

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN EGYPT

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in Egypt.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to arrest a ship in Egypt, he is strongly advised to consult a lawyer qualified to practise in that country.

\*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. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?

1.1 The Egyptian Commercial Maritime Law addresses the issue of ship arrest as follows:

'A conservatory arrest may be placed on the vessel pursuant to an order to be rendered by the President of the First Instance Court or his substitute. A conservatory arrest may be placed even in case the vessel is ready to sail.'

1.2 The Egyptian Commercial Maritime Code, which follows the 1952 Convention, addresses the issue of the claims that are subject to ship arrest and provides as follows:

'No conservatory arrest may be placed unless for settlement of a marine debt. A debt is considered a marine debt in case it arises out of one or more of the following reasons:

- (a) Ports and sea channels duties
- (b) Expenses concerning removal, picking up, or lifting the ship wrecks and cargo
- (c) Damage caused by the ship caused either by collision or pollution or other similar marine casualties
- (d) Loss of life or personal injury caused by the ship or occurring in connection with her operation
- (e) Contracts related to the use or hire of the ship
- (f) Insurance on the ship
- (g) Contracts related to the carriage of goods by means of a charterparty or bill of lading
- (h) Loss of or damage to goods and baggage carried out in the ship

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- (i) Salvage
- (j) General average
- (k) Ship's towage
- (l) Pilotage
- (m) Supply of goods or materials whether supplied to the ship for her operation or for her maintenance; whichever maybe the source of such supply
- (n) Construction, repair or equipment of the ship or dock charges and dues
- (o) Wages of Masters, Officers, or crew
- (p) Master's disbursements, and disbursements made by shippers, charterers or agent on behalf of a ship or her owner
- (q) Disputes as to the ownership of the ship
- (r) Disputes over the common ownership of the ship or her possession, employment, or in common earnings of that ship, resulting from her exploitation
- (s) Marine mortgage.'

1.3 The arrest procedures are applicable irrespective of the flag of ship and/or the debtor's nationality. These procedures are applicable to bareboat and time-chartered vessels and are also applicable to sister ships as long as they were owned by the same owner at the time the debt giving rise to the claim has been created and remained under the same ownership at the time of enforcing the arrest.

1.4 According to the Egyptian Civil and Commercial Procedures Law, the Egyptian Courts (including the courts of urgent matters) would be competent to give orders of a conservatory nature even if the Egyptian court will have no jurisdiction over the merits.

### **2. What is the time limit within which a seafarer must start a claim for unpaid wages?**

2.1 The Egyptian Commercial Maritime Law addresses the issue of the time limitation for claims. This provides as follows:

'All claims arising from the Maritime Labour Contract shall prescribe by the lapse of one year as from the date the contract has been concluded'.

### **3. What documents are required to obtain an arrest of a ship?**

3.1 An arrest application should be presented before the competent court of the venue or geographic area over which the court authority extends. For example, if a vessel is

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berthed in Port Said, the Port Said court will have venue jurisdiction over the arrest application.

- 3.2 In practice, the judge issues his order in camera and his opinion is based predominantly on the documents presented. Most importantly, granting an arrest is in the discretion of the judge.
- 3.3 The application should contain a brief explanation of the 'claim' and reasons the seafarer is applying for security, as well as proof that the liabilities giving rise to the claim would come within the 'maritime claims' as defined in the Egyptian Maritime law and the 1952 Convention. The application should clarify the relationship between the seafarer and the vessel's representative (the debtor), and the seafarer must support his application with sufficient documents to justify his claim and application for security. This would include but not be limited to the employment contract, a certificate from the port where the vessel is berthed (to confirm that the vessel is in fact in the jurisdiction of the court) and other documents which relate to the debt.
- 3.4 All document submitted to the court must be accompanied by a translation into Arabic. In addition, a power of attorney must be issued by the seafarer to empower his counsel to apply for the arrest on behalf of the seafarer. The power of attorney must be notarized and subsequently legalized by the Egyptian Embassy/Consulate if issued outside Egypt.

#### **4. What are the costs of the arrest, including court expenses and other expenses?**

- 4.1 The estimated court expenses and other expenses (exclusive of retainers) will reach about USD 100.00 and must be paid in advance.
- 4.2 Under Egyptian law, the arresting crew is not held responsible for financial obligations during the arrest. This obligation remains with the owners. Thus the vessel's local agent in Egypt, in his capacity as owner representative, is held legally responsible to pay all expenses needed by the vessel or crew.
- 4.3 Further, the master is allowed under the Egyptian Commercial Maritime Law to act as follows:

'In case an emergency arises, the shipmaster may borrow money against pledging of the vessel and the freight. If such pledge is inadequate, the loan security/pledge may extend to the vessel's cargo. In all cases however, the taking of the loan must not take place before obtaining the permit of the court of Urgent Matters at the venue

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jurisdiction of the judge in case the vessel is in Egypt or from the Egyptian Consul or the local judicial authorities in case the vessel is abroad.'

### **5. Does the arresting party have to lodge counter security against wrongful arrest?**

5.1 No counter security for wrongful arrest is required under the Egyptian Commercial Maritime Law.

### **6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**

6.1 The arrest procedures will not bring jurisdiction to the court. The arrest procedures are an extraordinary means and in this respect Egyptian law gives the court the right to decide upon the application for the arrest, even in if the court is without jurisdiction to decide upon the substantive claim.

6.2 The arrestor must file an ordinary claim before the competent court within eight days from applying the arrest procedures, thereby claiming the ascertainment of the debt and accuracy of the applied arrest procedures applied, failing which the arrest will become null and void.

### **7. Will the crew and vessel be maintained/supported during the arrest?**

7.1 Under the Egyptian Commercial Maritime Law, the shipowner is responsible for maintaining the crew at all times (including but not limited to during the arrest), until such time as the crewmember's employment contract is terminated.

### **8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?**

8.1 The presence of the crew onboard of the vessel is not essential in case of legal proceedings related to unpaid wages, that is unless the crewmember is not signed off and his employment contract is still in force.

8.2 However, the arrest order if granted by the court will be served on the master onboard the vessel and, thereafter, a minimum number of the crew must remain onboard to keep the vessel safe and seaworthy.

8.3 If the employment contract is terminated, the seafarer is free to repatriate himself. The Egyptian court will not pay the crew's repatriation costs unless the crewmembers

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have filed a lawsuit claiming for repatriation expenses. The repatriation expenses are associated with the wages and would be looked at as part of the wages, if claimed by the seafarers in their lawsuit. In such a case the court will pay the repatriation expenses from the vessel's sale proceeds.

### **9. Do the seafarer's wages continue to accrue during the arrest?**

9.1 As a general rule, seafarer's wages continue to accrue during the arrest.

9.2 However, the Egyptian Commercial Maritime Law provides as follows:

- '(1) In case the ship has sank, was confiscated, was lost or became unseaworthy, the court may order exempting the employer from paying the entire seafarers' wages or part thereof, that is, in case it has been proven that the damage sustained to the ship has resulted from the seafarers act or negligence in salvaging the ship, the wreck, passengers or cargo.
- (2) In such a case as envisaged in article 134/1, the employer may terminate the marine employment contract without prior notice.'

### **10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?**

10.1 A substantive judgment of a first instance Egyptian court will normally take about one to two years. This judgment is appealable and the appeal proceedings may take a similar period.

10.2 The sale of the ship is dependent on rendering the final judgment, and would take about six months; and then approximately six months to distribute the sale proceeds in settlement of the crew's claim.

### **11. How are the lawyer's fees for arresting the ship paid?**

11.1 The seafarer pays the lawyer from his own funds. The legal costs/expenses are not recoverable from owner or proceeds of sale. In fact only symbolic lawyers' fees are payable by the loser of the claim and are not payable to the opponents but rather to the Egyptian Bar Association.

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### 12. Are there any other procedures to enforce a seafarer's wage claim?

12.1 The Egyptian Commercial Maritime Law addresses the issue of arresting a sister ship as follows:

'Whoever insists on his right for any of the marine debts enumerated in the aforementioned article may apply for arresting the vessel involved in the debt or any other vessel owned by him (the debtor) at the time the debt has taken place.'

12.2 The crew member claiming for the unpaid wages may exercise a maritime lien or file a subjective lawsuit against his employer or his local agent in Egypt.