

SEAFARER SUBJECT GUIDE

SHIP ARREST FOR SEAFARERS' WAGES IN THE NETHERLANDS

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

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

If a seafarer intends to arrest a ship in the Netherlands, 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 The nationality of the seafarer and the flag of the ship is not relevant to the arrest of a ship. The Netherlands is a party to the 1952 Convention. Any vessel flying the flag of a contracting state may be arrested but only for maritime claims listed in the 1952 Convention. Wages are defined as a maritime claim.
 - 1.2 Even if a ship is flying the flag of a non-contracting state this vessel may be arrested in the Netherlands in respect of any maritime claim or for any claim for which Dutch law permits an arrest. Under the Dutch Commercial Code ('the DCC'), a debtor can take recourse for his claim against all the assets of his debtor.
- 2. What is the time limit within which a seafarer must start a claim for unpaid wages?**
 - 2.1 Once an arrest is made the proceedings on the merits should commence within eight days, unless the President of the Court that granted permission for the arrest has determined a longer period, which can be requested in the petition requesting permission to arrest the vessel.
- 3. What documents are required to obtain an arrest of a ship?**
 - 3.1 An arrest of a vessel is only allowed if permission is granted by the court. In order to obtain permission a petition must be filed by a lawyer.
 - 3.2 The petition has to mention the character of the arrest (conservatory), the basis of the claim (contract or tort), the amount or the maximum of the claim, increased with a charge for interest and costs. Furthermore, a description of the vessel (to be

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arrested) must be given mentioning if it is a seagoing vessel and if it is flying the flag of a state which is a party of to the 1952 Convention. One also has to mention if proceedings on the merits have commenced or not, in which latter case a term to do so can be requested to be set by the court, failing which the statutory term to do so is eight days.

3.3 The contract of employment will have to be attached to the petition as an exhibit. In the petition the defenses of the debtor (why the wages have not been paid) must be mentioned (if known). There is no obligation to translate exhibits.

3.4 Once the court has granted permission to arrest the vessel, a bailiff will board the vessel and inform the master as well as the relevant authorities of the fact that the vessel is under arrest.

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

4.1 Lawyers' fees, the rates and terms of payment differ. Court fees are at present € 589, the cost of the bailiff to arrest the vessel are approx. € 400, but may be increased if the vessel is not easy to enter, for instance, when at the anchorage. Since lawyers are considered the courts/bailiffs debtor, no costs will have to be advanced unless the lawyer instructed has insisted on an advance payment for these costs (and his fees).

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

5.1 Normally no counter security has to be lodged. The Dutch Code of Civil Procedure ('the DCCP') mentions that the court has the discretionary authority to set as a condition for the arrest that counter security for wrongful arrest has to be lodged. However, this rarely happens.

5.2 Under Dutch case law the Supreme Court has ruled that the arresting party has a risk liability for the consequences of an unlawful arrest. This will occur if the claim (on the merits) is unfounded. However, in the Netherlands there is no liability for the person who has his claim awarded, but mitigated.

5.3 A crew claim is not treated differently from any other claim.

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

6.1 Once the vessel has been arrested, the court may possibly accept jurisdiction over the substantive claim. The 1952 Convention mentions the instances in which the court where the arrest was made shall have jurisdiction over the claim on the merits. If the unpaid wages of the seafarers relate to the last voyage, then the court in which jurisdiction the vessel was arrested is competent. Alternatively, the DCCP provides that the court permitting the arrest of the vessel is competent to hear the claim if and when there is no other way open to get an enforceable title. This is the case if owners are established in, for example, Liberia or the Marshall Islands. If the owners are established in the EU there will (most likely) be no jurisdiction.

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

7.1 There are no provisions in Dutch law providing for aid to, or support of, crews that have claims for unpaid wages. In practice there will be a union involved who will provide for this.

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 Crews that have arrested a vessel do not have to be present on the vessel and will not forfeit or abandon or lose their rights of privileged claims if they leave the vessel during the legal proceedings.

8.2 In principle there is no reason why the crew cannot be repatriated. The court will not pay for the crew's repatriation. The costs of repatriation are also included in the privileged claims. In general, in the case of enforcement the mortgagee will provide for the repatriation at their expense (all claims and costs paid by the mortgagee to be assigned to the mortgagee).

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

9.1 Seafarers' wages continue to accrue if there is still an employment agreement in force. However, the privileged crew claim is maximized to the total amount owed over a period of 12 months.

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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 This may take eight to twelve weeks, but may be longer depending on all the circumstances of the case.

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

11.1 Dutch lawyers are not allowed to work on a 'no cure-no pay' basis. Dutch lawyers often request an advance payment for fees and costs. In practice often a union will pay for or warrant the payment of fees and costs. The DCC states that the legal costs and expenses are recoverable from the proceeds of the sale and outrank the privileged claim for unpaid wages claims.

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

12.1 Usually vessels are mortgaged. The mortgagee has a great interest in maximizing the proceeds of a judicial sale and minimizing the quantum of claims ranked above the mortgage such as a crew claim. An often sought solution is that the mortgagee satisfies the crew claims having the same assigned to the mortgagee. This mitigates the claims that outrank the mortgage.