

## SEAFARER SUBJECT GUIDE

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### MARITIME LIEN FOR SEAFARERS' WAGES IN CYPRUS

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Cypriot flagged ships, and foreign ships which are in the ports of Cyprus. These rights can be enforced in the Supreme Court of Cyprus in its admiralty jurisdiction, 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 Cyprus.

\*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 There is no statutory definition of a maritime lien for seafarers' wages. The common law definition of a maritime lien is 'a privileged claim over a vessel or other maritime property in respect of services rendered to, or injury caused by, that vessel or maritime property.'
- 1.2 To enforce a maritime lien, a seafarer must invoke the jurisdiction of the Supreme Court of Cyprus by filing an action *in rem* against the *res* (that is, the vessel) or an action *in personam* against the owners and/or managers and/or operators of the vessel. In either case the court must first accept that it has jurisdiction to hear such a claim.

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

- 2.1 The Supreme Court of Cyprus in its admiralty jurisdiction has jurisdiction over a seafarer's claim for wages. Where the claim is for less than Euro€100,000 the Supreme Court may refer an admiralty action with subject matter related to seafarers' wages to a District Court of Cyprus.

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

- 3.1 The court can refuse to hear a seafarer's claim for wages if it determines that it has no jurisdiction to hear such a claim.

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

- 4.1 A seafarer in person can file a claim for seafarers' wages. A third party who has paid off the seafarer does not stand in the shoes of the seafarer. This person can be considered only as a volunteer who has decided to pay off a debt which constituted a maritime lien on the vessel. Such party does not acquire a maritime lien by his action or any rights conferred by it and, therefore, has no right *in rem* based on a maritime lien.
- 4.2 However, where the vessel is already arrested, a third party may step in and pay the seafarer's wages, provided the leave of the court is first being granted in order to acquire such right. The prior sanction of the court must at all times be first acquired in order for such party to secure its interest by paying off the seafarers.

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

- 5.1 All ships within the jurisdictional waters of Cyprus are subject to the court's jurisdiction *in rem*. In any other case the court will refuse to hear the claim. Since the action is against the *res* (that is, the vessel) the writ must be served on the vessel itself.
- 5.2 Therefore, the physical presence of the ship is required within the jurisdiction.

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

- 6.1 The following may be counted as wages:
- (1) wages and emoluments (including compensation for late payment of wages);
  - (2) 'short-hand' bonus;
  - (3) damages for wrongful dismissal;
  - (4) allowances;
  - (5) overtime;
  - (6) bonuses for work performed on board the ship;
  - (7) annual leave allowance;
  - (8) repatriation expenses; and
  - (9) maintenance expenses (accommodation and provisions).
- 6.2 The court will also take into consideration the provisions of the contract of employment in determining the nature of wages.
- 6.3 Any collective agreement on seamen's wages from the seaman's country of origin, even where it is not applicable, may be considered by the court to determine the

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nature and calculation of the wages and any additional amounts to which a seaman may be entitled if there is no written contract (or no such contract is produced as evidence to the court) or where the contract of employment remains silent in this respect. This, however, is subject to the court's discretion.

6.4 Unless it is expressly agreed between the parties (whether in writing or orally) that a collective agreement will apply as regards wages or that it is incorporated into the private contract of employment, then even where the private contract provides for lower wages and payments other than those provided for under the collective agreement, the private contract prevails over the collective agreement.

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

7.1 Under the law of Cyprus, it is not the contract of employment that creates the obligation and thus the maritime lien for wages. What creates the obligation and the maritime lien is the service provided on board. Therefore, wages can be claimed if there is no written contract of employment.

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

8.1 The services of the seafarer must have been rendered on board the ship for the maritime lien to arise.

8.2 Whether 'service rendered on board' would extend to include anything else other than its regular meaning has not been considered by the courts of Cyprus.

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

9.1 Master's and crew wages rank fourth in line, after:

- (1) marshal's costs and expenses;
- (2) salvor's lien; and
- (3) damages done by a vessel.

9.2 The courts of Cyprus have however an inherent discretion to vary the ranking of priorities on the basis of the principles of equity and natural justice. The court may order that the legal costs of the arrest proceedings rank second in priority after the Admiralty Marshal's expenses.

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

- 10.1 It is not necessary for the shipowner to be the employer. The claim is against the vessel and in respect of the services rendered to that vessel and not against the shipowner, manager or charterer of the vessel.
- 10.2 In cases of illegal actions by the shipowner it will depend on the facts of the case. Wages may, however, be claimed even where the shipowner acted illegally.

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

- 11.1 A seaman cannot by agreement waive or renounce a maritime lien for wages.
- 11.2 As regards ships registered in Cyprus, the law states that:

'A seaman belonging to a Cyprus ship shall not by any agreement forfeit his lien on the ship, or be deprived of any remedy for the recovery of his wages, to which, in the absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship, or abandon any right that he has or obtains in the nature of salvage; and every stipulation in any agreement inconsistent with any provision of this Law shall be void.'

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

- 12.1 The common law defences that may allow for the forfeiture of wages, in whole or in part, include:
- (1) desertion;
  - (2) absence without leave; and
  - (3) gross misconduct or incompetency.
- 12.2 Forfeiture of wages applies in cases of incapacity while employed on board a Cyprus ship, where such incapacity was caused by the seaman's own willful act or default for the time during which he was unable to perform his duties as a result of such incapacity.
- 12.3 In case of desertion from a Cyprus ship, the individual's wages and effects, or the money arising from the conversion of the effects, shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and, subject to that reimbursement, shall be paid into the public revenue.

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- 12.4 Law 106(I)/2000 provides for a number of criminal and disciplinary offences for seafarers, punishable by way of imprisonment or a fine or both. Fines can be imposed by the master and may be deducted by the seaman's wages.
- 12.5 A maritime lien will be extinguished in any of the following ways:
- (1) the sale of the vessel by order of the court which allows for the transfer of the unencumbered ownership of the vessel;
  - (2) when bail or guarantee has been lodged with the court to prevent the arrest of the vessel or to secure its release;
  - (3) when a contractual assignment of a claim for seafarers' wages that has taken place without the prior leave of the court; or
  - (4) when the claim is time-barred.
- 12.6 Care should be given when signing a release for the settlement for wages if unsettled amounts remain due to the seafarer, since the release would *prima facie* mean that the seafarer accepts that his claim has been settled and that wages have been fully paid.