



## Information

### Maritime lienor's rights in the German law benefitting seafarers with claims for outstanding wages

We, the Ship Safety Division of the BG Verkehr, are the competent monitoring body of maritime labour law compliance requirements on sea-going ships **under German flag**. Part of our service is to inform **seafarers** who work and have worked on ships under German flag and who still have claims for wages against their employer/shipowner about their **maritime lienor's rights**. We are only allowed to offer general information; please refer to a lawyer in case of individual legal advice.

#### What are maritime lienor's rights?

According to German law, crew members have liens to the ship (and its equipment) they have been working on for their claims for wages. According to German law, seafarers are automatically maritime lienor's and as such can have their claims for wages be recovered by way of enforced auction of the ship.

#### Why are the maritime lienor's rights advantageous for seafarers?

The maritime lienor's rights take precedence over any other liens (e.g. ship mortgages). Maritime lienor's rights remain in place even after a change of owner or flag of the ship as long as the lienor's rights have not expired. Amongst maritime lienor's rights, claims for wages of crew members rank first. This way, seafarers are the first to receive money from the proceeds of the auction in case of a successful enforced auction of the ship.

#### How do I assert my maritime lienor's rights?

Firstly, a seafarer has to request his or her employer/shipowner in written form (with a registered letter) to pay the outstanding wages (which have to be quantified in detail) up until a specified due date. If the employer/shipowner does not react or denies the claim, the seafarer has to **file a court action to obtain tolerance of the compulsory enforcement** at a German court. This court action should be filed against the owner and the charterer of the ship. The court action has to be filed at the local court where the ship is at port. If the court action is successful, a court decision is provided that can be used to apply for the enforced auction of the ship.

#### Do I need a lawyer for my court action?

Even though according to German law, it is not necessary to have a lawyer to file the court action to obtain tolerance of the compulsory enforcement, it is advisable to bring in a German lawyer, because German legislation regarding enforced auctions is very complicated.

#### What happens once there is a successful court decision?

In case of a successful court decision, you as a seafarer have to apply for an enforced auction at the same court. You will receive a court order, which serves as the order for an enforced auction of the ship. At the same time, from this moment the ship is deemed seized. After that, the court orders the ship to be guarded so that the ship cannot be removed from

port; an enforced auction is only valid for ships in port. The surveillance of the ship until the date of the enforced auction may accrue significant costs that must be covered by the claimant (the maritime lienor) and may significantly decrease the proceeds from the enforced auction.

### **What happens during an enforced auction?**

The court determines a date for the enforced auction of the ship and publishes it. The court also determines the lowest bid. At the day of the enforced auction, bidders can submit bids. If a bidder's bid on the ship is accepted, the court will determine a date for the distribution of the proceeds from the enforced auction. Next, the court prepares a distribution plan specifying how the proceeds of the auction are allocated according to the rank of the lienors' respective claims. If the proceeds from the auction are not enough to cover all claims, the lienor with the highest rank is allocated the auction proceeds up to the amount of their claim (no quota arrangement for all lienors).

### **How much time do I have to assert my maritime lienor's rights?**

The right exists for one year after the claim arises. Within this year, the maritime lienor must have obtained the seizure of the ship (by means of compulsory enforcement). It is not sufficient just to have filed a court action to obtain tolerance of the compulsory enforcement within that year.

### **Which costs will I have to face if I assert my maritime lienor's rights?**

First, a maritime lienor (the seafarer) will have to advance the **money for the court action to obtain tolerance of the compulsory enforcement**. The court charges as well as the fee of one's lawyer depend on the amount of the claim (outstanding pay). An online calculator (in German) for the trial costs can calculate the court charges and the lawyer fee: <https://www.juris.de/jportal/nav/services>. If the court action is successful, the defendant has to cover the court charges and the lawyer fee. However, the defendant must still have enough money (possible problem in case of impending/current insolvency proceedings). In case of a successful enforced auction, the seafarer receives the court and lawyer fees back from the auction proceeds.

First and foremost, the costs for the maritime lienor regarding the **enforced auction proceedings** include the following:

- a) 100 Euros fixed fee (German "Gerichtskostengesetz-Verzeichnis" (court cost act index) No. 2220),
- b) Cost advance for a valuation (up to 2,500 Euros) usually commissioned by the court to have the market value of the object to be auctioned off assessed,
- c) Advance on the court fees: a full court fee acc. to the German "Gerichtskostengesetz" (depends on the market value of the ship)

In case of a successful enforced auction, the cost advances are returned out of the auction proceeds.

### **What are the risks of this procedure?**

It is possible that the enforced auction fails because no bidder for the ship can be found. Furthermore, the proceeds of the enforced auction may be so low that there is not enough money left for all of the outstanding claims for wages of all seafarers or even for the accrued surveillance costs of the ship.

### **What are the most important German legal bases for maritime lienor's rights?**

- a) Commercial Code ("Handelsgesetzbuch" (HGB)): [available in English](#)
  - Sections 597, 598: Schiffsgläubiger-Rechte
  - Section 596 paragraph 1 No. 1: First rank for claims for wages

- b) Act on Enforced Auction and Receivership ("Zwangsversteigerungsgesetz" (ZVG)):  
[available in English](#)  
- Sections 162 and the following: Enforced auction of ships

**Further information**

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