

## SEAFARER SUBJECT GUIDE

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### PERSONAL INJURIES AND DEATHS IN RUSSIA

This Guide explains national law when seafarers are injured or killed in a port in Russia or on a Russian flagged ship. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is injured or killed, then the seafarer or his relatives are strongly advised to consult a lawyer qualified to practise in Russia.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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#### **1. If a seafarer is injured or killed in a work related incident, does Russian law allow a claim for compensation to be brought?**

- 1.1 The status of seafarers in Russia is regulated principally by the Merchant Shipping Code of the Russian Federation dated 30 April 1999 ('MSC'), general provisions of the Civil Code of the Russian Federation ('Civil Code'), Labour Code of the Russian Federation No. 197-FZ dated 30 December 2001 ('RLC'), other applicable laws and secondary legislation, international legislation, including the Maritime Labour Convention as of 7 February 2006 ('Maritime Labour Convention').
- 1.2 A seafarer works under an employment agreement with the ship owner, and therefore is considered as an employee for legal purposes. Pursuant to the RLC and the Code of Civil Procedure of the Russian Federation No. 138-FZ dated 14 November 2002 ('Civil Procedure Code'), an employee, i.e. a seafarer (or his next of kin), is entitled to bring a claim against the employer, i.e. the shipowner, arising out of any disputes connected with a work related incident.

#### **2. What is the basis for recovery of compensation for personal injury or death claims?**

- 2.1 Pursuant to the Maritime Labour Convention, Russia must ensure that the seafarers on ships that fly Russian flag are provided 'with a right to material assistance and support from the ship owner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.'
- 2.2 According to the provisions of the RLC and Civil Code, the employer must compensate all damages (actual and moral) caused to his employees in connection with their work performance. In particular, the employer must compensate his employee injured in a work-related incident (or the relatives of the employee killed in a work-related

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accident) in respect of: (a) any and all earnings lost due to the incident; and (b) any and all expenses for the medical, social and professional rehabilitation (or any and all relevant expenses in connection with the death) of the employee in connection with the incident.

2.3 Other provisions on liability recovery may be provided in the employer's local acts, collective or employment agreements.

### **3. Are Russian laws for compensation for personal injury or death of a seafarer applicable only to Russians, or are the laws applicable to foreigners also?**

3.1 The issues related to compensation for the personal injury or death of a seafarer are mainly regulated by the RLC. According to the RLC, its provisions are mandatory for each employer operating within the Russian Federation regardless of their organizational and legal status and forms of ownership. In addition, the law also directly specifies that Russian labour legislation shall, *inter alia*, apply to labour relations of foreign nationals and apatrides, unless otherwise stated by an international treaty of the Russian Federation.

3.2 Therefore, the laws for compensation for the personal injury or death of a seafarer are applicable to both Russian and foreign citizens, provided that such persons are employed by a Russian shipowner located in Russia.

### **4. Is Russian law the same throughout the country, or does it change from state to state or from province to province or for any other political or geographical area?**

4.1 According to the RLC, the issues related *inter alia* to the investigation of work related accidents, procedures and conditions of material liability of the parties to the labour contract, including the matters connected with compensation of damage to the employee's life and health due to the work related accidents are exclusively regulated by the federal laws of the Russian Federation.

4.2 This means that the constituent entities of the Russian Federation are not entitled to adopt any laws or regulations covering the above-mentioned issues, if such matters are specifically covered by federal law.

### **5. Is Russian law the same for all types of seafarers, such as blue water seafarers engaged in international trade, seafarers employed in coastal waters, or fishers?**

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- 5.1 The general provisions of Russian labour, civil law and civil procedure do not distinguish between the types of seafarers.
- 5.2 According to the MSC, its provisions cover: (a) sea vessels in course of their shipping in sea waters and inland water ways unless otherwise stipulated by law or an international treaty of the Russian Federation; and (b) inland vessels and mixed (water-sea) vessels in the course of their shipping in sea waters and inland water ways when carrying cargoes, passengers and their luggage and calling at a foreign port, in the course of a rescue operation and in the course of a collision with a sea vessel.
- 5.3 Unless directly stipulated in the MSC, its rules do not cover naval ships, naval auxiliary vessels and other vessels owned by the state or used by it for the purposes of state non-commercial service, as well as state-owned non-commercial cargoes.
- 6. Which court would have jurisdiction over a claim for compensation by a seafarer who was injured or killed: (1) on a Russian vessel, or (2) on a foreign flagged vessel in a local port of Russia or in the territorial seas of Russia?**
- 6.1 As described below, a seafarer's claim for compensation for injury or death is deemed to be a maritime claim. The Russian judicial system does not provide for a special court for maritime claims (such as, for example, the Admiralty Court in England). As a general rule, the courts of general jurisdiction would normally have jurisdiction over labour disputes (including the claims connected with work-related incidents).
- 6.2 In accordance with the RLC, an individual labour dispute for a work-related incident shall be resolved in the Russian court of general jurisdiction within the jurisdiction of the district court ('District Court').
- 6.3 Prior to initiating legal proceedings in a District Court, an employee may at his own discretion initiate a pre-trial of the labour dispute by a labour dispute commission established within the relevant organization by the parties involved in the respective dispute ('Dispute Commission'). If the dispute has not been considered and resolved by the Dispute Commission within ten days, or if the employee does not agree with the decision of the Dispute Commission, the employee is entitled to appeal such inaction or decision in a District Court.
- 6.4 Pursuant to the Civil Procedure Code, seafarers are able to assert their claims in connection with the work-related incidents:
- (a) to the courts at the location of the defendant (ie, ship owner); or

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(b) to the courts at the seafarers' domicile; or

(c) to the courts at the incident's place.

6.5 The Civil Procedure Code provides that foreign citizens and apatrides are entitled to bring claims before the Russian courts for the protection their rights.

6.6 According to the Federal Law No. 155-FZ 'On Internal Sea Waters, Territorial Seas and Contiguous Zone of the Russian Federation,' the civil, criminal and administrative jurisdiction of the Russian Federation extends to foreign flagged ships in Russian ports. According to article 41 of the same Federal Law, disputes between Russian citizens, foreign citizens, apatrides, Russian and foreign legal entities relating to the performance of their rights and liabilities in the internal sea waters, territorial seas and contiguous zone are subject to resolution in accordance with Russian legislation.

6.7 Therefore, if an incident takes place on a Russian flag ship or on a foreign flag ship in Russian port or territorial seas, District Court will have jurisdiction over the claim of the Russian or foreign seafarer (or their next of kin).

### **7. Would the Russian court uphold a jurisdiction and/or law clause in the employment contract of a seafarer who had been injured or killed in a work related accident?**

7.1 The provisions of the RLC shall apply to each employer performing business in Russia regardless of his organizational and legal status and forms of ownership. In practice this could mean that each employment contract entered into by the entity operating in Russia and any individual whether Russian or not, shall be governed and constructed in accordance with the laws of the Russian Federation. Therefore, it may be concluded that the Russian court apparently would not uphold a foreign law clause.

7.2 However, the abovementioned restrictions do not apply to the employment of foreign citizens by representation offices or branches of the Russian outside Russia. In these cases, the court is likely to uphold the jurisdiction clause and construct the agreement in accordance with the foreign law.

### **8. What is the time limit for bringing a claim after the occurrence of an incident?**

8.1 In accordance with the provisions of the Civil Code, the statute of limitations does not apply to the requirements of compensation for personal injury or death. Therefore, it is possible to bring the claim at any moment after the incident.

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- 8.2 However, if the claim for compensation for injury or death is brought more than three years after the incident, the amount of the awarded compensation for the previous time cannot cover the period of more than three years.
- 8.3 The temporary disability benefit must be claimed by the injured seafarer from the social insurance fund within six months from the date of full recovery or total disability of the seafarer.
- 9. Is a seafarer's claim for compensation for injury or death a maritime claim that can be secured by arrest of a ship? If so: (1) which ship can be arrested; and (2) in what circumstances can the ship be arrested?**
- 9.1 As a general rule, a seafarer's claim for compensation for injury or death is deemed a maritime claim that can be secured by the arrest of a ship.
- 9.2 Ship arrests in Russia are regulated principally by the MSC which basically incorporates most principles envisaged by the International Convention for the Unification of Certain Rules relating to Arrest of Ships, adopted in Brussels on 10 May 1952 ('Convention on Arrest of Ships').
- 9.3 The MSC defines an arrest of a ship as any detention or restriction in movement of a ship within the jurisdiction of the Russian Federation, carried out under the decision of the respective court. A ship can be arrested only for a maritime claim. Maritime claims, which can be the ground for arresting a ship, constitute, *inter alia*, any claims related to: (a) damage caused during operation of the ship; (b) loss of life or personal injury caused ashore or afloat in direct connection with the operation of the ship; and (c) general average, etc.
- 9.4 A ship is subject to arrest under a claim for injury or death only if it is encumbered with a maritime lien. The MSC defines a maritime lien as the mechanism of securing maritime claims against the shipowner in relation to the following claims: (a) wages and other payments due to the master and crew of the ship for their work aboard the ship, including expenses related to repatriation and social security payments made on behalf of the master and the crew; (b) compensation for loss of life or personal injury caused ashore or afloat in direct connection with the operation of the ship; (c) remuneration for rescue of the ship; (d) payment of port dues, canal and other waterway tolls; and (e) compensation of real damage incurred during operation of the ship as a result of loss or damage of other property than cargo, containers and passengers' luggage.

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- 9.5 As a general rule, a maritime lien arises simultaneously with the underlying maritime claim and the existence of such maritime lien is limited to a specific period of time. The total period of time when the maritime lien is effective is one year. In relation to liens securing seafarer's claims for injury or death such term begins to run from the date of dismissal from the ship of the seafarer who has the respective maritime claim. The maritime lien in relation to a particular ship terminates upon expiration of the one year. Maritime claims secured by maritime liens are subject to first priority satisfaction over any other claims (including the claims secured by a registered mortgage of the ship).
- 9.6 Russian laws prescribe that an arrest of the ship may be imposed by Russian courts if: (a) the ship is located in the Russian Federation although registered in a foreign jurisdiction and flying under the flag of the Russian Federation; (b) the ship is registered in the Ship State Register in the Russian Federation or in the ship book and is temporarily transferred to the national flag of a foreign country with the right to its use and possession accorded to foreign charterer; and (c) the ship is flying the national flag of a foreign country.
- 9.7 The ship may be arrested in Russia even if in accordance with the jurisdiction clause or arbitration clause specified in the respective agreement, the maritime claim pursuant to which a ship is arrested is subject to consideration by court or arbitration of another country. However, in such a case, a Russian court would only have authority to arrest the ship, but the main dispute would later be considered by the foreign court.
- 9.8 At the same time various bilateral shipping treaties to which Russian Federation is a party, may provide for impossibility to arrest certain ships of foreign countries. Russia is now a party to bilateral shipping treaties restricting arrests with the Netherlands, Belgium and Luxembourg, Czech Republic and Slovak Republic, Romania, Hungary, and Angola.
- 9.9 The MSC prohibits repeated and multiple arrests of the ship for the same maritime claim. A ship also cannot be arrested if there is already the arrest of another ship in its place securing the same maritime claim.

### 10. What types of damages are recoverable?

- 10.1 According to the general provisions of Russian law, a person, whose right is violated, can claim full recovery of damages (actual damages or lost profits), unless otherwise stipulated by law or contract. Actual damages are interpreted as: (a) expenses which must be undertaken by the party, whose right is violated, in order to repair the

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violated right, or (b) loss or damages to its property. Lost profits are interpreted as non-received income which would have been received by such person during his usual business activities, if his right had not been violated.

- 10.2 In order to claim damages (actual damages as well as lost profits), the claimant must prove: (a) the fact of damages and their quantum; (b) the respondent's fault causing the damages; and (c) a cause and effect relationship between the damages and the actions and/or omissions of the defendant.
- 10.3 Neither Russian legislation nor Russian court practice knows the term 'indirect damages.' Moreover, when an agreement establishes liability in form of indirect damages, Russian courts do not levy such damages.
- 10.4 The parties can limit (but not totally exclude) their liability by indicating its upper limit. If total liability is limited, for example, by a certain amount, the parties shall not be liable in excess of that amount, even if the total liability of any party under the agreement will be more than such an amount.
- 10.5 The parties can also include provisions on liquidated damages in their agreement. Civil Code recognizes four types of liquidated damages:
- (a) set-off liquidated damages (the damages can be claimed in part which is not covered by the liquidated damages). If an agreement does not specifically indicate a type of liquidated damages, it shall be considered as a set-off liquidated damages;
  - (b) exclusive liquidated damages (only liquidated damages can be claimed, not damages);
  - (c) punitive liquidated damages (the liquidated damages can be claimed in addition to damages); and
  - (d) alternative liquidated damages (either damages or liquidated damages can be claimed).

### **11. What are the principles for calculating compensation for a claim by a seafarer or his next of kin for: (1) a work related injury; and (2) a work related death?**

- 11.1 Pursuant to the MSC, the shipowner must insure the life and the health of the seafarers in the discharge of their work duties. Pursuant to the RLC and the Federal Law No. 125-FZ 'On Compulsory Social Insurance from Industrial Accidents and

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Professional Diseases', all employees in the Russian Federation working under labour agreements are subject to the compulsory disability insurance.

- 11.2 Pursuant to the Resolution of the Russian Supreme Court No. 2 of 10 March 2011, compensation for a claim for work-related injuries and work related deaths must be provided on the basis of compulsory disability insurance.
- 11.3 Seafarers injured in a work related incident are entitled to the following compensations: (a) temporary disability benefits in the amount of 100% of the employee's average monthly salary, paid by the employer on a monthly basis during the whole period of the temporary disability (until the employee recovers or obtains permanent incapacity to work); (b) insurance payments (one-time and/or on a monthly basis), Russian laws establish maximum limits of insurance payments; (c) compensation of all expenses for medical, social and professional rehabilitation. The expenses must be confirmed by relevant documents (e.g. cashier's checks, medical receipts, etc); (d) compensation for moral damages in the amount determined by the court and depending on the size and nature of the moral and physical damages of the seafarer; and (e) other compensations for which the employer is liable in local regulatory acts.
- 11.4 The relatives of the seafarers killed in a work related incident are entitled to the following compensations: (a) funeral grant in the amount not exceeding RUB 4,000 (approx. USD 116); (b) insurance payments (one-time (RUB 1,000,000 (approx. USD 29,129)) or on a monthly basis), Russian laws establish maximum limits of monthly insurance payments; and (c) compensation for moral damage in the amount determined by the court and depending on the size and nature of the moral damages of the seafarers' relatives.

## 12. What damages might be awarded in the following circumstances:

### (1) 30 year old seafarer, injured aboard a vessel, who is now totally disabled. Medical expenses of US\$15,000 per year for the remainder of his life?

- 12.1 As described in paragraph 11 above, under Russian law the injured seafarer will be entitled to the following compensations of damages (the seafarer will not be awarded temporary disability benefits since his disability is established in full): (a) one-time insurance payment due to the occurrence of the insurance event calculated in accordance with law but not exceeding the legally established maximum limit; (b) monthly insurance payments in the amount of 100% of the seafarer's average monthly salary; (c) compensation of medical expenses in the amount of USD 15,000

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per year for the remainder of the seafarer's life; (d) compensation for moral damage; (e) other compensations provided for by the employer in local regulatory acts, if any.

**(2) 30 year old seafarer, who dies as a result of an accident on board a vessel, who is survived by a 29 year old wife and 2 children, ages 2 years and 4 years old?**

12.2 As described in paragraph 11 above, under Russian law the wife and the children of the dead seafarer will be entitled to the following compensations of damages: (a) funeral grant in the amount equal to the funeral expenses but not exceeding RUB 4,000 (approx. USD 116); (b) one-time insurance payment in the amount of RUB 1,000,000 (approx. USD 29,129); monthly insurance payments to each of three seafarer's survived family members (the wife and both children), calculated as follows:

$$\frac{a - b}{c},$$

where:

a - 100% of the seafarer's average monthly salary;

b - the share designated to be spent by the dead seafarer himself;

c - the number of persons entitled to the insurance premium, ie three.

12.3 The monthly payments shall be paid: (a) to the children, until they are 18 years old (or 23 years old if they obtain full-time education); (c) to the wife, if she does not work and takes care of the children, until the younger of the children is 14 years old; and (c) compensation for moral damage.

**13. How efficient are the local courts and what would be an average estimated time for hearing and ruling on a seafarer's claim for compensation for injury or death?**

13.1 Generally, under Russian law each employer is obliged to insure its liability for payment of compensation for injury or death in case of work related accidents. Pursuant to legal requirements, such compensation must be paid by the respective local social fund in the out-of-court procedure. Nevertheless, this does not exclude or otherwise restrict the employee's right to claim for compensation of additional

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damages (which have not been covered by the provided insurance policy) in court on general civil law terms.

13.2 However, Russian procedural law provides for multiple options to artificially but legally delay a trial due to procedural reasons including upper court appeal, delay and postponements of the court hearings. Therefore, the whole process until the court decision comes into force may take from two to three months up to one year or even more, and the actual date for the payment of damages in the case of a positive decision can be significantly extended.

### **14. On what basis will a lawyer generally charge a seafarer for handling a claim for compensation?**

14.1 Legal relations between a seafarer (as a client) and lawyers should be regulated by a separate services agreement which *inter alia* should cover the lawyer's charges for representing the seafarer's interests in court.

14.2 However, under statutory provisions if the court decision is made in favour of seafarer, he may be reimbursed for legal costs from the opposite party, i.e. the shipowner, within the reasonable limits. If the shipowner fails to give effect to the court decision, or is unable to do so due to bankruptcy, the legal costs (as well as all other payments due to seafarers) shall be recovered from the proceeds of the sale of the ship by virtue of the security provided by the maritime lien.