

## Maritime Liens in Turkey

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### Introduction

Maritime liens give the holder a priority over mortgages and other claims and continue to bind the ship despite a change of ownership. They are secret and unregistrable. A purchaser of a ship often takes a risk as there may be outstanding maritime liens on the ship. Thus, the law of maritime liens is significant in admiralty practice. The number and the variety of claims that give rise to maritime liens differ depending on the jurisdiction.

Articles 1320 to 1327 of the Turkish Commercial Code (TCC) regulate the law of maritime liens. To harmonise Turkish maritime regime with international maritime law, many international conventions have been reflected in the TCC and Maritime Liens and Mortgages Convention 1993 (“MLM 1993”) is one of them. Articles 1320 to 1327 of TCC are mainly based on MLM 1993.

Maritime claims that give rise to maritime liens are also listed in Article 1352 of TCC therefore, a claimant holding a maritime lien will be allowed to arrest the ship under Article 1353 of TCC.

The claims set out in Article 1320 of TCC, if they lay against the owner, demise charterer, manager or operator of the ship, will have maritime liens.

## Assets Subject to Maritime Lien

Maritime liens are attached to the ship and its appurtenances. However, appurtenances which do not belong to the shipowner are excluded by Article 1321 of TCC. Cargo, on the other hand, is not subject to a maritime lien in Turkish law.

## Claims that give rise to Maritime Liens

### a. Claims for Seaman's Wages

Seamen are the weak party in an employment contract and they are usually on high seas or foreign ports. Due to their vulnerable position, most jurisdictions, including Turkey, protect them by securing their claims with a maritime lien.

Article 934 of TCC provides that "*seamen include master, officers, crew and other persons employed on the ship.*" The meaning of "*other persons employed on the ship*" extends to cooks, waiters, musicians, cleaners, stewards and other staff who even does ironing or laundry in a ship according to the High Court of Appeals.

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The scope of seamen's wage lien in TCC is wide and the criteria is "employment on the vessel". Therefore, seamen who are employed on a ship without any contract of employment will also have a maritime lien.

Wages and other sums, repatriation costs and social insurance contributions are the three categories of such claims that give rise to maritime liens. Other sums may refer to severance pay, overtime pay, annual leave pay and other leave pays due from death of relatives or marriage, sick pay and accommodation costs if seamen are accommodated off the ship etc.

### b. Claims for Loss of Life and Personal Injuries

Maritime liens are secured for claims for loss of life and personal injury of passengers or crew on the ship as well as other people on land or on water under Article 1320(1)(b) of TCC. Such claims must arise "in direct connection with the operation of the vessel".

## c. Claims for Salvage

According to Article 1 of the Salvage Convention 1989, salvage is defined as “...any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.” Article 12/1 of the Salvage Convention 1989 states that salvage operations which have had a useful result give right to a reward.

Salvage law is regulated under TCC and provisions of the salvage in TCC is in line with the provisions of the Salvage Convention 1989. Salvage claims give rise to maritime liens in Turkish law.

There is no maritime lien for special compensation claim which is regulated under 1312 of the TCC and Article 14 of the Salvage Convention 1989. Furthermore, claims for expenses of removal of shipwrecks are not supported by a maritime lien. However, both of these claims are regarded as maritime claims under Article 1352/1(c) and (e) of the TCC therefore, claimants who are holding such claims have the right to arrest the ship.

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## d. Claims for port, canal and other waterway dues and pilotage dues

Claims for port, canal and other waterway dues and pilotage dues give rise to maritime liens.

## e. Claims based on Tort

Claims based on tort and arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' luggage carried on the vessel give rise to maritime liens. However, only claims for “physical” loss or damage are covered therefore, claims for economic loss are not supported with maritime lien. No maritime lien arises for cargo claims.

Transportation of oil and other hazardous and noxious substances by sea or dumping at sea may cause pollution therefore, marine pollution and claims in connection with it, is important in admiralty law.

Many international conventions have been adopted to regulate the compensation and liability regime for pollution claims. Turkey is party to Civil Liability Convention 1992, Fund Protocol 1992 and Bunker Convention 2001. Pollution claims do not attract maritime liens under Turkish law and this is expressly stated in Article 1320/2 of TCC.

### f. Claims for General Average

Claims arising from a general average act is secured by a maritime lien under Article 1320(1)(f) of TCC. However, Article 1323(2) of TCC states that maritime liens for general average claims rank after all other maritime liens and ship mortgages. In other words, the general average claims follow the ship into whosoever possession it comes, however, unlike other maritime liens they rank after ship mortgages.

### Priority of Maritime Liens

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If the proceeds after the judicial sale of the ship are insufficient to cover all claims, priority of the claims becomes crucial for claimants. At that stage, all the claims including maritime liens will be competing.

As mentioned above, maritime liens have priority over mortgages. However, the ranking between different types of maritime liens is of vital importance as well.

The main rule with regards to the ranking of maritime liens is found in Article 1324/2 of TCC: Maritime lien for salvage reward takes priority over all other maritime liens which had attached to the vessel prior to the time when the salvage operations giving rise to the said liens were performed.

Thus, priority of the maritime liens is as follows:

1. Claims for Seaman's Wages.
2. 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.
3. Claims for port, canal and other waterway dues and pilotage dues.

4. Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

The maritime liens set out in number 1, 2, 3 and 4 rank pari passu between each other. However, salvage maritime liens have priority in the reserve order to the time of the emergence of such claim.

### Extinction of Maritime Liens by Lapse of Time

The extinction of maritime liens by lapse of time is regulated under Article 1326 of TCC. This Article is adopted from Article 6 and Article 9 of the MLM 1993.

The maritime liens set out in Article 1320/1 (a) to (e) of TCC shall 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. As for the seaman's claims, period of one year commences upon claimant's discharge from the ship.

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Unlike other maritime liens, maritime liens for claims arising out of general average contributions are extinguished after 6 months or at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel.

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