



中华人民共和国海商法

MARITIME CODE OF
THE PEOPLE'S REPUBLIC OF CHINA

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(中英对照)

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**Order of the President of
the People's Republic of China
No.64**

The 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 of the People's Republic of China on November 7, 1992, is hereby promulgated and shall enter into force as of July 1, 1993.

**Yang Shangkun
President of the People's Republic of China**

November 7, 1992

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 by Order No.64 of the President of the
People's Republic of China on November 7, 1992,
and effective as of July 1, 1993)*

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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.

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; no 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 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.

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 regula-

tions 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) or (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 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.

Chapter III

Crew

Section 1 Basic Principles

Article 31 The term "crew" means the entire complement of the ship, including the Master.

Article 32 The Master, deck officers, chief engineer, engineers, electrical engineer and radio operator must be those in possession of appropriate certificates of competency.

Article 33 Chinese "crew" engaged in international voyages must possess Seaman's Book and other relevant certificates issued by the harbour superintendency authorities of the People's Republic of China.

Article 34 In the absence of specific stipulations in this Code as regards the employment of the crew as well as their labour-related rights and obligations, the provisions of the relevant laws and administrative rules and regulations shall apply.

Section 2 The Master

Article 35 The Master shall be responsible for the management and navigation of the ship.

Orders given by the Master within the scope of his functions and powers must be carried out by other members of the crew, the passengers and all persons on board.

The Master shall take necessary measures to protect the ship and all persons on board, the documents, postal matters, the goods as well as other property carried.

Article 36 To ensure the safety of the ship and all persons on board, the Master shall be entitled to confine or take other necessary measures against those who have committed crimes or violated laws or regulations on board, and to guard against their concealment, destruction or forging of evidence.

The Master, having taken actions as referred to in the preceding paragraph of this Article, shall make a written report of the case, which shall bear the signature of the Master himself and those of two or more others on board, and shall be handed over, together with the offender, to the authorities concerned for disposition.

Article 37 The Master shall make entries in the log book of any occurrence of birth or death on board and shall issue a certificate to that effect in the presence of two witnesses. The death certificate shall be attached with a list of personal belongings of the deceased, and attestation shall be given by the Master to the will, if any, of the deceased. Both the death certificate and the will shall be taken into safe keeping by the Master and handed over to the family members of the deceased or the organizations concerned.

Article 38 Where a sea casualty has occurred to a ship and the life and property on board have thus been threatened, the Master shall, with crew members and other persons on board under his command, make best efforts to run to the rescue. Should the foundering and loss of the ship have become inevitable, the Master may decide to abandon the ship. However, such abandonment shall be reported to the shipowner for approval except in case of emergency.

Upon abandoning the ship, the Master must take all measures first to evacuate the passengers safely from the ship in an orderly way, then make arrangements for crew members to evacuate, while the Master shall be the last to evacuate. Before leaving the ship, the Master shall direct the crew members to do their utmost to rescue the deck log book, the engine log book, the oil record book, the radio log book, the charts, documents and papers used in the current voyage, as well as valuables, postal matters and cash money.

Article 39 The duty of the Master in the management and navigation of the ship shall not be absolved even with the presence of a pilot piloting the ship.

Article 40 Should death occur to the Master or the Master be unable to perform his duties for whatever reason, the deck officer with the highest rank shall act as the Master; before the ship sails from its next port of call, the shipowner shall appoint a new Master to take command.

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.