

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN PANAMA

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

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

If a seafarer intends to arrest a ship in Panama, 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 In Panama, ships from any flag may be arrested by seafarers from any nationality. When the flag is not Panamanian, the arrest may be directly required at the Maritime Court and the law of the corresponding flag must be proved by the lawyers and applied by the Maritime Court.
- 1.2 In the case of a Panamanian flag, the Panamanian labour law is applicable, and the arrest is to be ordered by a Labour Court and executed by the Maritime Court. This involves a procedure slightly more complicated as the seafarer must first have recourse to the labour jurisdiction and later to the maritime jurisdiction.

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

- 2.1 The time limit to file a claim for unpaid wages is one year counted from the termination of the labour relationship.
- 2.2 When the vessel is sold during a voyage, seafarers wages for the voyage are payable by the buyer, but if the vessel is sold after it arrives at its destination, wages must be paid by the seller or owner of the vessel, save for another agreement.
- 2.3 In the case of a judicial sale of a vessel, all seafarer's wages not claimed during the proceedings will be extinguished, but in the case of a private sale, wages will be extinguished six months after the bill of sale is recorded at the Public Registry. This is not applied to those who before the expiration of the six months had initiated legal proceedings against the vessel.

## SEAFARER SUBJECT GUIDE

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

- 3.1 In order to arrest a ship, in addition to a power of attorney, it is most convenient to produce originals of the employment contract, vouchers of previous payments, seafarers certificates, and copies of the ship's logbook, as well as any other document issued by the ship relating to the wages.
- 3.2 In case of foreign flagged ships, the law of the relevant country should be proved with certified copies of the law and a lawyer's opinion.
- 3.3 Documents filed in court must be translated into Spanish. Their legalization by apostille or by the closer Panamanian Consulate is convenient but if not available, a local lawyer may start working with photocopies.

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

- 4.1 In respect of claims filed in local Labour Courts against Panamanian flagged ships, the Labour Law requires a security bond equivalent to 10 to 15% of the sum claimed, as counter security against wrongful arrest. Although it is most difficult to obtain from a Labour Court, the law provides that the Labour Court may exonerate a seafarer from making this deposit when the following is proved:
  - (1) that there exists serious evidence of the seafarer's right;
  - (2) written evidence of the facts that support the claim;
  - (3) that the amount claimed is determined or easy to be determined;
  - (4) that there exists justified reasons to fear that the defendant may become insolvent or the decision unfruitful.
- 4.2 The Maritime Court will execute the arrest and therein an initial deposit for US\$2,500.00 should be made to cover expenses. Depending on expenses incurred in the maintenance and custody of the ship the Marshall will require further deposits.
- 4.3 In respect of claims filed at the Maritime Court against foreign flagged ships, the Following deposits should be advanced:
  - (1) claims for wages which qualify for the action *in rem*: US\$ 1,000.00, as a guarantee to cover damages, plus US\$2,500.00 to cover initial maintenance expenses;
  - (2) claims for wages which do not qualify for the action *in rem*, but for the action *in personam*: 20 to 30% of the sum claimed, plus US\$ 2,500 for expenses.

## SEAFARER SUBJECT GUIDE

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- 4.4 Maintenance and custody expenses will run continuously while the ship is arrested and the Marshall will require more funds when needed.
- 4.5 It will be necessary to prove at the Maritime Court that according to the corresponding flag's law the claim for the seafarer's wages qualify for an action *in rem*.
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
- 5.1 Regarding the requirement of counter security against wrongful arrest, courts will not treat crew claims differently to other claims.
- 5.2 There exists different treatment in another aspect as to the preferences granted by the law to be paid first from the judicial sale proceeds. In this respect seafarers' wages from the last voyage are ranked in the third place as a privilege maritime credit against the ship; and against the freight, also in third place but in respect of wages for the voyage where the freight was accrued. In both cases court costs incurred in the general interest of all creditors and salvage and assistance for the last voyage are ranked first and second respectively.
- 5.3 As regards foreign ships, the corresponding flag's law will be applied to determine the preferences of credits on the ship.
- 6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**
- 6.1 Once a vessel has been arrested by a Labour Court, the Labour Court will accept jurisdiction over the substantive claim.
- 6.2 In the case of foreign flagged ships, the Maritime Court may decline jurisdiction if there exists a jurisdiction clause in the labour contract, save when the Court decides that the labour contract is an adhesion contract. This exception for adhesion contracts was inserted by Law 12 of 2009, but previous to this amendment the Supreme Court declined jurisdiction where a jurisdiction clause was signed.
- 6.3 In a recent decision the Supreme Court of Justice decided that a labour contract previously negotiated by a seafarers union was an adhesion contract because in accordance with article 22, number 3 of Law 8 of 1982, the jurisdiction clause must be negotiated by the parties, and the union was a third party and not the seafarer himself. The Supreme Court upheld the decision of the Maritime Court which denied the motion to decline jurisdiction.

## SEAFARER SUBJECT GUIDE

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

7.1 Once a vessel is arrested the Marshall of the Maritime Court will take control of the vessel, its maintenance and custody. When seafarers arrest the ship they are not expected to stay in the ship and be supported, unless the Marshall so requires some seafarers. If the arrest is not released soon, only seafarers who are engaged to continue working may stay on board, as there is no provision in the law to maintain and support the arresting crew.

7.2 All expenses related to the maintenance and support of the vessel and engaged seafarers should be funded by the seafarers as plaintiffs.

### **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 presence of the crew on board the vessel is not necessary during the course of the legal proceedings.

8.2 As per article 176 of Law 8 of 1982, one of the duties of the Marshall is to coordinate the repatriation of those seafarers who so require in writing to the Judge. The Maritime Court will not provide funds for repatriation but these will be covered from the maintenance fund managed by the Marshall. Seafarers may include in their claim the costs incurred for their repatriation.

8.3 Regarding Panamanian vessels, the Maritime Labour Convention 2006 ('the MLC') came into force from August 2013, and as required by article 88 of Executive Decree 86 of 2013 which regulates the MLC, all ships must provide a financial guarantee to cover repatriation expenses.

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

9.1 Seafarer's wages will not continue to accrue during the arrest, unless for those who are asked to stay in the vessel. The case is different where the vessel is arrested by another creditor, in which case the seafarers may stay on board.

### **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 In accordance with article 179 of Law 8 of 1982 if more than 30 days have passed after the arrest, or when no funds are provided to cover the maintenance and custody, the Maritime Court may order the sale of the vessel. The funds of the sale

## SEAFARER SUBJECT GUIDE

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will be deposited to wait for a final decision. How long this could be depends on whether there are other claims against the vessel and appeals that have been filed.

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

11.1 A seafarer will pay lawyer fees from proceeds of the claim, it be from a payment made by the owner or by the sale of the vessel. Court costs fixed by the Maritime Court may not cover the fees agreed with the lawyer, especially when the lawyer has advanced funds to the case.

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

12.1 As far as Panamanian flagged vessels are concerned, the Labour Code provides that in the case of the bankruptcy or insolvency of the employer, seafarers' claims will enjoy a preference, being paid before any other credit except those secured by mortgage. Nevertheless, Maritime Courts who are the ones to execute the arrests and distribute the sale proceeds will not apply the Labour Code but the Commercial Code to decide what is the order of preferences to be paid. In this regard article 244 of the Commercial Code provides that seafarers' wages are payable before any mortgages. The gap in the law between the courts may be overcome by seafarers (on board Panamanian vessels) filing their claims again at the Maritime Court.