

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN HONG KONG

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

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

If a seafarer intends to arrest a ship in Hong Kong, 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 A seafarer can arrest a ship in Hong Kong for unpaid wages regardless of the seafarer's nationality and regardless of the flag of the ship, provided that the ship is not state owned.

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

2.1 The general restrictions limiting the time within which actions founded on contract or on tort must be brought, apply to any cause of action within the admiralty jurisdiction of the Court of First instance.

2.2 Section 4 (6) of the Limitation Ordinance expressly states that the Limitation Ordinance applies to seafarers wages, and pursuant to section 4 (1) thereof, the limitation period is six years for an action founded in contract.

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

3.1 To obtain an arrest of a ship, the seafarer must lodge:

- (1) a writ as in form 3 in appendix B of the Rules of the High Court;
- (2) a *praecipe* for the service of a writ;
- (3) a warrant of arrest;
- (4) an affidavit in support to issue the writ, and
- (5) if the ship is foreign (from a country with a consulate in Hong Kong), a notice must be sent to the consul.

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- 3.2 If the documents are not in English or Chinese, which are the official languages of Hong Kong, then they must be translated.
- 3.3 Affidavits to be lodged must be sworn before a notary public and legalised by way of apostille outside of Hong Kong. The Hague Convention of 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents applies in Hong Kong.
- 4. What are the costs of the arrest, including court expenses and other expenses?**
- 4.1 The cost of filing the writ is Hong Kong\$1045, and the cost of the praecipe for service of the writ is Hong Kong\$110.
- 4.2 Legal costs and costs incurred by the bailiff are variable.
- 4.3 After service of the warrant has been effected, the property arrested whatever the value, remains in the custody of the court until the action is determined or the property is released. A ship-keeper may then be put in possession under the authority of the bailiff. The crew will not be held responsible for the costs of maintaining the vessel or crew. They are the responsibility of the Director of Marine, who will claim these back from the proceeds of sale in priority over the crew's claims.
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
- 5.1 In Hong Kong, there is no requirement for seafarers to lodge counter security against wrongful arrest.
- 6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**
- 6.1 The court will accept jurisdiction over the substantive claim after the vessel's arrest. On the face of it, the fact that the vessel is arrested in Hong Kong is sufficient to establish jurisdiction over the claim. It is for the parties to then persuade the Hong Kong court of a more suitable jurisdiction.
- 7. Will the crew and vessel be maintained/supported during the arrest?**
- 7.1 The Director of Marine will pay for all reasonable expenses and then reimburse itself from the sale of the ship, this will override any lien against the vessel.

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### **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 It is not necessary that the seafarers be present in court provided that they instruct solicitors to represent them in court in their absence, although the seafarers might have to come to Hong Kong to give evidence at trial.
- 8.2 If the court decides that the repatriation is a reasonable expense, then the court may pay for the repatriation and claim the expense from the sale. If it is decided that a full complement of crew is not needed some crew may be repatriated, however this will depend on an application to the court.
- 8.3 For instance, a ship wrecked foreign crew can be sent home by a foreign consul and the expense ranks in priority above a solicitors lien for costs.

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

9. Generally in Hong Kong, wages due to a seafarer under a crew agreement relating to a ship must be paid to him in full and continue to accrue until the seafarer leaves the ship on being discharged.

### **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 Sale of the vessel is permitted '*pendente lite*', that is, pending the hearing of the claim. This order may be made in fairly short order, and if unopposed may be possible within six to eight weeks. The sale process is by public auction by sealed bid, after appraisal by the court if a sealed bid meets or exceeds the appraisal value. The court is likely (although not obliged) to sell the vessel to the highest bidder.
- 10.2 If an offer does not meet the appraisal value the court has the discretion to:
- (1) re-run the auction;
  - (2) sell to the highest bidder; or
  - (3) on application, approve a private sale, which is only permitted in exceptional circumstances.
- 10.3 The court order for sale of the vessel will specify the period in which claimants must using their claims against the fund in court. The usual order is 90 days, but where seafarers are involved this may be reduced. In terms of a judgment, provided there is no appeal, if contested a judgment following a trial in an action may take over a

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year. If it is not contested judgment can be entered into in default of acknowledgment of service or of a defence. This may take a few weeks only. The distribution of proceeds can be applied for by any party with a claim after the period specified in the court order for sale.

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

- 11.1 Solicitors in Hong Kong are usually paid on an hourly basis. Conditional and contingency fee (that is, 'no win, no fee') arrangements are strictly prohibited. The seafarer must arrange for the payment of the solicitor. However, the solicitors' costs are recoverable from the owner or the proceeds of sale. The amount of the solicitors' fees recovered from the owner or the proceeds of sale cannot exceed the amount paid to the solicitors by the seafarer.
- 11.2 The solicitors have a lien over the vessel/proceeds of sale for their costs. The solicitors' lien for costs would take priority over:
- (1) claims for goods;
  - (2) materials supplied after the inception of the lien; and
  - (3) the master's claim for wages when he is part owner.

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

- 12.1 Under the High Court Ordinance, the plaintiff does have the right to arrest: 'any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it'.
- 12.2 If a seafarer has established jurisdiction for his claim for wages under a maritime claim, he may also bring an action *in personam* against the ship owner or employer in the Admiralty Court in Hong Kong for other breaches of the employment contract although this part of the claim would not have the status of a maritime lien.