

## SEAFARER SUBJECT GUIDE

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### MARITIME LIEN FOR SEAFARERS' WAGES IN VENEZUELA

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of a Venezuelan flagged ship, or a foreign ship which is in a port in Venezuela. 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 ship.

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 Venezuela.

\*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 In Venezuela, the maritime lien for seafarers' wages is contained in the Chapter under privileges over the vessel of the Maritime Commerce Law ('MCL'). Article 115 of the MCL states:

'The following are privileged credits [liens] over the vessel:

1. Credits for wages and other monies owed to the Master, officers and other members of the crew of the vessel for their services onboard, including repatriation expenses and social security quotas payable to their name...'
- 1.2 The creation of this lien for seafarer's wages, which the legislator gave privileged status, grants the seafarer a priority right over the vessel when enforcing his claim.
- 1.3 The enforcement of the liens can be achieved by arresting the vessel under the provisions regarding the arrest of vessels in the MCL.
- 1.4 Additionally, since the MCL provides that maritime liens need not to be registered to have effect, as mortgages do, these liens follow the vessel everywhere it goes. Claims for unpaid wages can be enforced by an *in rem* action and they follow the vessel even if it is transferred, sold, chartered, or has its flag changed.

#### 2. Which courts have jurisdiction over a seafarer's wage claim?

2.1 Venezuela has a separate jurisdiction for maritime cases: the Maritime First Instance (equivalent to Trial Courts) and Superior Courts (equivalent to Appellate Courts).

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- 2.2 The MCL states that Venezuela has non-revocable jurisdiction on claims over contracts for carriage of goods and passengers that enter the Venezuelan territory, so all claims arising from a contract of carriage of goods or passengers inbound to Venezuela, may be tried by the Venezuelan Maritime Court.
- 2.3 Moreover, Venezuelan private international law establishes that Venezuelan courts have jurisdiction over all claims against individuals or entities domiciled in Venezuela.
- 2.4 The Venezuelan courts also have jurisdiction in cases involving foreign individuals or entities or Venezuelans domiciled abroad regarding the following:
- (1) property or possession of movable and immovable goods located in the territory;
  - (2) obligations that must be performed in Venezuela;
  - (3) if the defendant was served personally in the territory; and
  - (4) when the parties submitted themselves implicitly or expressly to Venezuelan jurisdiction.
- 2.5 However, seafarers' claims must be filed before the Labour Courts. Venezuelan Labour Courts have jurisdiction over all claims arising out of the work performed in the Venezuelan territory (this obviously includes territorial waters), work on board a Venezuelan flagged vessel or over any claim arising from a working agreement entered into in the Venezuelan territory even if performed abroad or in a foreign flagged vessel.
- 2.6 Similarly, all work performed in the Venezuelan territory, even on a foreign flagged vessel (and of course on a Venezuelan flagged vessel) is subject to Venezuelan labour law, even if the seafarer is not Venezuelan, or if the contract was entered in a foreign territory or under foreign regulations. The seafarer has the right to claim all the benefits of the Venezuelan law for the time he worked in Venezuela.

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

- 3.1 Due to the relevance afforded to all issues regarding employment and activities regulated under the labour laws in Venezuela, Labour Courts cannot refuse to hear any claim for wages.
- 3.2 As a matter of public policy, all issues regarding employment may not be revoked, waived or ignored to the prejudice the employee.

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

- 4.1 Apart from the legitimate claim by a seafarer, under article 145 of the Workers and Labour Act ('WLA'), upon the death of the seafarer, his heirs have the right to collect the seafarer's benefits. Heirs include sons and daughters, widows, mothers and fathers, and grandchildren if they are orphans. There is no priority between these parties. Thus, if more than one claims the benefits of the seafarer, it will be distributed equally among those claimants.
- 4.2 Further, article 145 of the WLA also states that the employer is exempt (time barred) from the liability of paying those heirs who claimed the seafarers' benefits within three months from his death.

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

- 5.1 Claims for wages or employment related issues on board Venezuelan flagged vessels are subject to the jurisdiction of the Venezuelan Labour Courts, regardless of where in the world they are operating.
- 5.2 If the employment agreement was entered into in Venezuelan territory, the Venezuelan Labour Courts have jurisdiction even on foreign vessels operating out of Venezuelan territory. Furthermore, Venezuelan Labour Courts have jurisdiction to hear claims of any vessel in Venezuelan territorial waters. Similarly, Labour Courts in Venezuela have jurisdiction to hear cases regarding foreign individuals on board foreign vessels while they were working in Venezuelan territorial waters.
- 5.3 Additionally, under article 96 of the MCL, the plaintiff may request the arrest of the vessel to which the lien is attached or of any other vessel property of the person or entity that is obligated under a maritime credit or lien, by the time such lien attached. This is known internationally as 'sister ship arrest.'

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

- 6.1 Under article 115 of the MCL, seafarers' wages which are a privileged claim (maritime lien) include all credits owed to the master, officials or other crew members of the vessel for their work on board, including repatriation and social security and all other benefits established by law or contract such as severance or vacations.

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

- 7.1 Wages can always be claimed even without a written contract. Under Venezuelan law, contracts may be materialized orally with the sole consent of the parties. No formal requirements are necessary. Nevertheless, the WLA states that before starting their service, the seafarers shall sign an employment contract filed at the Harbour Masters Office of the place of enrollment. This is the ideal scenario.
- 7.2 However, if the contract is oral, the mere inclusion of the crewmember in the crew list or the mere rendering of service will evidence the contractual relationship.

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

- 8.1 The provisions of the Workers and Labour Act regarding seafarers' work expressly refers to work performed on board a merchant vessel and for the benefit of an owner or charterer, either during the time the vessel is navigating or during the time it is in dock.
- 8.2 This provision also applies not only to merchant vessels, but also to any type of vessel that engages in the transportation of persons or goods, and those who work aboard tugs, tows, barges, etc.

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

- 9.1 Privileged credits or liens under the MCL have supremacy over any other privilege either general or special. This includes mortgages.
- 9.2 However, within the category of maritime liens and in the event of distribution of sale proceeds, the first cut goes to salvage rewards. All of the other liens will be shared *pro rata*, namely:
- (1) seafarers' wages (including repatriation and social security);
  - (2) personal injury or death on shore, on board a vessel, or in water in direct relation to the vessel's exploitation;
  - (3) liens for the use of ports, waterways, tug and tows, lighterage and other services provided by law;
  - (4) liens for torts arising out of damage or loss caused by the exploitation of the vessel, different from loss or damage to goods or baggage on board the vessel.

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

- 10.1 The employer need not be the shipowner for the privilege or lien to attach to the vessel. Under article 15 of the MCL the action for liens is directed against the vessel or the master.
- 10.2 Furthermore, article 245 of the WLA states that the seafarer's work may be for the benefit of a charterer.
- 10.3 Thus, the lien still attaches even in the absence of an owner or ignorance of who the owner may be.

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

- 11.1 Under article 120 of the MCL, maritime privileges or liens are accessories to the credit which they guarantee. Thus, if the credit extinguishes, the lien follows the same fortune. If the obligation or credit is the payment and such payment is indeed satisfied or waived by agreement, then the lien is extinguished.
- 11.2 However, actions for payment of wages cannot be waived by agreement. Under article 89 section 2 of the Venezuelan Constitution, labour rights are not subject to waiver. Furthermore, the constitutional provision states that any agreement or conduct that implies a waiver of these rights is void. As mentioned above, labour laws in Venezuela are considered a matter of public policy; thus, matters regulated under them are not revocable or able to be waived by agreement. This constitutional provision was adopted by the WLA in articles 3 and 19 which state, that labour rights cannot be waived by agreement. Even if the worker agrees to the waiver, such a waiver is void because constitutionally labour rights cannot be waived.

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

- 12.1 Maritime liens for wages expire one year after the end of the seafarer's agreement to work on board.
- 12.2 This expiration period may only be interrupted if the vessel has been subject to an arrest or execution, leading to its forced sale.