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# Shipping

## **Russia: Law & Practice**

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NAVICUS.LAW

## **Russia: Trends & Developments**

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# 2021

## Law and Practice

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## 1. Maritime and Shipping Legislation and Regulation

### 1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Russian Federation has no special maritime and shipping courts. All commercial matters arising in this sphere are decided by commercial (“*arbitrazh*”) courts, and claims involving individuals (crew, passengers, etc) fall within the jurisdiction of the courts of general jurisdiction.

Most common disputes in the area involve cases connected with claims arising out of or in connection with carriage agreements, cargo claims, freight claims and collision damages.

### 1.2 Port State Control

Under the Federal Law “On Sea Ports”, port state control is exercised by the Federal Service on Transport Supervision and harbour masters. They have wide powers with regard to maritime safety in general, and safety of seaports in particular, which include, inter alia, supervision over compliance with maritime legislation, supervision over compliance with requirements for calling at a port and departing from a port, control over the existence of ship’s papers and ship’s compliance with them.

In the case of marine casualties, the Federal Service on Transport Supervision is in charge of conducting investigation. Major casualties can be investigated by forming a commission with the involvement of the harbour master and independent experts. The investigation of incidents with Russian-flag vessels is conducted in accordance with the Order of the Ministry of Transport No 308 dated 8 October 2013. Whenever at least one foreign-flag vessel is involved in the incident, the investigation shall be accomplished in accordance with the IMO Casualty Investigation Code (Resolution MSC.255(84)).

In the case of wreck removal, the obligation to remove the wreck is placed upon the ship-owner. Article 109 of the Merchant Shipping Code (MSC) provides that the owner of the vessel is obliged to raise and remove the wreck upon the order of the harbour master if the wreck presents a threat to safe navigation or poses a risk of damage to the marine environment or obstructs fishing activities or the normal functioning of a port.

### 1.3 Domestic Legislation Applicable to Ship Registration

State ship registration is regulated by Chapter III of the MSC (Articles 11-51) and the Rules for the State Registration of Vessels (the Order of the Ministry of Transport No 191 dated 19 May 2017). The authority exercising state registration of vessels, except for small crafts, is the harbour master.

### 1.4 Requirements for Ownership of Vessels

The vessels can be owned by Russian citizens, Russian legal entities, the Russian Federation as a state, the territorial subjects of the Russian Federation or municipal bodies. Nuclear-powered vessels can only be owned by the Russian Federation as a state or by Russian legal entities authorised by the President.

An exception to the above-mentioned rule is the Russian Open Register of Ships, which was introduced in 2019, and allows registration of vessels under the Russian flag that are owned by foreign citizens or legal entities that comply with the requirements set out in the Federal Law “On International Companies and International Funds”.

Vessels under construction can be registered in the Register for Ships under Construction.

### 1.5 Temporary Registration of Vessels

Temporary dual registration of foreign-owned vessels under the Russian flag is recognised where the vessel is bareboat-chartered to a Russian legal entity and its principal flag is temporarily suspended for the period of its registration under the Russian flag. Such vessels can be temporarily registered in the Russian Bareboat Charter Register (RBCR), or in the Russian International Register of Ships (RIRS) or the Russian Open Register of Ships (RORS), which provide for special tax regimes and benefits. The vessel would have to be Russian-classed (by the Russian Maritime Register of Shipping) or in practice can hold a class of one of the International Association of Classification Societies (IACS).

Russian legislation also allows the temporary suspension of the Russian flag and the temporary dual registration of a vessel in a foreign register.

### 1.6 Registration of Mortgages

The procedure for registration of a mortgage in a ship register is set out in the Rules for the State Registration of Vessels. Mortgages are registered by the same authority that registered the vessel and in the same ship register, that is, the harbour master of the relevant port of registration of the vessel.

The principal documents that are required for the registration of a mortgage is an application to the harbour master, along with the corporate documents of a legal entity, a mortgage agreement, and payment of the state fee.

### 1.7 Ship Ownership and Mortgages Registry

Article 50 of the MSC provides that the ship registers are public. Any interested party is free to obtain information from the register. Upon written request (in Russian) to the harbour master, it is possible to obtain a whole range of information about the reg-

istered ship-owner, mortgages (the mortgagor, the mortgagee, the amount of secured obligation and the date of termination of the mortgage), as well as bareboat charterers, in the form of a certified extract from the register.

## 2. Marine Casualties and Owners' Liability

### 2.1 International Conventions: Pollution and Wreck Removal Pollution

The relevant conventions in force impacting on liability of owners for pollution are:

- the Civil Liability Convention (CLC) and International Fund for Compensation for Oil Pollution Damage (Fund) Convention (Protocols 1992);
- the Bunkers Convention 2001;
- the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976/1996 (2012 limits);
- the Anti-Fouling Convention 2001;
- the Ballast Water Management Convention 2004.

A number of these conventions are incorporated into Russian domestic legislation, in particular, into the MSC. Chapter XVIII of the MSC, which is based on the CLC Convention, regulates liability for oil pollution and provides for liability limits as adopted by the IMO Resolution LEG.1(82). Chapter XX.1 of the MSC implements the provisions of the Bunkers Convention.

There are numerous internal legislative acts regulating pollution and maritime pollution. The starting point is the Federal Law "On the Protection of the Environment", as well as other federal laws, followed by governmental decrees and regulations enacted by Russian administrative bodies, such as the Ministry of Transport and the Ministry of Natural Resources and Ecology.

Contrary to the provisions of the CLC Convention and the Bunkers Convention, national legislation provides for compensation for oil pollution damage (or damage caused by other pollutants) based on a formula, according to which the amount of compensation depends on the amount of oil spilled. Nevertheless, in cases falling within the scope of the CLC/Bunkers Convention, the latter shall prevail over domestic legislation. However, the courts are sometimes reluctant to apply the conventions directly and choose to follow national environmental legislation and by-laws.

Internal regulations also set requirements for oil response plans for ships and ship-operating companies and contain other environmental requirements.

### Wreck Removal

Wreck removal is regulated mainly in Chapter VII of the MSC (Articles 107–114). Despite the fact that the Russian State Duma was scheduled to consider accession to the Nairobi Convention in 2019, the Russian Federation still has not ratified it, and it is unclear whether it will do so in the foreseeable future.

### 2.2 International Conventions: Collision and Salvage Collision

Russian law on marine collisions can be found in Chapter XVII of the MSC (Articles 310–315), the provisions of which are based on the Brussels Collision Convention 1910. The International Regulations for Preventing Collisions at Sea (COLREGS) 1972 apply in the Russian Federation; however, their practical application in cases of collision occurring in ice and on the Northern Sea Route is somewhat peculiar.

### Salvage

The Russian Federation is a party to the International Salvage Convention 1989. Russian legal rules on salvage are contained in Chapter XX of the MSC and are based on the Salvage Convention.

### 2.3 1976 Convention on Limitation of Liability for Maritime Claims

In 1999, Russia acceded to the 1996 Protocol to amend the LLMC 1976, with some reservations. Limitation of liability is dealt with in Chapter XXI of the MSC (Articles 354–366), which largely implements the provisions of the LLMC. Article 355 of the MSC contains a list of maritime claims subject to limitation, which is based on Article 2 of the Convention. As of May 2020, the applicable liability limits are set by the 2012 Amendments to the LLMC and are implemented into Article 359 of the MSC. Similarly, the MSC incorporates rules on limitation of liability with respect to oil pollution, bunker pollution, cargo claims, and passenger claims based on the respective international conventions.

### 2.4 Procedure and Requirements for Establishing a Limitation Fund

The limitation fund may be established by a person who can be held liable in the total amount equal to the limit of liability with interest on that amount from the day of the incident until the day of fund establishment by placing a cash deposit or by providing a bank guarantee or a liability insurer's letter of undertaking to a commercial ("arbitrazh") court that could be dealing with the claims subject to limitation (eg, the court that has jurisdiction at the place of incident). P&I Club Letters of Undertaking (LOUs) used to be accepted; however, in recent years, in view of EU and US sanctions, the courts are reluctant to accept Club's LOUs.

## 3. Cargo Claims

### 3.1 Bills of Lading

The Hague-Visby Rules (with the 1979 SDR Protocol) apply. Most provisions of the Rules are incorporated in Chapter VIII of the MSC. However, some provisions of the Hamburg Rules have also been included into that Chapter, although Russia is not a party to the Hamburg Rules. Russian law on carriage of goods by sea is quite complex, since some of the Hague-Visby Rules relating to the contracts of carriage covered by a bill of lading are extended to apply to charterparties.

### 3.2 Title to Sue on a Bill of Lading

Depending on the circumstances of a case, a shipper, a consignee or a bill of lading holder can sue on a bill of lading.

### 3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

A ship-owner's liability with regard to cargo claims, under Russian law, shall be understood as the carrier's liability.

The carrier is liable for loss of goods – in the amount of lost goods, for damage of goods – in the amount of goods' diminished value, for loss of goods with declared value – in the amount of declared value of the goods. The carrier is liable for any delay of goods' delivery in accordance with the terms of a contract for carriage of goods.

The carrier's liability for any loss of or damage to the goods is limited to the equivalent of 666.67 units per package or two units per kilo of gross weight of the goods lost or damaged, whichever is the higher, provided that the nature and value of the goods had not been declared by the shipper before shipment and inserted into the bill of lading. The carrier's liability for any delay of goods' delivery is limited to the amount of freight to be paid under the terms of a contract for carriage of goods.

The carrier is not entitled to limit his or her liability if it is proven that the loss of or damage to the goods, or delay in their delivery, resulted from his or her personal act or omission committed intentionally or with gross negligence.

Under the MSC, the contractual carrier will be liable for the carriage of goods, even if the factual carrier will be delivering the goods. The factual carrier will be liable before the contractual carrier on the same grounds.

### 3.4 Misdeclaration of Cargo

If inflammable, explosive, or dangerous goods are misdeclared, and the carrier could not establish their nature and character by external inspection upon receipt, such goods may at any time be unloaded, destroyed, or rendered harmless by the carrier

without compensation to cargo interests. The shipper is liable for all damages and expenses directly or indirectly arising out of or resulting from such goods. The freight for the carriage of such goods is non-returnable. If freight was not paid upon shipment, the carrier is entitled to recover it in full.

There is no established case law on claims between a carrier and a shipper arising out of misdeclaration by the latter of a cargo. Such claims usually arise between a shipper/a carrier and customs authorities.

### 3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

The time bar for claims under contracts for carriage of goods is one year (Article 408(1) of the MSC). The date from which the limitation period runs may be different, depending on whether the claim is for cargo loss, damage, or delay, or whether it is to recover demurrage, detention, or dispatch (Article 408(2) of the MSC). The time bar for claims arising out of torts is three years.

The statute of limitations, according to the general rules of the Civil Code of the Russian Federation, cannot be extended or otherwise altered contractually. It must be specifically pleaded as a defence.

## 4. Maritime Liens and Ship Arrests

### 4.1 Ship Arrests

Russia is a party to the 1952 Arrest Convention. The provisions of Russian law on ship arrests are contained in Chapter XXIII of the MSC. It must be noted that Russia is not a particularly arrest-friendly jurisdiction. Most applications for arrest are denied. At the same time, a number of wrongful arrests are ordered each year. Arrests are usually granted to major state companies or state institutions. Despite having a maritime claim, a party seeking arrest must prove to the court on a probability basis that it will be impossible or difficult to enforce a judgement or an arbitral award on the merits, unless the arrest is granted. It is at the judge's sole discretion to assess that eventuality and is usually the ground for refusing the arrest.

### 4.2 Maritime Liens

There is a difference between maritime liens and maritime claims. Russia is a party to the 1993 International Convention on Maritime Liens and Mortgages. Article 367 of the MSC contains a list of claims secured by maritime liens which are the same as in Article 4 of the 1993 Convention (wages, loss of life and personal injury, salvage, port/canal/pilotage dues, and tort arising out of physical loss or damage caused by the operation of the vessel), which have priority over a registered mortgage of a vessel. Provided the lien is not extinguished (a period of

one year), a vessel can be arrested regardless of the change of ownership.

The list of maritime claims in respect of which a vessel may be arrested under Russian law includes claims listed in Article 1 of the 1952 Arrest Convention, as well as some claims from the 1999 Arrest Convention, such as claims for insurance premiums, commissions, brokerages or agency fees payable in respect of the ship.

A vessel may be arrested only in respect of a maritime claim if:

- the claim is secured by a maritime lien;
- the claim is based on a mortgage or the same type of collateral of the vessel;
- the claim relates to the ownership or possession of the vessel; or
- in respect of another maritime claim, provided that the person who owned the vessel at the time when the maritime claim arose is liable in respect of that claim and is its owner at the time when the arrest proceedings began, or that person was a bareboat charterer of the ship liable for the claim at the time when that claim arose and at the time when the arrest proceedings began. Russian law also recognises the arrest of sister ships.

### 4.3 Liability in Personam for Owners or Demise Charterers

A vessel can be arrested regardless of its owner's personal liability, provided the claim is secured by a maritime lien. For maritime claims that are not secured by a maritime lien, the owner or the bareboat charterer shall be personally liable in respect to the claim (see **4.2 Maritime Liens**).

### 4.4 Unpaid Bunkers

A bunker supply claim is a maritime claim, but under Russian law it is not secured by a maritime lien. Russian law recognises only in personam claims. Thus, only a contractual bunker supplier can arrest the vessel to secure a claim against his or her immediate contractual counterparty if the latter is the ship-owner. A physical supplier is not entitled to arrest the vessel if he or she has no contractual relationship with the ship-owner.

### 4.5 Arresting a Vessel

Article 6 of the 1952 Arrest Convention provides that the arrest procedure is governed by the law of the state in which the arrest is sought. In Russia, most arrest cases (except for personal injury and labour claims) are considered by the commercial (*arbitrazh*) courts under the provisions of Chapter 8 ("Measures to secure a claim") of the Commercial (Arbitrazh) Procedure Code (CPC) and arrests are treated as ordinary interim measures.

Under Articles 90 and 99 of the CPC, an arrest of property (including an arrest of a ship) can be granted by the commercial (*arbitrazh*) court at any stage of the already pending litigation, at the execution stage, and also before any proceedings on the merits.

In order to obtain an arrest order, the applicant must persuade the court that:

- without arrest, it would be "difficult or impossible to enforce" a judgment or an arbitral award on the merits, or that it may become necessary to enforce the court judgment outside Russia; or
- arrest is necessary to prevent "considerable damage" to the applicant.

It is at the judge's sole discretion to assess the arguments of the applicant with due regard to proportionality of the claim to any potential damages which the ship-owner may sustain.

If arrest is granted by the court before proceedings on the merits begin, the applicant must within 15 days from the date of the arrest order file his or her substantive claim with the arresting court or present evidence that proceedings on the merits commenced in another competent court or arbitral tribunal, failing which, the arrest is lifted.

The arrest may be lifted at the ship-owner's request if he or she provides security for the claim in the form of a cash deposit, bank guarantee, or a P&I letter of undertaking. Otherwise, the arrest will remain in force throughout the proceedings on the merits and until completion of the execution proceedings by a forced sale of the vessel.

An arrest application must be filed with a commercial (*arbitrazh*) court in the jurisdiction in which the vessel is located (ie, the port of discharge/loading) or with a court of general jurisdiction if the arrest is sought to secure a claim for death, personal injury, or wages. The applicant must present evidence that the vessel is within the court's jurisdiction (typically, a confirmation from a harbour master), evidence relating to the maritime claim and its amount, as well as evidence concerning the vessel's ownership, the party liable for the maritime claim, etc.

Under Article 93 of the CPC, an arrest application is considered by a single judge without notice to the parties. The decision whether or not to order an arrest must be taken within one day after the application is filed; if that day is a weekend or a public holiday – then on the day following immediately thereafter.

All documents must be filed in the Russian language, and powers of the applicant must be confirmed. If the original docu-



ments are in foreign languages, they must be translated and certified. The documents must be presented in original copies or in the form of officially certified copies, which will require notarisation and apostillisation (for documents in foreign languages).

## 4.6 Arresting Bunkers and Freight

There are no restrictions as to the arrests of bunkers or freight in Russian law; nevertheless, it is highly unlikely that arrests could be enforced effectively.

It is common practice across the globe that the bunkering companies have only emails in confirmation of bunkering. However, Russian courts are sceptical about emails. The Bunker Delivery Notes (if available in original) are better evidence for the Russian court: first, evidence of the fact that bunkers were supplied, and second, of the existence of a bunker supply contract.

Meanwhile, the Russian courts require counter-security and a significant amount of evidence. It is recommended to provide Russian courts with certified translations into Russian language of all documents originally executed in foreign languages, a certified and apostilled confirmation of the good standing of a claimant (if a foreign company) and strong evidence of the violation of rights of a claimant (the standard of proof is close to “beyond reasonable doubt”). Thus, in a matter of urgent issues, arrest in Russia could not be considered as an effective and recommended interim measure.

Nevertheless, it should be noted that arrests are usually granted to the Russian state authorities, Russian state-owned companies or by the courts of general jurisdiction to individuals.

## 4.7 Sister-Ship Arrest

Article 390(2) of the MSC implements the sister-ship arrest rule where any other vessel or vessels are arrested if, at the moment of initiation of the arrest procedure, the vessels are owned by the person liable under a maritime claim who was, at the time of the claim arising, the owner of the vessel relating to which a maritime claim had arisen, or the bareboat charterer, the time charterer or the voyage charterer of that vessel.

## 4.8 Other Ways of Obtaining Attachment Orders

Any type of security from any liable party is possible pursuant to the provisions of the CPC. The party seeking arrest of cargo, bunkers, etc, or requesting another form of security for securing its claim against a party other than the vessel's owner, shall prove to the court, on a probability basis, the risk of non-enforcement of a judgment or an arbitral award on the merits, or that the party seeking arrest will suffer considerable damage unless the arrest is granted.

## 4.9 Releasing an Arrested Vessel

Russian procedural codes do not contain a comprehensive list of acceptable forms of security. The most common types of security are cash deposits into a court's account and bank guarantees. LOUs of Russian fixed-premium insurers are also generally accepted. P&I Club LOUs are occasionally accepted but would have to be substantiated by additional evidence of the Club's financial standing, along with an explanation of the nature of a P&I Club, as most Russian judges are not familiar with this type of security. Russian courts may be especially reluctant to accept club's LOUs in cases where Russian state-owned entities and/or their subsidiaries affected by US and EU sanctions are involved in the proceedings. In 2017 and 2018, several commercial (*arbitrazh*) courts referred to sanctions specifically when refusing to accept club's LOUs as a security for releasing a vessel.

## 4.10 Procedure for the Judicial Sale of Arrested Ships

Where a mortgagor has failed to perform his or her duty to pay the debt, a vessel encumbered with a mortgage may be sold pursuant to a court decision at the place of location of the arrested vessel.

In the event of the forced sale of a vessel, all registered mortgages of the vessel, with the exception of those accepted by the buyer with the consent of their pledge holders, all pledges and other encumbrances of any kind shall cease to apply to the vessel.

Expenses incurred in connection with the arrest and subsequent sale of a vessel are primarily paid for at the expense of the proceeds from the sale. Such expenses include, in particular, expenses incurred from the moment of the vessel's arrest for the maintenance of the vessel and the crew of the vessel, as well as salaries and other amounts. The balance of the proceeds from the sale of a vessel shall be distributed in accordance with the priority of maritime liens and mortgages. Any remaining amount shall be returned to the owner of the vessel.

In the case of the forced sale of a stranded or sunken ship, the lifting of which is carried out by the administration of seaports in order to ensure the safety of navigation or protection from pollution of the marine environment, the costs of lifting a stranded or sunken ship shall be paid for from the amount received from its sale, prior to satisfaction of any claims secured by maritime lien on the ship.

If, at the time of the forced sale, the vessel or the vessel under construction is in the possession of a ship-building or ship-repair company with the right of retention, that company must refuse possession of the vessel or the vessel under construction in favour of the buyer; at the same time, the former has the right to satisfy his or her claim at the expense of the amount received

from the sale of the vessel or the vessel under construction. If there are claims secured by a maritime lien, the ship-repair company has the right to obtain satisfaction after the secured claims are satisfied.

In the event of the forced sale of a vessel, at the request of the buyer, a document certifying that the ship was sold, and that it is not burdened with any mortgages, with the exception of those accepted by the buyer with the consent of the mortgagees, can be issued.

When submitting that document, the authorities that registered the mortgages of the vessel are required to exclude from the corresponding register of ships all mortgages registered over the vessel, with the exception of those accepted by the buyer.

In accordance with Article 379 of the MSC, mortgage claims stand in priority before other maritime claims, except for the claims secured by a maritime lien.

#### **4.11 Insolvency Laws Applied by Maritime Courts**

There are no maritime courts in the Russian Federation. Insolvency procedures are regulated by Federal Law No 127-FZ and the CPC. Insolvency cases are considered by the commercial (*arbitrazh*) courts.

With regard to the possibility of arrest and judicial sale of the debtor's property outside the bankruptcy procedure, the following can be noted.

The law provides for several successive stages of insolvency: supervision of the process, company reorganisation, outside administration, and winding-up proceedings.

Starting with the reorganisation procedure, arrests on the debtor's property and other restrictions on the debtor in terms of disposing of the property belonging to him or her can be imposed only in the commercial process in the bankruptcy case. In the winding-up proceedings, the previously imposed arrests on the debtor's property and other restrictions on the disposal of the debtor's property are removed. The imposition of new arrests on the debtor's property and other restrictions on the disposal of the debtor's property is not allowed.

From the moment a bankruptcy case is initiated, creditors' claims for monetary obligations can be presented only in a bankruptcy case, and after the debtor is declared bankrupt: all claims, except for claims for recognition of ownership, for reclaiming property from someone else's illegal possession, for invalidating void transactions and on the application of the consequences of their invalidity.

The judicial sale of a vessel owned by a debtor is also possible only by a court considering a bankruptcy case in winding-up proceedings.

#### **4.12 Damages in the Event of Wrongful Arrest of a Vessel**

Russian procedural legislation (namely, Article 98 of the CPC) establishes that the respondent or other person whose rights are violated by the interim measures is entitled to a claim for damages.

The above-mentioned rule is general and permits also the seeking of damages for the wrongful arrest of ships. A positive change in Russian case law may be noted on such matters. In 2015, The Supreme Court of the Russian Federation indicated that fault should not be established in such cases, therefore proving damage from unlawful arrest should be easier before the Russian courts.

Meanwhile, since the Russian jurisdiction is not ship arrest-friendly, there is no established case law on the damages in the event of the wrongful arrest of a vessel.

## **5. Passenger Claims**

### **5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims**

In 2018, Russia acceded to the 2002 Protocol to the Athens Convention, denouncing the previously applicable 1974 Convention and the 1976 Protocol. National rules concerning passenger claims are contained in Chapter XI of the MSC (Articles 177-197) which has not yet been amended to reflect the changes and is still largely based on the old Athens Convention and the Protocol.

The time bar for most passenger claims is two years. The date from which the limitation period runs, and limitations of carrier's liability, may be different, depending on whether the claim is for personal injury or death, or for baggage loss or damage (Article 409(1)(1), Article 190 of the MSC).

## **6. Enforcement of Law and Jurisdiction and Arbitration Clauses**

### **6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**

Depending on which parties are involved in a dispute and what the circumstances of a case are, Russian courts generally recognise and enforce clauses on foreign applicable law and jurisdiction stated in bills of lading. This basic conclusion follows from



the standpoint that the contracts for carriage of goods with the participation of Russian persons are not subject to the exclusive jurisdiction of the Russian Federation.

## **6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading**

Russian courts generally recognise and enforce clauses on foreign applicable law and arbitration incorporated from a charterparty into the relevant bill of lading.

A practical difficulty can occur when original evidence is presented to the court in a case when the counterparty denies either signing the charterparty or having seen the charterparty. In such a case, the enforcement of an arbitration clause could be successfully challenged.

## **6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Foreign arbitral awards are enforced and recognised under the 1958 New York Convention, which applies directly to such awards. Enforcement of awards is therefore a relatively straightforward procedure and the number of enforced awards is significant.

The Law of the Russian Federation “On International Commercial Arbitration” and Chapter 31 of the CPC are applicable to the procedure of recognition and enforcement of arbitral awards, and grounds for denying their recognition and enforcement, which are mostly identical to the provisions of the 1958 New York Convention.

## **6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction**

Russia is a party to the 1958 Arrest Convention. A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the other Contracting States in respect of any maritime claim. Article 90 of the CPC allows the arrest of assets for securing a claim that is subject to foreign arbitration/jurisdiction.

## **6.5 Domestic Arbitration Institutes**

A specialised maritime arbitration tribunal in Russia is the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation in Moscow, with a branch in St Petersburg.

## **6.6 Remedies Where Proceedings Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses**

In the event that a claim is filed in breach of an arbitration clause, the Russian court shall leave the claim without consideration (Article 148 of the CPC, and Article 222 of the Code of

Civil Procedure). A party seeking such a remedy must request it in its first submission to the court.

Similar consequences are provided for where a valid jurisdiction clause exists. In 2017, the Supreme Court of the Russian Federation has also confirmed that, even if the foreign court proceedings were not initiated, the Russian court should leave a claim without consideration in the presence of a valid and enforceable foreign jurisdiction clause. This remedy should be granted at the request of one of the parties declared in the first submission to the court.

## **7. Ship-Owner’s Income Tax Relief**

### **7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner’s Companies**

Tax benefits are stipulated with regard to the registration of vessels in the Russian International Register (RIR), which provides that the operators of ships registered in the RIR are entitled to exemption from import customs duty and 0% VAT for the import of respective vessels, subject to registration in the RIR, 0% VAT if vessels which are subject to registration in the RIR are Russian new-builds. There are also exemptions from property tax, a reduced rate of social taxes and a number of exemptions from profit tax and VAT.

The income of ship-owners from the operation and (or) sale of the vessels registered in the RIR is not subject to income tax (Article 251 of the Tax Code of the Russian Federation).

For tax purposes, the operation is understood as the use of such vessels for the carriage of goods, passengers and their baggage and the provision of other services related to the implementation of the indicated carriage, as well as the leasing of such vessels for the provision of these services.

This benefit applies when the point of departure and/or the point of destination is outside the territory of the Russian Federation, or if the vessels were built by Russian ship-building organisations after 1 January 2010 – regardless of the location of the point of departure and/or destination.

Similar income tax benefits apply to ship-owners who have received the status of a participant in a special administrative region (SAR) in accordance with the Federal Law “On Special Administrative Regions within the Kaliningrad Region and Primorsky Region” for the vessels registered in the Russian Open Register (ROR).

## 8. Implications of the Coronavirus Pandemic

### 8.1 COVID-19-Related Restrictions on Maritime Activities

The majority of measures were implemented by each harbour master of each of the seaports following the guidelines of the Russian Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor) and of the Ministry of Transport. Nevertheless, not all the measures were identical across the Russian seaports; each harbour master has decided for themselves on the terms and the range of measures. The enforcement of measures also differed from port to port.

The most common measures were disinfection of the vessels and the obligatory temperature-screening of the crew members arriving from the coronavirus-affected countries, temporary prohibition for a shore leave for the citizens who had arrived fewer than 14 days before from coronavirus-affected countries. A requirement to provide the immigration authorities of Russia with a list of the previous ten ports of call was introduced, as well as the requirement for shore personnel to wear personal protective equipment while working on board the vessels coming from coronavirus-affected countries.

Although there was no official requirement for a 14-day quarantine at anchorage, at the beginning of March 2020, in some ports, a vessel coming from one of the coronavirus-affected countries was not allowed to proceed for berthing until the expected incubation period of 14 days had expired.

### 8.2 Force Majeure and Frustration in Relation to COVID-19

In April 2020, the Russian Supreme Court has clarified that the coronavirus pandemic could be recognised as a *force majeure*, depending on the category of the contract, and the debtor seeking for a contractual relief. The Supreme Court assumes that the contractual relief due to the coronavirus could be granted only if adverse financial consequences are caused by restrictive measures, and a reasonable participant in the turnover could not have avoided them.

The Russian courts have repeatedly stated that the pandemic itself, as well as the subsequent negative reactions of the markets, cannot be regarded as a *force majeure* circumstance. For example, it is hardly possible to absolve oneself of responsibility for a breach of contractual obligations due to a drop in demand for a particular product or service caused by the pandemic or fluctuations in purchase prices, even if these events were caused by the pandemic.

Thus, the contractual relief due to the coronavirus will mainly depend on the Russian judge's evaluation of the specific circumstances of the matter.

## 9. Additional Maritime or Shipping Issues

### 9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Russia is generally a complex jurisdiction, with a lack of legal certainty and uniform application of law. As far as there are no specialised maritime courts or judges specialising in the field, complex maritime disputes are occasionally considered by ordinary commercial judges who are overloaded with work. The latter factors occasionally lead to an unexpected judgment.

The Russian courts have been increasingly protective in recent years towards Russian state institutions and major Russian companies, companies with the participation of the Russian state (as shareholder or otherwise).

An attempt to promote maritime law in Russia is being made by the establishment of RUMLA.org, the Russian Maritime Law Association, which publishes maritime law news reviews, articles, holds seminars and generally promotes the understanding of maritime law in Russia amongst the shipping industry and lawyers.

NAVICUS.LAW is one of the leading Russian maritime law firms, advising major Russian ship-owners and P&I Clubs, traders, banks and venture companies. The firm's professional standards comply with the International Code of Ethics of the International Bar Association. Based in St. Petersburg, the firm also practises across Russia and has associated lawyers in Moscow and Russia's regions (the Far East and South of Russia). The firm has an associated office in Ukraine. NAVICUS.LAW is a member of the Shiparrested.com network (an af-

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## Trends and Developments

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### Overview

The Russian Shipping sector usually follows the international trends and developments. In terms of legal framework, the Merchant Shipping Code of the Russian Federation, which was enacted in 1999 and has since been amended 45 times, reflecting the modern developments in international maritime law, such as, for example, the increase in ship-owners' liability limits (under the Convention on Limitation of Liability for Maritime Claims (LLMC) and the International Convention on Civil Liability for Oil Pollution Damage (CLC), and the implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers)) applies. Major maritime conventions are usually promptly acceded to by the Russian Federation, for example the Ballast Water Management Convention, 2017, and the anticipated ratification of the Nairobi International Convention on the Removal of Wrecks, 2007. As a party to the Maritime Labour Convention, Russia also follows the developments in maritime labour protection.

At the same time, there has been an increasing protectionism towards the Russian-flagged ship-owners and, in general, promotion of Russian ship-building and Russian-flagged vessels, whilst imposing restrictions on foreign-flagged vessels.

### Restrictions on the Carriage of Hydrocarbons by Foreign-Flagged Vessels

Whilst cabotage carriages were always restricted to foreign-flagged vessels (except for some special exceptions) by Article 4 of the Merchant Shipping Code, the restrictions have been further extended to the carriage of hydrocarbons.

Promoting vessels to fly the Russian flag has been accomplished by allowing for the sea transportation of oil, natural gas, gas condensate and coal mined in the territory of the Russian Federation (including the continental shelf), and loaded onto ships in the water area of the Northern Sea Route, up to the first point of unloading/reloading, to be accomplished only by Russian-flagged vessels. The same applies for storage of those commodities, if such storage is carried out on a ship in the water area of the Northern Sea Route.

There is a trend of developing this protectionist policy further, where not only the requirement for the vessel to fly the Russian flag would be imperative, but also for the vessel to have been built in a Russian shipyard.

### The Development of Ship-Building and the Import Substitution Trend Will Impact Hydrocarbon Export

The Russian government has been supporting Russian ship-building financially; a number of tax benefits were in place, and other measures to promote domestic ship-building. However, further support of the ship-building industry is anticipated, with a number of protective measures.

Early in 2019, the Russian government declared that the Russian shipyards require state support. The same year, a draft bill was brought for consideration of the State Duma (the Russian low chamber of Parliament). Following a number of hearings and considerations in 2019 and 2020, the bill passed in the first reading in October of 2020. The main legislative work on the bill is scheduled for 2021 and is likely to be completed.

The core proposal is to amend Article 4 of the Merchant Shipping Code. The article deals with activities exclusively dedicated to vessels flying the Russian flag, such as cabotage, ice-breaker support and salvage operations in the inland or territorial waters, carriage of oil and natural gas over the Northern Sea Route, etc. It suggests that certain shipping activities falling under the regulation of Article 4 should not only be allowed to be accomplished exclusively by vessels flying the Russian flag but should require the vessels to have been built in Russian shipyards.

It is underlined in the reports and accompanying letters to the bill that the requirements for vessels built in Russia will mainly relate to the transportation of oil and natural gas. The exact list of such activities which could be carried out by the Russian-built ships will be determined by the Russian government.

This strict protectionist rule is not anticipated to be retroactive, ie, it should not be applied to the contracts executed before the entry of the amendments into force, and/or the foreign-built vessels that have been constructed before entry of the amendments into force, or where the ship-building contracts were executed before these amendments. The amendments will require significant expense from the exporting companies and increase in capacity and quality from the Russian shipyards.

### Standard A2.5.2 of the Maritime Labour Convention

In 2020, the Russian shipping industry faced a number of notable bankruptcy cases and accidents that resulted in declarations of abandonment by the Russian seafarers. The abandonment

of the seafarers traditionally is a complex issue, involving and even requiring co-operation between the ship-owner and the public state authorities and the involvement of the International Labour Organization (ILO) and the Convention on the International Maritime Organization (IMO). Standard A2.5.2. of MLC 2006 as amended, implementing the financial security of the abandoned seafarers, was introduced in 2014 (and entered into force in 2017) for the purpose of improving the protection of the seafarers and covering the so-called first-aid costs for repatriation and salary of the seafarers.

Russian maritime insurers are facing difficulties in resolving issues related to the abandoned seafarers (for example, who is entitled to the financial security, the point in time from which the seafarers should be considered abandoned, the sum of the payment, etc). Following the general negative impact on the shipping industry of COVID-19, it is anticipated that the cash-flow problems of the ship-owners could lead to an increasing amount of cases related to the enforcement of Standard A2.5.2. The matter is something new for the Russian courts and law enforcement. It is complicated to predict how the enforcement of a compensation scheme for the paid salary and repatriation costs from the ship-owners would work in practice.

## **One Step Closer to the 2007 Nairobi Convention**

The Ministry of Transport of the Russian Federation has developed and sent to the Government the drafts of laws regulating matters of salvage and utilisation of ships sunk in the sea and inland waterways. The Codes of Merchant Shipping, Inland Water Transport and Administrative Offences are the subject of potential amendments. A new regime of record-keeping, salvage and utilisation of sunken ships is proposed. The owner of a sunken ship shall inform the harbour master about an incident within a month from the date of the incident; within the next month the harbour master shall establish conditions and a term of salvage. The ships creating a threat to safe navigation, or posing a risk of damage to or obstructing fishing activities, shall be salvaged within three months, and if there is no threat, within six months. If the ship-owner is refusing to salvage and utilise, it will be subject to payment of administrative fines amounting to millions of rubles.

The Government will define the criteria for compensation of expenses for record-keeping, salvage and utilisation of such ships. The Ministry of Natural Resources and Ecology has supported the initiative of the Ministry of Transport. It has proposed to take into account a period of time needed for carrying out the environmental impact assessment.

Keeping track in this direction is a positive sign of getting closer, with the assistance of governmental bodies, to the ratification of the 2007 Nairobi Convention. At present, the salvage and

utilisation of sunken ships in Russia is governed by Chapter VII of the Merchant Shipping Code and Chapter VII of the Code of Inland Water Transport. These provisions are not effective. According to the data of the Federal Agency of Maritime and River Transport, there are about 1,500 sunken ships in the Russian inland waterways.

The Nairobi Convention applies to sea waters, but, if ratified, this conventional regime could also be expanded over a number of estuary harbours, such as Rostov-on-Don or Arkhangelsk.

Nevertheless, ratification of the Nairobi Convention requires supplemental responsibilities, not only for the ship-owners, but also for the Russian Government, therefore more research and analysis are expected before any decision on ratification of the Convention by the Russian Federation would be made.

## **Marine Insurance and Reform of the Russian Insurance Law**

The Russian marine insurance market has significantly declined over the last several years. Traditionally, the Russian market attracted ship-owners by low insurance premiums and the possibility to insure old and/or substandard vessels against all risks, as opposed to the “named perils” Hull and Machinery (H&M) insurance.

At the same time, there are no standardised Russian marine insurance rules, such as one can find abroad (eg, the Institute Time Clauses (ITC) Hulls or the Nordic Plan). Each underwriter proposes their own hull insurance rules, which differ significantly. Subsequently, these varying terms give a wide scope to interpretation and disputes when underwriters refuse to pay. What complicated the matter even further were the occasionally unpredicted results of the interpretation of the insurance rules by courts.

Chapter 48 of the Russian Civil Code, which deals with insurance contracts, was enacted more than 20 years ago and since then a lot of lacunes and imperfections have been stumbled upon. In 2018, the Russian Federation Presidential Council for Codification and Improvement of the Civil Legislation (an advisory body to the President of Russia) formed a working group whose task was to prepare the concept of reform of the insurance law. After almost two years of work and about 30 meetings, the working group has developed the concept of the insurance law reform. The Council for Codification approved project reform in September 2020. The project consists of 59 blocks dedicated to the main existing problems of the Russian insurance law provisions. According to its elaborators, the key aim is to make the Russian insurance law more flexible and relevant to the current situation on the market.



# RUSSIA TRENDS AND DEVELOPMENTS

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*Contributed by: Konstantin Krasnokutskiy and Konstantin Putrya, NAVICUS.LAW*

It appears that the proposed reform indeed will resolve a lot of issues and is based on the practice of European jurisdictions. It is expected that the next few years will be dedicated to the negotiations and voting for the proposed amendments to Russian insurance law.

## **Northern Sea Route: the Future in the Arctic**

Rusatom Cargo (a company of the state corporation “ROSATOM”) has been incorporated for the organisation and development of international transit of sea freight traffic along the newly formed transport route of the Northern Sea Transit Corridor. One of the ongoing projects of the company includes two transport and logistics hubs (Murmansk and the Far East) which are going to be established for trans-shipment of containers from non-ice-class feeder ships to Arctic-class ones, and back. Rusatom Cargo is also planning to build its own fleet of Arc7 container carriers, establish digital logistics and organise feeder services. The plan is anticipated to be completed by 2024.

Further far-reaching projects involve the creation of a fleet of ice-breakers that should ensure year-round navigation at the Arctic. The fleet will include nuclear-powered ice-breakers of different classes, LNG-powered ice-breakers, tankers, bulkers and ice-class gas carriers. These new-builds are planned to be carried out for the Arctic until 2035.

The fleet operating in the Arctic is to be expanded by 2024, with multi-purpose rescuers, as well as rescue and fire-fighting tugboats. In addition, a number of new hydrographic survey ships and buoy tenders will operate in the Northern Sea Route (the NSR) waters.

One of the problematic issues connected with the NSR is related to the use of heavy fuel oil. The Russian government is making proposals to the International Maritime Organization, proposing to postpone the ban of heavy fuel oil until July 2024, without covering the ships ensuring safe navigation, ships involved in search and rescue operations, and oil-spill response vessels. Also, it was suggested to grant an extension until 1 July 2029 for vessels with tanks featuring structural protection in compliance with the International Convention for the Prevention of Pollution from Ships (MARPOL) and Polar Code requirements. The right to exclude national-flagged ships, including floating storage and offtake tankers, has been proposed as per the rights of the Arctic states.

## **Development of the Russian Maritime Law by the RUMLA**

A new Russian Maritime Law Association (RUMLA.org) was established and registered by the Ministry of Justice of the Russian Federation. It is a non-profit organisation gathering practitioners, academics, representatives of ship-owning companies, insurers, brokers, etc, for the purpose of allowing Russia to have an input into important international shipping conventions and to bring about conformity in the enforcement of maritime law conventions in the Russian Federation. The RUMLA provides a forum for those who are engaged in international maritime trade and organises and participates in seminars and conferences in the maritime industry.

As of 2021, the Russian Maritime Law Association is publishing the Maritime Law Journal with reviews of Russian jurisprudence and developments in maritime law.

The RUMLA is an influencer in Russia in the shipping industry and facilitates the co-operation of different persons involved in the maritime sector, allowing for the better understanding of each other's needs, making contacts and promoting the shipping business in general.

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