Annual Report on Maritime Arbitration in China 2014

China Maritime Arbitration Commission(CMAC)

November 2015

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Chapter 1 Overviw of China's Maritime Arbitration in 2014

Maritime arbitration, as one of the most important dispute resolution mechanism in maritime, maritime commerce, shipping and logistics industries, has gained its popularity with prominent advantages including professionism, flexibility, efficiency and confidentiality, etc. The maritime arbitration system, which essentially indicates a nation's soft power in navigation, plays an important role in China's realization of its national strategies of maritime power, pilot free trade zone and international shipping center, etc.

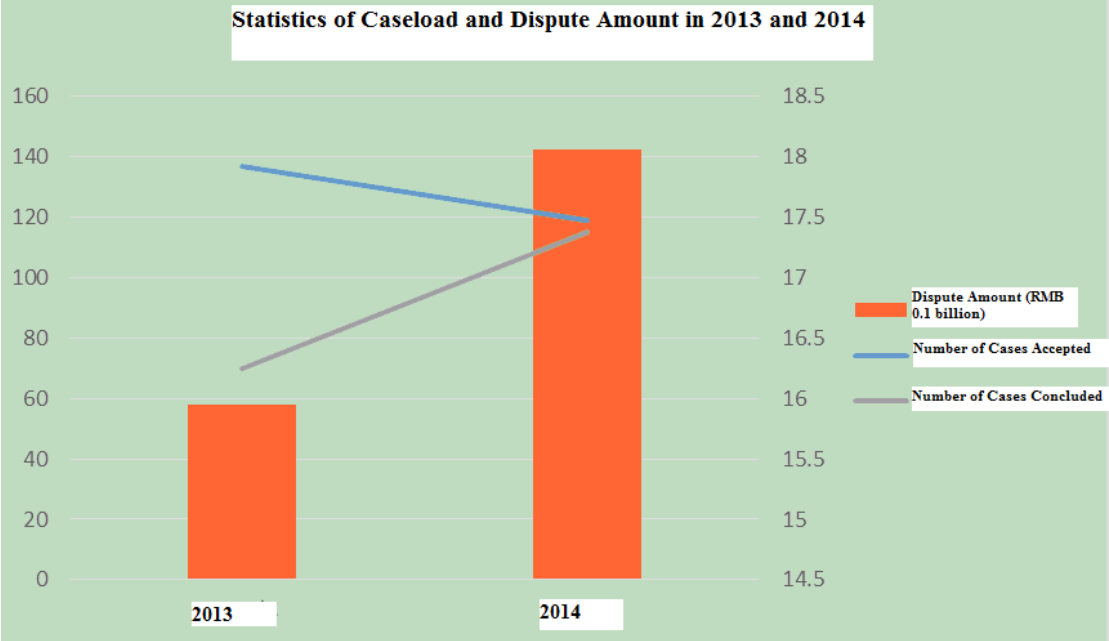
China, with its accumulation and development in over half a century, has initially established a rather complete maritime arbitration system with Chinese characteristics of which the main grounds are the Arbitration Law of the People's Republic of China (hereinafter referred to as the Arbitration Law), the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the Civil Procedure Law), the Speicial Maritime Procedure Law of the People's Republic of China (hereinafter referred to as the Special Maritime Procedure Law) and the arbitration rules issued by maritime arbitration institutions. The Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law adopted in the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China presents the clear requirements on improving China's arbitration system and enhancing the credibility of arbitration. The Opinions on Promoting the Healthy Development of Shipping Industry released by the State Council on 15 August 2014 further states accelerating the development and innovation of maritime arbitration as the key task in promoting the vigorous development of modern shipping service industry. The Opinions of the Ministry of Transport on Accelerating the Development of the Modern Shipping Service Industry issued in December 2014, promoting the strengthening of shipping legal service capability as the main task, clearly requests for support of CMAC to broaden the range of services, gradually esbalish its panel of arbitrators with authority and impartiality and arbitration procedures in line with international practice, and play its role in international maritime arbitration. Shanghai

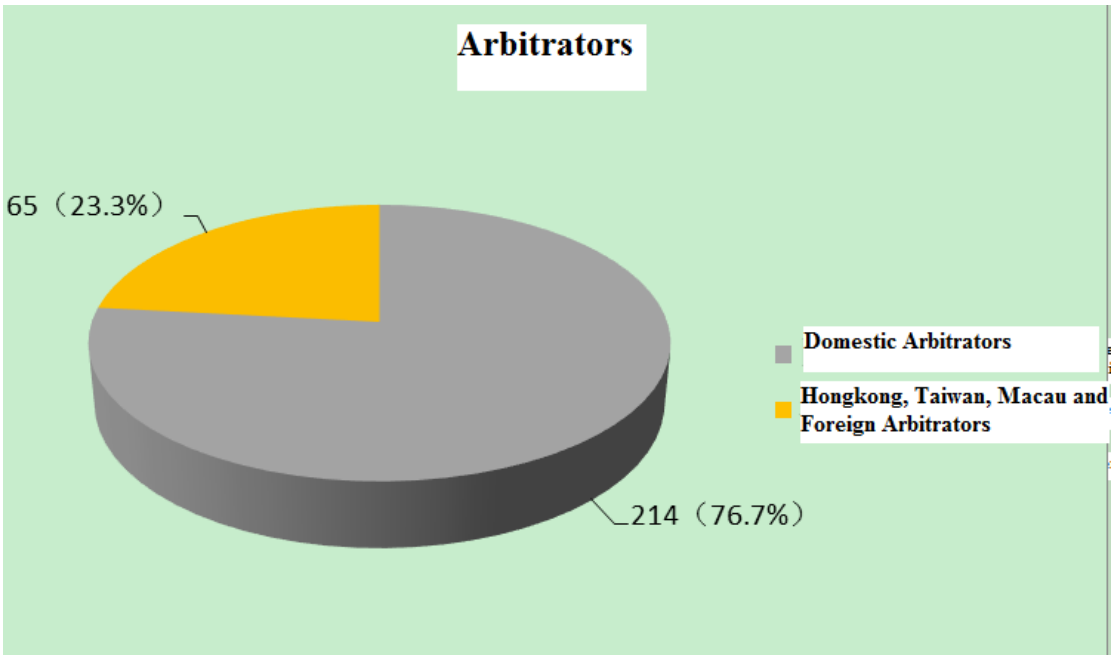
Maritime Court, in the Opinions on the Strengthening of Maritime Judicial Function Service to Safeguard National Strategies issued on 8 April 2015, emphasizes on steady support of the maritime arbitration system innovation in accordance with law.

Maritime arbitration is an essential part of China's arbitration industry. There are two types of maritime arbitration institutions grouped by nature and form of the institutions. One is specialized maritime arbitration institutions established within relevant national non-government foreign trade and economic organizations under the decision of the State Council while another is arbitration institutions established according to law in municipalities directly under the Central Government, in cities that are the seats of the people's governments of provinces or autonomous regions and in other cities divided into districts under the unified organization by the relevant departments and chambers of commerce as arranged by people's governments of the cities and through registration with the administrative department of justice of the relevant province, autonomous region or municipality directly under the Central Government after the enactment of the Arbitration Law. CMAC, claasified as the first type, is the sole national specialized maritime arbitration institution in China. Needless to say, CMAC is the most important maritime arbitration institution in China, the one with the longest history, the best profissionism, the highest market share and the most international influence all over the country, as well as the core strength of China's maritime arbitration industry. CMAC, in the fifty-six years since its establishment, has solved a large number of maritime disputes impartially and independently, safeguarded legitimate rights and interests of Chinese and foreign parties, won high reputation internationally, escorted the development of China's shipping industry and provided solid soft pwer foundation for China's successful transform from shipping giant to shipping power.

It is found from case accepting statistics that CMAC accept over half maritime arbitration cases while Shanghai Arbitration Commission/Shanghai Arbitration Court of International Shipping, Xiamen Arbitration Commission/Southeast International Shipping Arbitration Court, Dalian Arbitration Commission/Dalian International Shipping Court of Arbitration, Guangzhou Arbitration Commission/Guangzhou

Arbitration Court of International Shipping, Wuhan Arbitration Commission/Maritime Arbitration Court and other institutions accept the rest. In recent years, CMAC has maintained steady growth in both caseload and dispute amount. From 2008 to 2013, CMAC accepted 491 cases with the dispute amount of RMB6.69 billion and concluded 343 cases. Compared with the previous six year period, there was 149% increase in the number of cases accepted and 962% increase in the value of subject matter. In 2013, CMAC accepted 137 cases with the dispute amount of RMB1.595 billion and concluded 70 cases, hitting record high with the number of cases exceeding 100 for the first time. The dispute amount of cases accepted by CMAC in 2014 was further raised to RMB1.806 billion while the number of concluded cases increased to 115. The awards for most of the cases concluded in three consecutive years were voluntarily performed while no case concluded in 2014 was set aside or refused the enforcement by courts due to CMAC's continuous enhancement of arbitrators and case administrators' professional qualities, improvement of service and guarantee of case handling quality and efficiency.



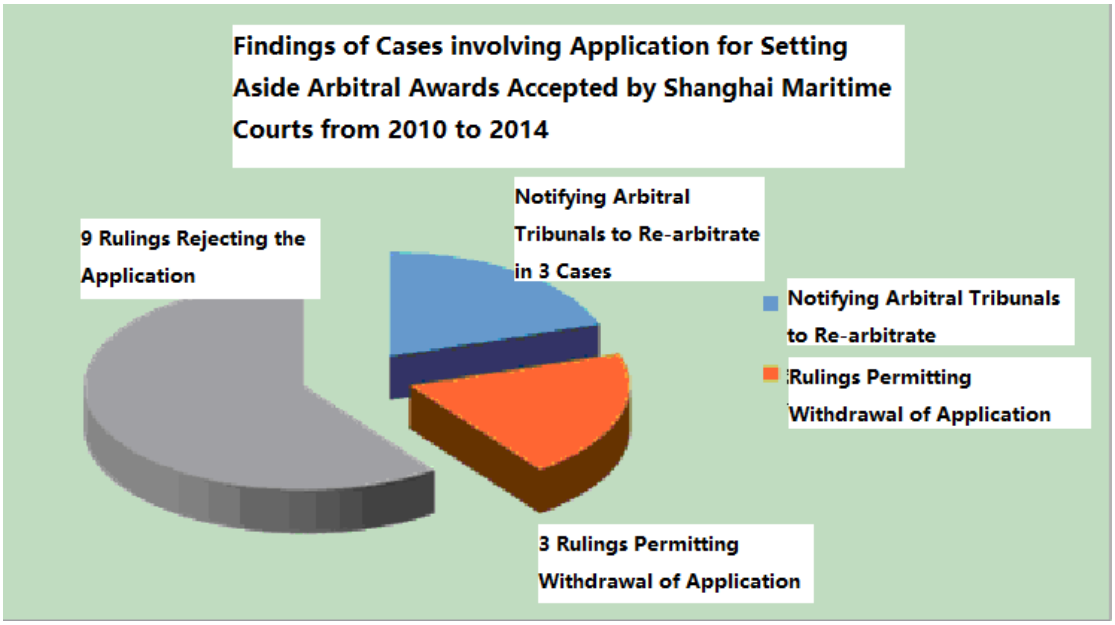


Concerning the institution development, CMAC has further improved its institutional structure, enhanced the professionalism of arbitrators, publicized and marketed maritime arbitration in various forms, drafted and popularized shipping format contract, and given full play to the advantages of diversified dispute resolution. The latest Articles of Association of CMAC effective as from 1 January 2015 improves the institutional settings, splitting the CMAC Secretariat into the Arbitration Court specializing in case administration and arbitration publicizing and marketing and the Secretariat in charge of routine administrative work of the institution and assuming organization and coordination function in public legal service. Such institutional restructuring shows CMAC's attitude and determination in innovating administration mode and actively coping with market competition, marking a new historic stage in CMAC's development. The currently applicable CMAC Arbitration Rules is the Rules amended on the basis of the 2004 version and adopted on 1 January 2015. There are many innovations and highlights in the amendment. CMAC, through summing up its own experience and referring to common practice of international commercial and maritime arbitration institutions, has enlarged the application scope of party autonomy in selecting arbitration rules and appointing arbitrators beyond the panel, etc, further improved arbitration procedures, reformed the way of hearing and fee collection, and raised the dispute amount standard for summary procedure cases so as to maximize the

flexibility and efficiency of arbitration and adapt to the latest trends in international maritime arbitration system. CMAC has also continuously improved diversified dispute resolution, been creative in providing service, enhanced and enlarged its influence. CMAC, through signing the Cooperation Minutes on Establishing the Mechanism for Conciliation under Delegation of Maritime Disputes with Shanghai High People's Court in 2011, formally established the mechanism of conciliation under delegation for maritime disputes, which is an important step in promoting the connection of litigation and conciliation of maritime disputes and gives full play to the advantages of diversified dispute resolution. CMAC has its Panel of Arbitrators, engaging Chinese and foreign arbitrators with specialized knowledge and experience in shipping, insurance and law etc. CMAC renewed its Panel in 2014, engaging 279 arbitrators including 65 Hongkong, Macau, Taiwan and foreign ones, optimizing the profession and age structure, enhancing nationality and area variation, thus ensuring skilled personnel for solving maritime disputes. In2014, CMAC actively advocated arbitration by way of holding seminars, attending national and international conferences, publishing thesis, visiting or receiving visits, etc. The official publishing of the Shipping Standard Contract Series (Shanghai Format) Volumn II compiled by CMAC Shanghai Sub-commission in which the Standard Vessel Financial Leasing Contract (Shanghai Format) is the first sample of such contracts in China has greatly enhanced and enlarged CMAC's core competitiveness and international influence.

Concerning judicial supervision on maritime arbitration, courts, especially maritime courts, have commonly implemented flexible policies in determining the validity of arbitration agreements to support the development of China's maritime arbitration. Shanghai Maritime Court made the ruling in 2013, recoganizing the validity of the maritime arbitral clause involved in one case accepted by CMAC Shanghai Sub-commission, indicating Chinese judicial system's determination of supporting maritime arbitration by keeping in line with international practice and being flexible with defective maritime arbitration clauses. In 2014, Shanghai Maritime Court accepted no case involving application for determination of the validity of maritime arbitration agreements, Dalian Maritime Court accepted and concluded 1 such case

only. Statistics of cases involving judicial review over arbitration from 2010 to 2014 show that Shanghai Maritime Court accepted 15 cases involving application for setting aside arbitral awards and 1 case involving application for determing the validity of arbitration agreements. Shanghai Maritime Court rejected the application for setting aside awards in all the 15 cases among which the Court made the rulings in 9 cases rejecting the application, made the rulings in 3 cases permitting the withdrawal of application, and notified the arbitral tribunals of 3 cases to re-arbitrate. In 2014, Shanghai Maritime Court accepted 4 cases involving application for setting aside maritime arbitral awards and concluded 2 cases, accepted 6 cases involving application for recognizing and enforcing foreign arbital awards and concluded 6 cases.



Chapter 2 Latest Development of China's Maritime Arbitration System

I. The Influence of China's New Policies on Maritime Arbitration

1. Several Opinions of the State Council on Accelerating the Healthy Development of Shipping Industry

Shipping industry is an important foundamental industry in the development of

economic society, playing an important role in safeguarding national maritime rights and interests and economic security, pushing forward the development of foreign trade and promoting industrial restructuring and upgrading, etc. China's shipping industry has developed rapidly and made significant achievements in recent years. Meanwhile, it should be noted that the current shipping industry cannot fully meet the needs of the development of economic society due to unclear strategic positioning and development goals, inflexible system and mechanism, unreasonable structure, incomplete set of supporting measures, low operational and management level and weak core competence, etc. It is essential for keeping steady growth, promoting reform, restructuring and enhancing people's livelihood to accelerate the healthy development of shipping industry. The State Council, for further improvement, issued Several Opinions on Accelerating the Healthy Development of Shipping Industry on 15 August 2014.

Several Opinions on Accelerating the Healthy Development of Shipping Industry is the first top-level national design for the development of shipping industry since the founding of People's Republic of China, making clear the strategic objectives and main tasks for the development of shipping industry comprehensively and systematically for the first time. Several Opinions on Accelerating the Healthy Development of Shipping Industry is of great guiding significance for boosting confidence in shipping, enhancing cohesion, deepening shipping industry reform, promoting transformation and upgrading of shipping companies, keeping further steady growth, restructuring, pushing forward reform and enhancing livelihood, especially under current situation when the shipping industry is influenced by international financial crisis and facing chanllenges. Several Opinions on Accelerating the Healthy Development of Shipping Industry states the key tasks in Part II in which it is provided in Article 7 that 'modern shipping service industry shall be vigorously developed. The traditiaonl shipping service industry shall be transformed and upgraded while modern shipping service industry including shipping finance, shipping trade, information services, design consulting, R&D and maritime arbitration, etc. shall be developed on a greater scale'.

The above Opinions has enhanced shipping industry to the level of national development strategies and listed accelerating the development of maritime arbitration and other modern shipping services in such strategies for the first time in China, which opens the door for acclerated development of China's maritime arbitration industry. Shipping industry, as an important foundamental industry in the development of economic society, is essential for safeguarding national maritime rights and interests and economic security, enhancing the development of foreign trade, promoting industry transformation and upgrading, etc. China's shipbuilding and shipping industry has developed fast and made significant achievements in recent years, laying solid foundation for accelerated development of modern shipping services including shipping finance, shipping trade, information services and maritime arbitration, etc. It is for sure that China's maritime arbitration industry, with its new development opportunities along with the gradual implementation of the national shipping strategies and accelerated constructure of international shipping center, will be the think tank providing legal services safeguarding the healthy development of China's and even the world's shipbuilding and shipping industry.

2. Opinions of the Ministry of Transport on Accelerating the Development of the Modern Shipping Service Industry

The Ministry of Transport issued the Opinions on Accelerating the Development of the Modern Shipping Service Industry on 26 November 2014 to accelerate the development of modern shipping service industry with further implementation of Several Opinions of the State Council on Accelerating the Healthy Development of Shipping Industry (Guo Fa[K014] No.32) and the Guiding Opinions of the State Council on Relying on the Golden Waterway to Boost the Development of Yangtze River Economic Belt (Guo Fa[2014] No.39).

According to the Opinions on Accelerating the Development of the Modern Shipping Service Industry, the modern shipping service industry system with comprehensive functions, good service, efficiency, convenience and orderly competition will be

basically formed in 2020. The modern shipping service industry fits the transformation and upgrading of China's shipping industry, further improving the shipping service function of the shipping center and enhancing the modern shipping service industry's overall competitiveness and capabilities of serving the development of economic society. The Opinions on Accelerating the Development of the Modern Shipping Service Industry states the key tasks in Part II in which it is provided in Article 7 that 'the shipping legal service capabilities shall be enhanced. The shipping legal service system shall be improved while the development of shipping legal consulting agencies shall be supported so as to provide high level shipping legal service to shipping companies. CMAC shall be supported in expanding its services, gradually building a team of authoritative and impartial arbitrators and arbitration procedures in line with international practice so local arbitration institutions play a role in international maritime arbitration. An efficient and standardized maritime claim settlement mechanism shall be established based on international experience to enhance the settlement level. Maritime legal consulting service shall be extended with professional advantages of maritime courts at different locations'.

The construction of modern shipping service industry system is highlighted in the Opinions on Accelerating the Development of the Modern Shipping Service Industry with various aspects such as banking and insurance, legal system and market supervision to be improved and objectives specified. It is expected that, through the effective implementation of the Opinions on Accelerating the Development of the Modern Shipping Service Industry, the overall competitiveness of China's modern shipping service industry will be enhanced and China will step forward to be a shipping power. After the release of the Opinions on Accelerating the Development of the Modern Shipping Service Industry, China's maritime arbitration will surely gain strong support and enter a new stage.

II. Improvement of Relation between Maritime Arbitration and Judicial System

The Arbitration Law coming into force as from 1 September 1995 contains detailed provisions on case-accepting scope of arbitration, arbitration institutions, fundamental principles and system, arbitration agreements, procedures, enforcement and foreign-related arbitration. The Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law of the People's Republic of China issued in September 2006 makes some general provisions more clear and specific and enhances the operability of the Arbitration Law. Furthermore, the Supreme People's Court has released series of notices and replies to guide trial involving arbitration issues. Concerning maritime arbitration, the Special Maritime Procedure Law coming into effect as from 1 July 2000 contains specific provisions on parties' application for enforcement of maritime arbitral awards, application for recognition and enforcement of foreign maritime arbitral awards and issues related to maritime arbitration including maritime claims, application for arresting ships or goods, provision of guarantee, auction, maritime injunction, maritime evidence preservation, constituting limitation funds for maritime claims liability and registering creditors' rights, etc.

The Decision on Amending the Civil Procedure Law of the People's Republic of China adopted by the Twenty-eighth Session of the Eleventh National People's Congress on 31 August 2012 and implemented on 1 January 2013 contains supplements or amendments regarding the relation between arbitration and judicial system on the following six issues.

1. Pre-Arbitration Evidence Preservation

As per Article 17 of the Decision, Article 81.2 of the Civil Procedure Law is amended to read that '[W]here any evidence may be extinguished or may be hard to obtain at a later time, if the circumstances are urgent, an interested party may, before instituting an action or applying for arbitration, apply for evidence preservation to a people's

court at the place where the evidence is located or at the place of domicile of the respondent or a people's court having jurisdiction over the case', which is important supplement to the system of evidence preservation in arbitration. The Arbitration Law only mentions evidence preservation after the initiation of arbitration in the section of Hearing and Award that '[I]n the event that the evidence might be destroyed or if it would be difficult to obtain the evidence later on, the parties may apply for the evidence to be preserved. If the parties apply for such preservation, the arbitration commission shall submit the application to the basic-level people's court of the place where the evidence is located'. Compared with the Arbitration Law which only covers evidence preservation during arbitration, the amended Civil Procedure Law obviously offers arbitration stronger judicial support with its provision on pre-arbitration evidence preservation. Tracing Back, it is clearly stated in Chapter 5 Maritime Evidence Preservation of the 1999 Special Maritime Procedure Law that the interested party may apply for maritime evidence preservation before initiating arbitration proceeding. Therefore, the above amendment of the Civil Procedure Law is in line with the Special Maritime Procedure Law regarding this issue.

2. Pre-Arbitration Property Preservation

As per Article 22 of the Decision, Article 101 of the Civil Procedure Law is amended to read that '[W]here the lawful rights and interests of an interested party will be irreparable damaged if an application for preservation is not filed immediately under urgent circumstances, the interested party may, before instituting an action or applying for arbitration, apply to the people's court at the place where the property to be preserved is located or at the place of domicile of the respondent or a people's court having jurisdiction over the case for taking preservative measures. The applicant shall provide security and, if the applicant fails to provide security, the people's court shall issue a ruling to dismiss the application'. However, it is stated in the section of Application and Acceptance of the Arbitration Law that '[A] party may apply for property preservation if, as the result of an act of the other party or for some other reasons, it appears that an award may be impossible or difficult to enforce. If one of

the parties applies for property preservation, the arbitration commission shall submit to a people's court the application of the party in accordance with the relevant provisions of the Civil Procedure Law'. Based on the sole provision of property preservation during arbitration in the Arbitration Law, the amended Civil Procedure Law supplements provisions on pre-arbitration property preservation, which, similar to the provisions on pre-arbitration evidence preservation, is important supplement to the system of preservation in arbitration as well as a progress in legislation. Pre-arbitration property preservation, similar to pre-arbitration evidence preservation, was first mentioned in the 1999 Special Maritime Procedure Law of the People's Republic of China. The amendment on the Civil Procedure Law expands the applicable scope of such provision from maritime arbitration to general commercial arbitration.

3. Prohibition on Evading Performance of Obligations Determined in a Legal Instrument by Way of Arbitration

As per Article 24 of the Decision, Article 113 of the Civil Procedure Law is amended to read that '[W]here the party against whom enforcement is sought, maliciously in collusion with other persons, evades performance of obligations determined in a legal instrument by litigation, arbitration, mediation or any other means, a people's court shall impose a fine or detention on them according to the severity of the circumstances; and if suspected of any crime, they shall be subject to criminal liability'. Article 113, in resonance to the provision that '[I]n civil procedures, the principle of good faith shall be adhered to' which is inserted in the amended Civil Procedure Law, aims at proposing choice of dispute resolution methods under the principle of good faith and imposing punishment on evading performance of obligations determined in a legal instrument.

4. Strengthening Arbitration Agreements' Exclusion of Court Jurisdiction

As per Article 28 of the Decision, Article 124.2 of the Civil Procedure Law is

amended to read that '[N]otifying the plaintiff to apply to an arbitral institution for arbitration, if, in accordance with law, both parties shall apply for arbitration under a written arbitration agreement reached between them and are prohibited from instituting an action in a people's court'. The amendment deleted the expression of 'voluntarily' and 'to submit their contract disputes' in Article 111.2 of the pre-amendment Civil Procedure Law so as to keep strict consistency with the Arbitration Law in regards to the scope of arbitration instead of limiting the arbitration agreements' exclusion of court jurisdiction to contract disputes which is not in accordance with either judicial or arbitral practice. The amendment has fixed this obvious loophole of the pre-amendment Civil Procedure Law.

5. Rulings Applicable to Revoking Arbitral Awards

As per Article 33 of the Decision, Article 154.1.9 is amended to read that rulings shall be applicable to 'revoking or not enforcing an arbitration award'. Similar to above, such amendment is to make the Civil Procedure Law more precise and stress the same importance of revoking and not enforcing arbitral awards in law. Surely, such amendment also aims at keeping consistency with the Arbitration Law.

6. Imposing Same Condition on Revoking and Not Enforcing Domestic Arbitral Awards

As per Article 54 of the Decision, Article 237.2.4 and Article 237.2.5 are amended to read that '(4) [T]he evidence for rending an award is forged. (5) The opposing party withholds any evidence to the arbitral institution, which suffices to affect an impartial award', which replaced Article 213.4 and Article 213.5 of the pre-amendment Civil Procedure Law which state that ' (4) [W]here the main evidence for finding the facts is insufficient; (5) Where there is an error in the application of the law'. After the amendment, the requirements under Article 237 of the Civil Procedure Law regarding non-enforcement of domestic arbitral awards with no foreign elements are the same as the requirements under Article 58 of the Arbitration law regarding revocation of domestic arbitral awards with no foreign elements, thus making up the unreasonable difference between revoking requirements and not enforcing requirements. Though

courts still review merits when enforcing domestic arbitral awards with no foreign elements, the review scope has been greatly reduced. Such stipulation, though not involves revoking and not enforcing foreign-related arbitral awards, may indicate the possible merge of the dual track system in China's judicial supervision on foreign-related and domestic arbitration.

The 2012 Amendment on the Civil Procedure Law further enriches and improves China's arbitration system. Furthermore, the Supreme People's Court issued the Interpretation on Implementing the Civil Procedure Law of the People's Republic of China on 4 February 2015 which is the longest judicial interpretation with the most provisions by the Supreme People's Court covering 552 articles in 23 chapters among which 17 articles are related to arbitration. On 29 June 2015, the Supreme People's Court issued the Provisions on Recognizing and Enforcing Taiwan Arbitral Awards which covers comprehensive provisions on recognizing and enforcing Taiwan arbitral awards. The above two Interpretations will surely have a significant impact on China's foreign-related arbitration system.

III. Courts' Judicial Supervision of Maritime Arbitration Cases

1. Determination of the Validity of Maritime Arbitration Agreements

Shanghai Maritime Court made the ruling on 25 September 2013, recoganizing the validity of the maritime arbitral clause involved in one case accepted by CMAC Shanghai Sub-commission, indicating Chinese judicial system's determination of supporting maritime arbitration by keeping in line with international practice and being flexible with defective maritime arbitration clauses. The arbitral clause involved in the case states that 'Place of Arbitration: Zhong Hai Maritime Arbitration Commission Guangzhou Sub-commission. Chinese laws shall be applied'. One party alleged that, first, there was no clear agreement on arbitration institution since 'Zhong Hai Maritime Arbitration Commission' never existed; secondly, the arbitral clause contained no intent of arbitration or dispute matters to be submitted to arbitration; thirdly, both parties were companies located in Guangdong Province having no

relation with CMAC Shanghai Sub-commission, so there was no factual or legal basis for the commission to accept the case; fourthly, the validity of the booking agreement involved in the case was under doubt. Accordingly, the party applied for the court's determination that the arbitral clause be void.

Shanghai Maritime Court deemed through hearing that, first, the arbitral clause involved in the case, though containing no specific agreement on subject matter of arbitration, clearly indicated both parties' intent of settling disputes arising out of the agreement involved in the case by way of arbitration, thus the clause contained clear intent of arbitration while the subject matter of arbitration should be disputes arising out of the agreement. Secondly, 'Zhong Hai' in 'Zhong Hai Maritime Arbitration Commission Guangzhou Sub-commission' contained in the arbitral clause must have been mis-spelt while the other party's explanation was reasonable, so it should be taken as 'Zhong Guo', i.e. China. Thirdly, CMAC has no Sub-commission in Guangzhou, but Guangzhou Office instead while the parties made inaccurate statement in the arbitral clause, but it could be inferred from the clause that the arbitration institution agreed on by the parties was CMAC which had jurisdiction over the dispute arising out of the agreement involved. CMAC Shanghai Sub-commission's acceptance of the case was appropriate according to the internal division of work as per CMAC Arbitration Rules. Last, the arbitral clause should be independent from the main contract whose validity could not influence the validity of the clause. Above all, the Court ruled the arbitral clause involved valid.

In 2014, Shanghai Maritime Court accepted no case involving application for determination of the validity of maritime arbitration agreement, Dalian Maritime Court accepted and concluded 1 such case only.

2. Recsission of Maritime Arbitral Awards

Statistics of cases involving judicial review over arbitration from 2010 to 2014 show that Shanghai Maritime Court accepted 15 cases involving application for setting aside arbitral awards and 1 case involving application for determing the validity of arbitration agreements. Shanghai Maritime Court rejected the application for setting

aside awards in all the 15 cases among which the Court made the rulings in 9 cases rejecting the application, made the rulings in 3 cases permitting the withdrawal of application, and notified the arbitral tribunals of 3 cases to re-arbitrate.

In the 9 cases rejecting the application, the applicants mainly relied on Article 58 of the Arbitration Law and Article 274 of the Civil Procedure Law. The application ground of 1 case is 'there is no arbitration agreement' as stipulated in Subsection 1, Section 1, Article 58 of the Arbitration Law. The ground of 5 cases is 'the matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration commission' as stipulated in Subsection 2. The ground of 3 cases is 'the formation of the arbitration tribunal or the arbitration procedure was not in conformity with the statutory procedure' as stipulated in Subsection 3. The ground of 3 cases is 'the evidence on which the award is based was forged' as stipulated in Subsection 4. The ground of 2 cases is 'the other party has withheld the evidence which is sufficient to affect the impartiality of the arbitration' as stipulated in Subsection 5. The ground of 2 cases is Subsection 6. The ground of 3 cases is 'the arbitration award violates the public interest' as stipulated in Section 3 of the Article. The above shows that, in the application of Article 58 of the Arbitration Law, the applicants relied on different sections rather evenly among which Subsection 2 is the most frequently quoted while Subsection 1 is the least.

The applicants of 2 cases clearly referred to Article 274 of the Civil Procedure Law in the application. The ground of application for setting aside foreign arbitral award in one case is Subsections 3 and 4, Secton 1, Article 258 of the 1991 Civil Procedure Law. The ground of application for setting aside arbitral award in another case is Subsections 1,2 and 4, Section 1, Article 58 of the Arbitration Law while the Court, through hearing, deemed that Article 274 of the Civil Procedure Law should be applied instead since the award involved was a foreign one and the circumstances alleged by the applicant fell within Subsections 1 and 4, Section 1 of the Article.

In the 3 cases in which the Court ruled to permit the withdrawal of application, the applicants of 2 cases withdrew the application on the ground that settlement agreements had been reached through negotiation while the applicant of the other case

withdrew on the ground the dispute would be solved in other ways.

In the 3 cases in which the Court notified the arbitral tribunals to re-arbitrate, the Court deemed in one case that there was circumstance falling within Article 21.1.2 of the Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law stipulating ‘the evidence on which the arbitral award is based is forged’ while gave no specific reason in the other two cases.

The above shows that the Court fully embodies the idea of limited judicial intervention in arbitration in the practice of judivial review over arbitral awards. The Court made no ruling setting aside awards in the five year period, indicating its cautiousness thereof.

In 2014, Shanghai Maritime Court accepted 4 cases involving application for setting aside maritime arbitral awards and concluded 2.

3. Recognition and Enforcement of Maritime Arbitral Awards

A CMAC award was recognized and enforced in New York in 2009. New York Southern District Court made judgment in China National Chartering, Corp. v. Pactrans Air & Sea, Inc. on 13 November 2009. The Plaintiff, China National Chartering Corp., applied for enforcement of the arbitral award rendered by CMAC on 31 March 2009 under which the Defendant, Pactrans Air & Sea, Inc. was the losing party on 17 July 2009. The Defendant plead on the ground that it had applied for setting aside the award by a Chinese court with jurisdiction in August 2009. According to Article V.1 of the New York Convention, New York Southern District Court should pend its decision on enforcement of the award till the Chinese court made its ruling. New York Southern District Court deemed that it should be cautious when deciding whether to pend the jucidial procedure of enforcing the award under the circumstance that one party had applied for setting aside award by the court at the place of arbitration so as to avoid the losing party in arbitration abused its rights to impede the award enforcement. New York Southern District Court, relying on the six general guiding opinions of the U.S. Second Circuit Court for such circumstance, made the final judgment that the Defendant had no legal ground for its plea while the

Plaintiff's application should be sustained and the CMAC award should be enforced.

Xiamen Maritime Court refused to recognize and enforce the arbitral award made by ad hoc tribunal in London, U.K. as applied by First Investment Corp (Marshall Island) in 2006. On 15 September 2003, the Defendant, Fujian Mawei Shipbuilding Ltd., and the Defendant, Fujian Shipbuilding Industry Group Corporation, as sellers, signed the Option Agreement on shipbuilding with First Investment Corp. registered by Restis Group of Greece in the Republic of Marshall Islands, providing that the two Defendants unrevocably agreed to sign the Option Agreement on Shipbuilding for at most 8 ships with First Investment Corp. or its designees. Any dispute arising out of or related to the Agreement should be arbitrated in London. U.K. Arbitration Act 1996 with effective amendments or inserted provisions and effective rules of London Maritime Arbitrators Association should apply to arbitration procedures including the enforcement of arbitral award. Each party should appoint one arbitrator and the two arbitrators should appoint the third arbitrator. Thereafter, Fist Investment Corp. announced the validity of 8 option ships within the time limit under the Option Agreement, requesting the Defendants to sign the Option Shipbuilding Contracts for 8 ships with the designated 8 single-vessle companies, and posted the contract documents to be signed, but the Defendants failed to sign the contracts within time limit. First Investment Corp. and the 8 designated companies initiated arbitration in London, U.K. on 4 June 2004, claiming USD 45.4 million joint compensation from the Defendants for commercial losses and interest, and appointed Mr. H as the arbitrator. The Defendants appointed Mr. W as the arbitrator. Mr. H and Mr. W appointed M as the third arbitrator. The presiding arbitrator, after two oral hearings, drafted the arbitral award on 21 January 2006 and distributed it to H and W for review. W returned the draft with different opinion on 16 February 2006, was then detained by people's procuratorate for suspected crime on 20 March 2006 and the procuratorate approved the arrest on the next day. W had no communication with M or H since he was detained and could not review the second version of the award distributed by M on 25 March 2006 and the final version on 31 March. His participation of the case had only lasted till he sent back his opinions on the first version of the award. M and H, as

per the stipulation that 'after the appointment of the third arbitrator, decisions, orders and awards shall be made by all or a majority of the arbitrators' in Article 8(e) of London Maritime Arbitrators Association Rules, signed and dated the award on 19 June 2006 and issued the award as one made by a majority of the arbitrators under which the Defendants should pay First Investment Corp. USD 26.4 million and interest and compound interest thereon as compensation. First Investment Corp. submitted application to Xiamen Maritime Court on 5 December 2006, requesting for recognition of the award's legal force in P.R.C. and enforce it according to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

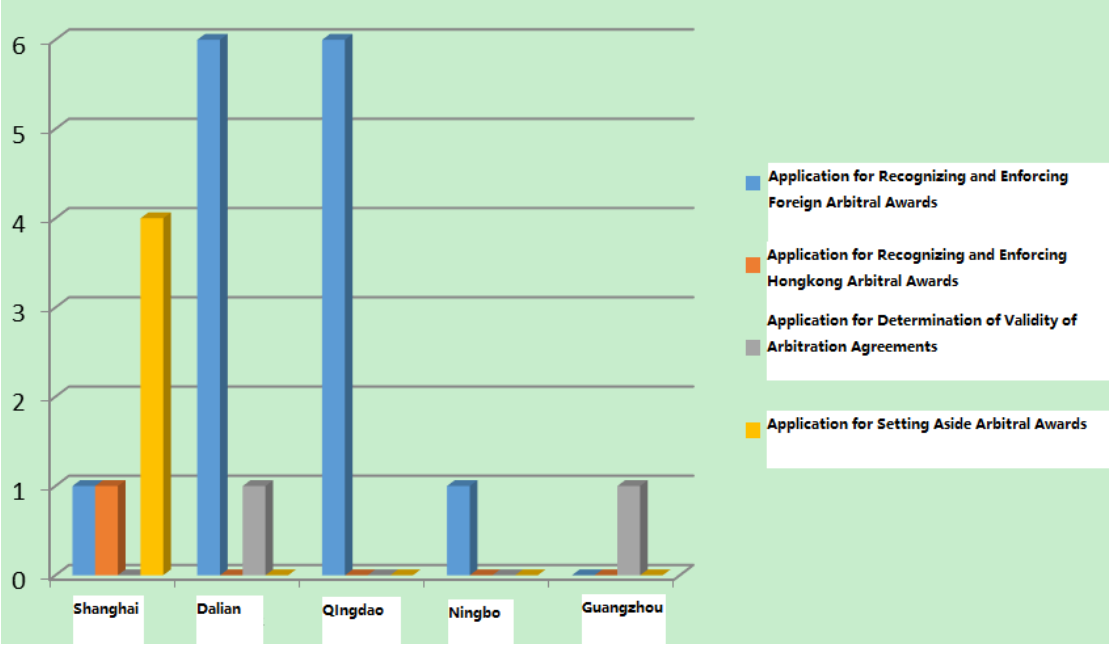
Xiamen Maritime Court deemed that the precondition for the application of Article 8(e) of London Maritime Arbitrators Association Rules was the participation of all members of the arbitral tribunal in the arbitration procedure otherwise the majority of the arbitrators were not empowered to make the award. Accordingly, the Court found that the tribunal's process is not only against the parties' arbitration agreement, but also contrary to the laws at the place of arbitration, i.e. U.K. laws. The Court, according to Article 267 of the Civil Procedure Law and Article V.1(d) of the Convention on Recognition and Enforcement of Foreign Arbitral Awards, made the ruling on 11 May 2008, refusing to recognize and enforce the arbitral award.

The above case has certain impact in international arbitration circle as a case of Chinese court's refusal of recognition and enforcement of truncated arbitration award. The focus is how to determine the effectiveness of truncated arbitration award made by the majority of arbitrators when one arbitrator cannot continue performing his duties in late stage of arbitration hearing while the others proceed on hearing and awarding. The arbitration clause involved in the above case clearly states the tribunal be formed by three members while there is no provision on truncated arbitration in both U.K. Arbitration Act 1996 and London Maritime Arbitrators Association Rules. However, the arbitral tribunal, when one arbitrator failed to participate in all the arbitration procedure, applied Article 8(e) of London Maritime Arbitrators Association Rules regarding award by the majority to make the award, which falls within the circumstance that the arbitral procedure was not in accordance with the agreement of

the parties as stipulated in Article V.1(d) of the Convention. Accordingly, the Court made the ruling refusing to recognize and enforce the award. The Convention on Recognition and Enforcement of Foreign Arbitral Award, known as the cornerstone of international commercial arbitration, sets the international standard for recognition and enforcement of foreign arbitral awards and has been approved by most countries. There were 149 signatory countries at the end of March 2014. China, as a signatory country, has established the system of recognizing and enforcing foreign arbitral awards which is basically in line with international common practice.

In 2014, Shanghai Maritime Court accepted 6 cases involving application for recognizing and enforcing foreign arbital awards and concluded 6 while Dalian Marimte Court accepted none.

	Shanghai		Dalian		Qingdao		Nongbo		Guangzhou	
Cause of Action	Number of Accepted Cases	Number of Concluded Cases	Number of Accepted Cases	Number of Concluded Cases	Number of Accepted Cases	Number of Concluded Cases	Number of Accepted Cases	Number of Concluded Cases	Number of Accepted Cases	Number of Concluded Cases
Application for Recognizing and Enforcing Foreign Arbitral Awards	1	1	6	6	6	1	1	1	0	0
Application for Recognizing and Enforcing Hongkong Arbitral Awards	1	1	0	0	0	0	0	0	0	0
Application for Determination of Validity of Arbitration Agreements	0	0	1	1	0	0	0	0	1	1
Application for Setting Aside Arbitral Awards	4	2	0	0	0	0	0	0	0	0
Total	6	4	7	7	6	1	1	1	1	1



IV. CMAC's Breakthrough in 2014

1. CMAC's Institutional Improvement

(1) Revision of CMAC Articles of Association

CMAC revised the Articles of Association in 2014. CMAC, through the revision, improved the institutional structure, clarified assignments and responsibilities and rationalized the relationship. The revised Articles of Association came into effect as from 1 January 2015 after its written submission for comment by CMAC Committee members, approved by the 18th Members' Council of CMAC on 5 September 2014 and report to China Council for the Promotion of International Trade(CCPIT)/China Chamber of International Commerce(CCOIC) for record.

The 2014 CMAC Articles of Association containing 35 articles is more detailed and unambiguous compared to the 2004 version containing 15 articles. There are 13 chapters including General Provisions, Main Functions, Orgainzational Structure, Members' Council, Chairman's Council, Speicial Committees, Arbitration Court, Secretariat, Branches and Other Organizations, Arbitration Rules and Other Rules of Dipute Resolution, Arbitrators and Experts of Other Dispute Resolution, Finance and Supplementary Articles.

（2）Newly-established CMAC Arbitration Court and Hongkong Arbitration Center

CMAC Arbitration Court was formally established on 26 September 2014, which marks a new stage of CMAC's development. The Arbitration Court is specialized in procedural administration of CMAC caess and publicity of CMAC arbitral clause, participates in market competition and continually makes CMAC bigger and stronger. CMAC, through the establishment of the Arbitration Court, aims at adapting to the new situation when China has large quantity of economic entities, more foreign trade and commerce and fast development of maritime economy, accelerating the development of foreign arbitration services and providing Chinese and foreign parties with internationalized and modernized arbitration service through improving functions, incremental reform, restructuring and upgrading.

The unveiling ceremony of CMAC Hongkong Arbitration Center was held on 19 November 2014. The arbitration service of CMAC Hongkong Arbitration center, as extension of CMAC service, enriches features and contents of CMAC arbitration service and provides parties, especially 'go global' Chinese maritime commerce, maritime, logistics and shipping enterprises with more internationalized and convenient dispute resolution consistent with the characteristics of maritime disputes.

（3） Committee and Special Committees Shift

The 18th Committee was formed on 28 April 2014 as approved by CCPIT. The first co-meeting of Chairmen of China International Economic and Trade Arbitration Commission (CIETAC) and CMAC was held in the assembly hall of CCPIT.

The 18th Committee of CMAC is composed of 64 higher officials and experts from legislative, judicial and administrative departments, enterprises, industry associations, colleges and universities, law firms, etc. The formation of the 18th Committee is favorable for bringing CMAC's extended functions into effect. The Committee will adhere to the basic tone of reform and development, build concensus, and promote CMAC's role in industry guidance, enactment of laws and international rules and assistance of enterprises in legal risk prevention, etc.

The main tasks of the 18th Committee include enhancing China's right of discourse in international maritime issues through CMAC's implementation of national maritime economy strategies, focusing on case administration, improving arbitration efficieny, motivating arbitrators, innovating way of publicity, and studying the overall layout to improve CMAC's networking strategy.

The Expert Advisory Committee of the 18th Committee of CMAC is composed of 42members.

2. Implementation of New CMAC Arbitration Rules

(1) Background and Main Reasons for CMAC's Amendment of the Arbitration Rules

First, the 2004 CMAC Rules, since it came into force as from 1 October 2004, has played an active role in improving arbitration procedure and promoting specialization, modernization and internationalization of CMAC arbitration. Along with the great development of international maritime arbitration theories and practice, some international commercial and maritime arbitration institutions have amended their arbitration rules, reformed arbitration procedure and adopted advanced arbitration concepts. CMAC need to follow such development and sum up its own experience in arbitration to further improve CMAC Arbitration Rules.

Secondly, China is shifting from maritime giant to maritime power, adopting maritime heavy weight strategy and devoting major efforts to develop maritime economy, which means great opportunities for maritime arbitration. CCPIT has paid much attention to the development of CMAC, requesting CMAC to be bigger and stronger so as to match the maritime giant status of China. CMAC has carried out deepened reform, establishing the Secretariat and the Arbitration Court for public service and market-oriented service functions repectively. The Secretariat is in charge of public legal service coordination, playing its role in planning, guiding, coordinating and servicing the development of China's maritime arbitration, participating in international and domestic maritime legislation, and enhancing the power to influence while the Arbitration Court is specialized in arbitration case administration, involved in arbitration market competition and promotes CMAC arbitration in the

competition.To carry out the reform, the Arbitration Court need to take over case administration function belonging to the Secretariat under the 2004 Rules.

Finally, CMAC Hongkong Arbitration Center was established on 19 November 2014. Special provisions on Hongkong arbitration need to be inserted in the Arbitration Rules so as to accomodate the practical demand of CMAC Hongkong Arbitration Center in case administration.

(2) Analysis of and Comment on Institutional Innovation in the New Arbitration Rules

Overall, the new Rules reflects latest development of international maritime arbitration. Under the precondition of emphasizing party autonomy, tribunals enjoy more power in procedural administration, which highlights features and advantages of arbitration procedure including equality, transparency and efficiency. The new Rules is an achievement based on CMAC's over half century experience as well as future-oriented. The core innovation is shown as follows.

First, CMAC fully respect party autonomy, allowing parties agree on alteration to certain provisions in the Rules or application of other arbitration rules, thus reinforcing the openness in the application of CMAC Rules. Where the parties agree to refer their dispute to arbitration under CMAC Rules without providing the name of the arbitration institution, they shall be deemed to have agreed to refer the dispute to arbitration by CMAC, which is consistent with the provision that 'Where an agreement for arbitration only stipulates the arbitration rules applicable to the dispute, it shall be deemed that the arbitration institution is not stipulated, unless the parties concerned reach a supplementary agreement or may determine the arbitration institution according to the arbitration rules agreed upon between them' in Article 4 of the Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law of the People's Republic of China. Parties are also entitled to agree on the tribunal's way of hearing and the application of summary procedure, which is in line with the development trend of international commercial arbitration. The open panel system is set up under which parties may appoint arbitrators beyond the Panel, thus the panel system displays its advantages in offering reference for parties' choice of arbitrators, allowing the institution to supervise

arbitrators' qualification as well as accomodating parties' demand in wider and diversified choice of arbitrators. Meanwhile, the limitation of 'subject to the confirmation by the Chairman of CMAC' ensures arbitrators appointed by parties beyond the Panel be qualified and guarantees the quality of case hearing. Arbitration institutions such as ICC International Court of Arbitration and London Court of International Arbitration have no panel but provide parties with recommendation lists case by case. Insitutions such American Arbitration Association and Singapore International Arbitration Center, though having panels, allow parties to appoint arbitrators beyond panels. CMAC, when introducing advanced concepts in international commercial arbitration, integrate such concepts with practice, created the requirement of Chairman's confirmation to ensure arbitrators appointed by parties beyond the Panel be legally qualified, which is quite of Chinese characteristics.

Secondly, arbitral tribunals enjoy more power under the new Rules. CMAC, when necessary, may authorize tribunals make jurisdiction decisions, which breaks through the traditional way of only arbitration institutions deciding validity of arbitration agreements and jurisdictional issues and follows standard international doctrine of competence-competence. At the request of a party, the arbitral tribunal may decide to order or award interim measure in accordance with law or the agreement of the parties and may require the requesting party to provide appropriate security. Furthermore, the emergency arbitrator mechanism is set up to provide parties with emergency relief, which is new breakthrough in the framework of the Arbitration Law, the Civil Procedure Law and the Special Maritime Procedure Law[1]. It should be noted that CMAC Arbitration Rules makes it possible and feasible for parties to get interim relief in certain countries and districts. For cases administered by CMAC Hongkong

[1] The legislation of most countries empowers both courts and arbitral tribunals to decide on interim measures. For example, it is stipulated in Article 38.4 of U.K. Arbitration Act 1996 that the tribunal may give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party… and in Article 38.6 that the tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control. However, it is stated in Article 28 of the Arbitration Law of China that if a party applies for property preservation, the arbitration commission shall submit the party's application to the people's court in accordance with the relevant provisions of the Civil Procedure Law. The new CMAC Arbitration Rules, with the introduction of interim measuers and emergency arbitrator mechanism, still emphacizes 'in accordance with the applicable law' so as to avoid the violation of mandatory legal provisions applicable to arbitration procedure. Thus, the institutional innovation is still within the framework of furrent Chinese laws.

Arbitration Center, Hongkong Arbitration Ordinance is applied to the arbitration procedure unless otherwise agreed by the parties. Article 22 and Article 35 thereof are about mandatory enforcement of embergency relief ordered by emergency arbitrators and the authority of tribunals to order interim measures.[2] The new Rules meets the demand of Hongkong Arbitration Center in administering arbitration cases and provides Chinese and foreign parties solving disputes by arbitration in Hongkong with institutional safeguard including interim measures, reflecting CMAC's internationalization and modernization.

Thirdly, the new Rules includes many effective provisions on arbitration procedure with reference to common practice of international commercial and maritime arbitration institutions such as suspension of proceedings, continuation of arbitration by majority, consolidation of oral hearings, etc. Furthermore, the mechanism of joinder of additional parties is established with the provision that a party may file the request for joinder with CMAC, based on the arbitration agreement invoked in the arbitration that prima facie binds the additional party, which is in conformity with the development trend of international commercial arbitration.[3] The Claimant may initiate a single arbitration concerning disputes arising out of or in connection with multiple contracts, provided that such contracts consist of the principal contract and its ancillary contract(s), or such contracts involve the same parties as well as legal relationships of the same nature; the disputes arise out of the same transaction or the same series of transactions; and the arbitration agreements in such contracts are identical or compatible. Thus, disputes arising out of multiple contracts with multiple parties such as chain transactions, multi-party transactions and serial transactions are

[2] It is stipulated in Article 22 of Hongkong Arbitration Ordinance, as amended by Article 5 of Ord. No. 7 of 2013, that any emergency relief granted, whether in or outside Hongkong, by an emergency arbitrator under the relevant arbitration rules is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court and in Article 35 that the tribunal, upon a party's request, may grant interim measure unless otherwise agreed by the parties.

[3] It is provided in Article 17.5 of UNCITRAL Arbitration Rules that the arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement…Article 1045 in Chapter 4 Arbitration of Netherland Civil Code 1986 also allows the tribunal, upon the written request of a third party having an interest in the result of the arbitration procedure, decide the third party's joining or involvement in the procedure. The party claiming compensation from a third party may also apply for the third party's joining while the third party get involved in the arbitration according to his written agreement with the parties of the arbitration agreement. However, China does not adopt such mechanism in the Arbitration Law.

resolved efficiently. Modern transaction is no longer limited to the one to one simple mode, but the old Rules contained abstract provision and strict requirement on consolidation of arbitration, which even caused the court notify the tribunal to re-arbitrate since the tribunal had consolidated cases.4 Therefore, the new Rules allows CMAC, upon a party's request, decide to consolidate two or more cases if all of the claims in the arbitrations are made under the same arbitration agreement; or the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the arbitrations involve the same parties as well as legal relationships of the same nature; the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the multiple contracts involved consist of the principal contract and the ancillary contract(s); or all the parties to the arbitrations have agreed to consolidation.

Finally, CMAC makes clear distinction between the place of arbitration and the place of oral hearing and introduces the concept of the place of arbitration so as to keep in line with international common practices.[5] Meanwhile, CMAC raises the upper limit of dispute amount for summary procedure from RMB1 million to RMB 2 million, enlarging the application scope of summary procedure. Furthermore, CMAC makes bold innovation based on advanced charging mode of other international maritime arbitration institutions, allowing parties agree on paying institutional administration fees and arbitrators' remuneration separately besides the traditional way of charging according to dispute amounts.

3. Release of New CMAC Panel of Arbitrators

(1) Renewal of the Panel

[4] The tribunal had got consent from all parties before consolidated the two cases. After the award was made, one party applied to the maritime court for setting aside the award. The maritime court deeded that the consolidation of arbitration was not in conformity with relevant provisions of the Arbitration Rules and notified CMAC to re-arbitrate within limited time. Thereafter, two arbitral tribunals held oral hearings and made award respectively which were of the same content as the the consolidated one and voluntarily implemented by the parties, but were waste of time and energy.

[5] It is provided in Article 20.1 of UNCITRAL Model Law on International Commercial Arbitration that the parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. It is stated in Article 15.1 of Portugal Arbitration Act 1986 that the parties may agree on the place of arbitration in the arbitration agreement.

CMAC arbitrators are on term and the CMAC renews the Panel every three years under the principles of easy in and strict out, considering case hearing evaluation, training performance and test results, investigating arbitrators' professional quality, and making regional distribution of arbitrators reasonable and comprehensive and through examination by the Arbitrator Qualification Evaluation Committee and approved by CMAC Chairman Conference. The new CMAC Panel of Arbitrators was released at the end of April 2014.

（2）Optimization of Arbitrators' Profession and Age Structure

The new Panel came into force as from 1 May 2014, through which CMAC optimized arbitrators' profession and age structure and provided personnel safeguard for hearing various maritime commerce, maritime and logistics cases.

（3）Diversification of Arbitrators' Nationalities and Regions

The new Panel contains arbitrators of diversified nationalities and regions. There are 279 arbitrators including 214 Mainland China arbitrators, accounting for 76.7%, and 65 Hongkong, Macau, Taiwan and foreign ones, accounting for 23.3%. Foreign arbitrators are from 18 countries and regions with newly added Turkey, France and Germany. CMAC and its sub-commissions hold arbitrators' seminars and training regularly, providing arbitrators with platform to broaden perspectives, exchange experience and enhance professional skills, so as to further improve the quality of arbitration and ensure the quality of arbitral awards.

4. Drafting and Promotion of Standard Contracts

(1) Compilation of Shipping Standard Contract Series (Shanghai Format) Volumn II

The Shipping Standard Contract Series (Shanghai Format) Volumn I compiled by experts organized by CMAC Shanghai Sub-commission and published by China Communications Press has been widely praised since the publication. Especially, the CMAC Standard Shipbuilding Contract therein has promoted the image of Chinese

professional maritime arbitration institutions with its great effect and strong support for the construction of legal soft environment of Shanghai international shipping center.

CMAC, seizing the opportunity, followed the trend in the development of shipping industry, organized professional experts to draft and widely solicited comments in the industry to publish Volumn II with the Standard Vessel Financial Leasing Contract as the highlight and other standard contracts regarding logistics and vessels including agreements on logistics monitoring in pledge of movables, ship repair contracts, ship conversion contracts and ship brokerage contracts. The compilation of Volumn II meets the demand of Shanghai international shipping center in deepening the urgent and 'time and tide wait for no man' reform and plays active role in improving China's rule of law basis of shipping industry.

(2) Promotion of CMAC Standard Shipbuilding Contract

The CMAC Standard Shipbuilding Contract is not only inclusive of advantages of common Chinese shipbuilding contracts and most international standard shipbuilding contracts, but also in line with the periodical changes of international ship market and the current status of continuous release of new specifications and standards in international maritimt circle. The Standard Contract is applicable to large-scale shipbuilding and inland river shipbuilding with good guidance, applicability and operability. The drafting of standard shipbuilding contracts is indication of not only authority but also power of influence in international shipbuilding industry.

5. Maritime Conciliation

(1)Connection of CMAC Conciliation and Maritime Litigation

CMAC and Shanghai High People's Court, under the purpose of improving the mechanism of maritime dispute litigation and alternative dispute resolution connection, bringing maritime arbitration institutions' role into full play, promoting positive interaction between maritime judicial system and maritime arbitration, and jointly pushing forward the constrction of soft environment for Shanghai international

shipping center, and in accordance with Several Opinions of the Supreme People's Court on Establishing a Sound Conflict and Dispute Resolution Mechanism that Connects Litigation and Non-litigation, signed the Cooperation Minutes on Establishing the Mechanism for Conciliation under Delegation of Maritime Disputes on 28 June 2011, which marks the official initiation of Shanghai courts' delegation of conciliation by maritime arbitration institutions as new explore and attempt in maritime dispute resolution in Shanghai and constructs healthy and harmonious legal environment for the innovation driven restructuring and development of Shanghai.

① Conciliation Rules of CMAC Shanghai Sub-commission under People's Courts' Delegation

CMAC Shanghai Sub-commission has implemented the Conciliation Rules of CMAC Shanghai Sub-commission under People's Courts' Delegation for the purpose of handling conciliation cases under courts' delegation. The Rules makes clear the types of conciliation under delegation cases and covers different stages of such cases. To facilitate conciliation, the Rules allows sole conciliators conciliate in the manner they deem appropriate in specific conciliation procedure, which is flexible, practicable and efficient.

②Panel of Conciliators

CMAC has engaged Chinese and foreign arbitrators with professional knowledge and experience in shipping, insurance and laws who are quite experienced and respectable. CMAC Shanghai Sub-commission, from among these arbitrators, selects conciliators who are mainly resided in Shanghai, with sufficient case handling time, patient and merticulous in accordance with characteristics of conciliation cases under courts' delegation so as to ensure experienced conciliators' participation in case handling as well as conciliators' sufficient time and patience in handling queries and resolving disputes.

③ Time Limit for Case Handling

Under the Conciliation Rules of CMAC Shanghai Sub-commission under People's Courts' Delegation, the time limit for handling pre-litigation conciliation cases under delegation is 60 days while that for handling in-litigation ones is 30 days.

(2) CMAC's Cooperation with Maritime Safety Administration in Conciliation

CMAC continued to improve its cooperation with Chinese Maritime Police and Maritime Safety Administration in pushing forward maritime conciliation. CMAC Shanghai Maritime Conciliation Center and Tianjin Maritime Conciliation Center, through full cooperation with local Maritime Safety Administration, effectively connect maritime conciliation with arbitration to solve various maritime disputes.

(3) Fishery Dispute Cases

In order to impartially and fairly resolve disputes arising from fishery, by combination of conciliation and arbitration, and promote development of the fishery production, CMAC set up the Fishery Dispute Resolution Center and local offices of the Center within fishery and fishing port supervision and administration authorities of Zhejiang, Shandong and Fujian, etc.

CMAC Fishery Dispute Resolution Center takes cognizance of cases relating to disputes arising from recovery of marine traffic accident, fishing and cultivating, and fishing nets; and disputes arising from shipbuilding, repariring, sale, insurance, leasing, mortgage and loan of fishing vessels; and the disputes arising from the contract and management of foreland; and other disputes involving fishery.

Chapte 3 Commentaries on Important Chinese Maritime Arbitration Cases

I. Charter Parties

1. The Bare Boat Charter Dispute Case

【Facts】

The Claimant and the Respondent signed the Bare Boat Charter on 29 September 2003, agreeing the applicable law be Chinese laws and disputes be arbitrated by

CMAC Shanghai Sub-commission. The parties signed the Supplementary Agreement on Renwal concerning Ship X on 13 September 2005 of which Article 3 stated that Party A was entitled to sell Ship X during the renewal period and should inform Party B at least 2 months ahead to prepare for ship delivery with rental calculated till Party A discharged cargo for the last operation while Party A agreed to give Party B the right of first refusal under the same condition.

On 20 August 2007, the Respondent signed the ship sale contract with a party not involved in the case and informed the Claimant the sale by way of fax. The Claimant requested the tribunal to determine the Respondent had violated Article 3 of the Supplementary Agreement and the Claimant had the right of first refusal under the same condition.

【Debates】

(1) Validity of the agreement on preemptive right of purchase in Article 3 of the Supplementary Agreement;

(2) Claimant's right of first refusal under the same condition; and

(3) Enforceability of the Claimant's request of confirming its right of first refusal under the same condition.

【Commentaries】

The first debate involves the validity of the Suppmentary Agreement which is based on the Bare Boat Charter signed by the parties on 29 September 2003. It is stated in Article 4 of the Supplementary Agreement that other clauses remain the same as the Bare Boat Charter signed by the parties on 29 September 2003. Both parties agreed to submit the dispute to CMAC Shanghai Sub-commission as per Article 25 of the Bare Boat Charter. There was no other dispute between the two parties in the performance of the Supplementary Agreement except the one on Party B's right of first refusal under the same condition as per Article 3. The Supplementary Agreement, signed by the parties through friendly negotiation and consensus, was valid and binding on the parties. The parties should fully perform their respective obligations under the Agreement.

The second debate depends on the execution of the right of first refusal in Article 3 of

the Supplementary Agreement. First, the right of first refusal under the Agreement, as pointed out by the Respondent, is not the right of first refusal of lessee stipulated in Article 230 of the P.R.C. Contract Law, but is a kind of civil preferencial rights. Besides the legal preemption of lessee, there is no legal prohibition on one party giving another party right of first refusal over the subject matter of lease under the same condition. The Claimant has legal ground to claim its right of first refusal over Ship X according to the parties' agreement. The Claimant's allegation that Article 230 in Chapter 3 Leasing Contract of the Contract Law be taken as reference as per Article 124 stating 'reference may be made to the provisions in the Specific Provisions of this Law or in any other law that most closely relate to such contract' of the Contract Law is reasonable. Secondly, the Respondent defended that the agreement on the right of first refusal was unclear. However, the Respondent had clearly agreed to give the Claimant right of first refusal over Ship X under the same condition which, as pointed out by the Respondent, not only referred to price, but also covered condition such as the time for entering into contract, the payment deadline and way, etc. All such condition need to be clarified by the Respondent in its notice to the specified party, i.e. the Claimant which is the precondition for the Claimant's realization of its right of first refusal. The Respondent should have notified the Claimant of 'the same condition' within reasonable time and before it reached agreement with the third party on the sale of Ship X. Such direct notice cannot be replaced by price inquiry on internet or by other ways. The Claimant's right of first refusal does not mean the Claimant must take the action of purchase. Once the Claimant expressed acceptance of 'the same condition' before the termination of the Charter, the Respondent could not sell the ship to the third party under the same condition. Claimant denied the Respondent's evidence Letter to the Claimant on 4 June 2007 on the following ground. First, the 'telecom records' taken by the Respondent itself carried no weight of proof. Secondly, the Letter was not related to other valid evidence and could not form chain of evidence or support each other. Thirdly, the fax received by the Claimant from the Respondent on the same day had different content from the Letter. Accordingly, the Claimant denied the truthfulness of the Letter and the Respondent's allegation that it

had fulfilled the notifying obligation. The tribunal admitted the Claimant's counter evidence and the cross examination opinion, denying the Respondent's evidence. The tribunal deemed Article 3 on the Claimant's right of first refusal under the same condition over the purchase of Ship X in the Supplementary Agreement was valid and the precondition for realizing such right was the Respondent's notification of 'the same condition'. Concerning the purchase of Ship X, the parties should enter the common ship transaction process. The parties should realize the right of first refusal under the Supplementary Agreement by way of signing sale contract when the Respondent, as the seller, offered suitable condition in line with the same condition requirement, the Claimant, as the buyer, accepted. However, the Respondent, during the renewal term of the Charter, sold Ship X to the third party without notifying the Claimant of the same condition, making it impossible for the Claimant to realize its right of first refusal, which was against Article 3 of the Supplementary Agreement. Obviously, the Respondent breached the Agreement.

As to the third debate, the Claimant, as mentioned above, had the right of first refusal under Article 3 of the Supplementary Agreement. The Claimant had such right all through the renewal term of the Charter as stipulated in the Supplementary Agreement. The right of first refusal was the option of charterer, as stated in the written opinion of the Claimant. However, the Respondent should notify the Claimant of the same condition no matter the Claimant choosed to exercise such power or not, otherwise the Claimant would have no option. Also, the right of first refusal involved in the case, as alleged by the Respondent, was a right of formation with condition under the precondition of 'the same condition'. Therefore, the Respondent must have notified the Claimant of 'the same condition' within reasonable time so that the Claimant could have sufficient time to choose whether to exercise such right. It was evidenced that the Respondent had failed to perform its obligation of notification, resulting in the Claimant's incapability of purchasing the ship. The tribunal awarded that the Claimant should have limited purchase right over the ship involved in the case while the Respondent had breached the Agreement for selling the ship to the third party

2. The Time Charter Dispute Case

【Facts】

The Claimant and the Respondent signed the Charter Party (time charter, serial number SL02) on 15 November 2006, agreeing that the Respondent rented Ship T to the Claimant from the time of delivery (6am 26 November 2006) to 12pm 28 February 2011. The Claimant and Company A (cargo receiver) signed the voyage charter on 3 November 2006. To perform the later, the Claimant issued 13 sets of bills of lading. On 23 December 2006, Ship T sailed from Busan, Korea to Havana, Cuba. On 6 January 2007, No.2 Cabin of Ship X had a leak, causing cargo damage. Nateusn Co., Ltd., the insurer of Company A, after compensating Company A, litigated against the Claimant and the Respondent for compensation on 22 January 2009. Shanghai Maritime Court made the first instance judgment on 25 December 2009 under which the Claimant and the Respondent were jointly liable for all the cargo loss. Shanghai High People's Court made the final judgment after all the parties had appealed against the first instance judgment, rejecting the appeal and upholding the first instance judgment.

The Respondent appealed against the final judgment, applying for retrial by the Supreme People's Court. On 18 March 2011, the Supreme People's Court made the final judgment that the charteree of the voyage charter (the Claimant) should compensate cargo loss of USD345,712.31 and interest thereon, and the registered bare boat charterer of Ship T (the Respondent), non party of the voyage chater, was under no compensation obligation.

On 6 December 2011, the Claimant, relying on Article 15 of No.SL02 Charter Party, initiated arbitration against the Respondent in CMAC Shanghai Sub-commission, requesting the Respondent take full responsibility to the cargo loss, compensate all loss in the amount of RMB 6,151,896.31, and bear the arbitration fee and attorney's fee. The Claimant alleged that the first instance and second instance courts both found there was no sufficient evidence showing that cargo loss had been caused by accident during voyage and current evidence was not enough to prove that there had been

ground of relief, so the Respondent, as the charterer of the bare boat and the charteree of the time charter at the time of cargo loss accident, was under the obligation of ensuring the navigability of the ship and shall undertake the final compensation obligation for the cargo damage.

【Debates】

(1) whether the Claimant exceeded the limitation period when initiating arbitration;

(2) whether the Respondent shall be liable for breach of contract; and

(3) whether the Claimant has the right to claim recourse before actually pays the cargo damage compensation.

【Commentaries】

The parties argued over two issues concerning the first debate, i.e. applicable law for determination of thelimitation period and the time to count such period. The parties argued whether the 90 day period for claiming recourse under Article 257.1 of the P.R.C. Maritime Law or the 2 year limitation period for claims under Article 259 of the Maritimte Law should be applied to the case. The provision in Article 257.1 of the Maritime Law, no matter the 1 year limitation period for claims or the 90 day period for claiming recourse, is applicable to carriage of goods evidenced by bills of lading instead of charter parties. Thus the 90 day period for claiming recourse may be applied when one party claims for recourse against a third party after undertakes its compensation obligation under the carriage of goods contract evidenced by the bill of lading. There was clear charter party relationship between the Claimant and the Respondent, so the 2 year limitation for claims under Article 259 of the Maritime Law should be applied directly as legal provision on time charter parties. According to Article 259 of the Maritime Law, the limitation period for claims shall be counted from the day on which the claimant knew or should have known that his right had been infringed. There were several interpretations on ‘the day on which the claimant knew or should have known that his right had been infringed’ involved in the case including (1) the day on which the claimant knew or should have known that the shipping accident had occurred, no later than the day on which the general average declaration was made; (2) the day on which the claimant knew or should have known

that the cargo receiver had initiated litigation, no later than the day the copy of the complaint was served;(3) the day on which the second instance court made the judgment, ordering the Claimant and the Respondent jointly compensate the cargo damage; and (4) the day on which the Supreme People's Court made the final judgment, ordering the Claimant compensate the cargo damage, among which only the third interpretation is in accordance with law and reasonable. The limitation period for claims should be counted from the day on which Shanghai High People's Court made the final judgment regarding the Claimant's obligation since the Claimant should know that it was under compensation obligation and could start legal proceedings according to the Charter Party if it deemed that the Respondent should undertake such obligation. Therefore, the limitation period for claims should be counted from the day the final judgment was made instead of the day the retrial judgment was made. Other interpretations all sound unplausible. Neither the occurrence of the accident nor the cargo reciever's initiation of litigation, i.e. interpretation (1) and (2), means that the Claimant must compensate cargo damage, thus it was impossible for the Claimant to know his rights had been infringed. As to interpretation (4), the retrial and judgment by the Supreme People's Court were after the final judgment came into force, thus could not influence the counting of limitation period for the Claimant's claim for recourse against other parties.

The second debate should be analyzed according to the parties' evidence to support their facts respectively during the hearing of the arbitration case, the Charter Party and the applicable laws. The first instance, second instance and retrial courts in the above mentioned cargo damage litigation case participated by the Claimant and the Respondent all found that the charteree was under the burden of proof for the ground of relief alleged by it and was presumed to be under the compensation obligation when there was no sufficient evidence. In the arbitration case involving cargo damage dispute under the Charter Party, the charteree, i.e. the Respondent, should prove it had contractual or statutory gound of relief under the same burden of proof doctrine otherwise it should compensate the charterer, i.e. the Claimant. The fact is supported by evidence of the case that Ship T had accident during voyage, causing cargo

damage for cabin leaking. According to Article 5.1 of the Charter Party, the Respondent is obliged to keep the ship in good effectivie functional mode and be appropriate for navigation and cargo transport all through the term. Obviously, the Respondent failed to perform such obligation. Though the Respondent attempted to prove the cargo damage had been caused by accident, it failed to prove the existence of force majeure stipulated in Article 107 of the General Principles of the Civil Law or other laws. Therefore, the Respondent, with no further evidence, could not be exempted from the compensation claimed by the Claimant.

Concerning the third debate, the Claimant's claim that the Respondent should pay cargo damage compensation, interet thereon and litigation fees could not be supported since it did not actually pay the compensation though the Claimant was ordered to compensate the cargo insurer for cargo damage in the first instance, second instance and retrial judgment. Accordingly, the arbitration fee and other expenses occurred in the arbitration process should be borne by the Claimant.

II. Ship Building, Sale and Repair

1. The Case involving Breach of Ship Sale Agreement for Delay in Payment

【Facts】

The Claimant and the Respondent signed the Agreement on Sale of Ship A on 2 November 2011. Under Article 3.2 of the Agreement, the Respondent would purchase Ship A and affiliated facilities including spare parts, special tools and full set of documents at the price of RMB 75 million.

According to Article 2.2 of the Agreement, the Respondent should prepay the Claimant RMB 1.5 million ship dispatch fee on 10 November 2011 while the Claimant should dispatch Ship A to the designated place so that the Respondent could have the condition survey. According to Article 2.2 of the Agreement, the survey time should be 30 days after the ship arrived while the Respondent should confirm whether it accepted current condition of the ship within 3 days upon the expiration of the

above 30 days, if accepted, the Respondent should perform the purchase obligation under the Agreement, if not accepted, the Respondent should pay the Claimant the actual expense and rate as per the Agreement. On 29 December 2011, the parties reached the Supplemental Agreement A for the Agreement on Sale of Ship A, agreeing that the survey time should be extended to 16 January 2012 while the Respondent should confirm in writing whether to purchase the ship within 3 work days upon the expiration of the survey time. If the Respondent confirmed to purchase the ship, it would obtain the ship after paying RMB4.5 million deposit when the Claimant retained the ownership. The balance and agreed interest should be paid before 29 February 2012. On 18 January 2012, the Respondent sent a letter to the Claimant, confirming its purchase of the ship. On the same day, the parties, as per the Supplemental Agreement, signed the Handover Protocol of Ship A under which the ship was handed over but the ownership was not changed. On 1 February 2012, the Respondent paid the Claimant RMB 4.5 million as the deposit under the Supplemental Agreement. On 3 February 2012, the Respondent made written promise that it would pay the balance before 29 February 2012 and bear all expense occurred for the ship as from 17 January 2012. On 5 April 2012, the Claimant sent letter demanding payment of balance. The Respondent replied with the plan of paying the balance but failed to pay all the balance. On 7 June 2012, the Claimant sent the Termination Notice to the Respondent, terminating the ship purchase agreement and requesting the Respondent return the ship and make relevant payment. On 10 June 2012, the Claimant entrusted a third party inspection agency to investigate in the pump room damage accident of Ship A. The agency issued a report, estimating the repair fee as RMB 0.84 million, but the ship was not placed under repair.

The tribunal also found that the Respondent had taken 31 crew members dispatched to Ship A and signed labor contracts with them respectively for the term of 6 months from 19 January 2012 to 18 July 2012. After receiving the Claimant's termination notice on 7 June 2012, the Respondent did not terminate or alter these labor contracts, but the crew members left the ship gradually with some crew members left behind to take care of the ship with no operation. The Claimant has been paying the relevant

fees of the crew members staying there and ship maintenance fees.

【Debates】

(1) whether the Agreement on Sale of Ship A is valid;

(2) whether liabilities for breach of contract under the Agreement on Sale of Ship A were altered in the Supplemental Agreement;

(3) who was the actual controller of Ship A in the course of dispute resolution;

(4) whether the Respondent breached the contract or the Claimant was entitled to terminate the Agreement on Sale of Ship A; and

(5) determination of the Claimant's claim amount and ground.

【Commentaries】

Concerning debates (1), (2) and (4), the Agreement on Sale of Ship A and the Supplemental Agreement are both the presentation of both parties' genuine intention with no violation of law, thus are valid and binding on both parties. According to the Agreement and the Supplemental Agreement, the condition survey of Ship A should be carried out from 16 November 2011 to 16 January 2012 while the Respondent should confirm in writing it would purchase the ship. According to the Supplemental Agreement, the Respondent, when agreeing to purchase the ship, should pay RMB 4.5 million deposit at the end of the extended construction time, and pay the balance RMB 70.5 million and interest RMB 1.175 million before 29 February 2012 stipulated in the Agreement; when giving up the purchase, should pay the charter and crew member remunderation, etc. during its possession of the ship. After the Respondent's confirmation of purchase, the parties carried out the handover of the ship on 18 January 2012. The Respondent paid RMB4.5 million deposit. Thereafter, the Respondent failed to pay the balance according to the agreement, constituting breach of contract. Accordingly, the Claimant may unilaterally announced the termination of contract according to Article 4.4 of the Agreement on Sale of Ship A. The Supplemental Agreement contains no alteration on the clause regarding liability for breach of contract in the Agreement, but only alteration or supplement to the parties' obligation and way of performance. Therefore, the liability for breach of contract should be determined according to the Agreement.

Concerning debate (3), it is provided in Article 134 of the Contract Law that ' The parties to a sales contract may agree that the ownership shall belong to the seller if the buyer fails to pay the price or perform other obligations'. The parties agreed in Article 3.1 of the Supplemental Agreement that '…within 3 bank work days after Party B pays 6% deposit for the purchase, Party A may hand over the ship to Party B without changing the ownership, then Party B shall bear the operation risks of the ship'. Accordingly, the ownership of the ship still belongs to the Claimant though Ship A was handed over at No. 6 Pier, Huangye Port Complex, Cang Zhou City, Hebei Province on 18 January 2012 and delivered from the Claimant to the Respondent. Considering the Respondent received the ship and 31 crew members on the ship and signed labor contracts with them on 18 January 2012, the Respondent, though alleged it stopped possessing the ship on 22 April 2012, never cancelled or terminated these labor contracts, so these crew members are still employed and dispatched by the Respondent. Therefore, the ship was under the actual control of the Respondent and the crew members employed by it in the course of dispute resolution.

The Respondent's plead that the crew members had stopped operation of the ship under the Claimant's direction without the Respondent's authorization, causing Company E terminate its cooperation with the Respondent in the construction of Huangye Port Project and cancel the project contract should not be supported due to lack of sufficient evidence.

Since the parties had agreed on the retention of ownership while the Respondent failed to make the agreed payment, the Claimant, as per Article 35 of the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts (effective as from 31 March 2012), is entitled to claim the recovery of the subject which means the Respondent should have returned Ship A immediately after receiving the Claimant's Notice on Termination on 7 June 2012. The parties' failure in handling the recovery procedure of Ship A till now has caused the continous enlargement of loss for both parties. Therefore, the Respondent should adopt a positive attitude to negotiate with the Claimant regarding the recovery procedure so as to avoid further enlargement of

loss.

Concerning debate (5), the Respondent has no right to demand for the return of the deposit RMB4.5 million possessed by the Claimant since it is stipulated in Article 115 of the Arbitration Law that 'If the party paying the deposit fails to perform its obligations under the contract, such party has no right to demand for the return of the deposit' though the parties have no written agreement on punitive rules.

Concerning the Claimant's claim for RMB 7.5 million liquidated damages, the Claimant's way of calculation is not in accordance with the Agreement. The total amount of liquidated damages should be RMB 14,479,500.00 as per Article 4 Liability for Breach of Contract of the Agreement stating that 'Party B, if fails to effect the purchase payment within the time as agreed, shall pay Party A liquidated damages of 0.1% of the unpaid amount per day and shall pay Party A liquidated damages of 10% of the total value if the overdue time exceeds 15 days' including the late fee of RMB6,979,500.00 calculated from 1 March 2012, the day after 29 February 2012, i.e. the agreed deadline for full payment, to 7 June 2012, i.e. the day the Claimant declared the termination of contract, totaling 99 days and based on the unpaid amount of RMB 70.5 million together with the agreed interest RMB1.175 million, and the liquidated damages for overdue time exceeding 15 days in the amount of RMB7.5 million, i.e. 10% of the total value.

2. The Case regarding Non-conformity of Weight Capacity

【Facts】

The Claimant and the Respondent signed the Contract on Sale of Ship Y on 12 December 2006, under which the Respondent sold Ship Y under its ownership to the Claimant. The relevant provisions of the Contract are as follows.

(1) Preamble Clause

Reference Cargo Capaticy: 7600 tons　Gross Tonnage: 5144 tons Net Tonnage: 2880 tons

…

(7) Time and Place for Delivery of Ship

Delivery Time: before 10 January 2007, exact date to be determined by Party A…At the delivery time, the ship must be seaworthy. Party A shall deliver the ship as per its status quo…

When negotiating and executing the Contract, the Respondent informed the Claimant and presented relevant ship certificate showing that the cargo capacity of the ship was 7,600 tons, but the Claimant found, when obtaining ship certificate in the ownership transfer procedure and loading the ship in actual operation, that the actual maximum cargo capacity of the ship was only 7,000 tons. The Claimant requested the Respondent be liable for breach of contract and return the overpaid amount since the agreed cargo capacity of Ship U in the Contract was different from the actual one, and compensate the Claimant for operating income loss. Furthermore, the parties agreed that the ship be delivered on 6 January 2007 after which the Claimant bear expenses and risks related to the ship, but the Respondent did not actually deliver the ship to the Claimant till 12 January 2007, resulting in the Claimant's 6 day loss for detention. Therefore, the Claimant claimed compensation from the Respondent for such loss.

【Debates】

(1) interpretation of 'Reference Cargo Capacity: 7600 tons' in the Contract;

(2) determination of the Claimant's claim for loss compensation; and

(3) late delivery of the ship.

【Commentaries】

Concerning the first debate, the probability for the decrease in cargo capacity, according to the expert analysis report, is 4.34%. 'Reference Cargo Capacity: 7600 tons' in the Contract should be interpreted as 7,600－7,600×4.34%＝7,270 tons。

The Claimant doubted the derease in cargo capacity mentioned in the expert analysis report on the groud that the cargo tonnage and carpo capacity should have been improved after Ningbo Binhai Ship Building and Repairing Co., Ltd, reconstructed Ship Y in December 2004, lengthening the ship without widening to enlarge the shipping space. The Claimant's allegation could not be dupported due to its failure in providing any evidence on the ship restructuring. The Claimant changed the name of the ship from Y to Z after receiving it. According to the cargo load chart of Ship Z

provided by the Claimant, the maximum cargo capacity of the ship was 7,007 tons in its 6 voyages, which is not in conformity with the cargo capacity of 7,270 tons stipulated in the Contract. The Respondent should be liable for breach of contract due to the decrease in the cargo capacity.

As to the second debate, the Respondent should compensate the Claimant for its loss since the actual cargo capacity is 7,007 tons, 263 tons less than 7,270 tons stipulated in the Contract.

The purchase price under the Contract is RMB 17,600,000 which means the unit price per cargo tonnage is RMB 2,421 per ton (RMB17,600,000÷7,270 tons). According to the expert analysis report, cargo capacity is one of the influencing factors in the determination of ship price, taking the proportion of 28%. Therefore, the 263 ton decrease in the cargo capacity means the corresponding decrease in the ship price in the amount of RMB178,282 (263×2,421×28％). Such decrease is caused by the Respondent's breach of contract. The Claimant alleged that the Respondent should also compensate the Claimant for freight loss due to the decrease in cargo capacity. It is stipulated in Article 113 of the Contract Law that 'Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract'. The case only involves the sale of ship instead of voyage charter party, so the freight loss is unforseable indirect loss and could not be supported.

As to the third debate, the ship should be seaworthy at the time of delivery under Article 7 of the Contract which states that 'At the delivery time, the ship must be seaworthy. Party A shall deliver the ship as per its status quo', but the ship, when being delivered, still carried goods and was not seaworthy. The Claimant did not start operation of the ship till 12 January 2007 which should be deemed as the day for actual delivery of Ship Y. The deadline for ship delivery should be 9 January 2007

since it is stipulated in the contract 'Delivery Time: before 10 January 2007', but the actual delivery date was 12 January 2007, so the Respondent delayed the delivery for 3 days and should compensate the Claimant's loss for detention which could be calculated with reference to the first voyage of the ship after being received and operated by the Claimant. The freight revenue of the Claimant's first voyage is RMB 744,800 with 21 day operation from 12 January 2007 to 1 February 2007. The freight revenue per day is RMB 35,467 元 while generally the operation cost is 50% of the freight revenue, thus the freight loss per day is RMB 17,733.50 and the 3 day loss suffered by the Claimant is RMB 53,200.50.

III. Carriage of Goods by Sea

1. The Case invloving Liner Cargo Space Booking

【Facts】

The Claimant alleged that it had signed the Agreement on Cargo Space Booking for Jakarta Port Liner with the Respondent on 28 September 2012, agreeing the Claimant arrange ship to transport the Respondent's cargo, i.e. 63 pieces of steel structure, from Nansha Port, Guangzhou, P.R.C. to Jakarta Port, Indonesia with the laytime from 15 October to 25 October 2012. The ship arranged by the Claimant arrived at Nansha Port timely, but the Respondent's cargo was not ready to load within the laytime specified in the Agreement.

It is stated in Article 11 of the Agreement that if the charterer/consignor fails to make cargo available at the loading port and accomplish the loading formalities when the ship arrives, it shall pay the shipowner the demurrage in the amount of USD 8,000 per day every 3 days, or calculated in proportion if the delay is less than 1 day, for additional work time calculated from the arrival of the ship to the loading of cargo…If the charterer fails to make cargo available timely or cancels all or part of the booked cargo space, the shipowner is entitled to give direction for sailing as scheduled without assuming any liability while the charterer shall pay 100% freight as stipulated in the Agreement as compensation for the shipowner's dead freight.

【Debates】

(1)whether there is contractual relationship between the Claimant and the Respondent;

(2) whether the Claimant is entitled to dead freight; and

(3) whether the Claimant is entitled to demurrage.

【Commentaries】

Concerning the first debate, the Respondent provides no evidence to support its allegation that the chop from its side on the Agreement is faked and it has never signed the Agreement while the Claimant's evidence covering the original of the Agreement with the original chop from the Claimant's side and the photocopy chop from the Respondent's side and relevant evidence such as the parties' email exchange, the notice for the arrival of cargo at the port and the letter of declaration, etc. are sufficient to prove the existence of voyage charter party relationship between the parties. In the practice of voyage charter, the way of signing contracts via fax or scan is quite common and in accordance with Article 10 and 11 of the Contract Law. Therefore, the Agreement is valid and binding on the parties.

Concerning the second debate, it is stipulated in Article 100.2 of the Maritime Law that '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' and Article 11 of the Agreement that if the charterer fails to make cargo available timely or cancels all or part of the booked cargo space, the shipowner is entitled to give direction for sailing as scheduled without assuming any liability while the charterer shall pay 100% freight as stipulated in the Agreement as compensation for the shipowner's dead freight. The Respondent should compensate the Claimant for dead freight as agreed since it breached the contract for not making cargo available and canceling cargo space.

The Respondent alleged there was no dead freight since the voyage had been loaded to capacity, which was not in accordance with the fact since the calculation based on the bills of lading of 6 consignments on the voyage involved in the case shows that the voyage is not loaded to capacity. Thus, the dead freight suffered by the Claimant is real and the Respondent shall undertake the liability of compensation.

The Respondent's allegation that the cargo involved in the case had been transported by the Claimant could not be supported since the relevant charter party submitted as the Respondent's evidence was signed by parties other than the Claimant or the Respondent and the cargo quantity on the bill of lading was not in accordance with the Agreement.

The Respondent's allegation for adjustment and reduction of the compensation amount claimed by the Claimant could not be sustained since it failed to provide any ground or specific way of adjustment and reduction. According to Article 114 of the Contract Law stipulating 'the parties may agree that if one party breaches the contract, it shall pay a certain sum of liquidated damages to the other party in light of the circumstances of the breach, and may also agree on a method for the calculation of the amount of compensation for the damages incurred as a result of the breach', the Claimant has the right to request the Respondent pay 100% freight as compensation for its dead freight,i.e. USD28,475, according to Article 11 of the Agreement. The Respondent shall also bear interest loss suffered by the Claimant due to its undue payment of such compensation, counting from 19 October 2012 to the day of actual payment and according to the same period interest rate for current funds loan by the People's Bank of China.

Concerning the third debate, the Claimant should provide evidence showing that the ship had to wait due to the Respondent's failure in making cargo available to support its claim of demurrage, but the evidence of the case could not indicate the reason for the waiting or distinguish between the time waiting for berth and that waiting for cargo. Thus, the Claimant should take the consequence for its failure in providing evidence and such claim is not supported.

2. The Case on Outstanding Freight Forwarder Charge

【Facts】

On 29 December 2011, the Respondent, via email and in the form of shipping bill, engaged the Claimant as the freight forwarder to book space and organize shipment of 20 foot container cargo from Shanghai, China to CHANDLER AZ 85248, U.S.A. and

relevant services such as trailer, customs declaration and clearing, etc. on the shipment date of 6 January 2012 with freight to collect.

The container cargo involved in the case was shipped from Shanghai Port on 6 January 2012. On the same day, the Respondent confirmed the sample bill of lading, changing the way of payment from freight to collect to freight prepaid, and notified the Claimant to release the cargo only after the receipt of the Respondent's Letter of Guarantee for Telex Release. Thereafter, the Respondent sent the Letter of Guarantee for Telex Release to the Claimant. On 17 January 2012, the Respondent sent the Claimant the Letter of Guarantee for Payment, confirming the total amount of freight and the destination delivery charge as USD4,050.42 and other charges as RMB2,630, requesting the Claimant to release the bill of lading to the Respondent first, and promising to make full payment of the confirmed amount before 5 February 2012. Then the Claimant delivered the named bill of lading to the Respondent under which the way of payment is freight prepaid, the way of transport is container freight station to door DDP, telex release. The cargo arrived at the destination port on 23 January 2012 and was delivered to the consignee on 26 January 2012. On 15 May 2012, the Respondent re-confirmed the Charges Confirmation Form from the Claimant, confirming the total charges as USD4,050.42 and RMB2,630. However, the Respondent had failed to pay the confirmed charges to the Claimant as agreed till the Claimant initiated arbitration. The Claimant, relying on the arbitral clause contained in the Letter of Guarantee for Payment from the Respondent on 17 January 2012, submitted arbitration application to CMAC Shanghai Sub-commission.

【Debates】

(1) whether the charges claimed by the Claimant are real and confirmed by the Responent; and

(2) whether the Respondent suffered loss, whether such loss was caused by the Claimant's action and whether the Claimant should be liable therefor.

【Commentaries】

Concerning the first debate, the Respondent, though listed the term of transaction as FOB Shanghai in the shipping bill and the way of payment as freight to collect,

changed the way of payment to freight prepaid in the confirmation of bill of lading on 7 January 2012, specified various charges including the freight in the Letter of Guarantee for Payment on 17 January 2012, and reconfirmed the charges as stated in the Charges Confirmation Form from the Claimant on 15 May 2012 without changing the payment amount.

The Respondent alleged the undue amount be RMB 18,450.17, but failed to submit valid evidence after being reminded by the tribunal while the Claimant denied such allegation. Thus, the charges claimed by the Claimant are real since they were confirmed by the Respondent and in accordance with the actual business process as evidenced.

Concerning the second debate, the Respondent's loss, as alleged by itself, was due to its late acquiring of verification sheet. First, the acquiring time of verification sheet depends on various factors in freight forwarding practice. The key is to determine which sector does not run well. Freight fowarders, after making custom declaration for consignors, need to wait for custom offices' return of verification sheets after processing all declaration documents which normally takes about one month. Secondly, many freight forwarders, to safeguard their own interests, normally detain verification sheets, requesting consignors pay charges timely in freight forwarding practice since there are many disputes arising out of verification sheets. Secondly, it is provided in Article 7 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Marine Freight Forwarding that the freight forwarding enterpreise may detain relevant consignor's documents which surely include verification sheet when the condition for defense right of simultaneous performance is met.

In the facts of the case, the Respondent issued the Letter of Guarantee for Payment on 17 January 2012, promising to make full payment before 5 February 2012, and re-confirmed the charges on 15 May 2012, but failed to make such payment.

Above all, there is neither evidence for the causal relationship between the Respondent's loss due to late verification and the Claimant's action as alleged by the Respondent and the authentificity of such loss nor counterclaim from the Respondent

while the Claimant's defense right of simultaneous performance is acceptable in current judicial practice. Thus, the Respondent's argument could hardly be sustained while the Claimant shall undertake no liability.

3. The Case involving Delivery of Goods without Bill of Lading

【Facts】

On 21 June 2011, Third Party A purchased a batch of textile goods such as cushions with the total value of USD 203,466.22 from the Claimant. Then the Claimant signed the Shipping Agreement specifying the shipment time as 25 November 2011 with the Respondent, entrusting the Respoondent to ship the goods. On 25 November 2011, the Respondent issued 2 sets of bill of lading under serial number SJIKJ10H202 and SJIKJ11H234 to the Claimant, stating the Claimant as the consignor, Third Party A as the consignee, Shanghai, China as the shipping port, and Tokyo, Japan as the destination port. It is stated in the face clause of bill of lading that the receiver at the destination port needs to apply to SUIYO SHOJI CO., LTD and the contact person is SUWA YOKO.

The Claimant made the following allegation.

On 29 November 2011, the goods arrived at the destination port. The Japanese consignee requested to change the bill of lading involved in the case into telex release one, but the bill of lading had been submitted to Bank of China for collection of payment and transferred to Bank of Japan. The Respondent refused such request since it had not received the bill of lading placed the goods at the Japan port. Thus, the Claimant applied for the bank's return of bill of lading. On 18 January 2012, the Claimant received the 2 sets of bill of lading and relevant documents from the bank and returned the 2 sets of bill of lading to the Respondent. On 21 January 2012, the Claimant requested the Respondent change the original bill of lading into telex release one and change the consignee into Third Party B to which the Respondent agreed. The changed bill of lading was sent to Party B, the new consignee, in the form of telex release bill of lading, informing it to take delivery. On 14 February 2012, the Claimant was informed by the new consignee that Third Party A, the original

consignee, had picked up goods. The Claimant claimed against the Respondent's delivery of goods without bill of lading to the original consignee which caused the new consignee unable to receive goods.

【Debates】

(1) whether the Claimant has the right to claim loss for the Respondent's delivery of goods without bill of lading;

(2) whether the Claimant has the subject qualification; and

(3) whether the Claimant has the right of indemnity.

【Commentaries】

Concerning the first debate, there is international shipping relationship between the Claimant, as the consignor, and the Respondent, as the carrier, since they reached the Shipping Agreement through offer and acceptance. The Respondent, after taking back the bill of lading issued by itself, should have delivered the goods involved in the case to Third Party B, the named consignee stated in the telex release bill of lading at the port of discharge, but the port agent of the Respondent delivered the goods to Third Party A instead of Third Party B named in the telex release bill of lading. For the Claimant, the Respondent's failure in delivering the goods to Party B as requested by the Claimant constituted breach of the Shipping Agreement. The Respondent should compensate the Claimant for its loss due to the non-delivery of goods to the named consignee in the telex release bill of lading.

Concerning the second debate, the Claimant, as the consignor, returned the bill of lading to the Respondent so as to change it into telex release one and change the named consignee, but the Respondent's port agent delivered the goods to Third Party A by mistake, resulting in non-delivery of goods to Third Party B, the named consignee in the telex release bill of lading. Third Party B claimed against the Claimant, i.e. the seller of the purchase contract, for refund of deposit and compensation of relevant loss to solve the dispute under the purchase contract. There is no party other than the Claimant who can rely on the wrong delivery of goods by the Respondent's port agent to claim for compensation under the Shipping Agreement, which means no double indemnity by the Respondent. Thus, the Claimant, as the

consignor, is the proper subject.

As to the third debate, the Claimant's right of indemnity depends on its actual loss caused by the Respondent's breach of contract. The Claimant admitted during the oral hearing that the payment for goods involved in the case had been verified and the tax authority had handled the export tax return based on the export verification sheet. Thus, it may be inferred that the Claimant had received the payment for goods. The Claimant alleged the verification had been rolling, but failed to provide evidence to prove the verified payment for exchange settlement was not the payment for goods involved in the case. Thus, the Claimant may be deemed as suffering no actual loss while the Respondent has no indemnity liability. The Claimant's claim is unsustainable.

Annual Summary

Almost a century has passed since China started its maritime arbitration in the 1950's. China's maritime arbitration has achieved remarkable growth along with China's development of economy and trade, shipping and logistics industries and significant improvement of its international status. Maritime arbitration, as high-end shipping services, not only provides legal support and service for the comprehensive development of China's shipping industry but also injects vitality into China's construction of the soft environment as international shipping center.

Looking back the year 2014, the development of China's maritime arbitration is mainly reflected in the following four aspects.

First, the overall data analysis shows that, on one side, China's maritime arbitration has become the mainstream in international maritime dispute resolution when its professionalism and efficiency get more and more awared by Chinese parties, on the other side, maritime arbitration case types are closely related to the overall development of international shipping industry, for example, disputes arising out of ship leasing, ship management and multimodal transport, etc. have registered marked increases.

Secondly, China's arbitration development system is getting improved. The legal environment conducive to the development of China's international commercial and maritime arbitration is maintained through various interpretations on the 1994 Arbitration Law by the Supreme People's Court, latest provisions involving arbitration in amendments to other laws, and the internal reporting system of judicial review over arbitration established by the Supreme People's Court. Recent breakthrough and progress have been made in the determination of the laws applicable to foreign-related arbitration agreements, the improvement of relationship between foreign-related arbitration and the judicial system and the courts' determination of flawed arbitral clauses.

Thirdly, Chinese international maritime arbitration institutions focus on internationalization and localization in their development. Chinese international commercial arbitration institutions represented by CMAC on one side amends their arbitration rules to follow the latest development and practice of international maritime arbitration, maintain international leading position, compile series of standard shipping contracts which are quite popular in the industry, and actively participate in the formulization of international shipping rules and construction of the system for Chinese shipping industry's power of international influence, on the other side, keep their root in Chinese culture, consider China's actual situation and the industry's current status, develop their own characteristics, maintain local advantages such as diversified dispute resolution, foreseeable and flexible arbitration cost, etc. so as to grasp the trend and direction of developing international maritime arbitration and put the doctrine of party autonomy in better practice.

Fourthly, the fundamental idea of supporting and befriending arbitration is further reflected in the judicial support and supervision of China's maritime arbitration. China's maritime arbitration has been pushed forward by both the improved legal system on arbitration and the more flexible and favorable judicial review environment.

China is an essential part and major propellent of the global economy and trade system. At the end of 2014, the policy of improving the arbitration system and the credibility of arbitration was introduced in the Fourth Plenary Session of the Eighteenth Central Committee of the Communist Party of China, which indicates the direction for the development of maritime arbitration in China.

China has gradually stepped on the center stage of international shipping industry. China, being the recognized international maritime giant, has not become international maritime power due to its lack of high-end services representing soft power. China's maritime arbitration, the typical representative of high-end shipping services, is essential for the promotion of China's shipping soft power. Meanwhile, it is facing the important historic opportunities in the construction of China's international influence. We shall continuously push forward the brand building of

local maritime arbitration, actively participate in formulating international arbitration rules and industrial standards, promote the overall international influence of China's shipping industry, continue developing and improving legislation on arbitration, strengthen judicial support and supervision favorable to international maritime arbitration and in conformity with international maritime practice, enhance theoretical research, personnel training and arbitration culture fostering of China's maritime arbitration, update arbitration rules and practice, combine internationalization with localization, exploit the advantages of institutional administration to the full, enhance the service capabilities and levels, enhance the credibility of arbitration, give full play to the important role of China's international maritime arbitration in international maritime dispute resolution, promote China as international maritime arbitration center, and promote the healthy development of international economic, trade and shipping order.