

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN SINGAPORE

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

*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 A maritime lien is an encumbrance or charge over a ship that travels with the ship into whosoever ownership or possession the ship may pass.
- 1.2 As to enforcement, section 4(3) of the High Court (Admiralty) Jurisdiction Act ('the HCJA') states that 'In any case in which there is a maritime lien the admiralty jurisdiction of the High Court may be invoked by an action *in rem* against that ship, aircraft or property.'

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

- 2.1 If the seafarer wishes to enforce his claim by ship arrest, the claim has to be filed with the Singapore Supreme Court, that is, the High Court which has exclusive admiralty jurisdiction by virtue of the HCAJA.

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

- 3.1 A claim can be filed with the Singapore Court if it is for a matter within the court's jurisdiction. There are limits on the jurisdiction.
- 3.2 Under the HCAJA, the High Court does not have jurisdiction to hear cases which fall under the Rhine Navigation Convention of 7 October 1868.
- 3.3 In the context of wage claims, the High Court does not have jurisdiction over ships owned by the Singaporean Government or foreign states.

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3.4 Before a warrant of arrest is issued against a foreign ship which belongs to a port of a state having a consulate in Singapore, a notice of the action for wages needs to be presented to that consulate. It is, however, possible to seek the leave of the court to issue a warrant of arrest notwithstanding the fact that notice has not been given.

3.5 The Singapore Court also honours agreements over jurisdictions and arbitrations. Proceedings may be stayed for a claim that is subject to a jurisdiction clause, or where the principle of *forum non conveniens* applies based on common law principles, or where there is an arbitration clause under s. 6 of the International Arbitration Act.

4. Who can claim seafarers' wages?

4.1 A legal writer has explored this, stating that from a reading of the cases, a seafarer encompasses: 'a wide range of persons working on board a ship who may not be mariners in the narrower sense of the word, such as a ship's surgeon, a purser, a cook, a carpenter, a steward and a watchkeeper on board an arrested ship but not a ship's husband.'

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

5.1 Under the HCJA, 'ship' is defined as follows: 'includes any description of vessel used in navigation.' From this law it is a reasonable inference that any ship is subject to the jurisdiction of the courts.

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

6.1 The term is not defined by statute. A legal writer on the HCJA has commented that based on case law, what is claimable as 'wages' has previously been judged to include: bonuses; sick and paid leave; profit sharing payments; overtime allowances; victualling allowances; provident fund contributions; social benefits contributions; national insurance contributions; trade union contributions; pension fund contributions and income taxes.

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

7.1 There has been no statement of this position under Singapore Law but, it is arguable that wages may be claimed even without a written contract. There is no statute prohibiting such a claim, although the court may not be inclined to believe that the claimant was employed as a crewmember or that he is entitled to a particular level of wages; unless, for example, there is some documentary proof to show that he was not employed as a crewmember such as crew lists and log books.

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

8.1 There has been no statement of this position under Singapore Law. It might be possible to bring a claim for wages if the service was rendered to the vessel albeit not 'on board;' for example, if a crewmember were to go ashore temporarily to perform some task for the vessel as part of his job as a crewmember.

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

9.1 Generally, claimants with maritime liens rank after the Maritime and Port Authority port dues, sheriff's expenses and the legal expenses of the party who created the pool of funds to draw from.

9.2 However, it has been held that courts can, under their inherent jurisdiction, alter this order, depending on the facts.

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

10.1 There has been no statement of this by the Singapore Court. In an English case, parties agreed that the wages claim could arise independently of contract and that the crew can claim if the employer was not the shipowner or if the shipowner had acted illegally, provided the seafarer is not himself guilty of fraud, or knew that he was not authorised to act as a master or a member of the crew.

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

11.1 Part IV of the Merchant Shipping Act is also relevant. Here, s. 67(1) states that a:

'seaman's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.'

11.2 However, this only applies to a Singapore ship. The position for non-Singapore ships is governed by the common law.

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

- 12.1 Maritime liens may be extinguished by: destruction of the ship; laches, which is an unreasonable where the rights of third parties are compromised; payment of the claim for wages or if the claim is relinquished or waived or settled; the provision of security; the passing of the ownership of the ship to a foreign sovereign; or the judicial (forced) sale of the vessel.