

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN THE NETHERLANDS

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Dutch flagged ships, and foreign ships which are in the ports of the Netherlands. These rights can be enforced in court, where they are secured and preferred by privileged claims 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 the Netherlands.

*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 Netherlands does not have the exact same legal concept as the maritime lien under English law. This is due to the fact that under Dutch law it is not possible to act against a vessel '*in rem*' but only against the owner of the vessel '*in personam*'. The practical effect of the Dutch legal concept is, however, similar to the maritime lien under English law.
- 1.2 In Dutch law seafarers have a privileged claim (meaning a claim with right of priority) when recovering their claims for unpaid wages on a vessel. The creditor who has a privileged claim shall retain his right to the vessel irrespective of who controls it. This is called '*droit de suite*' and is provided in the Dutch Commercial Code ('the DCC'). Even if the debtor of the claim is not the registered owner but the charterer or another party operating the vessel the privileged claim is enforceable on the vessel.
- 1.3 A privileged claim can only be enforced by way of an enforceable title, normally a judgment from a competent court. As a conservatory measure it is possible to arrest the vessel since the Netherlands is a party to the 1952 Convention. Procedural rules on the arrest of a vessel are given in the Dutch Code of Civil Procedure.

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

- 2.1 Most often the court of the place where a conservatory arrest is made is competent. 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

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that the court permitting the arrest of the vessel is competent to hear the claim if there is no other way to get an enforceable title.

- 2.2 If an employment agreement contains a valid and exclusive law and jurisdiction clause then a court may not be competent.

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

- 3.1 If there is no jurisdiction the courts can refuse to hear a seafarer's claim for wages.

4. Who can claim seafarers' wages?

- 4.1 Only the creditor can claim his own wages. However, unions tend to represent the individual seafarers (by a power of attorney) and will instruct lawyers to act on behalf of the individual seafarer involved.

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

- 5.1 Any vessel calling at a Dutch port can be arrested in the Netherlands. The 1952 Convention determines when the courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits. Under the 1952 Convention the provisions shall apply to any vessel flying the flag of a contracting state in the jurisdiction of any contracting state. A ship flying the flag of a non-contracting state may be arrested in the jurisdiction of any contracting state.
- 5.2 The Dutch legal system does not the possibility of acting against the vessel '*in rem*'. Only proceedings against the owner of the vessel can be instituted in order to obtain a judgment. If there is no conservatory arrest of the vessel the normal rules on jurisdiction apply. A Dutch shipowner is subject to Dutch jurisdiction. European Union based shipowners are subject to the European Union directive on jurisdiction. Other owners may not be subject to the Dutch jurisdiction. A conservatory arrest is therefore a crucial step to have a claim successfully and speedily satisfied.

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

- 6.1 The DCC states that claims resulting from the contracts of employment of the captain or other members of the crew are privileged, provided that the claims with respect to gross wages, salary or remuneration shall be privileged only up to a maximum amount earned and owed over a period of twelve months.

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

7.1 Assuming Dutch law applies to the contract, the DCC states that a written contract of employment needs to be signed, failing which the contract is null and void.

7.2 However, the Dutch Supreme Court ruled in the *Pamina* case that there are circumstances where the shipowner cannot validly invoke the nullity of an employment contract due to the absence of the written document.

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

8.1 A claim for unpaid seafarers' wages is only privileged if it relates to services rendered on board that particular vessel. However, the 1952 Convention does allow a conservatory arrest of a sister ship, but then the crew claim does not create a privileged claim on that ship but only a non-privileged claim.

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

9.1 Dutch international private law states that in case of enforcement of a title against a vessel, the question of whether a claim is privileged, and if so, the scope, ranking and of consequence of the privilege is determined by the law of the flag state. Claims outranking a mortgage under the applicable law of the flag state can only have that effect if under Dutch law these claims also outrank the mortgage.

9.2 Dutch law provides that privileged claims are ranked as follows. First of all, the costs of the enforcement sale, the costs of surveillance during the enforcement sale and the costs of judicial ranking and division of the proceeds and, if applicable, the costs of clearing the wreck (if the vessel has sunk) shall be paid in priority to all other claims. Second, in case of a conservatory arrest, are the costs made to preserve the vessel, like costs of repairs. After that at third ranking are the privileged claims for unpaid wages, followed by salvage and general average claims and port dues (in the last port). The mortgage is ranked after these claims.

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

10.1 The DCC states that the seafarer has a privileged claim enforceable against the vessel on which he worked, regardless of whether there was a contract with the owner of the vessel and even if the claim arises during the period that the vessel was in use by a charterer or operator, unless control over the vessel has been taken away from the shipowner by an unlawful act and if the creditor is not acting in good faith.

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

11.1 Under Dutch law this is not possible. The general concept of the DCC is that an employment contract can only diverge from statutory law in favor of the employee. In view of the fact that statutory law provides that a claim for unpaid wages is privileged, a waiver of this privilege is not in favour of the employee. Therefore, it is not possible to waive or abandon the privilege in a prior agreement.

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

12.1 A privileged claim for unpaid wages, salary or remuneration is maximized and cannot exceed the total amount owed over a period of 12 months.

12.2 A privileged claim is extinguished after one year, unless within that period proceedings on the merits have been commenced. This one year term commences once the claim is claimable. Evidently, if the claim is satisfied (by payment or after enforcement), the privileged claim is also extinguished.