

Arrested and Detained Vessels, and Abandoned Seafarers





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Introduction

This booklet has been prepared as a guide to the voluntary societies involved in port-based welfare globally. It is intended to outline the responsibilities of the authorities and other organisations that might become involved when problems are identified aboard a vessel whilst in port.

The guidance has been produced to assist port welfare committee members and welfare agencies, to review best practice following incidents of seafarers being abandoned, and vessels being arrested or detained. It is hoped that this booklet will provide some practical advice as to actions which should be taken and signposting to organisations who may be able to offer further assistance. This guidance is intended to be adapted by national welfare boards to suit their particular circumstances.

In preparing this guidance, the authors have considered information available from a few sources including the ICS, ITF Guidelines for implementing the Welfare Aspects of the Maritime Labour Convention, 2006, as amended and the Merchant Navy Welfare Board publication, Arrested and Detained Vessels and Abandoned Seafarers: A Guide to Who Does What. The latter document covered situations prior to the adoption of the ILO Maritime

Labour Convention, 2006, as amended and may continue to be relevant to vessels which come from countries which are yet to ratify the convention.

This booklet is for guidance purposes only and when necessary, legal and or professional advice should be sought. There is a wide range of expertise, advice and support available from various organisations who are listed at the end of this document.

Vessels may encounter problems requiring the involvement of regulatory authorities when evidence exists of one or more breaches of the MLC 2006 (as amended), relevant conventions, regulations or contracts of employment. These may include breaches of health and safety regulations, non-payment of bills (including crew wages), or unacceptable working conditions and standards.

A crew, or individual crew members, are deemed to be 'abandoned' if an owner fails to pay for repatriation, necessary maintenance and support, or fails to pay the wages. This may occur when the shipowner becomes insolvent, or simply absconds. From the seafarer's perspective these cases can often be complex, stressful and prolonged.



1. Arrested Vessels

This is a complicated area of civil law which may well vary in different jurisdictions and the following guidance should be read in broad and general terms. Legal advice should always be sought in the appropriate jurisdiction when considering arresting a vessel. A ship is arrested if, for example, legal action is taken against the ship itself to enforce a maritime lien or claim. These usually arise in respect of unpaid services or wages. Below is a general guide to vessel arrest.

A lien is a right to retain possession of another party's property until the owner pays the debt. In maritime law, this can be enforced by applying to a court for the arrest and sale, usually by means of an auction, of a vessel which has accrued debts. Following an auction, the proceeds of the sale are divided amongst the arresting creditors, as directed by the court. As the vessel is unable to leave the port in which it is arrested, creditors often use arrest as leverage to recover their money.

In many jurisdictions, seafarers' wages are ranked as 'high priority' which means that the crew will be one of the first parties to receive what they are owed, but this does not mean that the crew will be guaranteed any money at all. In some jurisdictions, court costs, port fees and other costs may outrank a claim for wages. Other creditors may also emerge or register an interest with the court following an arrest, which may affect prioritisation. In some countries, the applicant must apply to the court to obtain high priority. In order for a claim to be recognised, the crew must be one of the arresting parties, or must have registered their claim with the court by some other means.

It is also important to note that cases in which a vessel is arrested and sold can take many years to resolve and seafarers are not likely to receive any payout until the case concludes. Consideration should be given to the impact of long delays on the seafarer and their family in the interim.

A vessel under arrest cannot sail without permission of the arresting officer. It can, however, be moved to an alternative berth or location for commercial, or

safety reasons, as authorised by the harbour master and with the permission of the arresting officer. This new location may be an anchorage, where there may be a requirement for safe manning levels to be maintained. This may affect the ability of the crew to take shore leave, receive supplies and welfare support, and may prevent the crew from returning home before the case is concluded.

It is important to understand that an 'arrest' only applies to the vessel and not to its crew, who retain all their rights as seafarers. Furthermore, an arrest does not necessarily imply that a ship is sub-standard.

It is hoped that the need for vessel arrests by seafarers will considerably reduce following amendments to the Maritime Labour Convention, 2006, as amended (MLC) which came into force in January 2017. The amendments introduce the requirement for the vessels covered by MLC to carry financial security which will respond to the shipowner's financial default and pay costs for the repatriation of abandoned seafarers. In addition, where an abandonment occurs, the financial security provider must provide for outstanding wages for a period limited to four months. More detail as to what constitutes an abandonment can be found in section 3 of this document.

2. Detained Vessels

A vessel can be detained by Port State Control for non-compliance with international conventions such as the MLC, SOLAS and STCW. This can include matters affecting seaworthiness, life-saving equipment, fire appliances, safe navigation, insufficient crew, inadequate crew certificates, and crew conditions such as excessive working hours and outstanding wages. Whilst a ship is detained, the relevant authority will not grant clearance for it to sail and a master, personally, may face a heavy fine if they choose to ignore this. Detained vessels may be required to be moved to an alternative berth or location.

It is not uncommon for a vessel to be both arrested and detained at the same time.

3. Abandonment of Seafarers

Seafarers are deemed to be abandoned when a vessel's owner withdraws responsibility for the crew by failing to meet their obligations. MLC Standard A2.5.2 paragraph 2 states:

"A seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:

- a. Fails to cover the cost of the seafarer's repatriation; or*
- b. Has left the seafarer without the necessary maintenance and support; or*
- c. Has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months."*

A similar definition can be found in IMO Resolution 930 Guidelines on Provision of Financial Security in case of Abandonment which may be helpful when dealing with vessels not covered by the MLC including fishing vessels. However, as this is a guideline document it does not have the same weight as the legal provisions of MLC, where it is in force and applicable.

It is the duty of the shipowner to ensure that seafarers are not abandoned. However, where this occurs, there are legal rights available under the MLC to ensure repatriation to the seafarer's country of residency at no cost to the seafarer. Early signs of abandonment may be indicated by food and water supplies running low, or if services and supplies to the vessel have not been paid for. In such cases, it is worth taking appropriate action as soon as possible.



Under MLC Standard A2.5.2, ratifying flag states are required to ensure that vessels flying their flag are carrying financial security which will provide for seafarers in the event that the shipowner fails to meet those obligations to the extent that the seafarers are considered abandoned. The needs that should be met are set out at Standard A2.5.2 paragraph 9 and include up to four months' wages, repatriation expenses and certain items necessary for the seafarers' survival.

The flag State is obligated to repatriate seafarers if the shipowner, and the financial security provider fails to do so.

The MLC also places an obligation on port States to act, if necessary, when seafarers on foreign flagged ships are abandoned in their ports. **Under MLC Standard 2.5.1.7 countries that have ratified MLC are obliged to facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, and under Standard 2.5.1.8, a ratifying country shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.**

If repatriation costs are borne by a port State and they are not recoverable from either a shipowner or insurance provider, the port State that meets these costs should be able to recover them from the flag State. Finally, labour supply countries also have a duty of care under the MLC to ensure the welfare of their seafarers, but should only be expected to step in when all other responsible parties have failed to take action. In order to see whether a flag State, a port State or a labour supply country has ratified the MLC please see the updated list of ratifications which is available at: <https://bit.ly/2UsBVCJ>

The MLC provides seafarers with access to a financial security system that is sufficient to pay the repatriation, necessary maintenance and support (including adequate food, accommodation supplies, essential fuel for survival on board the vessel), necessary medical care and payment of outstanding wages up to a maximum period of four months. It is therefore in the best interests of the seafarer to report abandonment or any of its constituent factors to relevant authorities including the flag State and/or other parties that can assist immediately.

Welfare providers should try to contact as many concerned parties as possible to try to secure the speedy repatriation of abandoned seafarers such as the shipowner, flag State, port State, ITF or other trade unions, and local welfare organisations.

To assist in the effective and prompt handling of seafarer abandonment, a party that provides practical support and assistance to seafarers should determine in the first instance whether the shipowner will pay costs; whether the seafarers want to be repatriated; whether they can quantify their wages claims; and liaise with the financial security provider to arrange for repatriation and the payment of contractual entitlements, where MLC applies. It is



also important for all interested parties to work collaboratively, including identifying local issues that may impede prompt repatriation and seek the co-operation of the relevant authorities in the port State in which the abandonment occurs.

The financial security system also should ensure payment is made to cover repatriation by appropriate and expeditious means, normally by air, and include accommodation and medical care from the time the seafarer leaves the ship until they return to their home location. The financial security system must provide direct access (allowing the seafarer to contact the insurance provider directly) sufficient coverage and expedited financial assistance to pay outstanding wages and entitlements. Seafarers needing to invoke the financial security system should refer to documentary evidence of the financial security issued which should be posted in a conspicuous place onboard the vessel.



IMO/ ILO Abandonment Database

Welfare providers are also encouraged to ensure all cases of abandonment are reported to the ILO and IMO so that they can be listed on the International Abandonment Database. Once a case is listed, this triggers high level involvement from ICS, ITF and the various State parties to work towards a speedy and appropriate resolution of a case. The database contains a regularly updated list of vessels that have been reported to the ILO as abandoned in various ports of the world by appropriate organisations. It specifically includes information on seafarers and fishers, who have been abandoned and their current status. Cases should be listed whether or not the ship is registered with a country that has ratified the MLC, as other diplomatic channels can be used if necessary.

To register a case contact should be made with either sending the appropriate information to:

1. The ICS via info@ics-shipping.org
2. The ITF via seafsupport@itf.org.uk

The Impact of Abandonment

It is essential to recognise the very human and emotional impact upon seafarers and their families when they are impacted by situations of abandonment. They will begin to encounter a multitude of social, emotional and legal challenges such as:

For Abandoned Seafarers

- Often being a long way from home and family
- Often being in a country with an unfamiliar language, culture and food
- Wages having ceased and few seafarers will have much, if any, cash
- Worries that the allotments to their families will have ceased
- Worries regarding legal rights and status with immigration and other authorities
- Vulnerability in eyes of others who may wish to exploit their current situation
- Little to do other than to maintain their living conditions which are likely to deteriorate as time progresses and adequate resources become difficult to obtain
- Extreme boredom over an extended period, compounded by worry and genuine fear, may create some very stressful situations, which might include conflict with other colleagues, or even the authorities. Rumours and counter rumours may begin to circulate
- Reluctance to leave the vessel to be repatriated for fear they will lose any claim on back pay
- Loss of pride and fear of returning home without money

For Seafarers' Families

- Allotments having ceased and inability to meet financial commitments and daily expenses
- Worries for the welfare and health of their seafarer family member
- Worries when they will see them next
- Uncertainty as to when the seafarer will financially provide for the family again. The longer the seafarer is away from home unable to send back money the more bills will pile up at home. It may be better for the seafarer to 'cut their losses' and return home quickly following repatriation offered by a flag State, State of Nationality, port State or insurance provider and then to find work onboard a new vessel therefore earning once again for their family

Fishers

Please note: fishers are not covered by the Maritime Labour Convention, 2006, as amended but by the Work in Fishing Convention 188. Details of provisions and entitlements are listed at: <https://bit.ly/2Rof35l>

Insurance assistance

There are a number of different insurance mechanisms available. The system of financial security may be in the form of a social security scheme or insurance or a national fund or other similar arrangements.

It is recommended that all seafarers check that an appropriate form of coverage is in place upon boarding the vessel, to know when it is likely to run out and when to expect new cover to be activated.

For vessels covered by organisations that are part of the International Group of P&I Clubs, there are established 24-hour emergency helplines. The details will be provided on the insurance certificates which should be posted conspicuously on board the vessel. Details of the respective members can be found on the following website: www.igpandi.org/group-clubs.

The Seafarers Emergency Fund

The Seafarers Emergency Fund (SEF) is available to provide immediate, essential aid to seafarers and families of seafarers, who are directly involved in sudden or unforeseen crises. The fund may be needed to cover expenses such as psychological counselling, medical bills, repatriation and a number of other unexpected costs.

The SEF is available to welfare organisations and trade unions in order to provide seafarers and/or their families with the goods or services they need in an emergency. The fund is not intended to be used for long-term maintenance or for situations where other sources of relief are available. Each application is considered on its own merits, on a personalised and timely basis and with confidentiality.

This fund is currently made possible by grants from The TK Foundation, the ITF Seafarers' Trust, the Trafigura Foundation and Seafarers UK.

To apply for a grant the assisting welfare agency will need to contact ISWAN at iswan@iswan.org.uk and fill in a short application form.



What to do in cases of abandonment

1. Be alert to early potential signs of abandonment and take action as appropriate.
 - a. Supplies of food, water and fuel are low and the crew don't know when more supplies will arrive
 - b. Crew members are working with expired contracts/employment agreements
 - c. Crew members have not been paid
 - d. The shipowner has not paid for supplies or other services
2. If the seafarer is abandoned, the local port State control authority, the flag State and the embassy of the country of nationality should be made aware of the situation. In addition, it is worth making contact with the local ITF Inspector or trade union representatives and welfare providers.
3. If the seafarer wants to return home, has not been paid wages or needs food, accommodation, drinking water etc., they should seek to activate the financial security system by contacting the financial security provider identified on the certificate or document posted on the vessel. A representative of the seafarer can make contact with the financial security provider on the seafarer's behalf.
4. If the vessel is not covered by MLC, seafarers should seek immediate assistance from a Port State Control Officer, an ITF Inspector, local trade union representative, or welfare agency or by contacting ICS.
5. Report the abandonment to the Joint IMO/ILO Database on reported incidents of abandonment of seafarers. The ICS and ITF can assist with the reporting process.
6. If the shipowner or their insurer will not act, this should be brought to the attention of the flag State in the first instance. The international agencies mentioned below may also be able to assist.
7. If urgent assistance is required, and there is no other help available, contact an appropriate welfare organisation, or the ITF, to see if an application can be made for urgent assistance from the Seafarers Emergency Fund.
8. Contact SeafarerHelp at www.seafarerhelp.org.



International organisations which may be able to provide assistance

ICMA – International Christian Maritime Association

ICS – International Chamber of Shipping

IGP&I – International Group of P&I Clubs

ILO – International Labour Organization
(Sectoral Activities Department for Shipping)

IMHA – International Maritime Health Association

ITF – International Transport Workers' Federation

IMO – International Maritime Organization

IRC – International Red Cross

ISWAN – International Seafarers' Welfare
and Assistance Network

SRI – Seafarers' Rights International

Many other organisations may be able to contribute significant support and legal assistance or advocacy such as The Mission to Seafarers, the Center for Seafarers' Rights at the Seaman's Church Institute, the Sailors' Society crisis response network, and some Apostleship of the Sea advocates in different countries.

Some local missions also have considerable experience in providing support to seafarers and in working in partnership with other international organisations. If you wish to get further advice on local missions, please contact the ICMA General Secretary.

National agencies which may also be able to assist

- Port State Control Officers
- Port Health Officers
- Border and Immigration Authorities
- Coastguard Agencies
- National and Local Port Welfare Committees.

It is important to ensure that any which are approached are bona fide. If you are unsure whether a particular body is legitimate, please contact one of the international organisations or national agencies listed above who will be able to give appropriate advice.



Website addresses

The following websites may be of assistance and hold information which may assist in situations of Arrest, Detention and Abandonment:

International Chamber of Shipping (ICS)
www.ics-shipping.org

International Labour Organization (ILO)
www.ilo.org/global/lang--en/index.htm

ILO MLC information
www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm

ILO MLC Convention text
www.ilo.org/global/standards/maritime-labour-convention/text/WCMS_554767/lang--en/index.htm

ILO MLC Ratification database
www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm

International Maritime Organization (IMO)
www.imo.org/en/About/Pages/Default.aspx

IMO/ILO Database on reported incidents of abandonment of seafarers
www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en

International Seafarers' Welfare and Assistance Network (ISWAN)
www.seafarerswelfare.org

SeafarerHelp
www.seafarerhelp.org

International Transport Workers' Federation (ITF)
www.itfglobal.org
www.itfseafarers.org

ITF Seafarers Trust
www.seafarerstrust.org

SRI information on IMO/ILO Guidelines
www.seafarersrights.org/legal_database/ilo-imo-resolution-a-93022/

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