# Maritime liens and Mortgages: Applicable law and interpretation

*Based on the ruling of September, 14th 2010 and the one of October, 14th 2010*

1. Applicable law to maritime liens and mortgages
2. Strict interpretation of maritime liens

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### 1) Applicable law to maritime liens and mortgages

Concerning maritime liens and mortgage granted abroad, we have to distinguish between, on one hand, the constitution and the validity of the security governed by the law of the contract (lex causae) which gave birth to the claim; and on the other hand, the conditions of execution of liens and mortgages, for which the law of the place of the seizure (lex arresti) is applicable.

We have to note that the Brussels Convention of 1926on maritime liens and mortgages inviting judges to respect securities granted abroad, is only applicable to the seizure of a ship flying the flag of a contracting state.

Concerning creditors ranking, it is necessary to add that French case law insures the supremacy of maritime liens on mortgage, and this solution is also adopted by the international law.

We should note that occasionally the lower courts apply the lex arresti (law of the place of seizure), to maritime liens without wondering if some of them which seem valid under the law the lex causae, were also valid under the lex arresti. This point could lead to other important developments.

### 2) Strict interpretation of maritime liens

Regarding the arrest of the ship, French law has a dual character : In addition to the international provisions of the Brussels Convention of 10 May 1952 applicablein France since February 24, 1956, the French law organizes the seizure of ships under Law No. 67-5 of 3 January 1967 and its implementing Decree No. 67-967 of 27 October 1967. The maritime privileges, as all the privileges, are the object of a strict interpretation: such is the case of the lien established by Article L.5114-8, 6° of transportation codein French law.

Concerning maritime liens, the important question arose of whether the owner was able to oppose the seizure of his ship on the grounds that he is not the debtor of the bills; in fact for instance, the debtor could be the bareboat charterer and shipowner.

The Court of Appeal of Nouméa held that the claim, basis of the seizure of the ship, may be a claim against the owner of the ship but it is not necessary. Indeed maritime liens burden the ship and maritime law places on the ship the obligation to pay the debts incurred by its exploitation.

Under these conditions, the creditor of a charterer may arrest the ship if he is in the position to claim a maritime lien. It is thus up to the creditor, in accordance with the French law, to prove a claim which seems real and to invoke a maritime lien.

a) An alleged claim

the first condition is not very difficult to fulfill: “it suffices, in accordance with the law to invoke the appearance of a debt. We can note that, contrary to the law applicable for general liens, it is not necessary to meet the urgency requirement.Moreover as we are in the commercial matter, persons cannot hide themselves behind the proof requirements as the one of Article 1341 of the Civil Code(concerning the written form requirement)”.

b) Expenses undertaken by the master for the real needs of the ship.

The second condition required to invoke a maritime lien is more delicate. According to article L. 5114-8, 6° of the French transportation code, the expenses incurred by the master for the real needs of the vessel creates a lien for the benefit of the creditor. This lien has been established to promote the "conservation of the ship" or the "continuation of the shipping". However, we have to specify services need to be ordered by the master of the ship outside its port of registry and in accordance with its statutory power. It implies a consent reflecting a preliminary contractual commitment. This condition leads to exclude numerous operations from the field of the lien.

In case law, judgments confirm this requirement. For instance, in the foregoing ruling, trial judges held that the simple stamp and signature affixed to the bills, even if it demonstrates the execution of the services billed, is not sufficient to bring the proof of the order by the master of the ship (the necessary condition for the validity of the maritime lien).

Maritime liens as all possible liens call a strict interpretation and not a restrictive one, that is to say we have to respect the letter of the legislation. However maritime laws do not solve all problems which could appear: is it still normal that only the claim of the consignee of the ship, who, contrary to the shipping agent has only limited powers, is privileged?