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海 商 法

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目 录

中华人民共和国海商法	(2)
(1992 年 11 月 7 日第七届全国人民代表大会常务 委员会第二十八次会议通过 1992 年 11 月 7 日 中华人民共和国主席令第 64 号公布)	
Maritime Code of the People's Republic of China	(3)
(Adopted at the 28th Meeting of the Standing Committee of the Seventh National People's Congress on November 7, 1992, promulgated by Order No. 64 of the President of the People's Republic of China on November 7, 1992)	
中华人民共和国海事诉讼特别程序法	(110)
(1999 年 12 月 25 日第九届全国人民代表大会常 务委员会第十三次会议通过 1999 年 12 月 25 日 中华人民共和国主席令第 28 号公布 自 2000 年 7 月 1 日起施行)	
Special Maritime Procedure Law of the People's Republic of China	(111)
(Adopted at the 13th Meeting of the Standing Committee of the Ninth National People's Congress on December 25, 1999, promulgated by Order No. 28 of the President of the People's Republic of China on December 25, 1999, and effective as of July 1, 2000)	
最高人民法院关于国内船舶发生海损事故造成的 营运损失应列入海损赔偿范围的复函	(156)

(法(交)函[1991]第 104 号)

Reply of the Supreme People's Court on That the Working Loss Caused by the Marine Casualty of the Domestic Ships Shall Be Rated as Marine Compensation (157)

(Fa (Jiao) Han (1991) No. 104)

最高人民法院关于审理涉外海上人身伤亡案件损害赔偿的具体规定(试行) (158)

(法发[1992]16 号)

Rules of the Supreme People's Court on Trying Cases of Compensation for Damages for Marine Personal Casualties Concerning Foreign Interests (for Trial Implementation) (159)

(Fa Fa (1992) No. 16)

最高人民法院关于审理船舶碰撞和触碰案件财产损害赔偿的规定 (164)

(法发[1995]17 号)

Rules of the Supreme People's Court on the Handling of Cases Concerning Shipping Collision and Striking (165)

(Fa Fa (1995) No. 17)

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第二十八次会议通过 1992年11月7日中华人民共和国
主席令第64号公布 1993年7月1日起施行)

目 录

- 第一章 总 则
- 第二章 船 舶
 - 第一节 船舶所有权
 - 第二节 船舶抵押权
 - 第三节 船舶优先权
- 第三章 船 员
 - 第一节 一般规定
 - 第二节 船 长
- 第四章 海上货物运输合同
 - 第一节 一般规定
 - 第二节 承运人的责任
 - 第三节 托运人的责任
 - 第四节 运输单证
 - 第五节 货物交付
 - 第六节 合同的解除
 - 第七节 航次租船合同的特别规定
 - 第八节 多式联运合同的特别规定
- 第五章 海上旅客运输合同
- 第六章 船舶租用合同
 - 第一节 一般规定
 - 第二节 定期租船合同
 - 第三节 光船租赁合同
- 第七章 海上拖航合同
- 第八章 船舶碰撞

Maritime Code of the People's Republic of China

(Adopted at the 28th Meeting of the Standing Committee of the
Seventh National People's Congress on November 7, 1992, promulgated
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on November 7, 1992, and effective as of July 1, 1993)

Contents

- Chapter I General Provisions
- Chapter II Ships
 - Section 1 Ownership of Ships
 - Section 2 Mortgage of Ships
 - Section 3 Maritime Liens
- Chapter III Crew
 - Section 1 Basic Principles
 - Section 2 The Master
- Chapter IV Contract of Carriage of Goods by Sea
 - Section 1 Basic Principles
 - Section 2 Carrier's Responsibilities
 - Section 3 Shipper's Responsibilities
 - Section 4 Transport Documents
 - Section 5 Delivery of Goods
 - Section 6 Cancellation of Contract
 - Section 7 Special Provisions Regarding Voyage Charter Party
 - Section 8 Special Provisions Regarding Multimodal Transport Contract
- Chapter V Contract of Carriage of Passengers by Sea
- Chapter VI Charter Parties
 - Section 1 Basic Principles
 - Section 2 Time Charter Party
 - Section 3 Bareboat Charter Party
- Chapter VII Contract of Sea Towage
- Chapter VIII Collision of Ships

第九章 海难救助

第十章 共同海损

第十一章 海事赔偿责任限制

第十二章 海上保险合同

第一节 一般规定

第二节 合同的订立、解除和转让

第三节 被保险人的义务

第四节 保险人的责任

第五节 保险标的的损失和委付

第六节 保险赔偿的支付

第十三章 时 效

第十四章 涉外关系的法律适用

第十五章 附 则

第一章 总 则

第一条 为了调整海上运输关系、船舶关系，维护当事人各方的合法权益，促进海上运输和经济贸易的发展，制定本法。

第二条 本法所称海上运输，是指海上货物运输和海上旅客运输，包括海江之间、江海之间的直达运输。

本法第四章海上货物运输合同的规定，不适用于中华人民共和国港口之间的海上货物运输。

第三条 本法所称船舶，是指海船和其他海上移动式装置，但是用于军事的、政府公务的船舶和 20 总吨以下的小型船艇除外。

前款所称船舶，包括船舶属具。

第四条 中华人民共和国港口之间的海上运输和拖航，由悬挂中华人民共和国国旗的船舶经营。但是，法律、行政法规另有规定的除外。

非经国务院交通主管部门批准，外国籍船舶不得经营中华人民共

Chapter IX	Salvage at Sea
Chapter X	General Average
Chapter XI	Limitation of Liability for Maritime Claims
Chapter XII	Contract of Marine Insurance
Section 1	Basic Principles
Section 2	Conclusion, Termination and Assignment of Contract
Section 3	Obligations of the Insured
Section 4	Liability of the Insurer
Section 5	Loss of and Damage to the Subject Matter Insured and Abandonment
Section 6	Payment of Indemnity
Chapter XIII	Limitation of Time
Chapter XIV	Application of Law in Relation to Foreign-related Matters
Chapter XV	Supplementary Provisions

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

和国港口之间的海上运输和拖航。

第五条 船舶经依法登记取得中华人民共和国国籍，有权悬挂中华人民共和国国旗航行。

船舶非法悬挂中华人民共和国国旗航行的，由有关机关予以制止，处以罚款。

第六条 海上运输由国务院交通主管部门统一管理，具体办法由国务院交通主管部门制定，报国务院批准后施行。

第二章 船 舶

第一节 船舶所有权

第七条 船舶所有权，是指船舶所有人依法对其船舶享有占有、使用、收益和处分的权利。

第八条 国家所有的船舶由国家授予具有法人资格的全民所有制企业经营管理的，本法有关船舶所有人的规定适用于该法人。

第九条 船舶所有权的取得、转让和消灭，应当向船舶登记机关登记；未经登记的，不得对抗第三人。

船舶所有权的转让，应当签订书面合同。

第十条 船舶由两个以上的法人或者个人共有的，应当向船舶登记机关登记；未经登记的，不得对抗第三人。

第二节 船舶抵押权

第十一条 船舶抵押权，是指抵押权人对于抵押人提供的作为债务担保的船舶，在抵押人不履行债务时，可以依法拍卖，从卖得的

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.

Chapter II Ships

Section 1 Ownership of Ships

Article 7 The ownership of a ship means the shipowner's rights to lawfully possess, utilize, profit from and dispose of the ship in his ownership.

Article 8 With respect to a State-owned ship operated by an enterprise owned by the whole people having a legal person status granted by the State, the provisions of this Code regarding the shipowner shall apply to that legal person.

Article 9 The acquisition, transference or extinction of the ownership of a ship shall be registered at the ship registration authorities; on acquisition, transference or extinction of the ship's ownership shall act against a third party unless registered.

The transference of the ownership of a ship shall be made by a contract in writing.

Article 10 Where a ship is jointly owned by two or more legal persons or individuals, the joint ownership thereof shall be registered at the ship registration authorities. The joint ownership of the ship shall not act against a third party unless registered.

Section 2 Mortgage of Ships

Article 11 The right of mortgage with respect to a ship is the right of preferred compensation enjoyed by the mortgagee of that ship from the proceeds of the auction sale made in accordance with law where and when the mortgagor fails to

价款中优先受偿的权利。

第十二条 船舶所有人或者船舶所有人授权的人可以设定船舶抵押权。

船舶抵押权的设定，应当签订书面合同。

第十三条 设定船舶抵押权，由抵押权人和抵押人共同向船舶登记机关办理抵押权登记；未经登记的，不得对抗第三人。

船舶抵押权登记，包括下列主要项目：

(一) 船舶抵押权人和抵押人的姓名或者名称、地址；

(二) 被抵押船舶的名称、国籍、船舶所有权证书的颁发机关和证书号码；

(三) 所担保的债权数额、利息率、受偿期限。

船舶抵押权的登记状况，允许公众查询。

第十四条 建造中的船舶可以设定船舶抵押权。

建造中的船舶办理抵押权登记，还应当向船舶登记机关提交船舶建造合同。

第十五条 除合同另有约定外，抵押人应当对被抵押船舶进行保险；未保险的，抵押权人有权对该船舶进行保险，保险费由抵押人负担。

第十六条 船舶共有人就共有船舶设定抵押权，应当取得持有2/3以上份额的共有人的同意，共有人之间另有约定的除外。

船舶共有人设定的抵押权，不因船舶的共有权的分割而受影响。

第十七条 船舶抵押权设定后，未经抵押权人同意，抵押人不得将被抵押船舶转让给他人。

第十八条 抵押权人将被抵押船舶所担保的债权全部或者部分转让他人的，抵押权随之转移。

第十九条 同一船舶可以设定两个以上抵押权，其顺序以登记的先后为准。

pay his debt to the mortgagee secured by the mortgage of that ship.

Article 12 The owner of a ship or those authorized thereby may establish the mortgage of the ship.

The mortgage of a ship shall be established by a contract in writing.

Article 13 The mortgage of a ship shall be established by registering the mortgage of the ship with the ship registration authorities jointly by the mortgagee and the mortgagor. No mortgage may act against a third party unless registered.

The main items for the registration of the mortgage of a ship shall be:

- (1) Name or designation and address of the mortgagee and the name or designation and address of the mortgagor of the ship;
- (2) Name and nationality of the mortgaged ship and the authorities that issued the certificate of ownership and the certificate number thereof;
- (3) Amount of debt secured, the interest rate and the period for the repayment of the debt.

Information about the registration of mortgage of ships shall be accessible to the public for enquiry.

Article 14 Mortgage may be established on a ship under construction.

In registering the mortgage of a ship under construction, the building contract of the ship shall as well be submitted to the ship registration authorities.

Article 15 The mortgaged ship shall be insured by the mortgagor unless the contract provides otherwise. In case the ship is not insured, the mortgagee has the right to place the ship under insurance coverage and the mortgagor shall pay for the premium thereof.

Article 16 The establishment of mortgage by the joint owners of a ship shall, unless otherwise agreed upon among the joint owners, be subject to the agreement of those joint owners who have more than two thirds of the shares thereof.

The mortgage established by the joint owners of a ship shall not be affected by virtue of the division of ownership thereof.

Article 17 Once a mortgage is established on a ship, the ownership of the mortgaged ship shall not be transferred without the consent of the mortgagee.

Article 18 In case the mortgagee has transferred all or part of his right to debt secured by the mortgaged ship to another person, the mortgage shall be transferred accordingly.

Article 19 Two or more mortgages may be established on the same ship. The ranking of the mortgages shall be determined according to the dates of their respective registrations.

同一船舶设定两个以上抵押权的，抵押权人按照抵押权登记的先后顺序，从船舶拍卖所得价款中依次受偿。同日登记的抵押权，按照同一顺序受偿。

第二十条 被抵押船舶灭失，抵押权随之消灭。由于船舶灭失得到的保险赔偿，抵押权人有权优先于其他债权人受偿。

第三节 船舶优先权

第二十一条 船舶优先权，是指海事请求人依照本法第二十二条的规定，向船舶所有人、光船承租人、船舶经营人提出海事请求，对产生该海事请求的船舶具有优先受偿的权利。

第二十二条 下列各项海事请求具有船舶优先权：

（一）船长、船员和在船上工作的其他在编人员根据劳动法律、行政法规或者劳动合同所产生的工资、其他劳动报酬、船员遣返费用和社会保险费用的给付请求；

（二）在船舶营运中发生的人身伤亡的赔偿请求；

（三）船舶吨税、引航费、港务费和其他港口规费的缴付请求；

（四）海难救助的救助款项的给付请求；

（五）船舶在营运中因侵权行为产生的财产赔偿请求。

载运 2000 吨以上的散装货油的船舶，持有有效的证书，证明已经进行油污损害民事责任保险或者具有相应的财务保证的，对其造成的油污损害的赔偿请求，不属于前款第（五）项规定的范围。

第二十三条 本法第二十二条第一款所列各项海事请求，依照顺序受偿。但是，第（四）项海事请求，后于第（一）项至第（三）项发生的，应当先于第（一）项至第（三）项受偿。

本法第二十二条第一款第（一）、（二）、（三）、（五）项中有两个以上海事请求的，不分先后，同时受偿；不足受偿的，按照比例受

In case two or more mortgages are established, the mortgagees shall be paid out of the proceeds of the auction sale of the ship in the order of registration of their respective mortgages. The mortgages registered on the same date shall rank equally for payment.

Article 20 The mortgages shall be extinguished when the mortgaged ship is lost. With respect to the compensation paid from the insurance coverage on account of the loss of the ship, the mortgagee shall be entitled to enjoy priority in compensation over other creditors.

Section 3 Maritime Liens

Article 21 A maritime lien is the right of the claimant, subject to the provisions of Article 22 of this Code, to take priority in compensation against shipowners, bareboat charterers or ship operators with respect to the ship which gave rise to the said claim.

Article 22 The following maritime claims shall be entitled to maritime liens:

(1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members and other members of the complement in accordance with the relevant labour laws, administrative rules and regulations or labour contracts;

(2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;

(3) Payment claims for ship's tonnage dues, pilotage dues, harbour dues and other port charges;

(4) Payment claims for salvage payment;

(5) Compensation claims for loss of or damage to property resulting from tortious act in the course of the operation of the ship.

Compensation claims for oil pollution damage caused by a ship carrying more than 2,000 tons of oil in bulk as cargo that has a valid certificate attesting that the ship has oil pollution liability insurance coverage or other appropriate financial security are not within the scope of sub-paragraph(5) of the preceding paragraph.

Article 23 The maritime claims set out in paragraph 1 of Article 22 shall be satisfied in the order listed. However, any of the maritime claims set out in sub-paragraph(4) arising later than those under sub-paragraph (1) through (3) shall have priority over those under sub-paragraph (1) through (3). In case there are more than two maritime claims under sub-paragraphs (1), (2), (3) of (5) of paragraph 1 of Article 22, they shall be satisfied at the same time regardless of their respective occurrences; where they could not be paid in full, they shall be paid in

偿。第（四）项中有两个以上海事请求的，后发生的先受偿。

第二十四条 因行使船舶优先权产生的诉讼费用，保存、拍卖船舶和分配船舶价款产生的费用，以及为海事请求人的共同利益而支付的其他费用，应当从船舶拍卖所得价款中先行拨付。

第二十五条 船舶优先权先于船舶留置权受偿，船舶抵押权后于船舶留置权受偿。

前款所称船舶留置权，是指造船人、修船人在合同另一方未履行合同时，可以留置所占有的船舶，以保证造船费用或者修船费用得以偿还的权利。船舶留置权在造船人、修船人不再占有其所修或者所修的船舶时消灭。

第二十六条 船舶优先权不因船舶所有权的转让而消灭。但是，船舶转让时，船舶优先权自法院应受让人申请予以公告之日起满 60 日不行使的除外。

第二十七条 本法第二十二条规定的海事请求权转移的，其船舶优先权随之转移。

第二十八条 船舶优先权应当通过法院扣押产生优先权的船舶行使。

第二十九条 船舶优先权，除本法第二十六条规定的外，因下列原因之一而消灭：

（一）具有船舶优先权的海事请求，自优先权产生之日起满 1 年不行使；

（二）船舶经法院强制出售；

（三）船舶灭失。

前款第（一）项的 1 年期限，不得中止或者中断。

第三十条 本节规定不影响本法第十一章关于海事赔偿责任限制规定的实施。

proportion. Should there be more than two maritime claims under sub-paragraph (4), those arising later shall be satisfied first.

Article 24 The legal costs for enforcing the maritime liens, the expenses for preserving and selling the ship, the expenses for distribution of the proceeds of sale and other expenses incurred for the common interests of the claimants, shall be deducted and paid first from the proceeds of the auction sale of the ship.

Article 25 A maritime lien shall have priority over a possessory lien, and a possessory lien shall have priority over ship mortgage.

The possessory lien referred to in the preceding paragraph means the right of the ship builder or repairer to secure the building or repairing cost of the ship by means of detaining the ship in his possession when the other party to the contract fails in the performance thereof. The possessory lien shall be extinguished when the ship builder or repairer no longer possesses the ship he has built or repaired.

Article 26 Maritime liens shall not be extinguished by virtue of the transfer of the ownership of the ship, except those that have not been enforced within 60 days of a public notice on the transfer of the ownership of the ship made by a court at the request of the transferee when the transfer was effected.

Article 27 In case the maritime claims provided for in Article 22 of this Code are transferred, the maritime liens attached thereto shall be transferred accordingly.

Article 28 A maritime lien shall be enforced by the court by arresting the ship that gave rise to the said maritime lien.

Article 29 A maritime lien shall, except as provided for in Article 26 of this Code, be extinguished under one of the following circumstances:

- (1) The maritime claim attached by a maritime lien has not been enforced within one year of the existence of such maritime lien;
- (2) The ship in question has been the subject of a forced sale by the court;
- (3) The ship has been lost.

The period of one year specified in sub-paragraph (1) of the preceding paragraph shall not be suspended or interrupted.

Article 30 The provisions of this Section shall not affect the implementation of the limitation of liability for maritime claims provided for in Chapter XI of this Code.