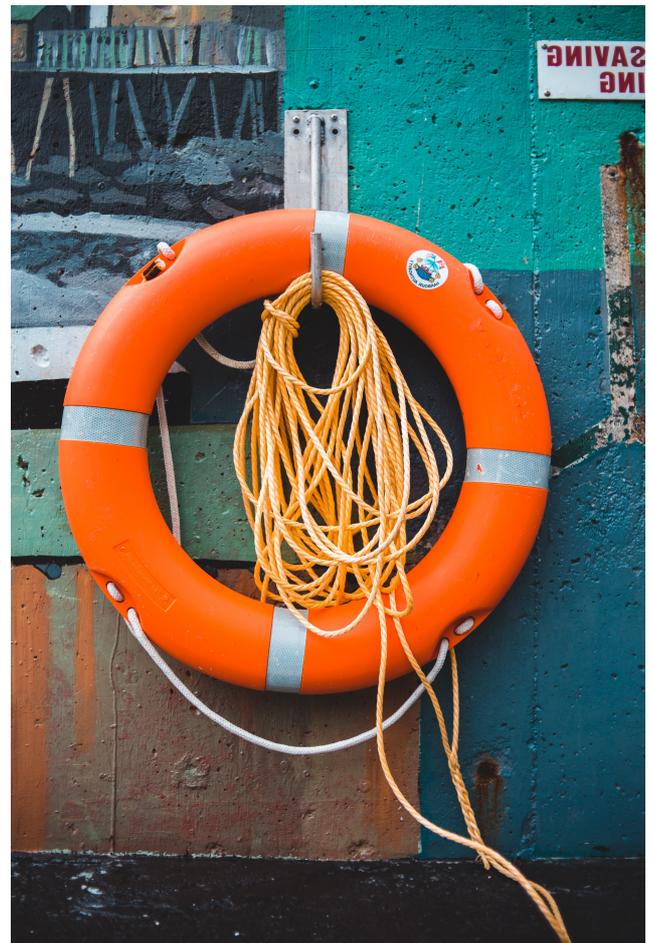


The Supreme People's Court of China Promulgated New Judicial Interpretation to Further Regulate Trial of Cases of Disputes Involving Seamen

November, 2020

On 27 September 2020, the Supreme People's Court of China ("SPC") promulgated the Provisions on Several Issues Concerning the Trial of Cases of Disputes Involving Seamen (Document number: Interpretation No. 11 [2020], hereinafter referred to as the Provisions), which came into force on 29 September 2020.

There are in total 21 articles under the Provisions, where issues as focuses of social concerns are covered, including how to identify contracts on the employment of seamen, service contracts and brokerage contracts, ascertainment, enforcement and transfer of maritime liens, components of seamen's wages and other remunerations, and whether seamen's wages earned from illegal work should be protected, etc.

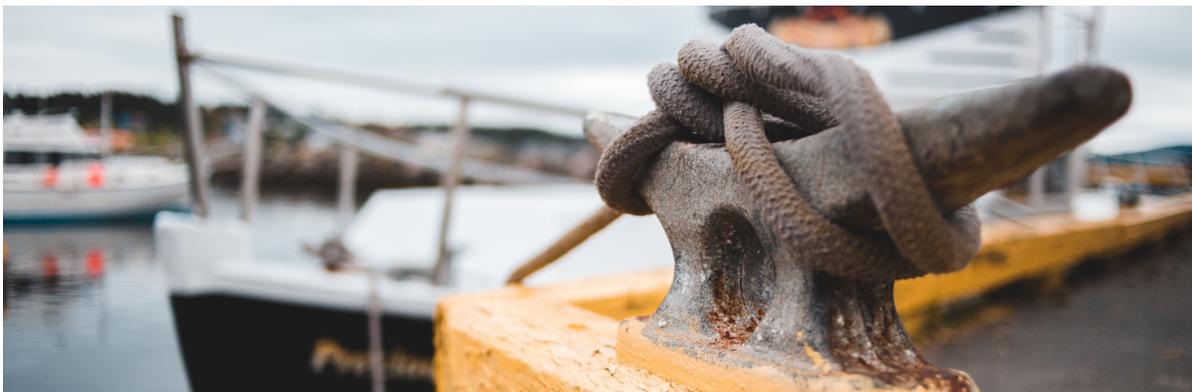


I. Under the Provisions, seamen employment contracts are differentiated from seamen service contracts with different dispute resolution procedures to apply.

The Provisions set out different dispute resolution procedures for disputes over seamen employment contracts and those over seamen service contracts, which are different in nature. Under the Provisions, if employment disputes have no relevance with maritime liens, the parties concerned shall commence labor arbitration first and follow the provisions of the *Labor Dispute Mediation and Arbitration Law of the People's Republic of China*, which means that labor arbitration shall be pursued before litigation; as to disputes defined as service contract disputes rather than labor disputes, the parties concerned shall file litigation to the competent maritime court, in which case, the aforesaid rule of “arbitration first followed by litigation” does not apply.

SPC made the aforesaid differentiation and arrangements after having considered the fact that seamen service contract disputes usually involve ship-related and seamen-related professional knowledge, which belong to disputes of technical maritime characteristics and maritime courts have particular strength in handling these cases; whereas for other employment disputes which do not involve maritime liens, labor arbitration commissions are more professional and have more abundant experience in related issues, such as ascertainment of the employment relation, performance of employment contract, wage payment in circumstances where no employment contract has been signed, severance pay and other economic compensation for employment contract termination, and other typical labor contract disputes. The parties concerned should choose the correct procedures pursuant to the Provisions to safeguard their rights and interests.

We would suggest that shipowners should also pay attention to the aforesaid differentiation when dealing with disputes with seamen so as to avoid incurring time and costs from going through incorrect dispute resolution procedures.



II. The Provisions clarify the application of the law for different types of seamen related disputes.

Under the Provisions and the *Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships*, the law shall be applied in different circumstances as follows:

1. If a seaman's employment contract involves foreign elements, the law of the place where the seaman works shall apply; where the workplace is difficult to identify, the law of the principal place of business of the employer shall apply;
2. If there is no applicable law stipulation in a seaman's service contract, the law of the dispatching place or the principal place of business of the shipowner or the flag state of the vessel shall apply.
3. If there is no applicable law stipulation in a brokerage contract or agency contract, the law having the closest connection with the contract shall apply.

Nevertheless, the Provisions do not clarify if the two contracting parties to a seaman service contract respectively assert the application of different laws, then which law shall be applied by courts. This issue has to be clarified by SPC's further interpretation in the future.



III. Under the Provisions, seamen's application only for confirming maritime liens without first pursuing ship arrest procedure is supported.

Article 28 of the currently effective *Maritime Code of China* provides that a maritime lien shall be enforced by arresting the ship that gave rise to the said maritime lien. However, there are procedural drawbacks in the aforesaid ship arrest requirement, because, in practice, seamen's claim amounts could be small while the losses sustained by the shipowner during the period of arrest can be large; a ship arrest cannot be enforced when the whereabouts of the subject ship is unknown or due to other reasons; or the subject ship has already been arrested by another party, etc.

In order to balance the tripartite rights and interests of seamen, shipowners, and other maritime creditors, the Provisions stipulate in Article 6 that with regard to maritime claims that shall be entitled to maritime liens, if seamen do not apply for arresting the ship that gave rise to the said maritime liens in accordance with Article 28 of the *Maritime Code of China*, and only apply for confirming their maritime liens against the ship that gave rise to the maritime liens within a certain period, such application shall be supported.

This means that in case disputes arise between a seaman, the master, or any other member of the complement over wages, other remuneration, crew repatriation, and social insurance costs payable or incurred due to his service on board, he may apply for exercising his maritime liens and for arresting the ship concerned at the same time, or only apply for confirming his maritime liens against the ship that gave rise to the maritime liens within one year of the existence of such maritime liens without the need of applying for ship arrest.



IV. The Provisions ascertain the components of seamen's wages and other remunerations that are entitled to maritime liens.

Under Article 22 of the *Maritime Code of China*, seamen's payment claims for wages, other remuneration, crew repatriation, and social insurance costs payable pursuant to labor laws, administrative laws and regulations, or labor contracts shall be entitled to maritime liens. But it is controversial in judicial practice whether all the components of seamen's wages and other remunerations shall be entitled to maritime liens.

Now, this issue is clarified by the Provisions, which expressly provide that wages which are entitled to maritime liens include the following items given rise by seamen's boarding, service on board, repatriation upon disembarkation: (1) remuneration or basic wages during normal working hours, (2) overtime pay during extended working hours and overtime pay for work during days off or statutory public holidays, (3) bonus and allowance earned during service on board, and wages payable in special circumstances, and (4) interest on the aforesaid payments which have not been paid in time. If seamen claim maritime liens for the aforesaid payment items and apply for arresting the ship on which he served, such claim and application shall be supported by courts.

Payment items which are not entitled to maritime liens include (1) severance pay and other economic compensation under the *Labor Law* and the *Labor Contract Law*, (2) the wages in the double amount payable by an employer to an employee due to the employer's failure to conclude a written labor contract with the employee pursuant to Article 82 of the *Labor Contract Law*, and (3) interests on the aforesaid payments which have not been effected in time. Where seamen claim maritime liens for the aforesaid payment items, such application shall not be supported by courts.

The *Maritime Code of China* provides that the law of the place where the court hearing the case is located shall apply to matters pertaining to maritime liens. Therefore, when disputes involving crew remuneration are heard by Chinese courts, the afore-mentioned rules under Chinese law will be applied for ascertaining the scope of maritime liens, no matter whether the shipowner's home state or the flag state has different stipulations on maritime liens.

V. The Provisions clarify that even if seamen engage in illegal tasks, their wage claims may still be protected in some circumstances.

To protect the marine ecological environment and safeguard seamen's lawful rights and interests, the Provisions stipulate that if seamen carried out illegal tasks as a result of fraud or duress (e.g. illegally fishing during a no-fishing period or in a no-fishing area), seamen may still claim their wages and other remunerations; however, if seamen were aware of and willingly carried out illegal tasks (the burden of proof is on shipowners), then seamen shall have no right to claim wages or remunerations for such unlawful tasks. Furthermore, if the acts of shipowners or seamen shall be subject to administrative punishment or are suspected of being involved in crimes, they shall be dealt with in accordance with the relevant statutory procedures.

The Provisions regulate and guide the development of the seaman market, and satisfy the realistic need for upholding an orderly shipping market. They also serve to safeguard China's efforts in building a new open economic system of a higher level, the Strong Maritime Nation strategy as well as the development of the Belt and Road Initiative.

For the time being the actual effect of the Provisions on the shipping industry remains to be seen.



A team led by Mr. Wang Jing, which has rich experience in foreign-related legal issues, have joined and started a strategy reconstruction with Grand & Holder Law Firm. The name of the new firm is Wang Jing & GH Law Firm, which is a full-service firm with more than 70 experienced practicing lawyers. Wang Jing & GH Law Firm now covers such practice areas as commercial litigation and dispute resolution, admiralty and maritime, cross-border investment and M&A, international trade, real estate development and construction, corporate governance, banking and finance, urban renewal, TMT, commercial crimes, intellectual property and taxation.

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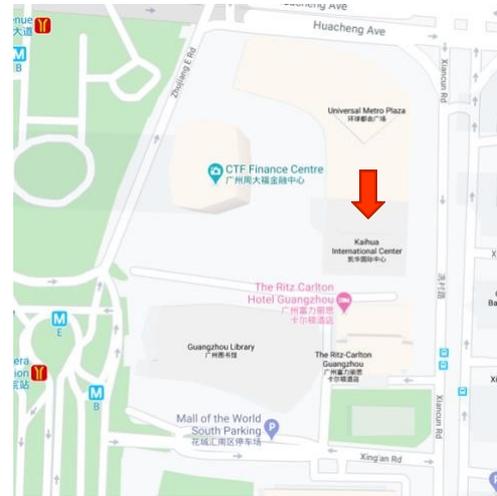
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