

SEAFARER SUBJECT GUIDE

SHIP ARREST FOR SEAFARERS' WAGES IN SINGAPORE

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

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

If a seafarer intends to arrest a ship in Singapore, 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 Section 3(1)(n) of the High Court Admiralty Jurisdiction Act ('the HCAJA') provides that:

'any claim by a master or member of the crew for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any of the provisions of the Merchant Shipping Act (Cap 179) is recoverable as wages or in the Court and in the manner in which wages may be recovered.'

1.2 The HCAJA also provides that a ship may be arrested for such a wages claim, provided the claim is wholly or partly for wages.

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

2.1 Under the Limitation Act, the action for crew's wages needs to be brought within six years of the accrual of the cause of action, or it becomes time-barred.

2.2 The claim for wages is forfeited if it is time-barred.

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

3.1 The documents need to be in English. If not, a translation needs to be provided and either certified by a court interpreter or verified by the affidavit of a person qualified to translate it.

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- 3.2 For the seafarer, the most important document is evidence of his identification such as his passport/crew identification and his contract/terms of employment showing his entitlement to wages. The documents and claims need to be described in a writ of summons/statement of claim and affidavit, which are to be prepared before an application for arrest can be made. Affidavits are typically sworn or affirmed before a commissioner for oaths.
- 4. What are the costs of the arrest, including court expenses and other expenses?**
- 4.1 The costs consist of several components. The professional fees of the lawyer are not fixed by the Rules of Court. Lawyers typically charge a lump sum for arrest, for example, Singapore \$20,000 or more for the professional fee component. However, more than one crew can be included in the same arrest action. Typically, all the officers and crew start one legal action. Singaporean lawyers may, however, ask for a deposit to cover their charges with additional payments as and when necessary.
- 4.2 However, it may not be necessary to arrest the vessel. Officers and crew are typically advised that they only need to file a caveat against release of the ship and to intervene in the proceedings to observe the court proceedings and are typically paid off by the agreement of the major creditor who also repatriates the crew to facilitate the judicial sale of the vessel and who is reimbursed from the proceeds of sale. As such, officers and crew typically do not have to engage a lawyer to arrest the ship, but may engage a lawyer to represent them in dealing with the court/the sheriff and the major creditor who agrees to advance their wages and repatriation costs. In cases where the major creditor or other creditors dispute the crew's claim, the crew's lawyer will need to file an action in court for the court to assess the crew claims although in that situation an arrest is not needed.
- 4.3 The disbursements are divided into several parts. There are one time disbursements, for example, payment of court document filing fees. A list of court fees may be found in appendix B of the Rules of Court.
- 4.4 As on 15 January 2013, and assuming that the total amount claimed for wages is less than \$1 million, these fees stand at: (a) S\$500 for the writ of summons; (b) S\$500 for the warrant of arrest if filed during office hours (\$750 if filed out of hours, or on weekends/public holidays); (c) S\$250 for the undertaking, which is listed in appendix B (item 76(d) for any document for which no fee is specifically provided for, including any document concerning the arrest or release of property against which the action *in rem* or any counterclaim in the action is brought); (d) for each affidavit, S\$2 per page or part thereof (including exhibits) subject to a minimum of S\$50 per affidavit; and

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(e) if the Sheriff or his representatives are to attend on board to arrest, his rates will be S\$100 per hour or part thereof between 9 am - 5 pm on Mondays to Fridays, excluding public holidays. At any other time, the rate is S\$200 per hour or part thereof.

- 4.5 There are also disbursements that increase daily, for example, security guard charges. The Sheriff places a security guard on board the arrested ship who will charge for every day of attendance.
- 4.6 There in addition the fees and commission for the Sheriff. The Sheriff is entitled to a commission for the arrest of the ship based on the size of the ship. A commission is S\$500 plus 10% per net ton per month that the ship was under arrest. The sheriff may require an advanced deposit of S\$5000-S\$10000.
- 4.7 There may also be unexpected expenses, that is to say, anything can happen during an arrest that increases expenses; for example, providing provisions for the crew, food and water, medical treatment, repairs to the ship, unexpected accidents at the collision and son on. If the Sheriff has to incur these costs, he looks to the arresting party to pay.

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

- 5.1 No counter-security is needed against wrongful arrest.
- 5.2 However, the Sheriff is entitled to request that the arresting party provide security to cover the Sheriff's expenses whilst the vessel is under arrest, as the arresting party is obliged to maintain the vessel during the period of arrest. This can be requested at the outset of the arrest, and from time to time, when the Sheriff deems it necessary. The initial deposit may range from S\$5000-\$10,000, depending on the facts of the case. If funds are not provided to maintain the vessel, the court may release the vessel from arrest.
- 5.3 The Rules of Court provide that where the claimant is a foreigner (regardless of whether he is an individual or a corporation), security for costs may have to be given, but this is at the court's discretion. Traditionally, courts have been inclined to be sympathetic to seafarers, but the court will not treat a crew claim differently to other arresting parties. The procedural aspects of the arrest of ships would have to be followed.

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

- 6.1 The court generally assumes jurisdiction over the substantive claim, following an arrest.
- 6.2 However it is open to the defendants to argue that Singapore is not the proper forum for hearing the case. In that case, although the arrest remains lawful, the court will grant a stay of proceedings in Singapore for the proceedings to be heard elsewhere.
- 6.3 It is possible to arrest to obtain security for a foreign arbitration proceedings (ongoing or anticipated), in the event that the seafarer's employment contract has an arbitration clause. It would then be the obligation of the arresting party to indicate that fact in the supporting affidavit, as otherwise there might be complications when applying for a stay of proceedings. Following provision of adequate security, the vessel can be released, and the action stayed in favour of the foreign arbitration.

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

- 7.1 By arresting the ship, the claimant assumes responsibility for all the expenses of the Sheriff. The Sheriff will (although not legally obliged to) provide provisions for the crew. Normally, the arrest is for short periods and the vessel is released within a few days and no question of supporting the crew arises. However, where the shipowner decides not to contest the legal proceedings and the claimant moves to sell the ship, the claimant may agree to support the crew on the basis that he is reimbursed from the proceeds of sale.
- 7.2 It has been held in *The Eastern Lotus*, *The Atlas Pride* and *The Aquarius III* that crew wages could be classified, in certain cases, as Sheriff's expenses. This is especially so in times of impasse and if an interested party pays off and repatriates the crew. Generally, however, leave of the court needs to be obtained before the interested party steps into the shoes of the crew's wages lien.
- 7.3 However, there could be a situation where the claimant is unwilling to do so. In such a case, the claimant has the option to release the ship. Thereafter, the crewmembers are on their own and, if they are not provided for, they will usually be advised to arrest the ship themselves and claim their wages. In *The Makassar Caraka Jaya Niaga III-39*, the court noted that typically crew wages are paid by the shipowners. If the shipowners abandon the ship, the crewmembers can make their own claims against the vessel.

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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 The crew do not need to remain on board during the legal proceedings but typically they do so as they have no other accommodation.
- 8.2 However, it is possible to repatriate the crew beforehand with the agreement of a party, such as the arresting claimant, to advance their costs; but usually the crewmembers want to remain until they are paid. The court does not pay for the crew's repatriation expenses; and, if no one is willing to advance the cost, the crew will not get repatriated, unless they pay their own way.

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

- 9.1 Seafarers' wages do not necessarily continue to accrue during the arrest. In *The Aquarius III*, post-arrest wages were recoverable but only as a Sheriff's expenses, the reason being that the port authorities require all ships to be manned and the court accepted the crew's argument that they were adopted by the Sheriff for that purpose and their wages could be claimed for that reason.

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 There is no average time to sell a ship. The process of selling the ship alone would take at the minimum two to three months or eight to twelve weeks at the best. Distribution will usually take even longer, but the crew is typically paid at the same time the ship is sold and without the need for judgment, in some cases with the main claimant advancing their wages.
- 10.2 As for judgment, this can be expedited by the crew applying for summary judgment, which can take two to three months if there is no serious challenge to their claim and no appeals. Again, this is only needed if someone decides to challenge the crew claim or no one is willing to advance their wages and repatriation costs.

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

- 11.1 Part of the lawyers' fees are recoverable from the proceeds of sale.
- 11.2 Singapore Law does not award costs on an indemnity basis and usually the cost recovery is relatively low as compared to the actual cost incurred.

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11.3 As to when and how the seafarer will pay his costs is a matter to be arranged between the seafarer his lawyer. However, as a matter of Singaporean law, contingency fees (that is, no win no fee arrangements) are prohibited.

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

12.1 In Singapore, a seafarer may claim against a sister ship but not an associated ship. If he claims against a sister ship, however, he loses his maritime lien and gets instead a statutory lien. This is because the maritime lien for wages is based on service to that ship. This has an effect on priorities: the statutory lien is lower in priority than the maritime lien.

12.2 There are no other procedures that are as useful or as powerful as an action *in rem* against the ship which the seafarer served on.