

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN THE RUSSIAN FEDERATION

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in Russia.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to arrest a ship in Russia, he is strongly advised to consult a lawyer qualified to practise in that country.

\*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. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?**
  - 1.1 As a general rule, a seafarer is entitled to demand the arrest of a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship, provided that the ship is located in Russia.
  - 1.2 The Merchant Shipping Code defines the arrest of a ship as any detention or restriction in movement of a ship within the jurisdiction of Russia, carried out under the decision of the respective court. The ship may be arrested in Russia in order to obtain security even if, in accordance with the jurisdiction clause or arbitration clause specified in the employment agreement, the maritime claim pursuant to which a ship is arrested is subject to consideration by a court or an arbitrator of another country. However, in such a case, a Russian court would only have authority to arrest the ship, while the main dispute would later be considered by the foreign court.
  - 1.3 In accordance with the 1952 Arrest Convention, ('the 1952 Convention') a ship flying a flag of any contracting state, may be arrested in the jurisdiction of any other contracting state under any maritime claims (including seafarers' claims over unpaid wages). The 1952 Convention also envisages that if the ship is flying flag of a country which is not a party to the 1952 Convention, such ship may still be arrested within the jurisdiction of any contracting party.

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### 2. What is the time limit within which a seafarer must start a claim for unpaid wages?

- 2.1 In accordance with the provisions of the Russian Labour Code, a seafarer is entitled to apply to court for unpaid wages within three months from the date of non-payment of the due wages.
- 2.2 If a seafarer has missed the time limit to apply to court, the seafarer can still claim his wages if he is able to justify to the court the reasons for missing the limitation period. In accordance with a Decree of the Supreme Court of Russia, a court must consider the explanation of the seafarer and if the court deems his reasons to be a reasonable excuse, the court must not refuse to hear and decide the claim.

### 3. What documents are required to obtain an arrest of a ship?

- 3.1 In accordance with the Civil Procedure Code, a claim for arrest of a ship must be supported by the following documents evidencing the claim: (1) if applicable, evidence of payment of the applicable state duty (for example, a bank receipt); (2) documents confirming the circumstances on which the claim is based (employment or any other existing agreements between the seafarer and the ship owner); and (3) a power of attorney confirming the authority of the representative of the seafarer (as the case may be).
- 3.2 The Civil Procedure Code stipulates that the documents shall be submitted to the District Court in originals or as copies duly certified by a notary copies. Russian law requires that documents in a foreign language must be accompanied by a notarized translation into Russian and that any foreign official document must be legalized or apostilled.
- 3.3 If the seafarer is represented by an attorney or other representative, such representative must have a properly drafted and executed power of attorney. Russian courts may refuse to consider claims if they believe that the claim is signed by unauthorized person.

### 4. What are the cost of the arrest, including court expenses and other expenses?

- 4.1 As the general rule, expenses consist of applicable state duty and other court expenses. However, in accordance with the Russian Tax Code, claims related to the recovery of unpaid wages are exempt from the payment of state duty.

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- 4.2 The other court expenses related to a hearing in court include the amounts payable to experts, specialists, witnesses, translators, cost of travel and accommodation of the person involved in the legal proceedings, and the expenses related to the examination of the evidence, and the costs for the services of the lawyers and other persons providing legal assistance. Such list of other court expenses is not exhaustive and can be increased by the costs associated with, for example, sending notices or publishing the court decision in the media.
- 4.3 In accordance with the Merchant Shipping Code, the shipowner's financial obligations during the arrest of the ship include not only the cost of maintaining the ship, but also the cost of supporting the crewmembers as well as payment of the crewmembers' wages which arise from the moment of the arrest of the respective ship. Therefore, the arresting crew would not be responsible for such costs. If the shipowner is unable to fund the maintenance of the ship and the support of the crew, the respective funds shall be recovered from the proceeds of the forced sale on the first priority basis.
- 4.4 Amounts to be paid to experts, specialists, witnesses, and translators shall be funded in advance by the person who has requested such services and within the period defined by the court. If such a request is made by the both parties involved in the legal proceedings, the respective amounts shall be funded by both parties in equal parts.
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
- 5.1 As a general rule, the Merchant Shipping Code stipulates that a District Court may require the person applying for the arrest to provide counter security in order to secure costs which may arise as a result of a wrongful arrest.
- 5.2 However, the Merchant Shipping Code further stipulates that such a requirement does not apply to seafarers who are applying to arrest the ship under the maritime claim related to payment of wages.
- 6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**
- 6.1 In accordance with the 1952 Arrest Convention, the courts of the country in which the arrest has been made are entitled to hear the case on the merits if the law of such country provides the court with competence to hear such a case, or if the claim arose in the country where the arrest was effected.

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- 6.2 The Civil Procedure Code provides that Russian courts may accept jurisdiction over a substantive claim involving foreign parties, if *inter alia*: (1) the defendant's residency or his property is in the territory of Russia; (2) the governing body, branch or representative office of a foreign entity (for example, shipowner) is located in Russia; (3) the dispute arose from the agreement which was intended to be performed in Russia; (4) the dispute arose out of damage to property, or such damage was caused or arose on the territory of Russia.
- 6.3 Furthermore, in accordance with the Judgment of the Supreme Court of Russia, District Courts may accept jurisdiction over a substantive claim in the following cases: (1) a ship is located in Russia although the ship is registered in a foreign country and is flying the national flag of Russia; (2) a ship registered in State Register of the Ships of Russia or in the ship book and temporarily transferred to the national flag of a foreign country with the right of a foreign charterer to use and possess the ship; and (3) a ship is registered in a foreign country and is flying the national flag of that state.
- 7. Will the crew and vessel be maintained/supported during the arrest?**
- 7.1 In accordance with the Merchant Shipping Code the shipowner shall support the ship and crew during the arrest of the ship. If the shipowner is unable to fund the maintenance of the ship and the support of the crew, the respective funds shall be recovered from the proceeds of the forced sale on the first priority basis.
- 8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?**
- 8.1 Russian legislation does not specifically address this question. If a District Court imposes the relevant interim measures in respect of the ship in the form of arrest, the shipowner will not be able to perform any actions with the relevant ship contrary to the interests of the seafarers. However, until the legal proceedings have been initiated it is recommended that the crew should not leave the ship.
- 8.2 The main reason why repatriation may not take place is the inability of the shipowner to pay for the expenses related to repatriation, although the Merchant Shipping Code provides that the shipowner must insure the seafarer's wages and other sums payable to the crewmembers, including the expenses related to the repatriation of the crewmembers. If the shipowner is unable to pay the costs related to the seafarers' repatriation, such expenses as well as the seafarers' wages are subject to first priority satisfaction over any other claims after the sale of the ship.

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8.3 A Russian court will not pay for the repatriation of the seafarers. The Federal Migration Services and the Ministry of Health and Social Development of the Russian Federation are the responsible state bodies in relation to regulation of the maritime labour issues, in particular, the issues regarding the repatriation of the seafarers and, therefore, any costs related to the repatriation of seafarers shall be covered by those state bodies.

### **9. Do the seafarer's wages continue to accrue during the arrest?**

9.1 As a general rule, Russian labour law stipulates that the employee's wages continue to accrue during the period of the validity of the labour agreement irrespective of the legal proceeding in court or the arrest of the ship.

9.2 If, at the time of the arrest of the ship, the labour agreement has been terminated but the seafarers wages have not been paid, pursuant to the Labour Code the employer is liable to pay the accrued wages to the employees and other payments together with interest for each day of the delay from the day the payment was due until the date of the actual payment.

### **10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?**

10.1 A vessel may be sold only on the basis of a court judgment.

10.2 As a general rule, a District Court should consider and decide a case (including labour disputes for unpaid wages) within two months from the date of receipt of the claim. However, in practice such a term is usually not be met and proceedings can take several months due to the fact that the courts are overloaded.

10.3 If a shipowner does not fulfil the requirements set out in the enforcement order, the court bailiff shall issue an order to transfer the ship for sale. The sale of the ship shall be performed by the specialized organization by way of open bidding in an auction within two months after receipt by the organizer of an auction of the ship to be sold. The distribution of the sale proceeds shall be made within five business days after receipt of the funds in the bailiff's deposit account.

### **11. How are the lawyer's fees for arresting the ship paid?**

11.1 If the court decision is made in favour of the seafarers, the legal costs shall be recovered from the opposite party, that is, from the shipowner within reasonable limits.

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11.2 If the shipowner fails to perform the court decision or is unable to perform the decision due to his bankruptcy, such expenses shall be recovered from the proceeds of the sale as well as all other payments due to the seafarers.

### **12. Are there any other procedures to enforce a seafarer's wage claim?**

12.1 Under the Russian law the ship may be subject to 'sister ship arrest'. A person with a claim relating to one ship can assert that claim against and apply for the arrest of another sister ship. In accordance with the Merchant Shipping Code, a sister ship is any other ship that is owned by the person/entity liable under a maritime claim who was, at the time the claim arose, the owner of a ship against which a maritime claim has arisen, or the bareboat charterer, time charterer or voyage charterer of such a ship. The Merchant Shipping Code allows the arrest of one or more sister ships under a maritime claim procedure.

12.2 In order to arrest sister ships, a claimant must prove that there is a connection between the ship against which a maritime claim has been asserted and the entity (physical person or legal entity) liable for the maritime claim (at the time the claim arises, the person/entity who is the owner of the ship, or its charterer under a bareboat charter, time charter or voyage charter), and between the sister ship and this person/entity.