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Subject: Supreme Court of China Published Judicial Interpretation Regarding the Trial of Crew Members Related Cases

On 27 Sep 2020, Supreme Court of China published Interpretation of The Supreme People's Court on Several Issues Regarding the Trial of Cases of Crew Members Related Disputes ("the Interpretation"), to encourage consistency in court rulings on crew members related issues.

Crew members related cases account for a relatively big part of maritime cases in Chinese judicial practice. However, there is no law that specifically deal with crew member issues in China, and crew members' rights and obligations are governed by a variety of laws, regulations and administrative rules, causing challenges and inconsistencies in judicial practices. As such, the supreme court published this interpretation aiming at dealing with these difficulties.

The Interpretation consists of 21 articles and provides guidance regarding nature of the various contracts concerning crew members, acknowledgement, enforcement and transfer of maritime liens, constitution and calculation of overtime pay, entitlement of salary for illegal fishing activities, liability determination in case of infringement, the relationship between work-related injury insurance compensation and civil compensation, applicable law in foreign-related employment contract, etc.

The highlights are summarized as follows:

- (1) Claims associated with embarkation, service on board, disembarkation and repatriation of a crew member under a labor contract (signed between crew members and Chinese ship owners) as well as all claims arising under employment agreement (signed between crew members and foreign ship owners, or signed between crew members and individual Chinese shipowners engaged in coastal and inland water transportation

or individual Chinese ship owners engaged in fishing activities for temporary service) shall be under the jurisdiction of the maritime courts, whilst claims under a labor contract not involving embarkation, service on board, disembarkation and repatriation of a crew member shall be submitted subject to the labor dispute arbitration procedures.

- (2) A crew member's request to the court to acknowledge his or her entitlement of maritime lien without applying for ship arrest shall be supported. When the ship owners fail to pay as per agreed the salary, other remuneration, repatriation costs, or social insurance expenses to a crew member, and a third party has advanced these payments in full or in part, the crew member shall transfer his entitlement of corresponding maritime lien to this third party, whose request to acknowledge or enforce the maritime lien for the subrogated maritime claims shall be supported.
- (3) If a crew member sustains harm during employment but the ship owners provide evidence to prove that the crew member has fault for such harm and request the crew member to bear relevant losses and expenses by himself or herself, the ship owners' defense shall be supported.
- (4) If a crew member suffers from work-related injury because of fault of a third party and brings civil lawsuits against this third party for civil compensation, the third party's defense to reject the civil compensation liability on ground that the crew member has received compensation under work-related injury insurance shall not be supported.
- (5) If the employment agreement between the crew member and the ship owners doesn't specify applicable law, the law of the labor dispatch place, the main business place of the ship owners or the flag state can be applied.

We have made a free translation of the Interpretation, which is attached hereto for your ready reference.

We hope the above is of assistance. Any further query, please feel free to contact us at oasis@oasispandi.com.

Best regards,

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Interpretation of The Supreme People’s Court on Several Issues Regarding the Trial of Cases of Crew Members Related Disputes

(Passed at 1803rd meeting of the Judicial Committee of the Supreme People’s Court on 08 June 2020, and taking effect as of 29 Sept 2020)

Fa Shi (2020) No. 11

In order to properly try the cases of crew related disputes, this interpretation is formulated in accordance with provisions of the Labor Contract Law of PRC, the Maritime Code of PRC, the Labor Dispute Mediation and Arbitration Law of PRC, the Special Maritime Procedure Law of PRC and in light of the trial practice.

Article 1 If the labor dispute between a crew member and the ship owners doesn’t involve embarkation, service on board, disembarkation or repatriation of the crew member, and the party brings a lawsuit to the maritime court, the maritime court shall advise the party to follow the provisions of the Labor Dispute Mediation and Arbitration Law of PRC.

Article 2 Regarding disputes under an employment agreement between a crew member and ship owners, if a lawsuit is brought to the maritime court at the place where the plaintiff has its domicile or where the agreement is signed, or where the crew member embarked or disembarked the ship, or where the defendant has its domicile, the maritime court shall entertain the case.

Article 3 If a crew manning agency is involved only in the handling of relevant formalities for the crew member or providing job vacancy information, and such service doesn’t fall into the category of labor dispatch, the crew manning agency’s proposition that it only has a brokerage or commission contract with the crew member shall be supported.

Article 4 If the ship owners are operating in the form of affiliation and fail to enter into any written labor contract with the crew member, in case the crew member is injured or died due to work, the crew member's proposition to hold the entity with which the ship owners are affiliated for liabilities under work-related injury insurance scheme shall be supported, unless a labor contract relationship has been established between the ship owners and the crew member.

Article 5 The labor dispute that doesn't involve embarkation, service on board, disembarkation or repatriation of a crew member shall be submitted to the labor dispute arbitration commission for arbitration. Upon application of the crew member, the tribunal decides on advance execution of its awards regarding payment of salary and other remuneration, medical expenses for work-related injury, economic indemnification or compensation, such decision shall be transferred to the local People's Courts for examination.

If the crew member applies for ship arrest, the tribunal shall submit the arrest application to the maritime court where the ship is registered or where the ship is located for examination, or to the People's Courts who will entrust the maritime courts where the ship is registered or where the ship is located for examination.

Article 6 For maritime claims entitled to maritime liens, in case the crew member doesn't apply to arrest the ship that gave rise to the said maritime lien in accordance with Article 28 of the Maritime Code of PRC but only requests to acknowledge his or her entitlement of maritime lien on the ship that gave rise to such maritime lien within a certain period of time, such request shall be supported.

The aforementioned time period shall be one year since the arising of the maritime lien.

Article 7 For maritime claims that are entitled to maritime liens, in case the crew member doesn't apply to restrict the operation of the ship, but only requests to take preservative measures such as restriction of disposition or mortgage, such request shall be supported. If the crew member claims that such preservative measures constitute arrest of ship under Article 28 of the Maritime Code of PRC, such claim shall not be supported.

Article 8 If a crew member claims to be entitled to maritime liens for the following salary or other remuneration incurred due to embarkation, service on board, disembarkation or repatriation, such claim shall be supported:

- (1) Reward or basic salary for normal working hours;
- (2) Overtime salary for extended working hours, weekends and public holidays;

(3) Bonus, allowance and subsidy for service on board, as well as payment under special circumstances;

(4) Interests accrued for failing to make the above payments in a timely manner.

If a crew member claims to be entitled to maritime liens for relevant economic indemnification or compensation under the Labor Law of PRC and the Labor Contract Law of PRC, for double salary that is payable for absence of a written labor contract in accordance with Article 82 under the Labor Contract Law of PRC, and for the interests accrued for failing to make the aforementioned payments timely, such claim shall not be supported.

Article 9 When the ship owners fail to pay as per agreed the salary, other remuneration, repatriation costs, or social insurance expenses to a crew member for embarkation, service on board, disembarkation or repatriation, and a third party has advanced these payments in full or in part, the crew member shall transfer his entitlement of corresponding maritime lien to this third party, whose request to confirm or enforce the maritime lien for the subrogated maritime claims shall be supported.

Article 10 If a crew member is abandoned during working abroad or encounters other emergencies but the ship owners or their financial guarantors or the crew manning agency fail to fulfill relevant obligations, the crew member's request to receive advance payment of necessary emergency assistance expenses from the financial guarantee or seaman expat cash reserve shall be supported.

Article 11 Regarding whether a crew member's salary constitution includes overtime salary for working days, weekends and public holidays during his embarkation, service on board, disembarkation and repatriation, if the parties have reached agreement and require to determine the overtime salary on basis of such agreement, such requirement shall be supported, unless the agreed rate of pay is lower than the statutory minimum pay rate.

Article 12 Under standard working hour scheme, if a crew member claims overtime salary for working in weekends but the ship owners can provide evidence to prove that the crew member has had compensation leave so as to request not to be paid overtime salary at statutory standard, the ship owners' request shall be supported. Under comprehensive working hour scheme, the crew member's claim for overtime salary for working hours that exceed standard total working hours within a counting period shall be supported.

If a crew member claims overtime salary for working on public holidays, but the ship owners plea that the crew member has had compensative leave so as to request not to pay overtime salary for working on public holidays, the ship owners' request shall not be supported, unless both parties have agreed otherwise.

Article 13 When the parties don't have any agreement or have ambiguous agreement regarding the payment standard or method of the crew member's salary or other remuneration, if the party requires to calculate on basis of average market standard of the same type of job at the same level in the same period, such requirement shall be supported.

Article 14 If a crew member participates in illegal fishing activities during fish ban period or in fish ban area or using banned equipment or method or catches rare and endangered marine species or conduct other illegal activities as a result of fraud or under duress, the crew member's claim for salary and other remuneration for embarkation, service on board, disembarkation and repatriation shall be supported.

If the ship owners provide evidence to prove that the crew member participated in the illegal activities voluntarily or knowingly, the crew member's above claim shall not be supported.

The ship owners or the crew member's conduct, if subject to administrative penalty or suspected of criminal offense, shall be dealt with in accordance with relevant legal procedures.

Article 15 If a crew member sustains harm out of employment but the ship owners provide evidence to prove that the crew member has fault for such harm and request to hold the crew member responsible for the corresponding liabilities, the ship owners' defense shall be supported.

Article 16 If a crew member suffers from work-related injury because of fault of a third party and brings civil lawsuits against this third party for civil compensation, the third party's defense to reject the civil compensation liability on ground that the crew member has received compensation under work-related injury insurance shall not be supported. However, if the crew member has been reimbursed of medical expenses, the claim for medical expenses against the third party shall not be supported.

Article 17 If the labor contract between the crew member and the ship owners has foreign element, the party's request to determine which is the applicable law in accordance with Article 43 of the Law of the Application of Law for Foreign-related Civil Relations of PRC shall be supported.

If the employment agreement between the crew member and the ship owners doesn't state the applicable law, the party's request to apply the law of the labor dispatch place, the main business place of the ship owners or the flag state shall be supported.

In the absence of expressed choice of applicable law in the brokerage agreement or

commission agreement between the crew member and the crew manning agency or between the crew manning agency and the ship owners, the party's request to apply the law that is the most closely connected with the contract shall be supported.

Article 18 "Ship owners" referred to in this interpretation includes bareboat charterers, ship managers and ship operators.

Article 19 This interpretation shall be applicable to cases where the last instance judgment hasn't been issued by the time this interpretation takes effect, and it shall not be applicable to cases where the last instance judgment has already been issued by the time this interpretation takes effect but a retrial has been commenced upon application of the parties or in accordance with trial supervision procedures.

Article 20 In case of any discrepancy between the provisions issued by the court and this interpretation, this interpretation shall prevail.

Article 21 This interpretation shall come into effect as from 29 Sep 2020.