

MARITIME LIEN AND ANALYSIS

A maritime lien is a species of charge that attaches to property and follows the property – most commonly a ship – to secure certain types of claims. It is inchoate from the time of the events giving rise to it, attaching to the ship, travelling with the ship into anyone's possession even a bona fide purchaser for value without notice, except a purchaser at an admiralty court sale and perfected by legal process. Only a limited class of maritime liens are recognised under section 9 (1) of the Admiralty Act (2017).

Maritime lien means a maritime claim as recognised under section 4 (1) (w) of the Admiralty Act (2017) against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

Maritime lien and its characteristics are:—

- (a) claims for 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;
- (b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (c) claims for reward for salvage services including special compensation relating thereto;
- (d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;

(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

The maritime lien shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. Provided that for a claim for wages and other sum due to the master, officers and other members of the vessel, the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

In admiralty law, a maritime lien is a privileged claim upon sea-connected property, such as a ship, for services rendered to, or the injuries caused by that property. In common law, a lien is the right of the creditor to retain the properties of his debtor until the debt is paid.

It is a proprietary lien where interest is about the property. It should be understood that “res” may be the vessel including its appurtenances and equipment, the cargo, the freight or even the proceeds of sale. The rights include jus in re (right on the property) and jus in rem (right against the property). The doctrine of maritime lien is that a ship will be treated as a wrongdoer, not the owner, that the loss, damage or harm is caused by the maritime property, itself, and it has to make good for the loss. The attachment of maritime lien will start when the cause of action arises and will not be eliminated even by change of ownership in a good faith purchase.

Two significant differences between maritime liens, which only exist in admiralty law, and the right to keep that exist in general civil law are that in general civil law, "Prior in time is prior in right", i.e., the rights of the lien holder with the earliest lien are superior to those of later lien holders, whereas

in maritime law the rights of the most recent lien holder are superior, and all maritime liens are superior to all non-maritime liens.