

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN TURKEY

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

*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 claims which provide maritime lien on the vessel for the creditors are listed under the Turkish Commercial Code. The unpaid wages of seafarers are secured by a maritime lien on the vessel as set out under the TCC as follows:

'Article 1320- '(1) the following claims raised against the owner, charterer, operator or manager of the vessel grants maritime lien on the vessel in favour of the creditors;

claims for wages and other sums due to the seafarers 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.'

1.2 The scope of the maritime lien provided for claims for seafarers' wages and other claims is defined under the TCC. The maritime claims set out in article 1320 of the TCC would provide maritime liens on the vessel and its attachment in favour of the creditors. The maritime lien could be claimed against all possessors of the vessel regardless of their title in exercising the right of possession.

1.3 The maritime liens for seafarers' wages take priority over all legal or contractual liens regardless of being registered over the vessel together with all rights *in rem*.

1.4 Maritime liens provide the right to request the arrest of the vessel. Claims for unpaid wages of seafarers constitute both a maritime lien and maritime claim as per the TCC. Therefore, the claims of seafarers regarding unpaid wages are ranked among both maritime liens and maritime claims that are enforced via arrest of the vessel.

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

- 2.1 The jurisdiction of courts over maritime liens and maritime claims are regulated under the TCC, depending on whether the arrest application to the court is made before or after filing the action on the merits for the collection of the credit. In practice, the courts seek evidence in order to determine that the vessel is within their jurisdiction as per the related articles of the TCC, such as may be found in the port authority /Harbour Master's Office records or documents.
- 2.2 According to the TCC, prior to the action on the merits having been brought, a decision to arrest a Turkish flagged ship can only be given by a court which has jurisdiction over the place where the ship has moored, moored to a buoy or kedged, berthed or dry docked or if the court is:
 - (1) the court of register for ships registered in a Turkish ship registry, or
 - (2) the court of the place of residence of the shipowner of unregistered ships, or
 - (3) the court of the place of residence of the charterer of ships registered in the special registry as per article 941's third subsection of the TCC.
- 2.3 According to the TCC, the decision to arrest a foreign flagged ship can be given by the court where the ship has moored, moored to a buoy or kedged, berthed or dry docked.
- 2.4 The courts which have jurisdiction pursuant to the TCC will continue to have jurisdiction for the arrest of the vessel (as security for a maritime claim) in order to secure a maritime claim, even if another court has been given the competency to decide upon the merits of the claim by an agreement on jurisdiction or arbitration or the law of a foreign country would be applied to the merits of the maritime claim. As seafarers' wages constitute both a maritime claim and a maritime lien, these articles will be applied where the conditions of the articles are applicable.
- 2.5 However, according to the TCC, if an arrest application is to follow an action on the merits filed in Turkey for the recovery of the claim, only the court which is competent to hear the action on the merits would have jurisdiction for the arrest application. If an action has been filed for a maritime claim before a foreign court or arbitrator, the arrest of the vessel could only be requested from the courts that have jurisdiction as per articles 1354 and 1355 of the TCC until the final verdict is rendered by the court or the tribunal hearing the action on the merits.

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

- 3.1 According to Turkish Law, the arrest of ships is requested within the scope of a provisional attachment. The conditions for requesting a provisional attachment are set out under the Code of Enforcement and Bankruptcy (the 'COEB'). For claims in relation to a due debt, the claimant must provide evidence for the application, which would satisfy the court in relation to the claim and grounds of attachment. In this regard, the court would seek evidence within the file (such as the contract of employment or other evidence of employment of the seafarer), before accepting the application.
- 3.2 Consequently the court may refuse the application for the arrest of a ship (as a provisional attachment) due to lack of evidence. However, the evidence submitted for the arrest application does not need to prove the claim one hundred percent in order to be accepted by the court. For instance, if the contract of employment cannot be submitted to the court as evidence for the application, the 'crew list' of the ship obtained from the relevant port authority would be sufficient in order to prove the employment relationship.

4. Who can claim seafarers' wages?

- 4.1 The seafarers are defined under the TCC as the master, officers, crew and other people whom are employed on the vessel. Thus, all seafarers - regardless of their nationality or the flag of the vessel - can claim seafarers' wages before the courts. In addition, the legal heirs of the seafarers can claim a maritime claim for the unpaid wages of the seafarer in accordance with the principles of subrogation under Turkish law.

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

- 5.1 All ships are subject to the jurisdiction of Turkish courts irrespective of their nationalities or types (container vessels, general cargo vessels, dry cargo vessels, cruise ships, pleasure yachts etc.). As per the TCC, any vehicle whose allocated purpose requires moving in water, that has buoyancy and is not very small, is deemed a 'vessel' in terms of this law even if it does not have the ability to move by itself. However it must be underlined that a Southern Cyprus flagged vessels cannot enter into Turkish ports and due to this restriction as per article 1354 (1) of the TCC, the Turkish courts would not have jurisdiction over the arrest of the vessel.

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

6.1 According to the TCC, all claims for wages and other sums due to the seafarers 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, would constitute a maritime lien. Those rights, which have arisen, would grant a maritime lien against the shipowner, charterer, operator and manager.

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

7.1 The terms and condition of employment of seafarers are regulated within the Maritime Labour Code (the 'MLC'). The MLC defines the scope of the application of the MLC and this law shall be applied to the seafarers (and their employers) that are working on vessels under contracts of employment which fly the Turkish flag on seas, lakes and water courses and which are larger than 100 gross tonnes. Pursuant to the MLC the contract of employment must be written to be valid under the MLC. Thus, for seafarers who are subject to the provisions of the MLC, the contract is required to be written by law. The TCC, on the other hand, does not set out an explicit provision in this matter; however, the court may require a contract of employment. In that case, documents establishing and/or proving the existence of the employment relationship can be submitted to the court. However, as the court has a discretion in determining whether there is sufficient evidence or not, it is not possible to determine in advance the chances of success of the application.

7.2 If there is no written contract of employment the court may require an experts' view to determine the monthly wage of a similar seafarer. However, the absence of a written contract of employment may result in the rejection of the application of a maritime lien for unpaid seafarers' wages.

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

8.1 A maritime lien provides a right *in rem* which can only be executed against the vessel, on which the services have been rendered on board, as per the TCC. Thus, in order to claim a maritime lien, the claim must be brought against the vessel on which the services have been rendered. In addition, the right, which is entitled by the maritime lien, can be claimed against any party who is in possession of the vessel.

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

- 9.1 The right provided by a maritime lien for a claim of seafarers' wages will precede any other legal and contractual lien and encumbrances which are registered or not registered on the vessel, pursuant to the TCC. The ranking of a maritime lien will be determined as per the ranking of the maritime liens in the TCC. Thus, the claim of a maritime lien due to unpaid seafarers' wages will rank first, with the exception of the right of maritime lien for a salvage award.
- 9.2 Under the TCC, the maritime lien for a salvage remuneration will precede any other maritime lien that has arisen on the vessel before the date of the event which caused the occurrence of this maritime lien claim.

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

- 10.1 The maritime lien for unpaid seafarers' wages on the vessel can be claimed from the shipowner, charterer, manager and operator of the vessel pursuant to the TCC. Thus, if the employment contract was signed between one of these persons, the seafarer can claim a maritime lien against the vessel by virtue of the TCC. As a maritime lien provides a right of lien for the claimant seafarer on the vessel and its legal accessories the wages can be claimed if the employment contract was not signed with the shipowner.
- 10.2 There is no provision under the TCC or criminal legislation that would prevent the seafarer from claiming wages if the shipowner acts illegally or uses the ship for illegal purposes.

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

- 11.1 Under Turkish law waiver from a right can be valid only after the right has arisen. Consequently, waiver or abandonment of a maritime lien by an agreement after the right causing the maritime lien has arisen is possible. Thus, for example, the abandonment or waiver of a maritime lien by incorporating a clause within the employment contract would not be valid as the right has not arisen during the signing of the contract by the parties.

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

12.1 Under the TCC, the claimant seafarer must bring a claim on the merits or start enforcement proceedings against the debtor shipowner within a month starting from the application of the arrest. If not, the maritime lien will be forfeited or not recognised.

12.2 The extinction of a maritime lien is set out in the TCC. According to article 1326:

'The maritime liens set out under the first paragraph sub-clauses (a) to (e) of the Article 1320 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale. The one-year period shall commence;

With respect to the maritime lien set out under the first paragraph sub-clauses (a) of Article 1320, upon the claimant's discharge from the vessel;

With respect to the maritime liens set out under the first paragraph sub-clauses (b) to (e) of Article 1320, when the claims secured thereby arise.'

12.3 The right of lien of the claimant set out under the first paragraph sub-clauses (f) of article 1320 shall be extinguished:

'after a period of 6 months starting from the day when the vessel arrived at the destination where the determination of damages and apportionment will be executed and starting from the day when the vessel arrived at the port where the voyage ended and, if the vessel does not arrive there, after a period of 6 months if the vessel has not been arrested or seized that has led to a forced sale;

at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the state in which the vessel is registered following the sale. The right of lien shall extinguish when whichever period expires first, if these periods commenced together.'

12.4 The period of time shall not run during the period that the arrest or seizure of the vessel is not permitted by law. The stopping or cessation of time for other reasons is not possible.

12.5 Consequently, the claimant seafarer would not be able to use the maritime lien after one year starting from the claimant's discharge from the vessel.