

# Shipping

*Contributing editor*  
**Kevin Cooper**



**2018**

GETTING THE  
DEAL THROUGH

GETTING THE  
DEAL THROUGH 

# Shipping 2018

*Contributing editor*

**Kevin Cooper**  
**Ince & Co LLP**

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# Russia

Alexey Karchiomov and Yulia Beliakova  
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## Newbuilding contracts

### 1 When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

The moment of title transfer of the ship depends on the fact whether the ship is registered in the relevant Ship Registry by the time of title transfer. In cases where the ship (including one under construction) has not been registered, the parties are free to determine the moment of title transfer. If the ship is already registered in the relevant Ship Registry by the time of title transfer, title passes to the interested party at the moment when such transfer is recorded in the Registry.

Risk of accidental loss or damage passes along with title transfer unless all parties agree otherwise.

### 2 What formalities need to be complied with for the refund guarantee to be valid?

Russian laws do not provide for specific requirements as to validity of a refund guarantee under shipbuilding contracts. However, under the general rules of Russian law a guarantee shall be in writing and should specify guarantor and beneficiary, guaranteed obligation, terms and conditions of payment, amount of guarantee (methods of calculation), date of issue and validity period.

### 3 Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Delivery of the vessel may be compelled by means of filing a relevant lawsuit against the shipbuilder. However, Russian courts may only grant an order for specific performance when yard is actually in a possession of the vessel at the time of the judgment. Otherwise the only remedy available is a claim for compensation of losses incurred.

### 4 Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

A claim will lie in contract if it is made against the shipbuilder at the suit of the shipowner. Any subsequent purchaser in case of damage resulting from a vessel's defects shall have a claim against the seller (a direct claim against the shipbuilder can be made if an assignment was granted by the seller, the original shipowner). But in case where the vessel was acquired for non-commercial use the shipbuilder may be held liable for damages occurred in connection with personal or property injuries (a direct claim under product liability is possible).

A third party that has sustained damage may claim recovery from the shipowner (bareboat charterer, operator).

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## Ship registration and mortgages

### 5 What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Depending on the type of ship, her operation capacities and other characteristics, she may be registered in one of the following Russian registers:

- the State Ships Register: the vessel has to be owned by a Russian legal entity or individual, or to be a state or municipal property;
- the Small Ships Register: the vessel should not be used for commercial purposes; her length should not exceed 20 metres and the number of people she may take on board does not exceed 12;
- the Bareboat Charter Register: temporary registration is available for vessels bareboat chartered by a Russian legal entity or individual for a period of at least one year;
- the International Ship Register: available for vessels used for the purposes of merchant shipping (except fishing) subject to compliance with certain requirements. The register grants tax and customs preferences but requires payment of annual fees for confirmation of registration.
- the Register of Ships under Construction: available for new-builds after keel laying or carrying out equivalent construction works.

Small boats and other floating means that are accessories of the vessel, ships under 200kg in light mass and up to 8kW in motor capacity (in case of installation), sport sailing vessels up to nine metres in length without equipped engines and rest spaces, as well as undocked non-self-propelled vessels up to 12 metres in length are not eligible for registration in Russia.

### 6 Who may apply to register a ship in your jurisdiction?

These are Russian citizens, legal entities incorporated under the laws of the Russian Federation, state, subject of the Russian Federation or municipality, who act as owners or bareboat charterers of the ship in question.

### 7 What are the documentary requirements for registration?

Generally, these are duly completed application forms covering a main vessel's information (current and previous names, International Maritime Organization (IMO) number, ship's characteristics, etc), ownership documents, owner foundation or identification documents, tonnage certificate, passenger certificate (for passenger ships), certificate on termination of ship's prior registration (if any) or letter from the foreign registry confirming termination or suspension of prior registration, and receipts confirming payment of state registration fees.

Depending on the particular registry where the vessel is going to be registered (see question 5), additional documents may be necessary to prove the register's requirements. For instance, for registration in the Bareboat Charter Register one should additionally submit written consent from the shipowner and mortgagee(s) (if any) to the vessel's registration in Russia; for registration in the Register of Ships under Construction, documents confirming keel laying or the expert's report confirming the performance of equivalent construction works will be necessary.

All documents and information should be submitted in Russian or with a certified translation into Russian. Documents issued by foreign public authorities should be duly legalised or apostilled.

### 8 Is dual registration and flagging out possible and what is the procedure?

Dual (bareboat charter) registration and flagging out are allowed under the Russian laws.

Bareboat charter registration is allowed provided that the bareboat charterer is a Russian person or entity and the Russian Federal Agency for Transport Supervision or Federal Agency for Fishery (for fishing vessels) has granted authorisation for the bareboat chartered vessel to fly the Russian flag. An application for bareboat charter registration is submitted to the harbour master of the chosen port together with the required documentation:

- an extract from the foreign shipping register;
- letters of consent on changing the flag from the owner, mortgagee (or holder of a similar registered encumbrance);
- letter on suspension of registration in a foreign shipping register;
- a bareboat charter (original and copy);
- tonnage certificate;
- passenger certificate (for passenger ships);
- seaworthiness certificate;
- authorisation to fly the Russian flag granted by the Russian Federal Agency for Transport Supervision or Federal Agency for Fishery (for fishing vessels); and
- a ship register questionnaire, which includes the current and previous vessel's names, IMO number, characteristics, etc).

Procedure on flagging out may be conducted in case the Russian ship is bareboat chartered by a foreign person or entity. In order to suspend the right to fly the Russian flag, the one should seek permission from the Russian Federal Agency for Transport Supervision or Federal Agency for Fishery (for fishing vessels) indicating the permitted period for flagging out, as well as a mortgagee's (if any) letter of consent on changing the flag. For flagging-out purposes, the bareboat charter period cannot be less than one year.

#### **9 Who maintains the register of mortgages and what information does it contain?**

There is no separate register of mortgages in Russia. All records on mortgages are maintained by the Harbour Masters of Russian seaports and are made in relevant ship registers where the vessel in question is registered (see question 5). Records on mortgages include information on mortgagor, mortgagee, maximum amount of obligations secured by the mortgage (amount in relation to each ship in case mortgage is applicable in relation to several ships), mortgage expiry date.

Mortgages over a foreign vessel temporarily entitled to fly the Russian flag (ie, registered in the Bareboat Charter Register), as well as mortgages over a vessel being built for a foreign consignee, cannot be registered in the Russian Federation.

#### **Limitation of liability**

#### **10 What limitation regime applies? What claims can be limited? Which parties can limit their liability?**

Russia is a party to the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC) (as amended by the Protocol of 1996), thus the conventional limitation regime applies. In order to apply increased limits of liability, relevant amendments to article 359 of the Russian Merchant Shipping Code were adopted by the Federal Law No. 253-FZ dated 3 July 2016.

Exceptions were made in respect of claims:

- relating to wreck and cargo removal, destruction and neutralisation; and
- personal injury claims if both shipowner and passenger, or shipowner and injured person, or salvor and injured person are Russian nationals or entities.

#### **11 What is the procedure for establishing limitation?**

Limitation of liability may be pleaded either with or without setting up a limitation fund (at the discretion of the defendant). Generally, the same calculation and allocation rules apply as are stipulated in the LLMC. Having established a limitation fund a person enjoys the rights guaranteed under the Convention (eg, frees its other property from claims and arrests).

A limitation fund may only be constituted after legal proceedings have been initiated by means of a cash deposit, bank guarantee, or other type of financial security accepted by the court.

#### **12 In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?**

A person liable loses the right to claim limitation of liability in case it is proved that the loss resulted from his or her personal act or omission (gross negligence in terms of the Russian laws).

#### **13 What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?**

The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 (as amended in 1976) is in force for the Russian Federation. However, the Russian Merchant Shipping Code provides for higher liability limits as to: personal injury up to 175,000 special drawing rights (SDR); cabin luggage up to 1,800 SDR; vehicles up to 10,000 SDR; and other luggage up to 2,700 SDR. The amount of deductibles parties may agree on is also increased up to 300 SDR in relation to vehicles and up to 135 SDR in relation to other luggage.

#### **Port state control**

#### **14 Which body is the port state control agency? Under what authority does it operate?**

Port state control is carried out by harbour masters of the sea ports on the basis of the Russian Merchant Shipping Code, the Federal Law on Sea Ports, the Harbour Master Statute, and relevant Ministry of Transport Regulations. Sea ports' administrations provide for assistance necessary to exercise such control.

#### **15 What sanctions may the port state control inspector impose?**

Harbour masters are authorised to impose administrative penalties in accordance with the Russian Code on Administrative Offences (these are for violation of rules of navigation, operation of a vessel without required documents, violation of rules of carriage of harmful substances, damage to port constructions, etc). A harbour master may also refuse to provide for port clearance (permission for the vessel to leave the port) and (or) order a ship's detention for up to 72 hours.

#### **16 What is the appeal process against detention orders or fines?**

Harbour master's orders or actions may be appealed by interested parties in an administrative order (to a superior agency) and (or) in the court within three months after the disputed action was made (or it became known of), or the disputed decision was received. The administrative penalty imposed by the harbour master may be appealed in the same way, but within 10 days after the penalty was imposed.

All appeals shall specify violations made by the harbour master, as well as reference to the rights infringed (accompanied by supporting documents).

#### **Classification societies**

#### **17 Which are the approved classification societies?**

Classification of ships registered in the State Ships Register and the Bareboat Charter Register may be provided for by a Russian classification society authorised by the Russian government. Such authorisation is granted to the Russian Maritime Register of Shipping (RS).

Owners of vessels registered in the International Ships Register may choose between the RS or foreign classification societies approved by the Russian government, namely: Bureau Veritas and Rina Services SpA.

#### **18 In what circumstances can a classification society be held liable, if at all?**

The RS may be held liable for damages incurred in case of breach of contractual obligations. However, the RS limits such liability to the cases where it is at fault (due to personal act or omission) and to the amount payable under the contract (ie, service cost due).

#### **Collision, salvage, wreck removal and pollution**

#### **19 Can the state or local authority order wreck removal?**

Wreck removal may be ordered either by the state or a local authority. Measures related to wreck removal may be adopted depending on the accident site and purposes of removal by the Ministry of Civil Defence,

Emergency and Disaster Response (the Federal Rescue Service), the Ministry of Transport, the Ministry of Defence, the Ministry of Environment and Natural Sources and other governmental bodies within the competence assigned.

**20 Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?**

Russia is a party to a number of international conventions and protocols in relation to collision, wreck removal, salvage and pollution, including the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910, the International Convention on Civil Liability for Oil Pollution Damage 1969 (as amended by the 1992 Protocol) and the International Convention on Salvage 1989.

The Nairobi International Convention on the Removal of Wrecks 2007 has not been yet ratified by the Russian Federation.

**21 Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?**

Russian laws do not provide for a mandatory form of salvage agreement; therefore, any form, including Lloyd's standard form of salvage agreement, is acceptable. However, 'exotic' forms should be applied while taking necessary precautions since a salvage agreement or its particular terms may be declared void in case the agreement was concluded in circumstances of a great danger and its terms are considered unfair by court.

Salvage operations in internal and territorial waters may only be carried out by Russian ships. Foreign vessels may only be allowed in exceptional cases subject to obtaining the relevant authorisation from the Russian State Salvage Coordination Centre.

**Ship arrest**

**22 Which international convention regarding the arrest of ships is in force in your jurisdiction?**

Russia is a party to the Brussels International Convention Relating to the Arrest of Sea-Going Ships 1952, the provisions of which apply to all ships flying the flag of another contracting state and calling at Russian ports. At the same time, Russian local rules on arrest stipulated in the Merchant Shipping Code incorporate principles of International Convention on the Arrest of Ships 1999.

**23 In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested?**

A vessel may be arrested in respect of a maritime claim only. The list of maritime claims in local rules (Merchant Shipping Code) is broader and corresponds to the list identified in the International Convention on the Arrest of Ships 1999. This will generally apply to the vessels flying the Russian flag where the claimant and the defendant are Russian parties. The Brussels International Convention Relating to the Arrest of Sea-Going Ships 1952 (with a shorter list of maritime claims) will apply to the ships flying the flag of another contracting state. The law governing the claim does not make a difference.

An associated ship (or ships) may be arrested provided that at the moment of the beginning of the arrest procedure, the ship in question was in the ownership of the person or entity liable under the maritime claim that was, at the time the claim arose, the owner of the ship against which the maritime claim has arisen, or the bareboat charterer, time charterer or voyage charterer of such a ship. An associated ship (or ships) may not be arrested under a claim related to the title to or ownership of the particular ship in respect of which the claim arose, or mortgage over the particular ship.

**24 What is the test for wrongful arrest?**

The arrest shall be considered wrongful (unlawful) when it was imposed as a preliminary injunctive measure against the wrong ship (ie, not belonging to the person or entity liable, or not in their possession, see question 25 below), or not under a maritime claim (made in bad faith). Additionally, the arrest shall be considered unlawful in cases where it is recognised by the court to be 'excessive' in terms of security or in case of the ultimate failure of the claim.

**25 Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?**

The answer will depend on whether the vessel is still chartered by the liable charterer at the time when the arrest is claimed. In cases where the vessel in question at the time when the arrest is claimed is in the possession of the charterer who is liable under a bunker supply contract, the answer is yes, a bunker supplier will be able to arrest the vessel in question. In cases where the vessel at the time when the arrest is claimed is not in the possession of the charterer liable under a bunker supply contract, the answer is no.

**26 Will the arresting party have to provide security and in what form and amount?**

Provision of security is not obligatory. The court that considers the application on arrest of a ship, may (but, is not obliged to) order an arresting party to provide security against any damages which may be caused to the shipowner by wrongful arrest. Usually this amounts to 50 per cent of the value of the claim. Nevertheless, an applicant's readiness to provide such security may increase the chances of success of an arrest application. The security may be provided in the form of cash deposit, bank guarantee, surety or any other financial security acceptable to the court.

Security is not required where the applicant demands arrest of a ship under a claim for wages and other amounts due to the master or the crew of the ship for their work on board.

**27 How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?**

In cases where the parties have not agreed on the sufficient amount of counter-security, such amount is determined by the court on its sole discretion (but, in any case, counter-security may not exceed the value of the ship). Counter-security may be provided in any form acceptable by the claimant and the court (cash deposit, bank guarantee, protection and indemnity letter of undertaking, etc). If the amount of counter-security is not acceptable to the arrested party, after provision of the requested counter-security such party may apply to the same court for reducing, amending or cancelling the counter-security.

**28 What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?**

A lawyer should have a written power of attorney (POA) from the interested party in order to make the arrest application. If the POA (or any other document issued by the foreign public authority) is issued outside Russia, it should be duly apostilled or legalised (Russia is a party to the Apostille Convention). If the POA is issued by a physical person, it should be notarised also. It is better to issue a bilingual POA containing Russian wording, otherwise it will be necessary to translate it into Russian before submitting it to the court. All documents submitted to the court should be translated into Russian. In practice, most Russian courts accept translations made in Russia as such translations (ie, signatures of the translators) are certified by the Russian public notary.

All documents supporting the arrest application should be filed with the court in hard copies or originals (not electronically). Unfortunately, it is not possible in practice to set the arrest procedure in motion if the arrest application and (or) the supporting documents do not comply with all the required formalities. Given the above, depending on the number of supporting documents and the need for translation, or legalisation or notarisation, etc, the full set of documents may be prepared for filing with the court in one to three working days.

**29 Who is responsible for the maintenance of the vessel while under arrest?**

The arrested vessel shall be maintained by the shipowner, as the arresting party is not responsible for the maintenance of the vessel while it is under arrest.

**30 Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?**

It is possible to arrest a vessel in Russia simply to obtain a security and thereafter to pursue proceedings on the merits in the other jurisdictions. In this case the Russian court which has imposed the arrest should be notified of the proceedings on merits brought in the other jurisdiction in order to keep the arrest.

**31 Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?**

Yes, the claimant may apply to the court with a motion to take other security measures (including preliminary ones), for instance, to arrest monetary funds or other property (eg, cargo on board or ashore) of the defendant, etc. It should be noted that depending on the particular case, the court may simultaneously impose security measures of several types.

**32 Are orders for delivery up or preservation of evidence or property available?**

Such orders are available mainly as part of administrative or criminal proceedings where the vessel is an instrument or subject of an administrative offence or crime or may serve as evidence of a crime. Likewise, the claimant may request the court to order the other party to perform certain actions (eg, to provide the requested evidence), or to refrain from performing certain actions.

**33 Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?**

Yes, theoretically it is possible to arrest bunkers as with any other property related to the claim. However, in practice, if the bunkers in question are on board operating the vessel, the Russian courts consider such arrest to be 'excessive' in terms of security (given the amount of losses which may be incurred to the shipowner or charterer by detention of the vessel due to such an arrest) and refuse to impose it. Moreover, there are complex issues from the point of view of Russian civil law to properly identify the ownership over the particular part of the bunkers in question on board the ship, and thus to prove the interest of the claimant in the particular bunkers.

**Judicial sale of vessels**

**34 Who can apply for judicial sale of an arrested vessel?**

Judicial sale of an arrested vessel may be applied for by the mortgagee where the mortgagor failed to perform its obligations secured by the mortgage, or by the claimant requesting the judicial sale of the arrested vessel in order to recover the secured obligation recognised by the court.

**35 What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?**

At least 30 days prior to judicial sale of a vessel, the court must notify the registration authority (including the one of temporary registration, if any), all known mortgagees and the owner of the vessel. The vessel is sold at a public auction. The average period for the judicial sale may be up to several months (depending on all circumstances of the particular sale).

The costs incurred in connection with the judicial sale of the vessel are calculated on the basis of the confirming documents provided by interested parties and are determined by the court (depending on the situation, it may be costs for conducting the auction, sending notifications, etc). Such costs are primarily reimbursed from the amount earned from the vessel's sale.

**36 What is the order of priority of claims against the proceeds of sale?**

Costs related to the arrest and the judicial sale of the vessel shall be reimbursed at the first place (wages and other amounts due to the master of the vessel and other crew members for their work on board the vessel, if any, are included in such costs). Then the priority is as follows:

- costs incurred by maritime administration for lifting aground vessel or removal of shipwreck;
- claims secured by maritime lien;
- claims of shipyards that possessed the vessel prior to the sale;
- claims secured by mortgage; and
- any other claims.

**37 What are the legal effects or consequences of judicial sale of a vessel?**

After a judicial sale all registered mortgages, except mortgages accepted by the purchaser with the consent of the mortgagees, all maritime liens and other encumbrances of any type are extinguished.

**38 Will judicial sale of a vessel in a foreign jurisdiction be recognised?**

Yes, judicial sale of a vessel in a foreign jurisdiction will be recognised in Russia and the vessel must be deleted by the harbour master from the relevant Register upon presentation of sufficient evidence of the vessel's judicial sale.

**39 Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?**

Yes. Russia has been a member of the International Convention on Maritime Liens and Mortgages 1993 since 1999.

**Carriage of goods by sea and bills of lading**

**40 Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?**

Russia has ratified the Hague-Visby Rules as amended by the 1979 Protocol. The Hamburg Rules and the Rotterdam Rules were not ratified. For the purpose of application of such rules and as prescribed by the Merchant Shipping Code of the Russian Federation, the carrier is liable for the cargo from the moment of its acceptance until the cargo is released to the consignee.

**41 Are there Conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?**

Yes, there are a number of international and domestic laws applicable in Russia in respect of different stages of the transport other than by sea. These are:

- the Convention on the Contract for the International Carriage of Goods by Road 1956;
- the Russian Merchant Shipping Code (partly regulating multimodal carriage);
- the Russian Code of Internal Waterways Transport;
- the Charter of the Railroad Transport; and
- a number of other acts.

**42 Who has title to sue on a bill of lading?**

A claim can be brought by a lawful holder of title under a bill of lading.

**43 To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?**

If the bill of lading contains reference to the terms and conditions of a charter party, such terms shall be obligatory. If reference to the terms of the charter party is 'general', then only those terms which are related to the carriage and delivery of the goods shall be obligatory. A jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill of lading, is not obligatory for a third-party holder or endorsee of the bill.

#### 44 Is the 'demise' clause or identity of carrier clause recognised and binding?

As a general rule, the 'demise' clause is recognised in Russia; however, the answer will generally depend on the bill of lading as a whole. If the parties specify a particular vessel to carry the cargo, that would be binding for them, thus the said cargo can be loaded on to another vessel with the consent of the parties.

#### 45 Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

As a general rule, a shipowner is not liable for cargo damage where he or she is not the contractual carrier, unless he or she may be found liable in tort. At the same time a shipowner cannot rely on the terms of the bill of lading if the bill of lading was issued by the contractual carrier, unless there is a specific clause extending the protections in the bill to third parties.

#### 46 What is the effect of deviation from a vessel's route on contractual defences?

The Russian legislation does not provide for any specific consequences of deviation on the contractual defences. In terms of the relationship between the parties to the shipping contract, the deviation may be qualified as non-fulfilment of the carrier's obligations. According to the general provisions of the Russian Civil law, such non-fulfilment would result in an obligation to recover damages.

Concerning insurance consequences any type of deviation other than for the purposes of salvage or safe continuation of the voyage entitles the insurer to review the terms and conditions of the insurance contract or to claim additional insurance premium.

#### 47 What liens can be exercised?

The Russian Maritime Shipping Code pursuant to the International Convention on Maritime Liens and Mortgages 1993 provides for a number of claims that give rise to a lien on the vessel, such as salvage, wreck removal, wages of crew members, etc.

A carrier has a lien on the cargo until he or she receives all necessary payments from the consignee (these are remuneration of expenses made by the carrier for the account of the cargo, compensations for delays in the ports (if applicable), charter hire, etc).

With regard to the shipyards, they have a lien on the vessel for the cost of construction works or repairs. In the same way, an operator of a marine transshipment terminal can exercise a lien on the cargo in the case of failure to make payments provided by the transshipment agreement.

#### 48 What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

Delivery of cargo without production of the original negotiable bill of lading is a breach of contract that will render the carrier liable for the value of the cargo to the lawful holder of the bill entitled to immediate possession of the cargo. The carrier's liability cannot be limited in such situations.

If the terms and conditions of carriage are set out in a document that is not a document of title (ie, the bill of lading is not issued), any possibility of limiting the carrier's liability will depend on the provisions of such document.

#### 49 What are the responsibilities and liabilities of the shipper?

The responsibilities of the shipper are:

- to pay the freight (unless it is fully or partially paid by the consignee);
- to properly mark the cargo and to provide true and accurate information on its type and special characteristics to the carrier; and
- to provide the carrier with all documents necessary for customs, police, sanitary and other controls.

The shipper has a right to dispose of the cargo until it is released to the consignee, including the right to claim that the cargo is delivered back to the shipper.

The shipper is liable for losses incurred to the carrier by breaching the above-mentioned responsibilities if he or she does not prove that the losses were caused not by his or her fault.

### Shipping emissions

#### 50 Is there an emission control area (ECA) in force in your domestic territorial waters?

Russian domestic territorial waters are part of the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 sulphur emission control area (the Baltic Sea area). Additionally, Russia has its own rules for establishing zones in which emissions of volatile organic compounds are regulated.

#### 51 What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

The cap on the sulphur content of fuel oil used in Russian territorial waters is 1.5 per cent m/m; in waters in the controlled area it is 0.1 per cent m/m starting from 1 January 2015.

The regulatory requirements relating to low-sulphur fuel are enforced by means of inspections held by the port state control inspectors. Non-compliance with the regulatory requirements is punished with administrative fines.

### Jurisdiction and dispute resolution

#### 52 Which courts exercise jurisdiction over maritime disputes?

There are no special maritime courts in Russia, thus, without prejudice to parties' right to conclude prorogation or arbitration agreement, Russian commercial courts and courts of common jurisdiction exercise jurisdiction over maritime disputes.

In order to determine the court competent to resolve a particular dispute, the following test shall be applied (unless the parties have agreed on the forum):

- identifying the subject matter of a dispute and the parties involved; and
- Russian commercial courts resolve disputes related to business activity conducted by companies or individual entrepreneurs. In fact, such disputes constitute a major part of maritime disputes in the country. Once the 'commercial' prerequisite is missing (eg, passengers' claims), courts of common jurisdiction become competent to consider maritime claim.

### Determining territorial jurisdiction

Generally, a claim shall be filed with the court where the respondent resides (has his or her registered office). However, exclusive jurisdiction is granted, for instance, to:

- courts at the place of maintaining the shipping register in relation to disputes over the ownership of a vessel; and
- courts at the place of business (registered office) of a carrier in relation to disputes arising from contracts of carriage.

#### 53 In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

In cases where a dispute involves a foreign company or individual, the claimant is able to choose the jurisdiction of a Russian court (unless parties have agreed on the forum). Russian courts are competent to serve proceedings on a defendant located outside Russia if the dispute is closely connected with Russia (for instance, when the respondent's branch or property is located on the Russian territory, the contract is to be performed in Russia, or the accident or unjust enrichment occurred on the Russian territory etc).

#### 54 Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

Established in 1930, the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation is still a major arbitration institution specialising in maritime arbitration in Russia.

**55 What rules govern recognition and enforcement of foreign judgments and arbitral awards?**

Enforcement of foreign judgments and arbitral awards depending on the nature of the dispute (commercial or non-commercial) are governed by the Russian Code Arbitration Procedural Code and Civil Procedural Code of the Russian Federation along with applicable international agreements.

Recognition and enforcement of foreign judgments is mostly subjected to bilateral agreements on legal assistance on civil and commercial matters specifically providing for mutual recognition and enforcement of foreign judgments. Though the list of such agreements is short, as a matter of practice foreign judgments have also been recognised and enforced by Russian courts based on the so-called reciprocity principle.

Procedure on recognition and enforcement of foreign arbitral awards may be instituted under the European Convention on International Commercial Arbitration 1961 or the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958.

A party concerned may apply for recognition and enforcement of a foreign judgment or arbitral award to the regional court where the debtor resides (has its registered office) or the debtor's property is located. The relevant request shall be necessarily served along with duly certified copy and translation of the foreign judgment or arbitral award, arbitration agreement (for arbitral awards), documents confirming that defendant was duly notified and that the judgment became binding (for judgments).

**56 What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?**

If the proceedings in breach of a jurisdiction clause were commenced in Russia, such proceedings should be terminated by the respective court or arbitration by virtue of law. In cases where such proceedings were issued abroad, it would be a matter for the foreign court or arbitration to decide whether it has jurisdiction. Also, the defendant can institute proceedings in Russia if such an option is established by the jurisdiction clause.

**57 What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?**

In order to stop domestic proceedings instituted in breach of a jurisdiction or arbitration clause, the defendant, before pleading to the merits, shall contest the court's jurisdiction. Therefore, unless it is not a case of exclusive jurisdiction, the court dismisses a claim.

**Limitation periods for liability****58 What time limits apply to claims? Is it possible to extend the time limit by agreement?**

As a general rule, a claim is to be time barred upon expiration of a three-year period. However, in relation to maritime disputes, except for oil

spill and damages incurred in relation to hazardous substances carriage, shorter terms apply. For instance, in connection with disputes arising from contracts on carriage of goods by sea, a claim shall be filed within one year. A two-year time bar is applicable to claims arising from collision and salvage operations, maritime insurance disputes and disputes arising from time charters, bareboat charters, towage and agency contracts.

Parties are prohibited from changing applicable time limits: such an agreement is considered void under Russian law. However, since the limitation period is a matter of a substantive law, the limits may be changed by means of a choice of law clause.

**59 May courts or arbitral tribunals extend the time limits?**

Courts or arbitral tribunals are not allowed to extend the applicable time limits; however, they may 'revive' them in the case of failure to file a claim timely in exceptional circumstances that concern individuals only (eg, serious illness, helpless conditions, etc).

**Miscellaneous****60 How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?**

Generally, the Maritime Labour Convention 2006, which became effective for the Russian Federation starting from 20 August 2013, applies directly on the territory of the country in relation to ships flying the Russian flag. Along and in compliance with the Convention the Labour Code of the Russian Federation and the RF Government and Ministry of Labour and Social Protection Regulations form a domestic framework aimed at protecting seafarers' rights.

**61 Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?**

In general, the parties to a shipping contract may seek for relief from the strict enforcement of their legal rights in the form of altering contract terms or contract termination due to vital changes of circumstances that would have prevented the parties from concluding the contract if such circumstances could have been reasonably foreseen. Similarly, the party in breach may not be held liable for the other party's damages pleading force majeure.

However, unless parties specifically provide in the contract for the list of events to be of a vital change or force majeure, a high threshold will be applied by the court.

**62 Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?**

No.



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