

Legal gap in licensing passenger transportation by sea

Fishing business is an integrated production process involving not only general fishing vessels but also other auxiliary commercial fishing vessels – refrigerated transports, bunkering vessels, etc.

Thus, due to the business specifics, shipowners of refrigerated vessels engaged in transportation of frozen fish products from the fishing vessels are from time to time addressed by charterers asking to deliver their employees to the fishing vessels belonging to them and staying at sea.

Besides, shipowners have to deliver State marine inspection staff exercising state control over the handling of fish products.

Applications of charterers requesting to take their employees to vessels at sea in the catching grounds and respective delivery from the catching grounds back to port is reasoned by the commercial need to shift crew members at sea. Other alternative methods to deliver the seafarers to the catching grounds are unavailable now.

However, the current law and the law enforcement practice by courts and state authorities relies on the impossibility to carry out such activities without the license for passenger transportation by sea.

Thus, in compliance with clause 20, article 12 of the Federal Act of 04.05.2011 # 99-FZ *On licensing certain kinds of activities* passenger transportation by inland water transport, sea transport shall be subject to licensing.

In compliance with subclause “e”, clause 6 of *Provisions on licensing passenger sea transportation* approved by Resolution of the Government of the Russian Federation dated August 13, 2006 # 490, to obtain a license for passenger transportation, the passenger certificate is required (we note that in *Provisions on licensing activities in passenger transportation by inland water transport, sea transport* approved by Resolution of the Government of the Russian Federation dated 06.03.2012 # 193 not in force at this moment – subclause “g”, clause 7 – the same requirement is provided for, namely to submit the passenger certificate besides the other documents).

Owners of freight and refrigerated vessels agree and are ready to obtain licenses on the passenger transportation by sea however they face the inability to obtain such license due to the following.

Rule 2f part A Chapter I of International Convention for Safety of Life at Sea of 1974 (SOLAS-74) provides that passenger vessel is a vessel carrying over 12 passengers.

Rule 2g of the same part of Convention provides that a vessel not being passenger vessel shall be deemed cargo vessel.

Thus, a vessel carrying less than 12 passengers shall not be passenger vessel and may not have passenger certificate.

In the meantime, Supreme arbitration court of the RF made the following conclusion – in compliance with article 94 of the UN Law of the Sea Convention of 1982, each state shall effectively exercise its jurisdiction and control in administrative, technical and social matters with regard to vessels navigating under its flag.

Thus, besides the execution of the international maritime regulations, the Russian Federation shall be entitled to regulate the relations arising out of commercial seafaring with regard to the vessels navigating under its flag including setting the norms and terms and conditions for licensed kinds of business to ensure HSE of its citizens.

Therefore, the provisions of the Russian regulations in licensing passenger transportation by sea set by Act and Provisions shall not contradict to Convention and international maritime law norms, and

therefore, **passenger certificate to obtain a license for passenger transportation by sea shall be mandatory** (Resolution of Presidium of Supreme arbitration court of the RF of 09.12.2010 # 8501/10).

As a result, fair owners of cargo and refrigerated vessels face the impossibility to obtain any license as the passenger certificate is a document necessary to obtain it. However, judging from the strict construction of Rule 2f part A Chapter I of International Convention for Safety of Life at Sea of 1974 (SOLAS-74) a vessel may carry 12 passengers and not be passenger vessel.

In some cases, State sea and river inspection authorities are calling shipowners to administrative account for carrying passengers without the relevant license.

Finally, due to the impossibility to obtain such license, the owners of cargo and refrigerated vessels together with the owners of fishing vessels needing to deliver seafarers onboard their vessels are in the situation where the legal gap makes it impossible to be engaged in such activity without violating law.

To solve that matter we are offering to introduce the amendments to *Provisions on licensing passenger transportation by sea transport* stating that passenger certificate shall only be submitted by passenger vessels while cargo vessels may receive relevant license without passenger certificates. Otherwise, such amendments may be included in the Federal Act *On licensing certain kinds of activities*.

Pavel Fugirov

Associate
Inmar Legal Ltd