

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN SPAIN

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Spanish flagged ships, and foreign ships which are in the ports of Spain. 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 Spain.

*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 maritime lien is a privileged claim upon maritime property (ordinarily the ship, but sometimes the cargo, freight and/or bunkers as well) in respect of services rendered to, or injuries caused by, that property. Unlike common law countries, where the term 'maritime lien' applies only to a select group of claims, in Spain claims for necessaries, cargo damage and general average among others are also granted full status as maritime liens.
- 1.2 Under the 1993 Convention, there is a maritime lien on the vessel in respect of 'claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.' This claim can be secured against the owner, demise charterer, manager or operator of the vessel.
- 1.3 Under the 1993 Convention, subject to a forced sale of the ship, the maritime lien for a seafarer's claim 'follow the vessel, notwithstanding any change of ownership or of registration or of flag.'
- 1.4 The 1993 Convention does not define the meaning of a vessel, but in Spain, the maritime lien cannot be claimed against the freight.

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

- 2.1 The Commercial Courts (*Juzgados Mercantiles*) have jurisdiction over a seafarer's wage claim. The Act for the Judiciary Branch (*Ley del Poder Judicial*) states that the Commercial Courts have jurisdiction over maritime law enforcement.
- 2.2 The court procedures concerning seafarer's claim for wages are as follows.
- (1) Claim to arrest the vessel: the Commercial Courts (*Juzgados Mercantiles*) have jurisdiction to arrest of vessel.
 - (2) Claim for unpaid wages: the objective of this claim is to obtain a judgment recognizing the right of the crew to receive the amount of unpaid wages. Whether this claim must be lodged in Spain or outside of Spain depends on the content of the contract of employment or collective agreement (jurisdiction or arbitration clauses). If the claim must be lodged in Spain, the Commercial Courts have jurisdiction over a seafarer's wage claim.
 - (3) Claim for enforcement of the judgment: once the favourable judgment is obtained, there is the possibility of enforcing the judgment by requesting the public auction of the vessel arrested. The Commercial Courts have jurisdiction over this claim.

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

- 3.1 The court procedures governing seafarers' claims for wages are the following:
- (1) Claim to arrest the vessel: the Commercial Courts cannot refuse to hear this claim.
 - (2) Claim for unpaid wages: the Commercial Courts can refuse only in certain cases to hear this claim. Whether the court has jurisdiction will depend on the content (jurisdiction or arbitration clauses) of the contract of employment or collective agreement.
 - (3) Claim for enforcement of the judgment: the Commercial Courts cannot refuse to hear this claim.

4. Who can claim seafarers' wages?

- 4.1 Only certain persons are given the status of maritime lien holders for claims by seafarers.
- 4.2 The 1993 Convention provides that 'the master, officers and other members of the vessel's complement in respect of their employment in the vessel' are entitled to maritime liens for their claims.

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- 4.3 Under the 1993 Convention, a maritime lien securing the claim of a seafarer may be assigned or subrogated to any other person.
- 5. Which ships are subject to the jurisdiction of the courts?**
- 5.1 All ships are subject to the jurisdiction of the national court.
- 6. What is included in the maritime lien for seafarers' wages?**
- 6.1 Under the 1993 Convention, seafarers have two claims secured by maritime liens:
- (1) 'Claims for wages, including costs of repatriation and social insurance contributions payable on their behalf; and
 - (2) 'Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel.'
- 7. Can seafarers' wages be claimed if there is no written contract of employment?**
- 7.1 A 'contract of engagement' is not expressly required under the 1993 Convention, provided the seafarer is employed on the vessel. One advantage of a written contract is that it provides evidence of the amount of the wages.
- 7.2 If there is no contract, the amount of the wages will be decided by the court. In this case, usually the master makes a certificate stating the amount of wages for each seafarer.
- 8. Must seafarers' services have been rendered on board the ship?**
- 8.1 Under the 1993 Convention, the seafarers must be employed 'on board' the vessel, and this includes any person (with or without a written contract of engagement) in any capacity, such as waiters and entertainers on board a cruise vessel.
- 9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?**
- 9.1 Whether or not a claim is recognised as a maritime lien in Spain is governed by the *lex fori*, that is, the procedural law of Spain.
- 9.2 Once a maritime lien is enforced and the ship is sold, all the maritime claims against the ship are ranked in order of priority with the objective of being paid. The 1993 Convention establishes the order of priority of maritime liens as follows:

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- (1) 'Claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;'
- (2) 'Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;'
- (3) 'Claims for reward for the salvage of the vessel;'
- (4) 'Claims for port, canal and other waterway dues and pilotage dues;'
- (5) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.'

9.3 According to the 1993 Convention, maritime liens take priority over registered mortgages, 'hypothèques' and charges.'

9.4 In any case, there are preferential and deductible costs ranked before all other claims secured by a maritime lien on the vessel by virtue of article 12.2 and 12.3 of 1993 Convention:

'12.2 The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.'

'12.3 A State Party may provide in its law that in the event of the forced, sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sales, before all other claims secured by a maritime lien on the vessel.'

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

10.1 The personal liability of a shipowner is not necessary for the creation of a seafarer's maritime lien. So, a seafarer enjoys the advantage that the maritime lien comes into existence even where the employer of the seafarer is not the owner of the vessel; or the employer is in unlawful possession of the vessel; or the employer has fraudulently obtained possession of the vessel; or the employer has mere possession of the vessel

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but not ownership of the vessel. Here, there is a maritime lien against the vessel provided there was 'employment on the vessel' of the seafarer.

10.2 The seafarers are only entitled to a maritime lien provided they are not guilty of illegality or otherwise blameworthy, such as being privy to fraud, or complicit in stealing the vessel, or knowing that they are not entitled to board the vessel to carry out the work, or acting in the capacity of a particular rank on board to which they are not entitled, or forcing their vessel to sail to a particular port even if for the purposes of claiming their wages.

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

11.1 The 1993 Convention is silent as to whether a seafarer can by agreement abandon or waive his maritime lien securing his claim, or be deprived of any remedy for the recovery of his claim to which he would otherwise be entitled, or abandon his claim in the case of the loss of the ship.

11.2 Under the Statute of the Workers (*Estatuto de los Trabajadores*), seafarers cannot by agreement abandon or waive their maritime liens securing their claims.

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

12.1 The maritime lien for wages is forfeited or not recognized in the event of the forced sale (public auction) of the vessel by the court or by the port authority, under the procedure of the 1993 Convention.

12.2 Under the 1993 Convention, the maritime lien is extinguished after one year after the discharge of the seafarer unless prior to the expiry of that period the vessel had been arrested or seized, leading to a forced sale of the vessel.

12.3 Maritime liens are extinguished and cease to attach to the vessel after its arrest and forced sale by order of court.