

Appendix A

MARITIME CODE OF THE PEOPLE'S REPULIC OF CHINA

(Extracts)

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CHAPTER I GENERAL PROVISIONS

Article 1

This Code is enacted with a view to regulating the relations arising from maritime transport and those pertaining to ships, to securing and protecting the legitimate rights and interests of the parties concerned, and to promoting the development of maritime transport, economy and trade.

Article 2

"Maritime transport" as referred to in this Code means the carriage of goods and passengers by sea, including the sea-river and river-sea direct transport.

The provisions concerning contracts of carriage of goods by sea as contained in Chapter IV of this Code shall not be applicable to the maritime transport of goods between the ports of the People's Republic of China.

Article 3

"Ship" as referred to in this Code means sea-going ships and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage.

The term "ship" as referred to in the preceding paragraph shall also include ship's apparel.

Article 4

Maritime transport and towage services between the ports of the People's Republic of China shall be undertaken by ships flying the national flag of the People's Republic of China, except as otherwise provided for by laws or administrative rules and regulations.

No foreign ships may engage in the maritime transport or towage services between the ports of the People's Republic of China unless permitted by the competent authorities of transport and communications under the State Council.

Article 5

Ships are allowed to sail under the national flag of the People's Republic of China after being registered, as required by law, and granted the nationality of the People's Republic of China.

Ships illegally flying the national flag of the People's Republic of China shall be prohibited and fined by the authorities concerned.

Article 6

All matters pertaining to maritime transport shall be administered by the competent authorities of transport and communications under the State Council. The specific measures governing such administration shall be worked out by such authorities and implemented after being submitted to and approved by the State Council.

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CHAPTER IV CONTRACT OF CARRIAGE OF GOODS BY SEA

Section 1 Basic Principles

Article 41

A contract of carriage of goods by sea is a contract under which the carrier, against payment of freight, undertakes to carry by sea the goods contracted for shipment by the shipper from one port to another.

Article 42

For the purposes of this Chapter:

- (1) "Carrier" means the person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper;
- (2) "Actual carrier" means the person to whom the performance of carriage of goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted under a sub-contract;
- (3) "Shipper" means:
 - a) The person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier;
 - b) The person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea;
- (4) "Consignee" means the person who is entitled to take delivery of the goods;

(5) "Goods" includes live animals and containers, pallets or similar articles of transport supplied by the shipper for consolidating the goods.

Article 43

The carrier or the shipper may demand confirmation of the contract of carriage of goods by sea in writing. However, voyage charter shall be done in writing. Telegrams, telexes and telefaxes have the effect of written documents.

Article 44

Any stipulation in a contract of carriage of goods by sea or a bill of lading or other similar documents evidencing such contract that derogates from the provisions of this Chapter shall be null and void. However, such nullity and voidness shall not affect the validity of other provisions of the contract or the bill of lading or other similar documents. A clause assigning the benefit of insurance of the goods in favour of the carrier or any similar clause shall be null and void.

Article 45

The provisions of Article 44 of this Code shall not prejudice the increase of duties and obligations by the carrier besides those set out in this Chapter.

Section 2 Carrier's Responsibilities

Article 46

The responsibilities of the carrier with regard to the goods carried in containers covers the entire period during which the carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharge. The responsibility of the carrier with respect to non-containerized goods covers the period during which the carrier is in charge of the goods, starting from the time of loading of the goods onto the ship until the time the goods are discharged therefrom. During the period the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods, except as otherwise provided for in this Section.

The provisions of the preceding paragraph shall not prevent the carrier from entering into any agreement concerning carrier's responsibilities with regard to non-containerized goods prior to loading onto and after discharging from the ship.

Article 47

The carrier shall, before and at the beginning of the voyage, exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Article 48

The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

Article 49

The carrier shall carry the goods to the port of discharge on the agreed or customary or geographically direct route.

Any deviation in saving or attempting to save life or property at sea or any reasonable deviation

shall not be deemed to be an act deviating from the provisions of the preceding paragraph.

Article 50

Delay in delivery occurs when the goods have not been delivered at the designated port of discharge within the time expressly agreed upon.

The carrier shall be liable for the loss of or damage to the goods caused by delay in delivery due to the fault of the carrier, except those arising or resulting from causes for which the carrier is not liable as provided for in the relevant Articles of this Chapter.

The carrier shall be liable for the economic losses caused by delay in delivery of the goods due to the fault of the carrier, even if no loss of or damage to the goods had actually occurred, unless such economic losses had occurred from causes for which the carrier is not liable as provided for in the relevant Articles of this Chapter.

The person entitled to make a claim for the loss of goods may treat the goods as lost when the carrier has not delivered the goods within 60 days from the expiry of the time for delivery specified in paragraph 1 of this Article.

Article 51

The carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier's responsibility arising or resulting from any of the following causes:

- (1) Fault of the Master, crew members, pilot or servant of the carrier in the navigation or management of the ship;
- (2) Fire, unless caused by the actual fault of the carrier;
- (3) Force majeure and perils, dangers and accidents of the sea or other navigable waters;
- (4) War or armed conflict;
- (5) Act of the government or competent authorities, quarantine restrictions or seizure under legal process;
- (6) Strikes, stoppages or restraint of labour;
- (7) Saving or attempting to save life or property at sea;
- (8) Act of the shipper, owner of the goods or their agents;
- (9) Nature or inherent vice of the goods;
- (10) Inadequacy of packing or insufficiency of illegibility of marks;
- (11) Latent defect of the ship not discoverable by due diligence;
- (12) Any other causes arising without the fault of the carrier or his servant or agent.

The carrier who is entitled to exoneration from the liability for compensation as provided for in the preceding paragraph shall, with the exception of the causes given in sub-paragraph (2), bear the burden of proof.

Article 52

The carrier shall not be liable for the loss of or damage to the live animals arising or resulting from the special risks inherent in the carriage thereof. However, the carrier shall be bound to prove that he has fulfilled the special requirements of the shipper with regard to the carriage of the live animals and that under the circumstances of the sea carriage, the loss or damage has occurred due to the special risks inherent therein.

Article 53

In case the carrier intends to ship the goods on deck, he shall come into an agreement with the shipper or comply with the custom of the trade or the relevant laws or administrative rules and regulations.

When the goods have been shipped on deck in accordance with the provisions of the preceding paragraph, the carrier shall not be liable for the loss of or damage to the goods caused by the special risks involved in such carriage.

If the carrier, in breach of the provisions of the first paragraph of this Article, has shipped the goods on deck and the goods have consequently suffered loss or damage, the carrier shall be liable therefor.

Article 54

Where loss or damage or delay in delivery has occurred from causes from which the carrier or his servant or agent is not entitled to exoneration from liability, together with another cause, the carrier shall be liable only to the extent that the loss, damage or delay in delivery is attributable to the causes from which the carrier is not entitled to exoneration from liability; however, the carrier shall bear the burden of proof with respect to the loss, damage or delay in delivery resulting from the other cause.

Article 55

The amount of indemnity for the loss of the goods shall be calculated on the basis of the actual value of the goods so lost, while that for the damage to the goods shall be calculated on the basis of the difference between the values of the goods before and after the damage, or on the basis of the expenses for the repair.

The actual value shall be the value of the goods at the time of shipment plus insurance and freight.

From the actual value referred to in the preceding paragraph, deduction shall be made, at the time of compensation, of the expenses that had been reduced or avoided as a result of the loss or damage occurred.

Article 56

The carrier's liability for the loss of or damage to the goods shall be limited to an amount equivalent to 666.67 Units of Account per package or other shipping unit, or 2 Units of Account per kilogramme of the gross weight of the goods lost or damaged, whichever is the higher, except where the nature and value of the goods had been declared by the shipper before shipment and inserted in the bill of lading, or where a higher amount than the amount of limitation of liability set out in this Article had been agreed upon between the carrier and the shipper.

Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or other shipping units enumerated in the bill of lading as packed in such article of transport shall be deemed to be the number of packages or shipping units. If not so enumerated, the goods in such article of transport shall be deemed to be one package or one shipping unit.

Where the article of transport is not owned or furnished by the carrier, such article of transport shall be deemed to be one package or one shipping unit.

Article 57

The liability of the carrier for the economic losses resulting from delay in delivery of the goods shall be limited to an amount equivalent to the freight payable for the goods so delayed. Where

the loss of or damage to the goods has occurred concurrently with the delay in delivery thereof, the limitation of liability of the carrier shall be that as provided for in paragraph 1 of Article 56 of this Code.

Article 58

The defence and limitation of liability provided for in this Chapter shall apply to any legal action brought against the carrier with regard to the loss of or damage to or delay in delivery of the goods covered by the contract of carriage of goods by sea, whether the claimant is a party to the contract or whether the action is founded in contract or in tort.

The provisions of the preceding paragraph shall apply if the action referred to in the preceding paragraph is brought against the carrier's servant or agent, and the carrier's servant or agent proves that his action was within the scope of his employment or agency.

Article 59

The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 56 or 57 of this Code if it is proved that the loss, damage or delay in delivery of the goods resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

The servant or agent of the carrier shall not be entitled to the benefit of limitation of liability provided for in Article 56 or 57 of this Code, if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the servant or agent of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 60

Where the performance of the carriage or part thereof has been entrusted to an actual carrier, the carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Chapter. The carrier shall be responsible, in relation to the carriage performed by the actual carrier, for the act or omission of the actual carrier and of his servant or agent acting within the scope of his employment or agency.

Notwithstanding the provisions of the preceding paragraph, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named actual carrier other than the carrier, the contract may nevertheless provide that the carrier shall not be liable for the loss, damage or delay in delivery arising from an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage.

Article 61

The provisions with respect to the responsibility of the carrier contained in this Chapter shall be applicable to the actual carrier. Where an action is brought against the servant or agent of the actual carrier, the provisions contained in paragraph 2 of Article 58 and paragraph 2 of Article 59 of this Code shall apply.

Article 62

Any special agreement under which the carrier assumes obligations not provided for in this Chapter or waives rights conferred by this Chapter shall be binding upon the actual carrier when the actual carrier has agreed in writing to the contents thereof. The provisions of such special agreement shall be binding upon the carrier whether the actual carrier has agreed to the contents or not.

Article 63

Where both the carrier and the actual carrier are liable for compensation, they shall jointly be liable within the scope of such liability.

Article 64

If claims for compensation have been separately made against the carrier, the actual carrier and their servants or agents with regard to the loss of or damage to the goods, the aggregate amount of compensation shall not be in excess of the limitation provided for in Article 56 of this Code.

Article 65

The provisions of Article 60 through 64 of this Code shall not affect the recourse between the carrier and the actual carrier.

Section 3 Shipper's Responsibilities**Article 66**

The shipper shall have the goods properly packed and shall guarantee the accuracy of the description, mark, number of packages or pieces, weight or quantity of the goods at the time of shipment and shall indemnify the carrier against any loss resulting from inadequacy of packing or inaccuracies in the above-mentioned information.

The carrier's right to indemnification as provided for in the preceding paragraph shall not affect the obligation of the carrier under the contract of carriage of goods towards those other than the shipper.

Article 67

The shipper shall perform all necessary procedures at the port, customs, quarantine, inspection or other competent authorities with respect to the shipment of the goods and shall furnish to the carrier all relevant documents concerning the procedures the shipper has gone through. The shipper shall be liable for any damage to the interest of the carrier resulting from the inadequacy or inaccuracy or delay in delivery of such documents.

Article 68

At the time of shipment of dangerous goods, the shipper shall, in compliance with the regulations governing the carriage of such goods, have them properly packed, distinctly marked and labelled and notify the carrier in writing of their proper description, nature and the precautions to be taken. In case the shipper fails to notify the carrier or notified him inaccurately, the carrier may have such goods landed, destroyed or rendered innocuous when and where circumstances so require, without compensation. The shipper shall be liable to the carrier for any loss, damage or expense resulting from such shipment.

Notwithstanding the carrier's knowledge of the nature of the dangerous goods and his consent to carry, he may still have such goods landed, destroyed or rendered innocuous, without compensation, when they become an actual danger to the ship, the crew and other persons on board or to other goods. However, the provisions of this paragraph shall not prejudice the contribution in general average, if any.

Article 69

The shipper shall pay the freight to the carrier as agreed.

The shipper and the carrier may reach an agreement that the freight shall be paid by the

consignee. However, such an agreement shall be noted in the transport documents.

Article 70

The shipper shall not be liable for the loss sustained by the carrier or the actual carrier, or for the damage sustained by the ship, unless such loss or damage was caused by the fault of the shipper, his servant or agent.

The servant or agent of the shipper shall not be liable for the loss sustained by the carrier or the actual carrier, or for the damage sustained by the ship, unless the loss or damage was caused by the fault of the servant or agent of the shipper.

Section 4 Transport Documents

Article 71

A bill of lading is a document which serves as an evidence of the contract of carriage of goods by sea and the taking over or loading of the goods by the carrier, and based on which the carrier undertakes to deliver the goods against surrendering the same¹. A provision in the document stating that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.²

Article 72

When the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading.

The bill of lading may be signed by a person authorized by the carrier. A bill of lading signed by the Master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

Article 73

A bill of lading shall contain the following particulars:

- (1) Description of the goods, mark, number of packages or pieces, weight or quantity, and a statement, if applicable, as to the dangerous nature of the goods;
- (2) Name and principal place of business of the carrier;
- (3) Name of the ship;
- (4) Name of the shipper;
- (5) Name of the consignee;
- (6) Port of loading and the date on which the goods were taken over by the carrier at the port of loading;
- (7) Port of discharge;
- (8) Place where the goods were taken over and the place where the goods are to be delivered in case of a multimodal transport bill of lading;
- (9) Date and place of issue of the bill of lading and the number of originals issued;

¹ A direct translation from the Chinese version is “... based on which the carrier undertakes to deliver the goods.”

² A direct translation from Chinese version is “A provision in the document stating that the goods are to be delivered to the named person, to order, or to bearer, constitutes such an undertaking.”

(10) Payment of freight;

(11) Signature of the carrier or of a person acting on his behalf.

In a bill of lading, the lack of one or more particulars referred to in the preceding paragraph does not affect the function of the bill of lading as such, provided that it nevertheless meets the requirements set forth in Article 71 of this Code.

Article 74

If the carrier has issued, on demand of the shipper, a received-for-shipment bill of lading or other similar documents before the goods are loaded on board, the shipper may surrender the same to the carrier as against a shipped bill of lading when the goods have been loaded on board. The carrier may also note on the received-for-shipment bill of lading or other similar documents with the name of the carrying ship and the date of loading, and, when so noted, the received-for-shipment bill of lading or other similar documents shall be deemed to constitute a shipped bill of lading.

Article 75

If the bill of lading contains particulars concerning the description, mark, number of packages or pieces, weight or quantity of the goods with respect to which the carrier or the other person issuing the bill of lading on his behalf has the knowledge or reasonable grounds to suspect that such particulars do not accurately represent the goods actually received, or, where a shipped bill of lading is issued, loaded, or if he has had no reasonable means of checking, the carrier or such other person may make a note in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking.

Article 76

If the carrier or the other person issuing the bill of lading on his behalf made no note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent goods order and condition.

Article 77

Except for the note made in accordance with the provisions of Article 75 of this Code, the bill of lading issued by the carrier or the other person acting on his behalf is *prima facie* evidence of the taking over or loading by the carrier of the goods as described therein. Proof to the contrary by the carrier shall not be admissible if the bill of lading has been transferred to a third party, including a consignee, who has acted in good faith in reliance on the description of the goods contained therein.

Article 78

The relationship between the carrier and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clauses of the bill of lading.

Neither the consignee nor the holder of the bill of lading shall be liable for the demurrage, dead freight and all other expenses in respect of loading occurred at the loading port unless the bill of lading clearly states that the aforesaid demurrage, dead freight and all other expenses shall be borne by the consignee and the holder of the bill of lading.

Article 79

The negotiability of a bill of lading shall be governed by the following provisions:

- (1) A straight bill of lading is not negotiable;
- (2) An order bill of lading may be negotiated with endorsement to order or endorsement in

blank;

(3) A bearer bill of lading is negotiable without endorsement.

Article 80

Where a carrier has issued a document other than a bill of lading as an evidence of the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage of goods by sea and the taking over by the carrier of the goods as described therein.

Such documents that are issued by the carrier shall not be negotiable.

Section 5 Delivery of Goods

Article 81

Unless notice of loss or damage is given in writing by the consignee the carrier at the time of delivery of the goods by the carrier to the consignee, such delivery shall be deemed to be *prima facie* evidence of the delivery of the goods by the carrier as described in the transport documents and of the apparent goods order and condition of such goods.

Where the loss of or damage to the goods is not apparent, the provisions of the preceding paragraph shall apply if the consignee has not given the notice in writing within seven consecutive days from the next day of the delivery of the goods, or, in the case of containerized goods, within 15 days from the next day of the delivery thereof.

The notice in writing regarding the loss or damage need not be given if the state of the goods has, at the time of delivery, been the subject of a joint survey or inspection by the carrier and the consignee.

Article 82

The carrier shall not be liable for compensation if no notice on the economic losses resulting from delay in delivery of the goods has been received from the consignee within 60 consecutive days from the next day on which the goods had been delivered by the carrier to the consignee.

Article 83

The consignee may, before taking delivery of the goods at the port of destination, and the carrier may, before delivering the goods at the port of destination, request the cargo inspection agency to have the goods inspected. The party requesting such inspection shall bear the cost thereof but is entitled to recover the same from the party causing the damage.

Article 84

The carrier and the consignee shall mutually provide reasonable facilities for the survey and inspection stipulated in Article 81 and 83 of this Code.

Article 85

Where the goods have been delivered by the actual carrier, the notice in writing given by the consignee to the actual carrier under Article 81 of this Code shall have the same effect as that given to the carrier, and that given to the carrier shall have the same effect as that given to the actual carrier,

Article 86

If the goods were not taken delivery of at the port of discharge or if the consignee has delayed or refused the taking delivery of the goods, the Master may discharge the goods into warehouses or other appropriate places, and any expenses or risks arising therefrom shall be borne by the consignee.

Article 87

If the freight, contribution in general average, demurrage to be paid to the carrier and other necessary charges paid by the carrier on behalf of the owner of the goods as well as other charges to be paid to the carrier have not been paid in full, nor has appropriate security been given, the carrier may have a lien, to a reasonable extent, on the goods.

Article 88

If the goods under lien in accordance with the provisions of Article 87 of this Code have not been taken delivery of within 60 days from the next day of the ship's arrival at the port of discharge, the carrier may apply to the court for an order on the selling the goods by auction; where the goods are perishable or the expenses for keeping such goods would exceed their value, the carrier may apply for an earlier sale by auction.

The proceeds from the auction sale shall be used to pay off the expenses for the storage and auction sale of the goods, the freight and other related charges to be paid to the carrier. If the proceeds fall short of such expenses, the carrier is entitled to claim the difference from the shipper, whereas any amount in surplus shall be refunded to the shipper. If there is no way to make the refund and such surplus amount has not been claimed at the end of one full year after the auction sale, it shall go to the State Treasury.

Section 6 Cancellation of Contract**Article 89**

The shipper may request the cancellation of the contract of carriage of goods by sea before the ship sails from the port of loading. However, except as otherwise provided for in the contract, the shipper shall in this case pay half of the agreed amount of freight; if the goods have already been loaded on board, the shipper shall bear the expenses for the loading and discharge and other related charges.

Article 90

Either the carrier or the shipper may request the cancellation of the contract and neither shall be liable to the other if, due to *force majeure* or other causes not attributable to the fault of the carrier or the shipper, the contract could not be performed prior to the ship's sailing from its port of loading. If the freight has already been paid, it shall be refunded to the shipper, and, if the goods have already been loaded on board, the loading/discharge expenses shall be borne by the shipper. If a bill of loading has already been issued, it shall be returned by the shipper to the carrier.

Article 91

If, due to *force majeure* or any other causes not attributable to the fault of the carrier or the shipper, the ship could not discharge its goods at the port of destination as provided for in the contract of carriage, unless the contract provides otherwise, the Master shall be entitled to discharge the goods at a safe port or place near the port of destination and the contract of carriage shall be deemed to have been fulfilled.

In deciding the discharge of the goods, the Master shall inform the shipper or the consignee and shall take the interests of the shipper or the consignee into consideration.

Section 7 Special Provisions Regarding Voyage Charter Party

Article 92

A voyage charter party is a charter party under which the shipowner charters out and the charterer charters in the whole or part of the ship's space for the carriage by sea of the intended goods from one port to another and the charterer pays the agreed amount of freight.

Article 93

A voyage charter party shall mainly contain, interalia, name of the shipowner, name of the charterer, name and nationality of the ship, its bale or grain capacity, description of the goods to be loaded, port of loading, port of destination, laydays, time for loading and discharge, payment of freight, demurrage, dispatch and other relevant matters.

Article 94

The provisions in Article 47 and Article 49 of this Code shall apply to the shipowner under voyage charter party.

The other provisions in this Chapter regarding the rights and obligations of the parties to the contract shall apply to the shipowner and the charterer under voyage charter only in the absence of relevant provisions or in the absence of provisions differing therefrom in the voyage charter.

Article 95

Where the holder of the bill of lading is not the charterer in the case of a bill of lading issued under a voyage charter, the rights and obligations of the carrier and the holder of the bill of lading shall be governed by the clauses of the bill of lading. However, if the clauses of the voyage charter party are incorporated into the bill of lading, the relevant clauses of the voyage charter party shall apply.

Article 96

The shipowner shall provide the intended ship. The intended ship may be substituted with the consent of the charterer. However, if the ship substituted does not meet the requirements of the charter party, the charterer may reject the ship or cancel the charter. Should any damage or loss occur to the charterer as a result of the shipowner's failure in providing the intended ship due to his fault, the shipowner shall be liable for compensation.

Article 97

If the shipowner has failed to provide the ship within the laydays fixed in the charter, the charterer is entitled to cancel the charter party. However, if the shipowner had notified the charterer of the delay of the ship and the expected date of its arrival at the port of loading, the charterer shall notify the shipowner whether to cancel the charter within 48 hours of the receipt of the shipowner's notification.

Where the charterer has suffered losses as a result of the delay in providing the ship due to the fault of the shipowner, the shipowner shall be liable for compensation.

Article 98

Under a voyage charter, the time for loading and discharge and the way of calculation thereof,

as well as the rate of demurrage that would incur after the expiration of the laytime and the rate of dispatch money to be paid as a result of the completion of loading or discharge ahead of schedule, shall be fixed by the shipowner and the charterer upon mutual agreement.

Article 99

The charterer may sublet the ship he chartered, but the rights and obligations under the head charter shall not be affected.

Article 100

The charterer shall provide the intended goods, but he may replace the goods with the consent of the shipowner. However, if the goods replaced is detrimental to the interests of the shipowner, the shipowner shall be entitled to reject such goods and cancel the charter.

Where the shipowner has suffered losses as a result of the failure of the charterer in providing the intended goods, the charterer shall be liable for compensation.

Article 101

The shipowner shall discharge the goods at the port of discharge specified in the charter party. Where the charter party contains a clause allowing the choice of the port of discharge by the charterer, the Master may choose one from among the agreed picked ports to discharge the goods, in case the charterer did not, as agreed in the charter, instruct in time as to the port chosen for discharging the goods. Where the charterer did not instruct in time as to the chosen port of discharge, as agreed in the charter, and the shipowner suffered losses thereby, the charterer shall be liable for compensation; where the charterer has suffered losses as a result of the shipowner's arbitrary choice of a port to discharge the goods, in disregard of the provisions in the relevant charter, the shipowner shall be liable for compensation.

Section 8 Special Provisions Regarding Multimodal Transport Contract

Article 102

A multimodal transport contract as referred to in this Code means a contract under which the multimodal transport operator undertakes to transport the goods, against the payment of freight for the entire transport, from the place where the goods were received in his charge to the destination and to deliver them to the consignee by two or more different modes of transport, one of which being sea carriage.

The multimodal transport operator as referred to in the preceding paragraph means the person who has entered into a multimodal transport contract with the shipper either by himself or by another person acting on his behalf.

Article 103

The responsibility of the multimodal transport operator with respect to the goods under multimodal transport contract covers the period from the time he takes the goods in his charge to the time of their delivery.

Article 104

The multimodal transport operator shall be responsible for the performance of the multimodal transport contract or the procurement of the performance therefor, and shall be responsible for the entire transport.

The multimodal transport operator may enter into separate contracts with the carriers of the different modes defining their responsibilities with regard to the different sections of the

transport under the multimodal transport contracts. However, such separate contracts shall not affect the responsibility of the multimodal transport operator with respect to the entire transport.

Article 105

If loss of or damage to the goods has occurred in a certain section of the transport, the provisions of the relevant laws and regulations governing that specific section of the multimodal transport shall be applicable to matters concerning the liability of the multimodal transport operator and the limitation thereof.

Article 106

If the section of transport in which the loss of or damage to the goods occurred could not be ascertained, the multimodal transport operator shall be liable for compensation in accordance with the stipulations regarding the carrier's liability and the limitation thereof as set out in this Chapter.

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CHAPTER VI CHARTER PARTIES

Section 1 Basic Principles

Article 127

The provisions concerning the rights and obligations of the shipowner and the charterer in this Chapter shall apply only when there are no stipulations or no different stipulations in this regard in the charter party.

Article 128

Charter parties including time charter parties and bareboat charter parties shall be concluded in writing.

Section 2 Time Chapter Party

Article 129

A time charter party is a contract under which the shipowner provides a designated manned ship to the charterer, and the charterer employs the ship during the contractual period for the agreed service against payment of hire.

Article 130

A time charter party mainly contains the name of the shipowner, the name of the charter; the name, nationality, class, tonnage, capacity, speed and fuel consumption of the ship; the trading area; the agreed service, the contractual period, the time, place and conditions of delivery and redelivery of the ship; the hire and the way of its payment and other relevant matters.

Article 131

The shipowner shall deliver the ship within the time agreed upon in the charter party.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer is entitled to cancel the charter. However, if the shipowner has notified the charterer of the

anticipated delay in delivery and has given an estimated time of arrival of the ship at the port of delivery, the charterer shall notify the shipowner, within 48 hours of the receipt of such notice from the shipowner, of his decision whether to cancel the charter or not.

The shipowner shall be liable for the charterer's loss resulting from the delay in delivery of the ship due to the shipowner's fault.

Article 132

At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the intended service.

Where the shipowner acts against the provisions in the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom.

Article 133

During the charter period, if the ship is found at variance with the seaworthiness or the other conditions agreed upon in the charter, the shipowner shall take all reasonable measures to have them restored as soon as possible.

Where the ship has not been operated normally for 24 consecutive hours due to its failure to maintain the seaworthiness or the other conditions as agreed upon, the charterer shall not pay the hire for the operating time so lost, unless such failure was caused by the charterer.

Article 134

The charterer shall guarantee that the ship shall be employed in the agreed maritime transport between the safe ports or places within the trading area agreed upon.

If the charterer acts against the provisions of the preceding paragraph, the shipowner is entitled to cancel the charter and claim any losses resulting therefrom.

Article 135

The charterer shall guarantee that the ship shall be employed to carry the lawful merchandise agreed.

Where the ship is to be employed by the charterer to carry live animals or dangerous goods, a prior consent of the shipowner is required.

The charterer shall be liable for any loss of the shipowner resulting from the charterer's violation of the provisions of paragraph 1 or paragraph 2 of this Article.

Article 136

The charterer shall be entitled to give the Master instructions with respect to the operation of the ship. However, such instructions shall not be inconsistent with the stipulations of the time charter.

Article 137

The charterer may sublet the ship under charter, but he shall notify the shipowner of the sublet in time. The rights and obligations agreed upon in the head charter shall not be affected by the sub-charter.

Article 138

Where the ownership of the ship under charter has been transferred by the shipowner, the rights and obligations agreed upon under the original charter shall not be affected. However, the shipowner shall inform the charterer thereof in time. After such transfer, the transferee and the charterer shall continue to perform the original charter.

Article 139

Should the ship be engaged in salvage operations during the charter period, the charterer shall be entitled to half of the amount of the payment for salvage operations after deducting therefrom the salvage expenses, compensation for damage, the portion due to crew members and other relevant costs.

Article 140

The charterer shall pay the hire as agreed upon in the charter. Where the charterer fails to pay the hire as agreed upon, the shipowner shall be entitled to cancel the charter party and claim any losses resulting therefrom.

Article 141

In case the charterer fails to pay the hire or other sums of money as agreed upon in the charter, the shipowner shall have a lien on the charterer's goods, other property on board and earnings from the sub-charter.

Article 142

When the charter redelivers the ship to the shipowner, the ship shall be in the same good order and condition as it was at the time of delivery, fair wear and tear excepted.

Where, upon redelivery, the ship fails to remain in the same good order and condition as it was at the time of delivery, the charter shall be responsible for rehabilitation or for compensation.

Article 143

If, on the basis of a reasonable calculation, a ship may be able to complete its last voyage at around the time of redelivery specified in the charter and probably thereafter, the charterer is entitled to continue to use the ship in order to complete that voyage even if its time of redelivery will be overdue. During the extended period, the charterer shall pay the hire at the rate fixed by the charter, and, if the current market rate of hire is higher than that specified in the charter, the charterer shall pay the hire at the current market rate.

Section 3 Bareboat Charter Party

Article 144

A bareboat charter party is a charter party under which the shipowner provides the charterer with an unmanned ship which the charterer shall possess, employ and operate within an agreed period and for which the charterer shall pay the shipowner the hire.

Article 145

A bareboat charter party mainly contains the name of the shipowner and the name of the charter; the name, nationality, class, tonnage and capacity of the ship; the trading area, the employment of the ship and the charter period; the time, place and condition of delivery and redelivery; the survey, maintenance and repair of the ship; the hire and its payment; the insurance of the ship; the time and condition for the termination of the charter and other relevant matters.

Article 146

The shipowner shall deliver the ship and its certificates to the charterer at the port or place and time as stipulated in the charter party. At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy.

The ship delivered shall be fit for the agreed service.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom.

Article 147

The charterer shall be responsible for the maintenance and repair of the ship during the bareboat charter period.

Article 148

During the bareboat charter period, the ship shall be insured, at the value agreed upon in the charter and in the way consented to by the shipowner, by the charterer at his expense.

Article 149

During the bareboat charter period, if the charterer's possession, employment or operation of the ship has affected the interests of the shipowner or caused any losses thereto, the charterer shall be liable for eliminating the harmful effect or compensating for the losses.

Should the ship be arrested due to any disputes over its ownership or debts owned by the shipowner, the shipowner shall guarantee that the interest of the charterer is not affected. The shipowner shall be liable for compensation for any losses suffered by the charterer thereby.

Article 150

During the bareboat charter period, the charterer shall not assign the rights and obligations stipulated in the charter or sublet the ship under bareboat charter without the shipowner's consent in writing.

Article 151

The shipowner shall not establish any mortgage of the ship during the bareboat charter period without the prior consent in writing by the charterer.

Where the shipowner acts against the provisions of the preceding paragraph and thereby causes losses to the charterer, the shipowner shall be liable for compensation.

Article 152

The charterer shall pay the hire as stipulated in the charter. In default of payment by the charterer for seven consecutive days or more after the time as agreed in the charter for such payment, the shipowner is entitled to cancel the charter without prejudice to any claim for the loss arising from the charterer's default.

Should the ship be lost or missing, payment of hire shall cease from the day when the ship was lost or last heard of. Any hire paid in advance shall be refunded in proportion.

Article 153

The provisions of Article 134, paragraph 1 of Article 135, Article 142 and Article 143 of this Code shall be applicable to bareboat charter parties.

Article 154

The ownership of a ship under bareboat charter containing a lease-purchase clause shall be transferred to the charterer when the charterer has paid off the lease-purchase price to the shipowner as stipulated in the charter.

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CHAPTER XI LIMITATION OF LIABILITY FOR MARITIME CLAIMS

Article 204

Shipowners and salvors may limit their liability in accordance with the provisions of this Chapter for claims set out in Article 207 of this Code.

The shipowners referred to in the preceding paragraph shall include the charterer and the operator of a ship.

Article 205

If the claims set out in Article 207 of this Code are not made against shipowners or salvors themselves but against persons for whose act, neglect or default the shipowners or salvors are responsible, such persons may limit their liability in accordance with the provisions of this Chapter.

Article 206

Where the assured may limit his liability in accordance with the provisions of this Chapter, the insurer liable for the maritime claims shall be entitled to the limitation of liability under this Chapter to the same extent as the assured.

Article 207

Except as provided otherwise in Article 208 and 209 of this Code, with respect to the following maritime claims, the person liable may limit his liability in accordance with the provisions of this Chapter, whatever the basis of liability may be:

- (1) Claims in respect of loss of life or personal injury or loss of or damage to property including damage to harbour works, basins and waterways and aids to navigation occurring on board or in direct connection with the operation of the ship or with salvage operations, as well as consequential damages resulting therefrom;
- (2) Claims in respect of loss resulting from delay in delivery in the carriage of goods by sea or from delay in the arrival of passengers or their luggage;
- (3) Claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations;
- (4) Claims of a person other than the person liable in respect of measures taken to avert or minimize loss for which the person liable may limit his liability in accordance with the provisions of this Chapter, and further loss caused by such measures.

All the claims set out in the preceding paragraph, whatever the way they are lodged, may be entitled to limitation of liability. However, with respect to the remuneration set out in sub-paragraph (4) for which the person liable pays as agreed upon in the contract, in relation to the obligation for payment, the person liable may not invoke the provisions on limitation of liability of this Article.

Article 208

The provisions of this Chapter shall not be applicable to the following claims:

- (1) Claims for salvage payment or contribution in general average;
- (2) Claims for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage to which the People's Republic of China is a party;
- (3) Claims for nuclear damage under the International Convention on Limitation of Liability for Nuclear Damage to which the People's Republic of China is a party;
- (4) Claims against the shipowner of a nuclear ship for nuclear damage;
- (5) Claims by the servants of the shipowner or salvor, if under the law governing the contract of employment, the shipowner or salvor is not entitled to limit his liability or if he is by such law only permitted to limit his liability to an amount greater than that provided for in this Chapter.

Article 209

A person liable shall not be entitled to limit his liability in accordance with the provisions of this Chapter, if it is proved that the loss resulted from his act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

Article 210

The limitation of liability for maritime claims, except as otherwise provided for in Article 211 of this Code, shall be calculated as follows:

- (1) In respect of claims for loss of life or personal injury:
 - a) 333,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
 - b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be applicable to the first 500 tons and the following amounts in addition to that set out under a) shall be applicable to the gross tonnage in excess of 500 tons:
 - For each ton from 501 to 3,000 tons: 500 Units of Account;
 - For each ton from 3,001 to 30,000 tons: 333 Units of Account;
 - For each ton from 30,001 to 70,000 tons: 250 Units of Account;
 - For each ton in excess of 70,000 tons: 167 Units of Account.
- (2) In respect of claims other than that for loss of life or personal injury:
 - a) 167,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
 - b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be applicable to the first 500 tons, and the following amounts in addition to that under a) shall be applicable to the part in excess of 500 tons:
 - For each ton from 501 to 30,000 tons: 167 Units of Account;
 - For each ton from 30,001 to 70,000 tons: 125 Units of Account;
 - For each ton in excess of 70,000 tons: 83 Units of Account.
- (3) Where the amount calculated in accordance with sub-paragraph (1) above is insufficient for payment of claims for loss of life or personal injury set out therein in full, the amount calculated in accordance with sub-paragraph (2) shall be available for payment of the unpaid balance of claims under sub-paragraph (1), and such unpaid balance shall rank rateably with claims set out under sub-paragraph (2).
- (4) However, without prejudice to the right of claims for loss of life or personal injury under sub-paragraph (3), claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over other claims under sub-paragraph (2).
- (5) The limitation of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which, he is rendering salvage services, shall be calculated according to a gross tonnage of 1,500 tons.

The limitation of liability for ships with a gross tonnage not exceeding 300 tons and those engaging in transport services between the ports of the People's Republic of China as well as those for other coastal works shall be worked out by the competent authorities of transport and communications under the State Council and implemented after its being submitted to and approved by the State Council.

Article 211

In respect of claims for loss of life or personal injury to passengers carried by sea, the limitation of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's relevant certificate, but the maximum amount of compensation shall not exceed 25,000,000 Units of Account.

The limitation of liability for claims for loss of life or personal injury to passengers carried by sea between the ports of the People's Republic of China shall be worked out by the competent authorities of transport and communications under the State Council and implemented after its being submitted to and approved by the State Council.

Article 212

The limitation of liability under Article 210 and 211 of this Code shall apply to the aggregate of

all claims that may arise on any given occasion against shipowners and salvors themselves, and any person for whose act, neglect or fault the shipowners and the salvors are responsible.

Article 213

Any person liable claiming the limitation of liability under this Code may constitute a limitation fund with a court having jurisdiction. The fund shall be constituted in the sum of such an amount set out respectively in Articles 210 and 211, together with the interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund.

Article 214

Where a limitation fund has been constituted by a person liable, any person having made a claim against the person liable may not exercise any right against any assets of the person liable. Where any ship or other property belonging to the person constituting the fund has been arrested or attached, or, where a security has been provided by such person, the court shall order without delay the release of the ship arrested or the property attached or the return of the security provided.

Article 215

Where a person entitled to limitation of liability under the provisions of this Chapter has a counter-claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Chapter shall only apply to the balance, if any.

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CHAPTER XIII LIMITATION OF TIME

Article 257

The Limitation period for claims against the carrier with regard to the carriage of goods by sea is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier. Within the limitation period or after the expiration thereof, if the person allegedly liable has brought up a claim of recourse against a third person, that claim is time-barred at the expiration of 90 days, counting from the day on which the person claiming for the recourse settled the claim, or was served with a copy of the process by the court handling the claim against him.

The limitation period for claims against the carrier with regard to voyage charter party is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 258

The limitation period for claims against the carrier with regard to the carriage of passengers by sea is two years, counting respectively as follows:

- (1) Claims for personal injury: Counting from the day on which the passenger disembarked or should have disembarked;
- (2) Claims for death of passengers that occurred during the period of carriage: Counting from the day on which the passenger should have disembarked; whereas those for the death of passengers that occurred after the disembarkation but resulted from an injury during the period of carriage by sea, counting from the day of the death of the passenger concerned, provided that this period does not exceed three years from the time of disembarkation.
- (3) Claims for loss of or damage to the luggage: Counting from the day of disembarkation or the day on which the passenger should have disembarked.

Article 259

The limitation period for claims with regard to charter parties is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 260

The limitation period for claims with regard to sea towage is one year, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 261

The limitation period for claims with regard to collision of ships is two years, counting from the day on which the collision occurred. The limitation period for claims with regard to the right of recourse as provided for in paragraph 3 of Article 169 of this Code is one year, counting from the day on which the parties concerned jointly and severally paid the amount of compensation for the damage occurred.

Article 262

The limitation period for claims with regard to salvage at sea is two years, counting from the day on which the salvage operation was completed.

Article 263

The limitation period for claims with regard to contribution in general average is one year, counting from the day on which the adjustment was finished.

Article 264

The limitation period for claims with regard to contracts of marine insurance is two years, counting from the day on which the peril insured against occurred.

Article 265

The limitation period for claims with regard to compensation for oil pollution damage from ships is three years, counting from the day on which the pollution damage occurred. However, in no case shall the limitation period exceed six years, counting from the day on which the accident causing the pollution occurred.

Article 266

Within the last six months of the limitation period if, on account of force majeure or other causes preventing the claims from being made, the limitation period shall be suspended. The counting of the limitation period shall be resumed when the cause of suspension no longer exists.

Article 267

The limitation of time shall be discontinued as a result of bringing an action or submitting the case for arbitration by the claimant or the admission to fulfill obligations by the person against whom the claim was brought up. However, the limitation of time shall not be discontinued if the claimant withdraws his action or his submission for arbitration, or his action has been rejected by a decision of the court.

Where the claimant makes a claim for the arrest of a ship, the limitation of time shall be discontinued from the day on which the claim is made.

The limitation period shall be counted anew from the time of discontinuance.

CHAPTER XIV APPLICATION OF LAW IN RELATION TO FOREIGN-RELATED MATTERS

Article 268

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are those on which the People's Republic of China has announced reservations. International practice may be applied to matters for which neither the relevant laws of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China contain any relevant provisions.

Article 269

The parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply.

Article 270

The law of the flag State of the ship shall apply to the acquisition, transfer and extinction of the ownership of the ship.

Article 271

The law of the flag State of the ship shall apply to the mortgage of the ship.

The law of the original country of registry of a ship shall apply to the mortgage of the ship if its mortgage is established before or during its bareboat charter period.

Article 272

The law of the place where the court hearing the case is located shall apply to matters pertaining to maritime liens.

Article 273

The law of the place where the infringing act is committed shall apply to claims for damages arising from collision of ships.

The law of the place where the court hearing the case is located shall apply to claims for damages arising from collision of ships on the high sea.

If the colliding ships belong to the same country, no matter where the collision occurs, the law of the flag State shall apply to claims against one another for damages arising from such collision.

Article 274

The law where the adjustment of general average is made shall apply to the adjustment of general average.

Article 275

The law of the place where the court hearing the case is located shall apply to the limitation of liability for maritime claims.

Article 276

The application of foreign laws or international practices pursuant to the provisions of this Chapter shall not jeopardize the public interests of the People's Republic of China.

CHAPTER XV SUPPLEMENTARY PROVISIONS

Article 277

The Unit of Account referred to in this Code is the Special Drawing Right as defined by the International Monetary Fund; the amount of the Chinese currency (RMB) in terms of the Special Drawing Right shall be that computed on the basis of the method of conversion established by the authorities in charge of foreign exchange control of this country on the date of the judgment by the court or the date of the award by the arbitration organization or the date mutually agreed upon by the parties.

Article 278

This Code shall come into force as of July 1, 1993.