

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN POLAND

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

*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 Maritime liens for seafarers' wages are regulated in the Polish Maritime Code ('the Maritime Code'). In accordance with the Maritime Code, creditors have the benefit of a statutory lien against a vessel ('a maritime lien'), to secure privileged claims. The maritime lien has priority over any other claims, even those secured by a lien arising from a contract or judicial decision, and is not affected by any change of the owner or ship's operator or by the transferee taking title to the vessel in good faith.
- 1.2 Under the Maritime Code, claims arising out of labour contracts with the master, other members of the crew and persons engaged in the service of the vessel are privileged. Further, the Maritime Code provides indemnity for the death of, or personal injuries to, members of the crew as privileged claims under the Maritime Code. Maritime liens also extend to the freight and monies due for the carriage of passengers and of their luggage on the voyage during which the privileged claim has come into existence, and in respect of claims arising from labour, on all voyages performed during the currency of the same contract of labour.

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

- 2.1 In accordance with the Maritime Code, maritime labour relations, maritime safety issues, the prevention of pollution from ships, as well as other matters not covered by the provisions of the Maritime Code, are regulated in separate acts, for example, Act of 23 May 1991 on Labour on Sea-Going Commercial Ships ('the Law on Sea Labour') which does not infringe upon the regulations of the Maritime Code.

SEAFARER SUBJECT GUIDE

- 2.2 Issues that are not regulated by the Law on Sea Labour are covered by the regulations of the Act of 26 June 1974 Labor Code ('the Labour Code'). In accordance with the Labour Code, an employee (including a seafarer) may pursue his claims arising from the employment relationship in court.
- 2.3 There is also a general rule in the Labour Code in which an employee and an employer shall make every effort to settle a dispute arising from an employment relationship. Based on the Labour Code all disputes over claims arising from an employment relationship shall be settled by labour courts as well as labour and social insurance courts ('the Labour Courts'). The following matters relating to: the determination of new terms and conditions of work and pay; the implementation of work standards; and accommodation in workers' hostels do not fall within the jurisdiction of the Labour Court.
- 2.4 Proceedings in the Labour Court are governed by separate regulations, especially Act of 17 November 1964 Code of Civil Procedure ('the Code of Civil Procedure'). The rules of court proceedings referring to employment relationships are regulated by the section of the Code of Civil Procedure called 'Proceedings in cases within the subject – matter and scope of labour law and social insurance'. In accordance with the Code of Civil Procedure, actions in cases within the subject of labour law may be brought in a court of general jurisdiction there the defendant is domiciled, or in a court in the district where the work is, was or was to be done, or in a court in a district where the work place is located. Irrespective of the value of the matter, the following matters shall be directed to the District Labor Court:
- (1) the determination of the existence of employment relationship; and
 - (2) the declaration of the termination of an employment relationship as ineffective, reinstatement, restoring previous terms and conditions of work and pay and related claims, and cases for damages in the event of termination of the employment relationship with or without notice and without just cause or in violation of provisions on the termination of employment relationship with or without notice, as well as in cases for penalties for breach of order or employment certificates, or related claims.
- 2.5 Simultaneously, the competent court in Poland may, at the joint request of the parties and for reasons of convenience, refer a case to be heard by another equivalent court competent to hear such cases within the subject matter and scope of labour law and social insurance. A relevant decision may be issued *ex parte*. The court to which a case is referred shall be bound by the decision of the referring court.

SEAFARER SUBJECT GUIDE

- 2.6 Poland is a party of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters Lugano of 16 September 1988 ('the Lugano Convention'), and is bound by the European Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('the Regulation') as a member state of the European Union. In accordance with the Lugano Convention and the Regulation, in matters relating to individual contracts of employment, jurisdiction shall be determined by section 5 of the Lugano Convention and the Regulation. Based on the Lugano Convention and the Regulation, an employer domiciled in a party member state may be sued:
- (1) in the courts of the party/member state where the employer is domiciled; or
 - (2) in another party/member state:
 - a. in a courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so; or
 - b. if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.
- 2.7 In accordance with the Lugano Convention and the Regulation, the provisions of section 5, which refer to the jurisdiction over individual contracts of employment, may be departed from only by an agreement on jurisdiction which is entered into after the dispute has arisen, or which allows the employee to bring proceedings in courts other than those indicated in section 5.
- 3. Can the courts refuse to hear seafarers' claims for wages?**
- 3.1 Courts may refuse to hear a seafarer's claim for wages if the court discovers it does not have jurisdiction by location or by subject matter.
- 3.2 The court would also refuse to hear a seafarer's claim for wages if it had no jurisdiction based on the Lugano Convention or the Regulation.
- 4. Who can claim seafarers' wages?**
- 4.1 In accordance with the Code of Civil Procedure, every natural and legal person has the capacity to be a party to court proceedings. There is also capacity to act in proceedings, which accrues to the natural persons with full capacity to perform acts in law. In addition, the Code of Civil Procedure states that parties and their authorities or legal representatives may act in court individually or be represented by court

SEAFARER SUBJECT GUIDE

attorneys or by legal counsels, that is, attorneys-at-law ('radca prawny') and advocates ('adwokat').

- 4.2 Under the Code of Civil Procedure, non-governmental organizations, within the scope of their statutory duties and subject to the written consent of an employee, may bring actions on behalf of the employee or file appeals against the decisions of pension institutions and, subject to the written consent of an employee, join them in pending proceedings.
- 4.3 In accordance with the Code of Civil Procedure, an employee may also be represented by an agent of a trade union, a labour inspector or an employee of the workplace where the authorizing party is or was employed. To be able to collect moneys awarded to an employee, a representative needs to have a special power of attorney issued after the enforcement order was issued.

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

- 5.1 Poland is a party of the United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982 ('UNCLOS'). Based on UNCLOS, the coastal state should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship. The coastal state may not levy execution against arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course, or for the purpose, of its voyage through the waters of the coastal state.
- 5.2 In accordance with UNCLOS, the above regulation is without prejudice to the right of the coastal state to levy execution against or to arrest the foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters, in accordance with the coastal state's law and for the purpose of any civil proceedings.
- 5.3 Pursuant to UNCLOS, Polish law provides Polish courts with jurisdiction over every ship that enters into the territory of Poland, that is, the territorial sea or inland waters.

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

- 6.1 In accordance with the Maritime Code, the maritime lien for wages includes:
 - (1) debts which arise out of labour contracts between a seafarer and the master of the vessel, other members of the crew and people employed to vessel's service;

SEAFARER SUBJECT GUIDE

- (2) compensation for damages caused by collision of vessels or by other marine accidents, and also damage caused to harbour works, docks and navigable ways; and
- (3) indemnity for death of, or personal injuries to, passengers and members of the crew.

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

- 7.1 Based on the Law on Sea Labour, each person in a work relationship with the ship's operator shall be deemed an employee. The Law on Sea Labour also regulates a 'foreign employee', who is defined as an employee who is not a Polish resident. If the employee and the foreign employee appear on the crew list they are deemed to be crew members.
- 7.2 The work relationship on the vessel is created based on the contract of employment on the vessel for a limited or an indefinite period ('the contract'). The contract of employment may be also constructed as the contract of employment for a voyage.
- 7.3 In accordance with the Law of Sea Labour, the contract must be concluded in a written form and include the:
 - (1) place and date of the conclusion of the contract;
 - (2) business name and business address of the ship's operator;
 - (3) name and surname, as well as date and place of birth of the employee;
 - (4) job title;
 - (5) rules of remuneration;
 - (6) place and date of the work commencement;
 - (7) type of the contract;
 - (8) in case of the contract of employment on the vessel being for a limited period, the date of termination; and
 - (9) in the case of the voyage contract, the name of the vessel of employment and the port or geographical region of completion of the cruise.
- 7.4 In addition, if the parties did not conclude the contract in a written form, the ship's operator should confirm the type of the contract and its content to the seafarer in a written form. Polish regulations do not require the contract to be in written form to be valid.

SEAFARER SUBJECT GUIDE

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

- 8.1 Based on the Law on Sea Labour, the seafarer is placed under an obligation to work in the job position on a vessel appointed by ship's operator. Under the contract the seafarer is obliged to work on the vessels of the ship's operator where he appears on the crew list.
- 8.2 The Law on Sea Labour states that if the execution of work by a seafarer is temporally impossible, the ship's operator is entitled to put the seafarer on standby.

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

- 9.1 In accordance with the Maritime Code and the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, signed in Brussels on 10 April 1926 ('the 1926 Convention'), the satisfaction of the creditor from the ship encumbered with a maritime lien is effected by way of execution.
- 9.2 Privileged claims arising from the same voyage are satisfied in the order set out in the Maritime Code:
- (1) legal costs owed to the state, not excluding the costs of judicial execution, expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale, tonnage dues, light or port dues and other public taxes and charges of that nature, pilotage dues and costs of watching and of the preservation of the vessel, arising from the time of her entry into the last port (first category);
 - (2) claims arising out of contracts of labour on the ship with the captain, other members of the crew and people engaged in the service of the vessel (second category);
 - (3) salvage remuneration and the contribution of the vessel in general average (third category);
 - (4) compensation for damage caused by collision of vessels or by other marine accidents, damage caused to harbor works, docks and navigable ways, indemnity for death of, or personal injuries to, passengers and members of the crew, indemnity for loss of, or damage to, cargo or baggage (fourth category); and
 - (5) claims arising out of contracts entered into or other legal acts done, by the master within the scope of his statutory authority while the vessel is away from her home port, where such contracts are necessary for the preservation of the

SEAFARER SUBJECT GUIDE

vessel or the continuation of her voyage, whether the master is or is not at the same time operator or owner or the vessel, lenders or other contracting parties (fifth category).

9.3 In addition, the Maritime Code provides that claims arising from the same voyage and belonging to the same group are satisfied in proportion to their amount if the amount available for division is insufficient to satisfy the claims in full.

9.4 The Maritime Code and the 1926 Convention state that maritime liens arising from the last voyage have priority over those from previous voyages. However, the claims arising from one and the same contract of labour relating to several voyages, all rank on an equal footing with claims from the last voyage.

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

10.1 Generally wages may be claimed even if the employer is not the shipowner.

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

11.1 Polish law does not forbid the abandonment of a claim. However, in accordance with the Labour Law, an employee cannot waive or transfer to another person the right to remuneration.

11.2 Nonetheless, a seafarer is entitled to waive a maritime lien only after it has arisen, but the employee's claim for remuneration cannot be waived.

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

12.1 Maritime Liens may only extinguish at the expiration of one year, except the claims from fifth category of claim as mentioned above.

12.2 In accordance with the Maritime Code, maritime liens are extinguished at the expiration of one year, except for claims from the fifth category of claim, as mentioned above. Pursuant to the Maritime Code, the period after which a maritime lien extinguishes, commences for the following claims as follows:

- (1) salvage remuneration – from the day of termination of the salvage;
- (2) compensation for damage caused by collision of vessels or by other marine accident, or which have arisen as a result of death or personal injuries – from the day when such damage was caused;

SEAFARER SUBJECT GUIDE

- (3) compensation for loss of, or damage to, cargo or baggage – from the day of delivery of cargo or baggage or from the day when such should have been delivered;
- (4) amounts due in respect of acts defined in the fifth category of claims indicated above; and
- (5) other occurrences - from the day when the claim fell due.

12.3 In accordance with the Maritime Code, if the vessel subject to a maritime lien could not be arrested in Polish internal waters or on the Polish territorial sea on behalf of a creditor having his residence or seat in Poland, the periods defined above cannot terminate earlier than the expiration of one month from the day when the vessel entered a Polish port and not later than the expiration of three years from the day when the claim came into existence.