

SEAFARER SUBJECT GUIDE

SHIP ARREST FOR SEAFARERS' WAGES IN MALTA

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

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

If a seafarer intends to arrest a ship in Malta, 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.

1. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?

- 1.1 There is no nationality restriction with regards to a seafarer filing an arrest warrant against a ship within Maltese jurisdiction. A ship may be arrested irrespectively of its flag or debtor. The only exceptions relate to ships of war, and ships wholly chartered in the service of the government of Malta or employed in any postal service either by the Government of Malta or by any other government.
- 1.2 Apart from nationality and flag, a seafarer claimant must adhere to the Code of Organisation and Civil Procedure ('the COCP') requisites which provide that a warrant of arrest may be issued only on ship, which length exceeds ten meters, and that the claim in respect of which the ship is arrested be no less than Euros7,000.
- 1.3 All matters relating to jurisdiction and ranking of creditors are subject to Maltese law as the *lex fori*.
- 1.4 A number maritime claims giving rise to *in rem* jurisdiction are provided for under paragraphs (a) – (y) of article 742B of the COCP. Such claims follow closely the British Supreme Court Act 1981, but also incorporate the International Convention Relating to the Arrest of Sea-Going Ships 1952 and the International Convention on the Arrest of Ships 1993, even though Malta is not yet a signatory to either Convention. The basic heads of claim, which include claim by crew members for wages and repatriation, may be summarized as follows:
 - (1) claims to possession/ownership/title to ship;
 - (2) questions arising between co-owners;
 - (3) claims in respect of mortgage/hypotec/charge on a ship;

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- (4) claims arising out of the contract of sale;
- (5) claims for damage received by ship;
- (6) claims for damage caused by ship;
- (7) claims for loss of life/personal injury caused by ship;
- (8) claims arising out of agreement for carriage of goods / use or hire of ship;
- (9) claims for salvage;
- (10) claims for damage to environment by ship;
- (11) claims relating to wrecks;
- (12) claims for towage;
- (13) claims to pilotage;
- (14) claims for supplies/services rendered to ship;
- (15) claims for construction/repair/conversion/equipping ship;
- (16) claims for port/dock/harbour dues;
- (17) claims by crew for wages/repatriation;
- (18) claims for disbursements made;
- (19) claims for commission/brokerage/agency fees;
- (20) claims arising out of general average act;
- (21) claims arising out of bottomry;
- (22) claims for forfeiture of ship;
- (23) Claims for insurance premiums; and
- (24) claims for fees due to the Registrar/tonnage dues.

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

- 2.1 A seafarer has to institute judicial proceedings for unpaid wages within one year.
- 2.2 Action on the merits is to be brought, or arbitration commenced, in respect of the claim stated in the warrant of arrest within 20 days from the date of issue of the warrant.

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

- 3.1 Provided that the ship to be arrested is physically within Maltese territorial jurisdiction, the crew member claiming wages must present to his lawyer sufficient background of facts in relation to the claim, documentation substantiating the claim, a power of attorney authorising the lawyer to act on his behalf, especially if the claimant is, or will be, absent from Malta. On the basis of such documentation the lawyer can proceed to arrest the ship.

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- 3.2 The warrant of arrest itself does not require to be substantiated by any documents according to law, which only requires the completion and filing of the official form of warrant.
- 3.3 There are two distinct and separate procedural stages. The first stage is the issue of the precautionary warrant of arrest in security of a maritime claim. The second stage is the filing of the action on the merits, which must follow the precautionary warrant of arrest within 20 days of the issue of the warrant in order to maintain valid the effects of the warrant of arrest.
- 3.4 In the action on the merits, documents submitted to the courts must be either in original format, or certified true copies in the manner required by the law of procedure. In the event that only copies of documents are available, these would need to be substantiated by evidence given either viva voce before the court, or by means of a sworn affidavit.
- 3.5 Documents must be either in Maltese or in English. If the documents are in other languages, those must be officially translated into English before being presented to the court.
- 4. What are the costs of the arrest, including court expenses and other expenses?**
- 4.1 The charges for the filing of a precautionary warrant of arrest against a vessel are: Euros250 - charges payable to the Court Registry; Euros100 fees due to the legal procurator and Euros300 legal fees due to the lawyer.
- 4.2 These charges and fees are payable by the claimant on filing of warrant at the Court Registry.
- 4.3 Any party arresting a vessel will not be held responsible for the maintenance of the vessel whilst it is under arrest within Maltese territorial waters. If the arrest has been filed by the seafarers for unpaid wages due to them, they will not assume responsibility for maintaining the vessel, such responsibility remains with the shipowner. The only exception to this is when the arresting party claims possession of the ship, in which case the claimant will take control of the vessel and assume responsibility for the vessel. This is often the case when a bank takes over control of the vessel after a mortgagor defaults in his payments.
- 4.4 When a vessel is arrested and control of vessel is retained by the shipowner, the latter will assume responsibility for the safety and maintenance of the vessel throughout the term of the arrest up to the date of lifting of such arrest. The master

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of a vessel before entering Maltese territorial waters must appoint a local agent to represent the vessel with the local port authorities. Such an agent will ensure that the needs of the vessel and its crew are attended to during her stay/arrest. When the crew arrest a vessel and owner abandons the vessel very often the Maltese port authorities ensure that the vessel and its crew are given all that is necessary during the arrest period. The port authorities will later on claim such funds out of the proceeds of the sale of the vessel or from the shipowner if the arrest warrant is lifted.

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

- 5.1 An owner whose ship has been arrested may request the court that counter security be put up by the claimant. The court, upon good cause being shown, will uphold such request and determine the quantum of such counter security in an amount of not less than 11,600 Euros for the payment of the penalty, damages and interest in case of wrongful arrest. The COCP establishes only the minimum amount of security that the court may impose. The court at its discretion will decide the amount of security, this varies according to the amount being claimed by the arresting party. In case the claimant defaults in depositing such security at the Court Registry within the ordered time frame, the court will rescind the warrant of arrest.
- 5.2 Maltese courts do recognize, and penalize, wrongful arrest. If the court finds that the demand for a warrant of arrest was issued maliciously, it may impose a penalty upon the arresting party in an amount of not less than Euros 11,600.
- 5.3 Maltese courts do not make any distinction in the case of a claim filed by a crew member. All claims before the Maltese courts are treated the same.

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

- 6.1 Provided the claim falls within the ambit of article 742B of the Code of Organisation and Civil Procedure, then the Maltese courts would be vested with jurisdiction to entertain the substantive claim on the merits.

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

- 7.1 When a vessel is arrested and control of vessel is retained by the shipowner, the latter will assume responsibility for the safety and maintenance of the vessel and crew throughout the term of the arrest up to the date of lifting of such arrest. There were various cases where the Maltese port authorities provided bunkers to the arrested vessel and provisions to the crew until the matter is resolved.

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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 Whilst the vessel is arrested within the Maltese jurisdiction, for security reasons the vessel cannot be left unmanned and hence the port authorities always insist that a minimum number of crew members must remain onboard until the vessel leaves Maltese waters. When a vessel is arrested within a port, the port authorities may request that the vessel be shifted and this would not be possible if the vessel is unmanned. In those cases where the vessel has been abandoned by her owners, the skeleton crew will have to remain on board until the vessel is sold by judicial or private sale. Where crew members have to be repatriated, the port authorities intervene by engaging crew members from local sources to assist the vessel. The cost of such engagement will be claimed by the port authorities out of the proceeds of the vessel once the vessel is sold. There were various cases where the Maltese port authorities provided bunkers to the arrested vessel and provisions to the crew until the matter is resolved.

8.2 The right to repatriation arises when the seafarer is discharged abroad. On discharge, the owner is obliged to settle wages and to defray expenses for repatriation to a proper return port. When this is not done within a reasonable time, one can say that the crew member or the entire crew, as the case may be, has been abandoned.

8.3 According to the MMSA, the agreement with the crew shall be terminated by the loss or total unseaworthiness of the ship, the sale of the ship or the expiration of time. A seafarer may also be discharged for personal reasons such as imprisonment, being so ill that he cannot continue the voyage or alternatively after having deserted ship.

8.4 The MMSA now states unequivocally that on sale of the vessel, the seaman is discharged unless he consents in writing to complete the voyage set out by the vessel if it is continued.

8.5 When a member of the crew is so ill that he cannot continue the voyage, he may be left behind, maintained, taken care of medically and repatriated at the expense of the owner. It is important to qualify illness. The MMSA does not confer an unlimited right of repatriation to the seafarer. In fact this right is curtailed when the illness is such that it is owing to a sickness or infirmity wilfully concealed at the time of the engagement.

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

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9.1 Article 131 of the MMSA states that:

'All wages to which a seaman may be entitled, subject to deductions made in accordance with this Act, shall be paid before or at the time the seaman lawfully leaves the ship at the end of his engagement; and in the event of a seaman's wages or any part thereof not being so paid or settled, then, unless the delay is due to the act or default of the seaman or to any reasonable dispute as to liability or to any other cause not being the wrongful act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof.'

9.2 Therefore, unless the seafarer is paid his wages, such wages continue to accrue during the arrest period, especially if the seafarer remains onboard during such term.

9.3 Furthermore, it is interesting to point out that if the employment of the seafarer is terminated before the date contemplated in the agreement due to wreck or loss of the ship, the seafarer, if he is unemployed for a period of two months, is entitled to receive wages at the rate to which he was entitled at that date.

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 Following the issue of an arrest warrant against a vessel, the claimant has 20 days to file an *in rem* lawsuit on the merits. It cannot be anticipated how long judicial proceedings before the Maltese courts will take.

10.2 Following judgment by the first court, the unsuccessful party has the right to file an appeal within 20 days of date of the judgment. The decision of the Court of Appeal is final. If claimant is successful he will have an executive title and may request that the arrested vessel be sold by judicial sale. The judicial sale generally takes about three to four months, during which period claimant has to publish adverts in both local newspapers. Following the judicial sale the proceeds of the sale will be deposited with the Court Registry. In the case of a sole claimant, the latter will request the court that his claim be settled out of the funds held by the court registry. If there is more than one creditor, any one of the competing creditors may request the court to initiate proceedings for the establishing of ranking of creditors. The purpose of these proceedings is for the court to decide how the proceeds from the sale will be distributed among the various creditors in terms of the MMSA.

10.3 Transport Malta, through its port directorate, may, for security, safety or other reasons, file an application to the court requesting the judicial sale of the arrested

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vessel before or during the proceedings on the merits. If the courts accedes to such a request, the vessel will be sold irrespective of the undergoing judicial proceedings and the proceeds from such sale be deposited with the Registrar of Courts.

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

11.1 If the seafarer is successful in his claim, apart from the recovery of the amount claimed, he is also entitled to be reimbursed court expenses and legal fees from the counterpart. In the case of a judicial sale of the vessel, such costs and fees are added to the seafarer's claim. If the proceeds of the sale are sufficient to cover the seafarer's claim, then the latter's lawyer is paid out of such proceeds. If there are not sufficient funds or the claim of the seafarer does not have priority in its ranking among the other creditors, the seafarer has to pay the court charges and the legal fees himself.

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

12.1 In respect of claims to possession/ownership/title to ship; questions arising between co-owners; and claims in respect of mortgage / hypothec / charge on a ship, an action *in rem* may only be brought against that ship in connection with which the claim arose.

12.2 In all other cases concerning the remaining maritime claims, an action *in rem* may be brought against either:

'that ship, where the person who would be liable on the claim for an action *in persnam* ['Relevant Person'] was, when the cause of action arose, an owner or charterer of or in possession or in control of, the ship if at the time when the action is brought the Relevant Person is either an owner or beneficial owner of that ship or the bareboat charterer of it, and/or [ii] any other ship of which, at the time when the action is brought, the Relevant Person is the owner or beneficial owner as respects all shares in it.'

12.3 The requirement of the relevant person being the owner or beneficial owner of the ship or the bareboat charterer of it at the time when the action is brought does not apply in regard to those maritime claims secured by a special privilege in accordance with the MMSA, which survive the voluntary sale of the vessel by up to one year from when such sale is recorded in the ship's register.