

## SEAFARER SUBJECT GUIDE

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### MARITIME LIEN FOR SEAFARERS' WAGES IN THE RUSSIAN FEDERATION

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Russian flagged ships, and foreign ships which are in the ports of Russia. These rights can be enforced in court, where they are secured and preferred by maritime liens and enforced by the arrest and forced (judicial) sale of the ships.

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

If a seafarer intends to claim his wages, he is 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. What is the maritime lien for seafarers' wages? How is it enforced?

- 1.1 Maritime liens in Russia are regulated principally by the International Convention on Maritime Liens and Mortgages of 1993 ('the 1993 Convention') and by the Code of Merchant Shipping ('the MSC'). The MSC defines a maritime lien (amongst others) as the mechanism of securing maritime claims in relation to the wages and other payments to the ship captain and other crew members for their work on the board of the ship, including the expenses of repatriation and social security payments effected on behalf of the master and other crew members. Thus, under the Russian legislation, the maritime lien is designed to create certain conditions to secure the maritime claims against the shipowner.
- 1.2 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 unpaid wages, such a 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 unless the ship will not be arrested for subsequent sale in order to satisfy the existing maritime claims.
- 1.3 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).
- 1.4 A maritime lien attaches to the ship from the moment it comes into being and is enforceable against the ship irrespective of any subsequent change of ownership,

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change of registration or flag. Under Russian law maritime claims secured by maritime liens do not require registration.

- 1.5 A maritime lien may be enforced by an arrest of the ship, which can be effected only upon the decision of a competent Russian court.

### **2. Which courts have jurisdiction over seafarers' wage claims?**

- 2.1 The Russian judicial system does not provide for a special court for maritime cases (such as, for example, the Admiralty Court in England). As a general rule, the maritime claims, depending on their nature, may be brought in the Russian courts of general jurisdiction, arbitration courts, or the Maritime Arbitration Commission of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation. Courts of general jurisdiction would normally have jurisdiction over labour disputes (for example, for unpaid wages).
- 2.2 In accordance with the Labour Code of Russian ('the Labour Code') an individual labour dispute in relation to recovery of unpaid wages shall be resolved in the Russian court of general jurisdiction within the jurisdiction of the District Court.
- 2.3 Prior to initiating legal proceedings in a District Court, a seafarer 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 into the respective dispute (the Dispute Commission). If the dispute has not been considered and resolved by the Dispute Commission within ten days, or if the seafarer does not agree with the decision of the Dispute Commission, the seafarer is entitled to appeal such a decision in a District Court.
- 2.4 Until recently the seafarers were able to assert their claims in relation to unpaid wages only in the District Court at the place of location of the shipowner. However, in 2012 amendments to the Code of Civil Procedure of the Russian Federation were passed, allowing seafarers to apply to the District Court for recovery of their unpaid wages not only at the location of the shipowner, but also at the actual location of the respective ship or at the port of the ship's registry. It should be noted that the rules on alternative jurisdiction should also apply to the unpaid wages of foreign seafarers; for example, if the foreign seafarers employed by the Russian shipowner have claims for unpaid wages they can submit their claims either at the location of the shipowner or at the location of the ship.
- 2.5 In addition to ordinary court proceedings, by way of filing a claim in the court, Russian Civil Procedure Code provides for a simplified procedure for settling disputes

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over unpaid wages. Employees may initiate injunction proceedings in respect of recovery of accrued but unpaid employee's wages, vacation payments, severance payments and other amounts payable to the employees. A District Court must issue an injunction on recovery of the seafarers' unpaid wages within five days of submission of the respective claim. The seafarer must provide a confirmation of accrued but unpaid wages (for example, an employment agreement). The injunction shall be made without court proceedings, that is, without having to call the shipowner to participate in the court. An injunction issued by a District Court has the effect of an enforcement order on the basis of which the court bailiff will recover the seafarer's unpaid wages.

- 2.6 However, a shipowner has a right to file an objection to the injunction within 10 days of receipt of the same in which case the injunction shall be cancelled and the seafarers may proceed with ordinary court proceedings.
- 2.7 Collective labour disputes cannot be resolved through legal proceeding in a District Court and must be resolved either through mediation procedures or labour arbitration.

### 3. Can the courts refuse to hear seafarers' claims for wages?

- 3.1 The Code of Civil Procedure sets out a closed list of grounds for refusal to hear cases. The court may refuse to accept the claim in the following cases:
- (1) the dispute is not subject to civil legal proceedings or is under the jurisdiction of another Russian court (for example, the arbitration court, ICAS or the Constitutional Court of the Russian Federation);
  - (2) there exists a court decision which has come into a force under a dispute between the same parties for the same matter and on the same grounds, or there is a court decision on the termination of legal proceedings pursuant to the refusal of the plaintiff to proceed with his claim, or a settlement agreement has been entered into between the parties; or
  - (3) a binding arbitral award exists under a dispute between the same parties, on the same matter, and on the same grounds, except when the court refused to issue an enforcement order in respect of such arbitral award.
- 3.2 The courts may also refuse to accept seafarer's claims for wages due to the expiry of the period of limitations, which is three months under the Labour Code. In 2010, the Supreme Court of the Russian Federation adopted a Decree 'On application of the Labour Code of the Russian Federation by courts,' stipulating that Russian courts shall not refuse to accept such claims due to the expiry of the period of limitations, provided that the court decides that the expiry was due to a reasonable excuse.

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3.3 It may also be the case that the District Court, pursuant to the provision of Civil Procedure Code, may refuse to hear seafarers' claims for unpaid wages and subsequent arrest of the ship due to a disproportion between the value of the submitted claims and the value of the ship.

### **4. Who can claim seafarers' wages?**

4.1 According to the Labour Code, seafarers' wages can be claimed in the District Court by the crew members and their representatives (for example, trade unions). In cases where the crew members are not in any trade union organization, the crew members may elect the representatives among themselves to represent them and claim wages in the District Court.

### **5. Which ships are subject to the jurisdiction of the courts?**

5.1 In accordance with the Judgment of the Supreme Court of the Russian Federation No.18 (the Supreme Court Judgment), the Russian courts of general jurisdiction have the right to resolve disputes arising from maritime claims if:

- (1) the ship is located in Russian although the ship is registered in a foreign country;
- (2) the ship is registered in the State Register of Ships in Russian or in the ship book and is temporarily transferred to the national flag of a foreign country with a foreign charter having the right to use and possess the ship; or
- (3) the ship has the nationality of a foreign country and is flying the national flag of such state.

5.2 Based on the above, the jurisdiction of the District Court in respect of claims for seafarer's unpaid wages covers Russian ships and foreign ships located in Russia.

### **6. What is included in the maritime lien for seafarers' wages?**

6.1 The MSC envisages that a maritime lien includes wages and other sums payable to the master and other crew members, including the expenses of repatriation and social security contributions. The seafarer's wages include payments for his work on board the ship including all fees for overtime working and payments for the work on weekends and public holidays, excluding however payments related to work on maintaining the technical condition of the ship or for emergency repairs.

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### **7. Can seafarers' wages be claimed if there is no written contract of employment?**

- 7.1 The Maritime Labour Convention of International Labour Organization, which has been ratified by Russian (which came into the force in August 2013), envisages that a labour agreement shall be concluded in writing.
- 7.2 In addition, the MSC provides that the labour relations between the shipowner and crew members shall be regulated by the Labour Code. According to the Labour Code, the employment agreement must be made in written form and in two copies (one for the shipowner and the other for the seafarer). If the employment agreement has not been concluded in written form but the seafarer has begun to work under the instructions from the shipowner or its representative, then the employment contract shall be deemed to be concluded and the shipowner or its representative must within three business days from the date when the seafarer started to work, prepare and sign a written employment agreement with the seafarer. In the case where the shipowner or his representative does not comply with these requirements, he shall be subject to an administrative liability, which may result in fines of up to RUR 5,000 for the company's official and up to RUR 50,000 for the legal entity.
- 7.3 Therefore, the employment agreement must be made in writing, and the absence of a written employment agreement constitutes a violation by the employer of the Labour Code of Russian. Moreover, absence of the employment agreement may result in seafarers' not being able to claim their wages or the wages may not be paid in full.

### **8. Must seafarers' services have been rendered on board the ship?**

- 8.1 Seafarer's rights to receive wages and assert maritime claims arise as a result of entering into an employment agreement with the shipowner and performance of the respective services specified in such employment agreement. The MSC provides that maritime claims arise only in connection with the ship and for the work of seafarers on board the ship. However, it is submitted that the services may not necessarily be provided on board the ship, but can also be provided as part of the performance of the employment agreement between the shipowner and the seafarer.
- 8.2 Seafarers are entitled to receive wages on equal conditions with other professions, for example, in a period of vacation, sick leave, or in the process of performance their duties arising out of the employment contract while ashore or on shore leave.

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### **9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?**

- 9.1 If the ship is sold in order to satisfy maritime claims, the 1993 Convention and the MSC provide that a maritime claim secured by a maritime lien shall take priority over any other claims, including claims arising from obligations secured by a registered mortgage on the ship.
- 9.2 Expenses incurred in connection with the arrest and subsequent sale of the ship (which pursuant to the MSC include costs relating to support of the ship while it is under arrest, support of the crew members, as well as the wages of the crewmembers) shall be satisfied prior to any other claims.
- 9.3 Therefore, maritime claims in respect of the seafarer's wages are given the highest ranking in the process of distribution the proceeds from the forced sale of the ship.
- 9.4 However, it should be noted that the MSC provides for an exception to this rule. In the case of the sale of a sunken ship, the raising of which is carried out by port authorities in the interests of safe navigation or protection of the marine environment from pollution, the costs of raising such a sunken ship shall be paid out of the proceeds of the sale of it, prior to any other claims secured by a maritime lien on the ship.

### **10. Can wages be claimed if the employer is not the shipowner or acts illegally?**

- 10.1 According to the MSC, the shipowner is the person operating the ship regardless of whether such person is an actual owner of the ship or operates the ship on other legal grounds (for example, under a bareboat charter agreement).
- 10.2 The rights of seafarer to their wages arise irrespective of whether the employer operates the ship on legal grounds or in violation of Russian law. If the employment agreement has been concluded and the services have been provided, the seafarers are entitled to a maritime lien and recovery of their wages, even though the shipowner acts illegally, provided that the seafarers were not privy to the illegality of the shipowner.
- 10.3 It should also be noted that maritime liens are attached to the ship from when they come into being and are enforceable against the ship irrespective of any subsequent change of ownership, or change of registration or flag.

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### **11. Can the seafarer's maritime lien for wages be abandoned or waived by agreement?**

11.1 Maritime lien arises by virtue of law rather than the agreement and simultaneously with the occurrence of the maritime claims. Russian legislation does not provide for the possibility of waiving by agreement the rights under maritime claims in respect of seafarer's wages. Therefore, it is submitted that any such agreement between the seafarer and the shipowner waiving the maritime lien will be deemed void and will have no force or effect under Russian law.

### **12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?**

12.1 There are not, it is submitted, any circumstances under Russian law where the maritime lien for unpaid wages is forfeited or not recognised. Even if certain disciplinary sanctions are applied in respect of the seafarer and his employment is terminated, the wages earned until the day of such termination shall still be paid in full.

12.2 A Russian court will therefore recognize the maritime lien in relation to a seafarer's unpaid wages, which arise under Russian law and attach to the ship that is located in Russia.

12.3 In accordance with Russian law, the maritime lien for seafarer's wages can be extinguished by the following ways:

- (1) termination of the monetary obligation, for example, payment of the accrued wages;
- (2) expiry of the period of limitations;
- (3) forced sale of the ship;
- (4) unreasonable delay in asserting the maritime claim for payment the wages (the claim for seafarers' unpaid wages should be asserted within three months from the time when the payment should have been made); or
- (5) total loss of the ship.