

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN INDIA

This Guide deals with the right of a seafarer of any nationality to claim a maritime lien for unpaid or underpaid wages against an Indian flagged ship, or a foreign ship which is in a port in India. These rights can be enforced in the High Court exercising 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 India.

*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.

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

- 1.1 The Supreme Court of India in the case of *Epoch Enterrepots v M.V. Won Fu* has defined a maritime lien for unpaid seafarers' wages to be the:

'right to a part of property in the res and a privileged claim upon a ship, aircraft or other maritime property which remains attached to the property travelling with it through changes of ownership. It is also acknowledged that it detracts from the absolute title of the 'res' owners.'
- 1.2 The Supreme Court of India in the case of *O. Konavalov vs Commander, Coast Guard Region* held that:

'the seamen's right to his wages have been put on a high pedestal. It is said that a seamen had a right to cling to the last plank of the ship in satisfaction of his wages or part of them as could be found. The right to wages for a seamen is the same as for any other wages of any employee is an integral part of the right to livelihood and is entitled to the protection under Article 21 of the Constitution of India.'
- 1.3 A maritime lien for seafarers' wages, like any other maritime lien or maritime claims, can be enforced by obtaining an order of arrest from a High Court in the exercise of its admiralty jurisdiction.

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

2.1 A seafarer can file an admiralty suit in the High Court in relation to their claim for wages. The High Courts of coastal states in India have admiralty jurisdiction over vessels in the territorial waters of that state. The High Court of Bombay and Calcutta have pan Indian jurisdiction, that is to say, they can arrest ships that are in the territorial waters of any of the states.

2.2 Claims can also be filed in the Magistrates Court. The Merchant Shipping Act 1958 states:

'Summary proceedings for wages.- (1) A seaman or apprentice or a person duly authorised on his behalf may, as soon as any wages due to him become payable, apply to any magistrate exercising jurisdiction in or near the place at which his service were terminated or at which he has been discharged, or at which any person upon whom the claim is made is or resides, and the magistrate shall try the case in a summary way and the order made by the magistrate in the matter shall be final.'

2.3 Seafarers can also initiate proceedings in the Office of Commissioner of Workmen's Compensation for compensation against an Indian manager and/or shipowner. Any amount deposited with the officer of the Workmen's Commissioner can be remitted to the dependants of the seafarer who are located in a country other than in India.

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

3.1 Indian courts can refuse to hear seafarers' claims for wages only in very limited circumstances such as the court not having jurisdiction. One such scenario could be the court refusing to pass an order of arrest over a vessel which is not within the jurisdiction of the court.

4. Who can claim seafarers' wages?

4.1 Seafarers' wages can be claimed by family members and/or dependants of the seafarer.

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

- 5.1 All ships flying the flag of any country in the territorial waters of India are subject to the jurisdiction of the Indian Courts. The High Courts of coastal states in India have admiralty jurisdiction over vessels in the territorial waters of that state. The High Court of Bombay and Calcutta have pan Indian jurisdiction, that is to say, they can arrest ships that are in the territorial waters of any of the states.

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

- 6.1 There is no precedent as to what is included in the maritime lien for wages. The International Conventions on Maritime Liens and Mortgages 1993 and 1967 have the force of law in India. Under these conventions a maritime lien for wages includes:

'wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.'

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

- 7.1 A seafarer can claim wages even in circumstances in which there is no written contract of employment. Indian courts are likely to be guided by the general standard agreement between National Union of Seafarers of India and Indian National Shipowners' Association. The Indian Merchant Shipping Act 1958 provides that a:

'seaman shall not by any agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wage 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 loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.'

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

- 8.1 A seaman making a claim for unpaid wages should have worked on the vessel. The rationale is that wage lien arises from the service rendered to the ship. Further, the Indian Merchant Shipping Act 1958 provides that a seaman shall not be entitled to wages for any period during which he is absent without leave from his ship or from his duty.

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

9.1 Maritime Liens for wages take priority over other maritime liens such as loss of life and personal injury or damage caused by the ship. It appears that the maritime lien for salvage takes priority over the maritime liens for wages, albeit there is no precedent on this point. Maritime liens set out in article 4 shall take priority over registered mortgages, 'hypothèques' and charges.

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

10.1 A seafarer would have a maritime lien over the vessel on which he was working irrespective of his contractual counterparty in his contract of employment.

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

11.1 A seafarer's maritime lien cannot be abandoned or waived by a term in an agreement. Section 139 of the Merchant Shipping Act states:

'Right to recover wages and salvage not to be forfeited.- (1) A seaman 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 loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.'

11.2 Section 149 of the Indian Merchant Shipping Act 1958 empowers Indian courts to resend contracts between a shipowner and a seafarer.

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

12.1 The Maritime Liens and Mortgage's Convention 1993 provides that maritime liens may be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale. However, under the Indian Limitation Act 1963 the limitation period for a claim for wages is three years from the time of the end of the voyage during which the wages are earned. Indian courts have not dealt with a case in relation to the extinguishment of a maritime lien after a period of one year. It could be argued that a maritime lien for wages is recognized for a period of three years.

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- 12.2 A maritime lien is extinguished with the destruction of the vessel or property, or laches (undue delay in enforcement), or is discharged by payment or judicial act. The Gujarat High Court in the recent case of *Sri Lanka Telecom PLC v. M V ACX Hibiscus* took the view that a maritime lien would be extinguished when the intention of the owner of the vessel is no longer to deploy the vessel for navigation and the vessel has been imported into India for the purpose of demolition/ ship recycling.