator under an employment contract and they are subjected to the provisions of this contract. Again, the main criterion in determining the nature of the employment contract and qualification of a person as a seafarer is the location of the work (to be rendered on board a ship) rather than its type. In other words, a cook and/or a doctor working on board a ship are qualified under this definition as seafarers.

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

9.1 In the Egyptian Commercial Maritime Law there are six types of maritime liens excluding other privilege rights provided for in the civil or other laws. The types, in descending order of priority, are:

- (1) judicial expenses incurred for selling a ship and distributing its price;
- (2) taxes and duties payable to the state or to a public law person, as well as load, harbour, pilotage, and tug dues, and also guarding and maintaining and other marine service costs and charges;
- (3) debts resulting from work contracts of the ship captain and sailors, and others bound under contract to work on the ship;
- (4) remuneration for assistance and salvage, and the contribution of the vessel in general average;
- (5) indemnities for collision or pollution or other navigational casualties, and indemnities for damages sustained to harbour installations, basins and navigational routes, indemnities for personal injury to passengers or crew, indemnities for loss of or damage/ destruction to cargo or baggage; and
- (6) debts consequent upon contracts as concluded by the ship's master, as well as the operations carried out thereby outside the port of the ship's registration, within the limits of his legal powers of actual needs necessitated for maintenance of the ship, or pursuing her voyage, whether the master is himself or is not the owner of the ship, and whether the debt is payable to him or to the supply contractors (ship-chandlers), to the loaners, the persons who perform repairs works on the ship, or other contractors, as well as the debts established on the vessel's operator ensuing from works performed by the ship's agent pursuant to the provisions of article 140 of the Egyptian Commercial Maritime Law.

9.2 The seafarer's claim for wages ranks third in the above enumeration.

9.3 Under the Egyptian Commercial Maritime Law, each charter trip of the vessel constitutes a legal entity in itself, with specific rights and obligations. Article 35/1 states that, 'The privileged debt arising from any trip precedes the privileged debts arising from a previous trip.'

9.4 But there is an exception to this rule, involving debts arising from a maritime contract covering multiple voyages, as all debts arising from this contract are equal in terms of priority to the debts of the last voyage, whether they arise from previous voyages or from the last voyage itself. Rights arising under a single voyage will be handled

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largely in accordance with the six priority categories outlined above. Debts arising from one incident are all considered to be accrued on the same date.

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

10.1 According to the Egyptian Commercial Maritime Law the maritime labour contract is a contract under which a person is bound to work on a vessel against wage payment and under the control and surveillance of the operator/the vessel's master.

10.2 The articles organizing the maritime lien under the Egyptian Commercial Maritime Law apply on such vessels that are exploited by the shipowner or the ship's non-owning operator or the head charterer. However, such application (of the articles organizing the maritime lien) shall cease in case the owner of the ship illegally loses his possession over the ship and when the seafarer acts in bad faith (*mala fide*) (that is, knowing that he is not working for the shipowner or knowing that his employer has gained possession of the vessel illegally).

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

11.1 A maritime lien is created by the power of law and it cannot be waived or abandoned by agreement. In the case where there is an agreement purporting to provide for a waiver of the right to a maritime lien, such an agreement shall be considered null and void according to Egyptian law.

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

12.1 According to the Egyptian Commercial Maritime Law, the maritime lien shall not apply if the shipowner loses possession of the ship and when the seafarer acts in bad faith. Under such circumstances, the maritime lien will not be recognized by the Egyptian Court

12.2 The maritime lien is extinguished by the payment of the debt giving rise to it. The Egyptian Commercial Maritime Law further provides that the lien terminates when the vessel is sold, either by compulsory sale (for example, by auction pursuant to a court order) or by non-compulsory sale (normally a sale by the shipowner). In the latter case, the maritime lien right shall expire after the lapse of 60 days from the publication of the sale contract in the ship's register. Lien rights shall then be shifted to the ship's sale price unless such price has already been paid. In all cases, however, lien rights shall expire after one year.