

## SEAFARER SUBJECT GUIDE

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### MARITIME LIEN FOR SEAFARERS' WAGES IN UNITED ARAB EMIRATES

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

These rights can be enforced in Court, where they are priority debts that give rise to the right to arrest a vessel.

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 the UAE.

\*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.

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#### 1. What is the maritime lien for seafarers' wages? How is it enforced?

- 1.1 The concept of maritime liens is not recognized under UAE law but it is akin to the concept of priority debts which can give rise to the right to arrest a vessel, among other things.
- 1.2 The UAE Maritime Code defines which debts - including seafarers' wages at subsection (b) - shall be priority debts:
  - (1) judicial costs incurred in protecting and selling the vessel, and distributing the proceeds thereof, as well as loading, lighthouse and port charges, and other dues and taxes or the same type, pilotage fees, compensation for damage caused to port installations, docks and navigation lanes, the costs of removing obstacles to navigation caused by the vessel, and costs of towing and maintenance of the vessel from the time of its arrival at the last harbour;
  - (2) debts arising out of a contract for the employment of the master and crew, and other persons bound by a contract of maritime employment on board the vessel;
  - (3) monies due for assistance and salvage, and the share of the vessel in general marine average;
  - (4) compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions;

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- (5) debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors;
  - (6) breakdowns and damage giving rise to a right of compensation in favour of the charterers of the vessel;
  - (7) all premiums for insurance effected on the hull, equipment and fittings of the vessel due in respect of the last insured voyage, in cases where the insurance was effected for that voyage, or for the last period of insurance if the insurance was effected for a specified period, but provided that in either case the total does not exceed the premiums for one year.
- 1.3 Pursuant to the UAE Maritime Code, the seafarer has one year from the time the debt arose to arrest the vessel, or three years if there are good grounds why the arrest could not be effected before the one year time limit. The one year and three year time limits provided in the UAE Maritime Code do not mean that (unless there is a time limit for pursuit of employment claims in the seafarer's employment contract or as a matter of the governing law of the employment contract) the crew member's claim for unpaid wages is lost if an arrest is not effected within these time frames; instead, it simply means that the debt's priority status will be lost.
- 1.4 Where the seafarer has a claim for unpaid wages, which is considered a maritime debt in the UAE Maritime Code and as such is a ground on which to effect a maritime arrest, the seafarer may arrest the vessel to which the debt refers or any sister vessel owned by the debtor at the material time.
- 1.5 Where an arrest is granted, substantive proceedings must be commenced within eight days in order to preserve the arrest, failing which the arrest will lapse.
- 1.6 Where the seafarer succeeds with his substantive claim and secures a final and binding judgment, he can then apply to the Execution Court for a judicial sale of the vessel.
- 2. Which courts have jurisdiction over seafarers' wage claims?**
- 2.1 There are no specialist maritime courts in the UAE. Maritime disputes will tend to be heard by the civil courts in the Emirate which has jurisdiction over the port in which

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the vessel is located. The civil court system comprises of three tiers: Court of First instance, Court of Appeal and the Court of Cassation.

- 2.2 Pursuant to the UAE Maritime Code, civil courts in the Emirate in which the arrest is effected will have jurisdiction to hear the dispute notwithstanding the nationality (flag state) of the vessel, if any of the following conditions are satisfied:
- (1) if the claimant has a usual place of residence or head office in the UAE;
  - (2) if the maritime debt arose in the UAE;
  - (3) if the maritime debt arose during a voyage in which the arrest was effected on the vessel;
  - (4) if the maritime debt arose out of a collision or assistance over which the court has jurisdiction; or
  - (5) if the debt is secured by a maritime mortgage over the arrested vessel.
- 2.3 In addition, UAE courts will also have jurisdiction to hear the claim against a party (person or company) who is domiciled or has a place of business in the UAE.

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

- 3.1 Where the seafarer is employed under a UAE labour contract and has a claim for unpaid wages or any other sums due, the seafarer will first need to lodge a claim with the relevant Labour Department who will call the parties to see if the dispute can be amicably settled without court proceedings.
- 3.2 If an amicable settlement cannot be reached within 14 days then the relevant Labour Department must refer the dispute to the competent court.
- 3.3 Where the seafarer is employed under a foreign labour contract, he would not need, or be entitled, to lodge a claim with the Labour Department.
- 3.4 A UAE court may then accept jurisdiction and hear the dispute if any of the conditions set out above are met; plus a UAE court may also consider itself competent to hear a dispute if the action arose in the UAE, or if the debtor is domiciled or has its principal place of business in the UAE.
- 3.5 On the proviso at least one of these criteria is met, a UAE court should accept jurisdiction, albeit there is no obligation on the court to do so and, therefore, it is always possible that a UAE court might be minded to refuse jurisdiction. The UAE courts have a very wide discretion when deciding applications and claims.

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### 4. Who can claim seafarers' wages?

- 4.1 Any crew member, master, officer or other person working on board the vessel under a contract of employment seeking to recover the maritime debt may claim against the vessel for which the debt refers or any other vessel owned by the debtor at the time when the debt arose.

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

- 5.1 Where there is a maritime debt and the claimant is able to establish a prima facie claim the UAE courts will consider an arrest of the vessel to which the debt refers or any sister vessel owned by the debtor at the time the debt arose.

- 5.2 The UAE Maritime Code provides:

'Any person seeking to recover the debts referred to in the preceding Article [Maritime Debt for which a ship arrest may be effected] may arrest the vessel to which the debt relates, or any other vessel owned by the debtor if such other vessel was owned by him at the time the debt arose even if the vessel is ready to sail relates, or any other vessel owned by the debtor if such vessel was owned by him at the time the debt arose.'

- 5.3 The onus will be on the arresting party to satisfy the court that the vessel subject to arrest is owned by the debtor.

- 5.4 Pursuant to the UAE Maritime Code, where the debtor is a bareboat charterer a court may also allow the arrest of the bareboat chartered vessel and any other vessel owned by the bareboat charterer at the time the debt arose.

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

- 6.1 Article 84(b) of the UAE Maritime Code provides:

'Debts arising out of a contract for the employment of the master and crew, and other persons bound by a contract of maritime employment on board the vessel.'

- 6.2 The construction of this provision suggests that it extends to 'any' debt arising from a contract of employment and therefore it is potentially not limited to wages only.

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

- 7.1 A seafarer who seeks to recover a debt for unpaid wages in the UAE needs to meet the evidentially requirements to establish a prima facie claim against a debtor for the unpaid wages.
- 7.2 Although UAE courts place significant weight on documentary evidence, UAE law does recognize contracts verbally entered into by the parties. The UAE Civil Code provides that a contract may be concluded verbally and shall be binding upon both parties as if the contract had been concluded between the parties in writing and at the same place.
- 7.3 The challenge the seafarer may face where there is no concluded written contract is to satisfy the court that there was a contract concluded between the shipowner and the seafarer and what the terms of that contract were, including the level of remuneration. Such terms may be evidenced by emails, bank statements, and the like.
- 7.4 UAE law also recognises electronic documents or communications as evidence, and that contracts can be concluded electronically. However, where a contract is concluded in hard copy this should be produced in evidence to minimise any opportunity for the debtor to contest the evidentiary weight to be given to electronic copy documents.
- 7.5 Where there is no 'original' hard copy of a document in the true sense the claimant must be prepared to explain to the court in argument how the contract was concluded and why there is no hard copy.

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

- 8.1 The UAE Maritime Code suggests that the seafarer's service should, in part at least, have been rendered on board a vessel as the protection afforded by this article extends the right to arrest a vessel not only to the master and the crew but also to any 'other person working on board the vessel'. Reference to 'working on board the vessel' suggests that there must at least be an element of this.

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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 UAE Execution Court will only issue an order for a judicial sale where there is a final and binding judgment against the shipowner to which the debt refers, or a sister vessel owned by the shipowner at the time the debt arose.
- 9.2 Pursuant to the UAE Maritime Code, the following debts enjoy a priority status (in the order provided) against the proceeds of sale:
- (1) legal costs incurred costs incurred in protecting and selling the vessel, and distributing the proceeds thereof, as well as loading, lighthouse and port charges, and other dues and taxes or the same type, pilotage fees, compensation for damage caused to port installations, docks and navigation lanes, the costs of removing obstacles to navigation caused by the vessel, and costs of towing and maintenance of the vessel from the time of its arrival at the last harbour;
  - (2) debts arising out of a contract for the employment of the master and crew, and other persons bound by a contract of maritime employment on board the vessel;
  - (3) monies due for assistance and salvage, and the share of the vessel in general marine average;
  - (4) compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions;
  - (5) debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors;
  - (6) breakdowns and damage giving rise to a right of compensation in favour of the charterers of the vessel;

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(7) all premiums for insurance effected on the hull, equipment and fittings of the vessel due in respect of the last insured voyage, in cases where the insurance was effected for that voyage, or for the last period of insurance if the insurance was effected for a specified period, but provided that in either case the total does not exceed the premiums for one year. Pursuant to article 105, mortgages shall rank below sub-section 84(a) to (e), but above sub-sections 84 (f) and (g). Debts secured by a mortgage shall rank in order of the dates of registration.

9.3 Pursuant to the UAE Maritime Code, the priority rights attach to the vessel and to the freight earned during the period in which the debt arises.

9.4 Priority debts of one voyage shall rank in the manner set out in article 84 and the debts mentioned in each section thereof shall rank equally and shall be distributed in proportion to the value of each of them. Furthermore, priority debts arising out of any voyage shall rank above priority debts arising during previous voyages; and debts arising out of one contract of maritime work for a number of voyages shall all rank equally with the debts of the last voyage.

9.5 Debts mentioned in paragraphs (b) and (c) of article 84 of the UAE Maritime Code shall rank in relation to each sub-paragraph taken separately in reverse order of the date on which each of them arose.

9.6 The maritime debt will follow the vessel despite a change of ownership.

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

10.1 Any seafarer seeking to recover a maritime debt for unpaid wages, may arrest a vessel to which the debt arose even where the vessel was on time or bareboat charterer at the material time when the debt arose.

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

11.1 The general principle under UAE law is that whatever is agreed between contracting parties should be binding unless the agreement conflicts with mandatory provisions of the UAE law, or it offends public policy.

11.2 The party claiming that the priority right is lost has the burden of establishing that the seafarer purposefully intended to forego the valuable privilege that a claim for unpaid crew wages afforded by UAE law.

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

- 12.1 A seafarer who is entitled to a priority right may forfeit his right if the seafarer delays in enforcing the priority debt.
- 12.2 If the seafarer does not take action to pursue his maritime debt within the time period of one year, the debt will lose its priority status. The debt itself will not be time barred but it will no longer enjoy the priority status.
- 12.3 A priority debt is lost when the debt is paid or distributed. The debt will also expire in any of the following circumstances:
- (1) upon the judicial sale of the vessel;
  - (2) upon the voluntary sale of the vessel if, before the payment of the price, the purchaser has taken the following steps:
    - (3) he has registered the contract of sale on the Register of Ships;
    - (4) he has placed a notice on the notice board at the Registration Bureau of the vessel containing particulars of the sale, the price, and the name and residence of the purchaser; and
    - (5) he has published a resume of the contract of sale, mentioning the price, and the name and residence of the purchaser, which publication must be made twice with an interval of eight days, in a widely circulating local newspaper.
- 12.4 A priority right will follow the proceeds of sale if, within thirty days of the last publication in the newspapers, the priority seafarer notifies the previous shipowner and the new shipowner of their objection to the payment of the sale price.