

# **Maritime Code of the People's Republic of China**

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## **Chapter I General Provisions**

Article 1 This Code is enacted with a view to regulating the relations arising from maritime transport and those pertaining to ships, to securing and protecting the legitimate rights and interests of the parties concerned, and to promoting the development of maritime transport, economy and trade.

Article 2 "Maritime transport" as referred to in this Code means the carriage of goods and passengers by sea, including the sea-river and river-sea direct transport.

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

Article 3 "Ship" as referred to in this Code means sea-going ships and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage.

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

Article 4 Maritime transport and towage services between the ports of the People's Republic of China shall be undertaken by ships flying the national flag of the People's Republic of China, except as otherwise provided for by laws or administrative rules and regulations.

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

Article 5 Ships are allowed to sail under the national flag of the People's Republic of China after being registered, as required by law, and granted the nationality of the People's Republic of China.

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

Article 6 All matters pertaining to maritime transport shall be administered by the competent authorities of transport and communications under the State Council. The specific measures governing such administration shall be worked out by such authorities and implemented after being submitted to and approved by the State Council.

## **Chapter II Ships**

### **Section 1 Ownership of Ships**

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

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

Article 9 The acquisition, transference or extinction of the ownership of a ship shall be registered at the ship registration authorities; no acquisition, transference or extinction of the ship's ownership shall act against a third party unless registered.

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

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

## Section 2 Mortgage of Ships

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Section 3 Maritime Liens

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

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

- (1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members and other members of the complement in accordance with the relevant labour laws, administrative rules and regulations or labour contracts;
- (2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;
- (3) Payment claims for ship's tonnage dues, pilotage dues, harbour dues and other port charges;
- (4) Payment claims for salvage payment; and

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

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

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

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

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

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

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

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

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

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

(1) The maritime claim attached by a maritime lien has not been enforced within one year of the existence of such maritime lien;

(2) The ship in question has been the subject of a forced sale by the court; or

(3) The ship has been lost.

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

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

### Chapter III Crew

#### Section 1 Basic Principles

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

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

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

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

#### Section 2 The Master

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

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

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

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

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

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

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

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

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

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

## **Chapter IV Contract of Carriage of Goods by Sea**

### **Section 1 Basic Principles**

Article 41 A contract of carriage of goods by sea is a contract under which the carrier, against payment of freight, undertakes to carry by sea the goods contracted for shipment by the shipper from one port to another.

Article 42 For the purposes of this Chapter:

(1) "Carrier" means the person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper;

(2) "Actual carrier" means the person to whom the performance of carriage of goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted under a sub-contract;

(3) "Shipper" means:

a) The person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier;

b) The person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea;

(4) "Consignee" means the person who is entitled to take delivery of the goods;

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

Article 43 The carrier or the shipper may demand confirmation of the contract of carriage of goods by sea in writing. However, voyage charter shall be done in writing. Telegrams, telexes and telefaxes have the effect of written documents.

Article 44 Any stipulation in a contract of carriage of goods by sea or a bill of lading or other similar documents evidencing such contract that derogates from the provisions of this Chapter shall be null and void. However, such nullity and voidness shall not affect the validity of other provisions of the contract or the bill of lading or other similar documents. A clause assigning the benefit of insurance of the goods in favour of the carrier or any similar clause shall be null and void.

Article 45 The provisions of Article 44 of this Code shall not prejudice the increase of duties and obligations by the carrier besides those set out in this Chapter.

## Section 2 Carrier's Responsibilities

Article 46 The responsibilities of the carrier with regard to the goods carried in containers covers the entire period during which the carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharge. The responsibility of the carrier with respect to non-containerized goods covers the period during which the carrier is in charge of the goods, starting from the time of loading of the goods onto the ship until the time the goods are discharged therefrom. During the period the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods, except as otherwise provided for in this Section.

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

Article 47 The carrier shall, before and at the beginning of the voyage, exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Article 48 The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

Article 49 The carrier shall carry the goods to the port of discharge on the agreed or customary or geographically direct route.

Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an act deviating from the provisions of the preceding paragraph.

Article 50 Delay in delivery occurs when the goods have not been delivered at the designated port of discharge within the time expressly agreed upon.

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

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

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

Article 51 The carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier's responsibility arising or resulting from any of the following causes:

- (1) Fault of the Master, crew members, pilot or servant of the carrier in the navigation or management of the ship;
- (2) Fire, unless caused by the actual fault of the carrier;
- (3) Force majeure and perils, dangers and accidents of the sea or other navigable waters;
- (4) War or armed conflict;
- (5) Act of the government or competent authorities, quarantine restrictions or seizure under legal process;

- (6) Strikes, stoppages or restraint of labour;
- (7) Saving or attempting to save life or property at sea;
- (8) Act of the shipper, owner of the goods or their agents;
- (9) Nature or inherent vice of the goods;
- (10) Inadequacy of packing or insufficiency or illegibility of marks;
- (11) Latent defect of the ship not discoverable by due diligence; and
- (12) Any other cause arising without the fault of the carrier or his servant or agent.

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

Article 52 The carrier shall not be liable for the loss of or damage to the live animals arising or resulting from the special risks inherent in the carriage thereof. However, the carrier shall be bound to prove that he has fulfilled the special requirements of the shipper with regard to the carriage of the live animals and that under the circumstances of the sea carriage, the loss or damage has occurred due to the special risks inherent therein.

Article 53 In case the carrier intends to ship the goods on deck, he shall come into an agreement with the shipper or comply with the custom of the trade or the relevant laws or administrative rules and regulations.

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

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

Article 54 Where loss or damage or delay in delivery has occurred from causes from which the carrier or his servant or agent is not entitled to exoneration from liability, together with another cause, the carrier shall be liable only to the extent that the loss, damage or delay in delivery is attributable to the causes from which the carrier is not entitled to exoneration from liability; however, the carrier shall bear the burden of proof with respect to the loss, damage or delay in delivery resulting from the other cause.

Article 55 The amount of indemnity for the loss of the goods shall be calculated on the basis of the actual value of the goods so lost, while that for the damage to the goods shall be calculated on the

basis of the difference between the values of the goods before and after the damage, or on the basis of the expenses for the repair.

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

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

Article 56 The carrier's liability for the loss of or damage to the goods shall be limited to an amount equivalent to 666.67 Units of Account per package or other shipping unit, or 2 Units of Account per kilogramme of the gross weight of the goods lost or damaged, whichever is the higher, except where the nature and value of the goods had been declared by the shipper before shipment and inserted in the bill of lading, or where a higher amount than the amount of limitation of liability set out in this Article had been agreed upon between the carrier and the shipper.

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

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

Article 57 The liability of the carrier for the economic losses resulting from delay in delivery of the goods shall be limited to an amount equivalent to the freight payable for the goods so delayed. Where the loss of or damage to the goods has occurred concurrently with the delay in delivery thereof, the limitation of liability of the carrier shall be that as provided for in paragraph 1 of Article 56 of this Code.

Article 58 The defence and limitation of liability provided for in this Chapter shall apply to any legal action brought against the carrier with regard to the loss of or damage to or delay in delivery of the goods covered by the contract of carriage of goods by sea, whether the claimant is a party to the contract or whether the action is founded in contract or in tort.

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

Article 59 The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 56 or 57 of this Code if it is proved that the loss, damage or delay in delivery of the goods resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

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

Article 60 Where the performance of the carriage or part thereof has been entrusted to an actual carrier, the carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Chapter. The carrier shall be responsible, in relation to the carriage performed by the actual carrier, for the act or omission of the actual carrier and of his servant or agent acting within the scope of his employment or agency.

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

Article 61 The provisions with respect to the responsibility of the carrier contained in this Chapter shall be applicable to the actual carrier. Where an action is brought against the servant or agent of the actual carrier, the provisions contained in paragraph 2 of Article 58 and paragraph 2 of Article 59 of this Code shall apply.

Article 62 Any special agreement under which the carrier assumes obligations not provided for in this Chapter or waives rights conferred by this Chapter shall be binding upon the actual carrier when the actual carrier has agreed in writing to the contents thereof. The provisions of such special agreement shall be binding upon the carrier whether the actual carrier has agreed to the contents or not.

Article 63 Where both the carrier and the actual carrier are liable for compensation, they shall jointly and severally be liable within the scope of such liability.

Article 64 If claims for compensation have been separately made against the carrier, the actual carrier and their servants or agents with regard to the loss of or damage to the goods, the aggregate amount of compensation shall not be in excess of the limitation provided for in Article 56 of this Code.

Article 65 The provisions of Article 60 through 64 of this Code shall not affect the recourse between the carrier and the actual carrier.

### Section 3 Shipper's Responsibilities

Article 66 The shipper shall have the goods properly packed and shall guarantee the accuracy of the description, mark, number of packages or pieces, weight or quantity of the goods at the time of

shipment and shall indemnify the carrier against any loss resulting from inadequacy of packing or inaccuracies in the above-mentioned information.

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

Article 67 The shipper shall perform all necessary procedures at the port, customs, quarantine, inspection or other competent authorities with respect to the shipment of the goods and shall furnish to the carrier all relevant documents concerning the procedures the shipper has gone through. The shipper shall be liable for any damage to the interest of the carrier resulting from the inadequacy or inaccuracy or delay in delivery of such documents.

Article 68 At the time of shipment of dangerous goods, the shipper shall, in compliance with the regulations governing the carriage of such goods, have them properly packed, distinctly marked and labelled and notify the carrier in writing of their proper description, nature and the precautions to be taken. In case the shipper fails to notify the carrier or notified him inaccurately, the carrier may have such goods landed, destroyed or rendered innocuous when and where circumstances so require, without compensation. The shipper shall be liable to the carrier for any loss, damage or expense resulting from such shipment.

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

Article 69 The shipper shall pay the freight to the carrier as agreed.

The shipper and the carrier may reach an agreement that the freight shall be paid by the consignee. However, such an agreement shall be noted in the transport documents.

Article 70 The shipper shall not be liable for the loss sustained by the carrier or the actual carrier, or for the damage sustained by the ship, unless such loss or damage was caused by the fault of the shipper, his servant or agent.

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

#### Section 4 Transport Documents

Article 71 A bill of lading is a document which serves as an evidence of the contract of carriage of goods by sea and the taking over or loading of the goods by the carrier, and based on which the carrier undertakes to deliver the goods against surrendering the same. A provision in the document

stating that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

Article 72 When the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading.

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

Article 73 A bill of lading shall contain the following particulars:

(1) Description of the goods, mark, number of packages or pieces, weight or quantity, and a statement, if applicable, as to the dangerous nature of the goods;

(2) Name and principal place of business of the carrier;

(3) Name of the ship;

(4) Name of the shipper;

(5) Name of the consignee;

(6) Port of loading and the date on which the goods were taken over by the carrier at the port of loading;

(7) Port of discharge;

(8) Place where the goods were taken over and the place where the goods are to be delivered in case of a multimodal transport bill of lading;

(9) Date and place of issue of the bill of lading and the number of originals issued;

(10) Payment of freight;

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

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

Article 74 If the carrier has issued, on demand of the shipper, a received-for-shipment bill of lading or other similar documents before the goods are loaded on board, the shipper may surrender the same to the carrier as against a shipped bill of lading when the goods have been loaded on board. The carrier may also note on the received-for-shipment bill of lading or other similar documents with the name of the carrying ship and the date of loading, and, when so noted, the received-for-

shipment bill of lading or other similar documents shall be deemed to constitute a shipped bill of lading.

Article 75 If the bill of lading contains particulars concerning the description, mark, number of packages or pieces, weight or quantity of the goods with respect to which the carrier or the other person issuing the bill of lading on his behalf has the knowledge or reasonable grounds to suspect that such particulars do not accurately represent the goods actually received, or, where a shipped bill of lading is issued, loaded, or if he has had no reasonable means of checking, the carrier or such other person may make a note in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking.

Article 76 If the carrier or the other person issuing the bill of lading on his behalf made no note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent good order and condition.

Article 77 Except for the note made in accordance with the provisions of Article 75 of this Code, the bill of lading issued by the carrier or the other person acting on his behalf is prima facie evidence of the taking over or loading by the carrier of the goods as described therein. Proof to the contrary by the carrier shall not be admissible if the bill of lading has been transferred to a third party, including a consignee, who has acted in good faith in reliance on the description of the goods contained therein.

Article 78 The relationship between the carrier and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clauses of the bill of lading.

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

Article 79 The negotiability of a bill of lading shall be governed by the following provisions:

- (1) A straight bill of lading is not negotiable;
- (2) An order bill of lading may be negotiated with endorsement to order or endorsement in blank;
- (3) A bearer bill of lading is negotiable without endorsement.

Article 80 Where a carrier has issued a document other than a bill of lading as an evidence of the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage of goods by sea and the taking over by the carrier of the goods as described therein.

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

## Section 5 Delivery of Goods

Article 81 Unless notice of loss or damage is given in writing by the consignee to the carrier at the time of delivery of the goods by the carrier to the consignee, such delivery shall be deemed to be prima facie evidence of the delivery of the goods by the carrier as described in the transport documents and of the apparent good order and condition of such goods.

Where the loss of or damage to the goods is not apparent, the provisions of the preceding paragraph shall apply if the consignee has not given the notice in writing within 7 consecutive days from the next day of the delivery of the goods, or, in the case of containerized goods, within 15 days from the next day of the delivery thereof.

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

Article 82 The carrier shall not be liable for compensation if no notice on the economic losses resulting from delay in delivery of the goods has been received from the consignee within 60 consecutive days from the next day on which the goods had been delivered by the carrier to the consignee.

Article 83 The consignee may, before taking delivery of the goods at the port of destination, and the carrier may, before delivering the goods at the port of destination, request the cargo inspection agency to have the goods inspected. The party requesting such inspection shall bear the cost thereof but is entitled to recover the same from the party causing the damage.

Article 84 The carrier and the consignee shall mutually provide reasonable facilities for the survey and inspection stipulated in Articles 81 and 83 of this Code.

Article 85 Where the goods have been delivered by the actual carrier, the notice in writing given by the consignee to the actual carrier under Article 81 of this Code shall have the same effect as that given to the carrier, and that given to the carrier shall have the same effect as that given to the actual carrier.

Article 86 If the goods were not taken delivery of at the port of discharge or if the consignee has delayed or refused the taking delivery of the goods, the Master may discharge the goods into warehouses or other appropriate places, and any expenses or risks arising therefrom shall be borne by the consignee.

Article 87 If the freight, contribution in general average, demurrage to be paid to the carrier and other necessary charges paid by the carrier on behalf of the owner of the goods as well as other charges to be paid to the carrier have not been paid in full, nor has appropriate security been given, the carrier may have a lien, to a reasonable extent, on the goods.

Article 88 If the goods under lien in accordance with the provisions of Article 87 of this Code have not been taken delivery of within 60 days from the next day of the ship's arrival at the port of discharge, the carrier may apply to the court for an order on selling the goods by auction; where the goods are perishable or the expenses for keeping such goods would exceed their value, the carrier may apply for an earlier sale by auction.

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

#### Section 6 Cancellation of Contract

Article 89 The shipper may request the cancellation of the contract of carriage of goods by sea before the ship sails from the port of loading. However, except as otherwise provided for in the contract, the shipper shall in this case pay half of the agreed amount of freight; if the goods have already been loaded on board, the shipper shall bear the expenses for the loading and discharge and other related charges.

Article 90 Either the carrier or the shipper may request the cancellation of the contract and neither shall be liable to the other if, due to force majeure or other causes not attributable to the fault of the carrier or the shipper, the contract could not be performed prior to the ship's sailing from its port of loading. If the freight has already been paid, it shall be refunded to the shipper, and, if the goods have already been loaded on board, the loading/discharge expenses shall be borne by the shipper. If a bill of lading has already been issued, it shall be returned by the shipper to the carrier.

Article 91 If, due to force majeure or any other causes not attributable to the fault of the carrier or the shipper, the ship could not discharge its goods at the port of destination as provided for in the contract of carriage, unless the contract provides otherwise, the Master shall be entitled to discharge the goods at a safe port or place near the port of destination and the contract of carriage shall be deemed to have been fulfilled.

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

#### Section 7 Special Provisions Regarding Voyage Charter Party

Article 92 A voyage charter party is a charter party under which the shipowner charters out and the charterer charters in the whole or part of the ship's space for the carriage by sea of the intended goods from one port to another and the charterer pays the agreed amount of freight.

Article 93 A voyage charter party shall mainly contain, inter alia, name of the shipowner, name of the charterer, name and nationality of the ship, its bale or grain capacity, description of the goods to

be loaded, port of loading, port of destination, laydays, time for loading and discharge, payment of freight, demurrage, dispatch and other relevant matters.

Article 94 The provisions in Article 47 and Article 49 of this Code shall apply to the shipowner under voyage charter party.

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

Article 95 Where the holder of the bill of lading is not the charterer in the case of a bill of lading issued under a voyage charter, the rights and obligations of the carrier and the holder of the bill of lading shall be governed by the clauses of the bill of lading. However, if the clauses of the voyage charter party are incorporated into the bill of lading, the relevant clauses of the voyage charter party shall apply.

Article 96 The shipowner shall provide the intended ship. The intended ship may be substituted with the consent of the charterer. However, if the ship substituted does not meet the requirements of the charter party, the charterer may reject the ship or cancel the charter. Should any damage or loss occur to the charterer as a result of the shipowner's failure in providing the intended ship due to his fault, the shipowner shall be liable for compensation.

Article 97 If the shipowner has failed to provide the ship within the laydays fixed in the charter, the charterer is entitled to cancel the charter party. However, if the shipowner had notified the charterer of the delay of the ship and the expected date of its arrival at the port of loading, the charterer shall notify the shipowner whether to cancel the charter within 48 hours of the receipt of the shipowner's notification.

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

Article 98 Under a voyage charter, the time for loading and discharge and the way of calculation thereof, as well as the rate of demurrage that would incur after the expiration of the laytime and the rate of dispatch money to be paid as a result of the completion of loading or discharge ahead of schedule, shall be fixed by the shipowner and the charterer upon mutual agreement.

Article 99 The charterer may sublet the ship he chartered, but the rights and obligations under the head charter shall not be affected.

Article 100 The charterer shall provide the intended goods, but he may replace the goods with the consent of the shipowner. However, if the goods replaced are detrimental to the interests of the shipowner, the shipowner shall be entitled to reject such goods and cancel the charter.

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

Article 101 The shipowner shall discharge the goods at the port of discharge specified in the charter party. Where the charter party contains a clause allowing the choice of the port of discharge by the charterer, the Master may choose one from among the agreed picked ports to discharge the goods, in case the charterer did not, as agreed in the charter, instruct in time as to the port chosen for discharging the goods. Where the charterer did not instruct in time as to the chosen port of discharge, as agreed in the charter, and the shipowner suffered losses thereby, the charterer shall be liable for compensation; where the charterer has suffered losses as a result of the shipowner's arbitrary choice of a port to discharge the goods, in disregard of the provisions in the relevant charter, the shipowner shall be liable for compensation.

## Section 8 Special Provisions Regarding Multimodal Transport Contract

Article 102 A multimodal transport contract as referred to in this Code means a contract under which the multimodal transport operator undertakes to transport the goods, against the payment of freight for the entire transport, from the place where the goods were received in his charge to the destination and to deliver them to the consignee by two or more different modes of transport, one of which being sea carriage.

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

Article 103 The responsibility of the multimodal transport operator with respect to the goods under multimodal transport contract covers the period from the time he takes the goods in his charge to the time of their delivery.

Article 104 The multimodal transport operator shall be responsible for the performance of the multimodal transport contract or the procurement of the performance therefore, and shall be responsible for the entire transport.

The multimodal transport operator may enter into separate contracts with the carriers of the different modes defining their responsibilities with regard to the different sections of the transport under the multimodal transport contracts. However, such separate contracts shall not affect the responsibility of the multimodal transport operator with respect to the entire transport.

Article 105 If loss of or damage to the goods has occurred in a certain section of the transport, the provisions of the relevant laws and regulations governing that specific section of the multimodal transport shall be applicable to matters concerning the liability of the multimodal transport operator and the limitation thereof.

Article 106 If the section of transport in which the loss of or damage to the goods occurred could not be ascertained, the multimodal transport operator shall be liable for compensation in accordance with the stipulations regarding the carrier's liability and the limitation thereof as set out in this Chapter.

## **Chapter V Contract of Carriage of Passengers by Sea**

Article 107 A contract of carriage of passengers by sea is a contract whereby the carrier undertakes to carry passengers and their luggage by sea from one port to another by ships suitable for that purpose against payment of fare by the passengers.

Article 108 For the purposes of this Chapter:

- (1) "Carrier" means the person by whom or in whose name a contract of carriage of passengers by sea has been entered into with the passengers;
- (2) "Actual carrier" means the person by whom the whole or part of the carriage of passengers has been performed as entrusted by the carrier, including those engaged in such carriage under a sub-contract.
- (3) "Passenger" means a person carried under a contract of carriage of passengers by sea. With the consent of the carrier, a person supervising the carriage of goods aboard a ship covered by a contract of carriage of goods is regarded as a passenger;
- (4) "Luggage" means any article or vehicle shipped by the carrier under the contract of carriage of passengers by sea, with the exception of live animals.
- (5) "Cabin luggage" means the luggage which the passenger has in his cabin or is otherwise in his possession, custody or control.

Article 109 The provisions regarding the responsibilities of the carrier as contained in this Chapter shall be applicable to the actual carrier, and the provisions regarding the responsibilities of the servant or agent of the carrier as contained in this Chapter shall be applicable to the servant or agent of the actual carrier.

Article 110 The passage ticket serves as an evidence that a contract of carriage of passengers by sea has been entered into.

Article 111 The period of carriage for the carriage of passengers by sea commences from the time of embarkation of the passengers and terminates at the time of their disembarkation, including the period during which the passengers are transported by water from land to the ship or vice versa , if such cost of transport is included in the fare. However, the period of carriage does not include the time when the passengers are at a marine terminal or station or on a quay or in or on any other port installations.

The period of carriage for the cabin luggage of the passengers shall be the same as that stipulated in the preceding paragraph. The period of carriage for luggage other than the cabin luggage commences from the time when the carrier or his servant or agent receives it into his charge and terminates at the time when the carrier or his servant or agent redelivers it to the passengers.

Article 112 A passenger travelling without a ticket or taking a higher class berth than booked or going beyond the distance paid for shall pay for the fare or the excess fare as required by relevant regulations, and the carrier may, according to the relevant regulations, charge additional fare. Should any passenger refuse to pay, the Master is entitled to order him to disembark at a suitable place and the carrier has the right of recourse against him.

Article 113 No passenger may take on board or pack in their luggage contraband goods or any article of an inflammable, explosive, poisonous, corrosive or radioactive nature or other dangerous goods that would endanger the safety of life and property on board.

The carrier may have the contraband or dangerous goods brought on board by the passenger or packed in his luggage in breach of the provisions of the preceding paragraph discharged, destroyed or rendered innocuous at any time and at any place or sent over to the appropriate authorities, without being liable for compensation.

The passenger shall be liable for compensation if any loss or damage occurs as a result of his breach of the provisions of paragraph 1 of this Article.

Article 114 During the period of carriage of the passengers and their luggage as provided for in Article 111 of this Code, the carrier shall be liable for the death of or personal injury to passengers or the loss of or damage to their luggage resulting from accidents caused by the fault of the carrier or his servant or agent committed within the scope of his employment or agency.

The claimant shall bear the burden of proof regarding the fault of the carrier or his servant or agent, with the exception, however, of the circumstances specified in paragraphs 3 and 4 of this Article.

If the death of or personal injury to the passengers or loss of or damage to the passengers' cabin luggage occurred as a result of shipwreck, collision, stranding, explosion, fire or the defect of the ship, it shall be presumed that the carrier or his servant or agent has committed a fault, unless proof to the contrary has been given by the carrier or his servant or agent.

As to any loss of or damage to the luggage other than the passenger's cabin luggage, unless the carrier or his servant or agent proves to the contrary, it shall be presumed that the carrier or his servant or agent has committed a fault, no matter how the loss or damage was caused.

Article 115 If it is proved by the carrier that the death of or personal injury to the passenger or the loss of or damage to his luggage was caused by the fault of the passenger himself or the faults of the carrier and the passenger combined, the carrier's liability may be exonerated or appropriately mitigated.

If it is proved by the carrier that the death of or personal injury to the passenger or the loss of or damage to the passenger's luggage was intentionally caused by the passenger himself, or the death or personal injury was due to the health condition of his, the carrier shall not be liable therefore.

Article 116 The carrier shall not be liable for any loss of or damage to the monies, gold, silver, jewellery, negotiable securities or other valuables of the passengers.

If the passenger has entrusted the above-mentioned valuables to the safe-keeping of the carrier under an agreement for that purpose, the carrier shall be liable for compensation in accordance with the provisions of Article 117 of this Code. Where the limitation of liability agreed upon between the carrier and the passenger in writing is higher than that set out in Article 117 of this Code, the carrier shall make the compensation in accordance with that higher amount.

Article 117 Except the circumstances specified in paragraph 4 of this Article, the limitation of liability of the carrier under each carriage of passengers by sea shall be governed by the following:

(1) For death of or personal injury to the passenger: not exceeding 46,666 Units of Account per passenger;

(2) For loss of or damage to the passengers' cabin luggage: not exceeding 833 Units of Account per passenger;

(3) For loss of or damage to the passengers' vehicles including the luggage carried therein: not exceeding 3,333 Units of Account per vehicle;

(4) For loss of or damage to luggage other than those described in sub-paragraphs (2) and (3) above: not exceeding 1,200 Units of Account per passenger.

An agreement may be reached between the carrier and the passengers with respect to the deductibles applicable to the compensation for loss of or damage to the passengers' vehicles and luggage other than their vehicles. However, the deductible with respect to the loss of or damage to the passengers' vehicles shall not exceed 117 Units of Account per vehicle, whereas the deductible for the loss of or damage to the luggage other than the vehicle shall not exceed 13 Units of Account per piece of luggage per passenger. In calculating the amount of compensation for the loss of or damage to the passenger's vehicle or the luggage other than the vehicle, deduction shall be made of the agreed deductibles the carrier is entitled to.

A higher limitation of liability than that set out in sub-paragraph (1) above may be agreed upon between the carrier and the passenger in writing.

The limitation of liability of the carrier with respect to the carriage of passengers by sea between the ports of the People's Republic of China shall be fixed by the competent authorities of transport and communications under the State Council and implemented after its being submitted to and approved by the State Council.

Article 118 If it is proved that the death of or personal injury to the passenger or the loss of or damage to the passenger's luggage resulted from an act or omission of the carrier done with the intent to cause such loss or damage or recklessly and with knowledge that such death or personal

injury or such loss or damage would probably result ,the carrier shall not invoke the provisions regarding the limitation of liability contained in Articles 116 and 117 of this Code.

If it is proved that the death of or personal injury to the passenger or the loss of or damage to the passenger's luggage resulted from an act or omission of the servant or agent of the carrier done with the intent to cause such loss or damage or recklessly and with knowledge that such death or personal injury or such loss or damage would probably result, the servant or agent of the carrier shall not invoke the provisions regarding the limitation of liability contained in Articles 116 and 117 of this Code.

Article 119 In case of apparent damage to the luggage, the passenger shall notify the carrier or his servant or agent in writing according to the following:

(1) Notice with respect to cabin luggage shall be made before or at the time of his embarkation;

(2) Notice regarding luggage other than cabin luggage shall be made before or at the time of redelivery thereof.

If the damage to the luggage is not apparent and it is difficult for the passenger to discover such damage at the time of his disembarkation or of the redelivery of the luggage, or if the luggage has been lost, the passenger shall notify the carrier or his servant or agent in writing within 15 days from the next day of disembarkation of the passenger or of the redelivery of the luggage.

If the passenger fails to send in the notice in writing in time in accordance with the provisions of sub-paragraphs (1) and (2) of this Article, it shall be presumed that the luggage has been received undamaged, unless proof to the contrary is made.

Where the luggage has been jointly surveyed or inspected by the passenger and the carrier at the time of redelivery thereof, the above-mentioned notice need not be given.

Article 120 With regard to the claims made to the carrier's servant or agent, such servant or agent shall be entitled to invoke the provisions regarding defence and limitation of liability contained in Articles 115,116 and 117 of this Code if such servant or agent proves that his act or omission was within the scope of his employment or agency.

Article 121 Where the performance of the carriage of passengers or part thereof has been entrusted by the carrier to an actual carrier, the carrier shall, as stipulated in this Chapter, remain liable for the entire carriage. Where the carriage is performed by the actual carrier, the carrier shall be liable for the act or omission of the actual carrier or the act or omission of his servant or agent within the scope of his employment or agency.

Article 122 Any special agreement under which the carrier assumes obligations not provided for in this Chapter or waives the rights conferred by this Chapter shall be binding upon the actual carrier where the actual carrier has expressly agreed in writing to the contents thereof. Such a special

agreement shall be binding upon the carrier whether the actual carrier has agreed to its contents or not.

Article 123 Where both the carrier and the actual carrier are liable for compensation, they shall be liable jointly and severally within the scope of such liability.

Article 124 Where separate claims have been brought against the carrier, the actual carrier and their servants or agents with respect to the death of or personal injury to the passengers or the loss of or damage to their luggage, the aggregate amount of compensation shall not be in excess of the limitation prescribed in Article 117 of this Code.

Article 125 The provisions of Articles 121 through 124 of this Code shall not affect the right of recourse between the carrier and the actual carrier.

Article 126 Any of the following clauses contained in a contract of carriage of passengers by sea shall be null and void:

- (1) Any clause that exonerates the statutory responsibility of the carrier in respect of the passenger;
- (2) Any clause that reduces the limitation of liability of the carrier as contained in this Chapter;
- (3) Any clause that contains provisions contrary to those of this Chapter concerning burden of proof; and
- (4) Any clause that restricts the right of claim of the passenger.

The nullity and voidness of the clauses set out in the preceding paragraph shall not prejudice the validity of the other clauses of the contract.

## **Chapter VI Charter Parties**

### Section 1 Basic Principles

Article 127 The provisions concerning the rights and obligations of the shipowner and the charterer in this Chapter shall apply only when there are no stipulations or no different stipulations in this regard in the charter party.

Article 128 Charter parties including time charter parties and bareboat charter parties shall be concluded in writing.

### Section 2 Time Charter Party

Article 129 A time charter party is a contract under which the shipowner provides a designated manned ship to the charterer, and the charterer employs the ship during the contractual period for the agreed service against payment of hire.

Article 130 A time charter party mainly contains the name of the shipowner, the name of the charterer; the name, nationality, class, tonnage, capacity, speed and fuel consumption of the ship; the trading area; the agreed service, the contractual period, the time, place and conditions of delivery and redelivery of the ship; the hire and the way of its payment and other relevant matters.

Article 131 The shipowner shall deliver the ship within the time agreed upon in the charter party.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer is entitled to cancel the charter. However, if the shipowner has notified the charterer of the anticipated delay in delivery and has given an estimated time of arrival of the ship at the port of delivery, the charterer shall notify the shipowner, within 48 hours of the receipt of such notice from the shipowner, of his decision whether to cancel the charter or not.

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

Article 132 At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the intended service.

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

Article 133 During the charter period, if the ship is found at variance with the seaworthiness or the other conditions agreed upon in the charter, the shipowner shall take all reasonable measures to have them restored as soon as possible.

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

Article 134 The charterer shall guarantee that the ship shall be employed in the agreed maritime transport between the safe ports or places within the trading area agreed upon.

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

Article 135 The charterer shall guarantee that the ship shall be employed to carry the lawful merchandise agreed.

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

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

Article 136 The charterer shall be entitled to give the Master instructions with respect to the operation of the ship. However, such instructions shall not be inconsistent with the stipulations of the time charter.

Article 137 The charterer may sublet the ship under charter, but he shall notify the shipowner of the sublet in time. The rights and obligations agreed upon in the head charter shall not be affected by the sub-charter.

Article 138 Where the ownership of the ship under charter has been transferred by the shipowner, the rights and obligations agreed upon under the original charter shall not be affected. However, the shipowner shall inform the charterer thereof in time. After such transfer, the transferee and the charterer shall continue to perform the original charter.

Article 139 Should the ship be engaged in salvage operations during the charter period, the charterer shall be entitled to half of the amount of the payment for salvage operations after deducting therefrom the salvage expenses, compensation for damage, the portion due to crew members and other relevant costs.

Article 140 The charterer shall pay the hire as agreed upon in the charter. Where the charterer fails to pay the hire as agreed upon, the shipowner shall be entitled to cancel the charter party and claim any losses resulting therefrom.

Article 141 In case the charterer fails to pay the hire or other sums of money as agreed upon in the charter, the shipowner shall have a lien on the charterer's goods, other property on board and earnings from the sub-charter.

Article 142 When the charterer redelivers the ship to the shipowner, the ship shall be in the same good order and condition as it was at the time of delivery, fair wear and tear excepted.

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

Article 143 If, on the basis of a reasonable calculation, a ship may be able to complete its last voyage at around the time of redelivery specified in the charter and probably thereafter, the charterer is entitled to continue to use the ship in order to complete that voyage even if its time of redelivery will be overdue. During the extended period, the charterer shall pay the hire at the rate fixed by the charter, and, if the current market rate of hire is higher than that specified in the charter, the charterer shall pay the hire at the current market rate.

### Section 3 Bareboat Charter Party

Article 144 A bareboat charter party is a charter party under which the shipowner provides the charterer with an unmanned ship which the charterer shall possess, employ and operate within an agreed period and for which the charterer shall pay the shipowner the hire.

Article 145 A bareboat charter party mainly contains the name of the shipowner and the name of the charterer; the name, nationality, class, tonnage and capacity of the ship; the trading area, the employment of the ship and the charter period; the time, place and condition of delivery and redelivery; the survey, maintenance and repair of the ship; the hire and its payment; the insurance of the ship; the time and condition for the termination of the charter and other relevant matters.

Article 146 The shipowner shall deliver the ship and its certificates to the charterer at the port or place and time as stipulated in the charter party. At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the agreed service.

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

Article 147 The charterer shall be responsible for the maintenance and repair of the ship during the bareboat charter period.

Article 148 During the bareboat charter period, the ship shall be insured, at the value agreed upon in the charter and in the way consented to by the shipowner, by the charterer at his expense.

Article 149 During the bareboat charter period, if the charterer's possession, employment or operation of the ship has affected the interests of the shipowner or caused any losses thereto, the charterer shall be liable for eliminating the harmful effect or compensating for the losses.

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

Article 150 During the bareboat charter period, the charterer shall not assign the rights and obligations stipulated in the charter or sublet the ship under bareboat charter without the shipowner's consent in writing.

Article 151 The shipowner shall not establish any mortgage of the ship during the bareboat charter period without the prior consent in writing by the charterer.

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

Article 152 The charterer shall pay the hire as stipulated in the charter. In default of payment by the charterer for seven consecutive days or more after the time as agreed in the charter for such payment, the shipowner is entitled to cancel the charter without prejudice to any claim for the loss arising from the charterer's default.

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

Article 153 The provisions of Article 134, paragraph 1 of Article 135, Article 142 and Article 143 of this Code shall be applicable to bareboat charter parties.

Article 154 The ownership of a ship under bareboat charter containing a lease-purchase clause shall be transferred to the charterer when the charterer has paid off the lease-purchase price to the shipowner as stipulated in the charter.

## **Chapter VII Contract of Sea Towage**

Article 155 A contract of sea towage is a contract whereby the tugowner undertakes to tow an object by sea with a tug from one place to another and the tow party pays the towage.

The provisions of this Chapter shall not be applicable to the towage service rendered to ships within the port area.

Article 156 A contract of sea towage shall be made in writing. Its contents shall mainly include name and address of the tugowner, name and address of the tow party, name and main particulars of the tug and name and main particulars of the object to be towed, horse power of the tug, place of commencement of the towage and the destination, the date of commencement of the towage, towage price and the way of payment thereof, as well as other relevant matters.

Article 157 The tugowner shall, before and at the beginning of the towage, exercise due diligence to make the tug seaworthy and towworthy and to properly man the tug and equip it with gears and tow lines and to provide all other necessary supplies and appliances for the intended voyage.

The tow party shall, before and at the beginning of the towage, make all necessary preparations therefore and shall exercise due diligence to make the object to be towed towworthy and shall give a true account of the object to be towed and provide the certificate of towworthiness and other documents issued by the relevant survey and inspection organizations.

Article 158 If before the commencement of the towage service, due to force majeure or other causes not attributable to the fault of either party, the towage contract could not be performed, either party may cancel the contract and neither shall be liable to the other. In such event, the towage price that had already been paid shall be returned to the tow party by the tugowner, unless otherwise agreed upon in the towage contract.

Article 159 If after the commencement of the towage service, due to force majeure or other causes not attributable to the fault of either party, the towage contract could not be performed, either party may cancel the towage contract and neither shall be liable to the other.

Article 160 Where the object towed could not reach its destination due to force majeure or other causes not attributable to the fault of either party, unless the towage contract provides otherwise, the tugowner may deliver the object towed to the tow party or its agent at a place near the destination or at a safe port or an anchorage chosen by the Master of the tug, and the contract of towage shall be deemed to have been fulfilled.

Article 161 Where the tow party fails to pay the towage price or other reasonable expenses as agreed, the tugowner shall have a lien on the object towed.

Article 162 In the course of the sea towage, if the damage suffered by the tugowner or the tow party was caused by the fault of one of the parties, the party in fault shall be liable for compensation. If the damage was caused by the faults of both parties, both parties shall be liable for compensation in proportion to the extent of their respective faults.

Notwithstanding the provisions of the preceding paragraph, the tugowner shall not be liable if he proves that the damage suffered by the tow party is due to one of the following causes:

(1) Fault of the Master or other crew members of the tug or the pilot or other servants or agents of the tugowner in the navigation and management of the tug;

(2) Fault of the tug in saving or attempting to save life or property at sea.

The provisions of this Article shall only apply if and when there are no provisions or no different provisions in this regard in the sea towage contract.

Article 163 If death of or personal injury to a third party or damage to property thereof has occurred during the sea towage due to the fault of the tugowner or the tow party, the tugowner and the tow party shall be liable jointly and severally to that third party. Except as otherwise provided for in the towage contract, the party that has jointly and severally paid a compensation in an amount exceeding the proportion for which it is liable shall have the right of recourse against the other party.

Article 164 Where a tugowner towing a barge owned or operated by him to transport goods by sea from one port to another, it shall be deemed as an act of carriage of goods by sea.

## **Chapter VIII Collision of Ships**

Article 165 Collision of ships means an accident arising from the touching of ships at sea or in other navigable waters adjacent thereto.

Ships referred to in the preceding paragraph shall include those non-military or public service ships or craft that collide with the ships mentioned in Article 3 of this Code.

Article 166 After a collision, the Master of each of the ships in collision is bound, so far as he can do so without serious danger to his ship and persons on board to render assistance to the other ship and persons on board.

The Masters of each of the ships in collision is likewise bound so far as possible to make known to the other ship the name of his ship, its port of registry, port of departure and port of destination.

Article 167 Neither of the parties shall be liable to the other if the collision is caused by force majeure or other causes not attributable to the fault of either party or if the cause thereof is left in doubt.

Article 168 If the collision is caused by the fault of one of the ships, the one in fault shall be liable therefore.

Article 169 If the colliding ships are all in fault, each ship shall be liable in proportion to the extent of its fault; if the respective faults are equal in proportion or it is impossible to determine the extent of the proportion of the respective faults, the liability of the colliding ships shall be apportioned equally.

The ships in fault shall be liable for the damage to the ship, the goods and other property on board pursuant to the proportions prescribed in the preceding paragraph. Where damage is caused to the property of a third party, the liability for compensation of any of the colliding ships shall not exceed the proportion it shall bear.

If the ships in fault have caused loss of life or personal injury to a third party, they shall be jointly and severally liable therefore. If a ship has paid an amount of compensation in excess of the proportion prescribed in paragraph 1 of this Article, it shall have the right of recourse against the other ship(s) in fault.

Article 170 Where a ship has caused damage to another ship and persons, goods or other property on board that ship, either by the execution or non-execution of a manoeuvre or by the non-observance of navigation regulations, even if no collision has actually occurred, the provisions of this Chapter shall apply.

## **Chapter IX Salvage at Sea**

Article 171 The provisions of this Chapter shall apply to salvage operations rendered at sea or any other navigable waters adjacent thereto to ships and other property in distress.

Article 172 For the purposes of this Chapter:

(1) "Ship" means any ship referred to in Article 3 of this Code and any other non-military, public service ship or craft that has been involved in a salvage operation therewith;

(2) "Property" means any property not permanently and intentionally attached to the shoreline and includes freight at risk;

(3) "Payment" means any reward, remuneration or compensation for salvage operations to be paid by the salvaged party to the salvor pursuant to the provisions of this Chapter.

Article 173 The provisions of this Chapter shall not apply to fixed or floating platforms or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Article 174 Every Master is bound, so far as he can do so without serious danger to his ship and persons on board, to render assistance to any person in danger of being lost at sea.

Article 175 A contract for salvage operations at sea is concluded when an agreement has been reached between the salvor and the salvaged party regarding the salvage operations to be undertaken.

The Master of the ship in distress shall have the authority to conclude a contract for salvage operations on behalf of the shipowner. The Master of the ship in distress or its owner shall have the authority to conclude a contract for salvage operations on behalf of the owner of the property on board.

Article 176 The salvage contract may be modified by a judgment of the court which has entertained the suit brought by either party, or modified by an award of the arbitration organization to which the dispute has been submitted for arbitration upon the agreement of the parties, under any of the following circumstances:

- (1) The contract has been entered into under undue influence or the influence of danger and its terms are obviously inequitable;
- (2) The payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Article 177 During the salvage operation, the salvor shall owe a duty to the salvaged party to:

- (1) carry out the salvage operation with due care;
- (2) exercise due care to prevent or minimize the pollution damage to the environment;
- (3) seek the assistance of other salvors where reasonably necessary;
- (4) accept the reasonable request of the salvaged party to seek the participation in the salvage operation of other salvors. However, if the request is not well-founded, the amount of payment due to the original salvor shall not be affected.

Article 178 During the salvage operation, the party salvaged is under an obligation to the salvor to:

- (1) cooperate fully with the salvor;
- (2) exercise due care to prevent or minimize the pollution damage to the environment;

(3) promptly accept the request of the salvor to take delivery of the ship or property salvaged when such ship or property has been brought to a place of safety.

Article 179 Where the salvage operations rendered to the distressed ship and other property have had a useful result, the salvor shall be entitled to a reward. Except as otherwise provided for by Article 182 of this Code or by other laws or the salvage contract, the salvor shall not be entitled to the payment if the salvage operations have had no useful result.

Article 180 The reward shall be fixed with a view to encouraging salvage operations, taking into full account the following criteria:

- (1) Value of the ship and other property salvaged;
- (2) Skill and efforts of the salvors in preventing or minimizing the pollution damage to the environment;
- (3) Measure of success obtained by the salvors;
- (4) Nature and extent of the danger;
- (5) Skill and efforts of the salvors in salvaging the ship, other property and life;
- (6) Time used and expenses and losses incurred by the salvors;
- (7) Risk of liability and other risks run by the salvors or their equipment;
- (8) Promptness of the salvage services rendered by the salvors;
- (9) Availability and use of ships or other equipment intended for salvage operations;
- (10) State of readiness and efficiency of the salvor's equipment and the value thereof.

The reward shall not exceed the value of the ship and other property salvaged.

Article 181 The salvaged value of the ship and other property means the assessed value of the ship and other property salvaged or the proceeds of the sale thereof, after deduction of the relevant taxes and customs dues, quarantine expenses, inspection charges as well as expenses incurred in connection with the discharge, storage, assessment of the value and the sale thereof.

The value prescribed in the preceding paragraph does not include the value of the salvaged personal belongings of the crew and that of the cabin luggage of the passengers.

Article 182 If the salvor has carried out the salvage operations in respect of a ship which by itself or its goods threatened pollution damage to the environment and has failed to earn a reward under Article 180 of this Code at least equivalent to the special compensation assessable in accordance

with this Article, he shall be entitled to special compensation from the owner of that ship equivalent to his expenses as herein defined.

If the salvor has carried out the salvage operations prescribed in the preceding paragraph and has prevented or minimized pollution damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 of this Article may be increased by an amount up to a maximum of 30% of the expenses incurred by the salvor. The court which has entertained the suit or the arbitration organization may, if it deems fair and just and taking into consideration the provisions of paragraph 1 of Article 180 of this Code, render a judgment or an award further increasing the amount of such special compensation, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

The salvor's expenses referred to in this Article means the salvor's out-of-pocket expenses reasonably incurred in the salvage operation and the reasonable expenses for the equipment and personnel actually used in the salvage operation. In determining the salvor's expenses, the provisions of sub-paragraphs (8), (9) and (10) of paragraph 1 of Article 180 of this Code shall be taken into consideration.

Under all circumstances, the total special compensation provided for in this Article shall be paid only if such compensation is greater than the reward recoverable by the salvor under Article 180 of this Code, and the amount to be paid shall be the difference between the special compensation and the reward.

If the salvor has been negligent and has thereby failed to prevent or minimize the pollution damage to the environment, the salvor may be totally or partly deprived of the right to the special compensation.

Nothing in this Article shall affect the right of recourse on the part of the shipowner against any other parties salvaged.

Article 183 The salvage reward shall be paid by the owners of the salvaged ship and other property in accordance with the respective proportions which the salvaged values of the ship and other property bear to the total salvaged value.

Article 184 The distribution of salvage reward among the salvors taking part in the same salvage operation shall be made by agreement among such salvors on the basis of the criteria set out in Article 180 of this Code; failing such agreement, the matter may be brought before the court hearing the case for judgment, or, upon the agreement of the parties, submitted to the arbitration organization for an award.

Article 185 The salvors of human life may not demand any remuneration from those whose lives are saved. However, salvors of human life are entitled to a fair share of the payment awarded to the salvor for salvaging the ship or other property or for preventing or minimizing the pollution damage to the environment.

Article 186 The following salvage operations shall not be entitled to remuneration:

(1) The salvage operation is carried out as a duty to normally perform a towage contract or other service contract, with the exception, however, of providing special services beyond the performance of the above said duty.

(2) The salvage operation is carried out in spite of the express and reasonable prohibition on the part of the Master of the ship in distress, the owner of the ship in question and the owner of the other property.

Article 187 Where the salvage operations have become necessary or more difficult due to the fault of the salvor or where the salvor has committed fraud or other dishonest conduct, the salvor shall be deprived of the whole or part of the payment payable to him.

Article 188 After the completion of the salvage operation, the party salvaged shall, at the request of the salvor, provide satisfactory security for salvage reward and other charges.

Without prejudice to the provisions of the preceding paragraph, the owner of the ship salvaged shall, before the release of the goods, make best endeavours to cause the owners of the property salvaged to provide satisfactory security for the share of the payment that they ought to bear.

Without the consent of the salvor, the ship or other property salvaged shall not be removed from the port or place at which they first arrived after the completion of the salvage operation, until satisfactory security has been provided with respect to the ship or other property salvaged, as demanded by the salvor.

Article 189 The court or the arbitration organization handling the salvor's claim for payment may, in light of the specific circumstances and under fair and just terms, decide or make an award ordering the party salvaged to pay on account an appropriate amount to the salvor.

On the basis of the payment on account made by the party salvaged in accordance with the provisions of the preceding paragraph, the security provided under Article 188 of this Code shall be reduced accordingly.

Article 190 If the party salvaged has neither made the payment nor provided satisfactory security for the ship and other property salvaged after 90 days of the salvage, the salvor may apply to the court for an order on forced sale by auction. With respect to the ship or the property salvaged that cannot be kept or cannot be properly kept, or the storage charge to be incurred may exceed its value, the salvor may apply for an earlier forced sale by auction.

The proceeds of the sale shall, after deduction of the expenses incurred for the storage and sale, be used for the payment in accordance with the provisions of this Code. The remainder, if any, shall be returned to the party salvaged, and, if there is no way to return the remainder or if the remainder has not been claimed after one year of the forced sale, it shall go to the State treasury. In case of any deficiency, the salvor has the right of recourse against the party salvaged.

Article 191 The provisions of this Chapter shall apply to the salvor's right to the payment for the salvage operations carried out between the ships of the same owner.

Article 192 With respect to the salvage operations performed or controlled by the relevant competent authorities of the State, the salvors shall be entitled to avail themselves of the rights and remedies provided for in this Chapter in respect of salvage operations.

## **Chapter X General Average**

Article 193 General average means the extraordinary sacrifice or expenditure intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the ship, goods or other property involved in a common maritime adventure.

Loss or damage sustained by the ship or goods through delay, whether on the voyage or subsequently, such as demurrage and loss of market as well as other indirect losses, shall not be admitted as general average.

Article 194 When a ship, after having been damaged in consequence of accident, sacrifice or other extraordinary circumstances, shall have entered a port or place of refuge or returned to its port or place of loading to effect repairs which are necessary for the safe prosecution of the voyage, then the port charges paid, the wages and maintenance of the crew incurred and the fuel and stores consumed during the extra period of detention in such port or place, as well as the loss or damage and charges arising from the discharge, storage, reloading and handling of the goods, fuel, stores and other property on board in order to have the repairs done shall be allowed as general average.

Article 195 Any extra expense incurred in place of another expense which would have been allowed as general average shall be deemed to be general average and so allowed, but the amount of such expense incurred shall not be in excess of the general average expense avoided.

Article 196 The onus of proof shall be upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Article 197 Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure. However, this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

Article 198 The amounts of sacrifice of the ship, the goods and the freight shall be respectively determined as follows:

(1) The amount of sacrifice of the ship shall be calculated on the basis of the repair cost of the ship actually paid, from which any reasonable deduction in respect of "new for old" being made. Where the ship has not been repaired after the sacrifice, the amount of sacrifice thereof shall be calculated on the basis of the reasonable reduced value of ship after the general average sacrifice. Such amount shall not exceed the estimated cost of repair.

Where the ship is an actual total loss or where the cost of repair would exceed the value of the ship after the repair, the amount of sacrifice of the ship shall be calculated on the basis of the estimated sound value of the ship, less the estimated cost of repair not allowable as general average, as well as the value of the ship after the damage.

(2) The amount of sacrifice of the goods already lost shall be calculated on the basis of the value of the goods at the time of shipment plus insurance and freight, from which the freight that need not be paid due to the sacrifice made being deducted. For the damaged goods that had already been sold before an agreement was reached on the extent of the damage sustained, the amount of sacrifice thereof shall be calculated on the basis of the difference between the value of the goods at the time of shipment plus insurance and freight, and the net proceeds of the goods so sold.

(3) The amount of sacrifice of the freight shall be calculated on the basis of the amount of loss of freight on account of the sacrifice of the goods, from which the operating expenses that ought to be paid in order to earn such freight but need not be paid because of the sacrifice shall be deducted.

Article 199 The contribution in general average shall be made in proportion to the contributory values of the respective beneficiaries.

The contributory value in general average by the ship, goods and freight shall be determined as follows:

(1) The contributory value of the ship shall be calculated on the basis of the sound value of the ship at the place where the voyage ends, from which any damage that does not come under general average sacrifice being deducted; alternately, the actual value of the ship at the place where the voyage ends, plus the amount of general average sacrifice.

(2) The contributory value of the goods shall be calculated on the basis of the value of the goods at the time of shipment plus insurance and freight, from which the damage that does not come under the general average sacrifice and the carrier's freight at risk being deducted. Where the goods had been sold before its arrival at the port of destination, its value for contribution shall be the net proceeds plus the amount of general average sacrifice.

Passenger's luggage and personal belongings shall not be included in the value for contribution.

(3) The Contributory value of freight shall be calculated on the basis of the amount of freight at the risk of the carrier and which the carrier is entitled to collect at the end of the voyage, less any expense incurred for the prosecution of the voyage after the general average, in order to earn the freight, plus the amount of general average sacrifice.

Article 200 Goods undeclared or wrongfully declared shall be liable for the contribution to general average, but the special sacrifice sustained by such goods shall not be allowed as general average.

Where the value of the goods has been improperly declared at a value below its actual value, the contribution to general average shall be made on the basis of their actual value and, where a general

average sacrifice has occurred, the amount of sacrifice shall be calculated on the basis of the declared value.

Article 201 Interest shall be allowed on general average sacrifice and general average expenses paid on account. A commission shall be allowed for the general average expenses paid on account, except those for the wages and maintenance of the crew and fuel and store consumed.

Article 202 The contributing parties shall provide security for general average contribution at the request of the parties that have an interest therein.

Where the security has been provided in the form of cash deposits, such deposits shall be put in a bank by an average adjuster in the name of a trustee.

The provision, use and refund of the deposits shall be without prejudice to the ultimate liability of the contributing parties.

Article 203 The adjustment of general average shall be governed by the average adjustment rules agreed upon in the relevant contract. In the absence of such an agreement in the contract, the relevant provisions contained in this Chapter shall apply.

#### **Chapter XI Limitation of Liability for Maritime Claims**

Article 204 Shipowners and salvors may limit their liability in accordance with the provisions of this Chapter for claims set out in Article 207 of this Code.

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

Article 205 If the claims set out in Article 207 of this Code are not made against shipowners or salvors themselves but against persons for whose act, neglect or default the shipowners or salvors are responsible, such persons may limit their liability in accordance with the provisions of this Chapter.

Article 206 Where the assured may limit his liability in accordance with the provisions of this Chapter, the insurer liable for the maritime claims shall be entitled to the limitation of liability under this Chapter to the same extent as the assured.

Article 207 Except as provided otherwise in Articles 208 and 209 of this Code, with respect to the following maritime claims, the person liable may limit his liability in accordance with the provisions of this Chapter, whatever the basis of liability may be:

(1) Claims in respect of loss of life or personal injury or loss of or damage to property including damage to harbour works, basins and waterways and aids to navigation occurring on board or in direct connection with the operation of the ship or with salvage operations, as well as consequential damages resulting therefrom;

(2) Claims in respect of loss resulting from delay in delivery in the carriage of goods by sea or from delay in the arrival of passengers or their luggage;

(3) Claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations;

(4) Claims of a person other than the person liable in respect of measures taken to avert or minimize loss for which the person liable may limit his liability in accordance with the provisions of this Chapter, and further loss caused by such measures.

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

Article 208 The provisions of this Chapter shall not be applicable to the following claims:

(1) Claims for salvage payment or contribution in general average;

(2) Claims for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage to which the People's Republic of China is a party;

(3) Claims for nuclear damage under the International Convention on Limitation of Liability for Nuclear Damage to which the People's Republic of China is a party;

(4) Claims against the shipowner of a nuclear ship for nuclear damage;

(5) Claims by the servants of the shipowner or salvor, if under the law governing the contract of employment, the shipowner or salvor is not entitled to limit his liability or if he is by such law only permitted to limit his liability to an amount greater than that provided for in this Chapter.

Article 209 A person liable shall not be entitled to limit his liability in accordance with the provisions of this Chapter, if it is proved that the loss resulted from his act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

Article 210 The limitation of liability for maritime claims, except as otherwise provided for in Article 211 of this Code, shall be calculated as follows:

(1) In respect of claims for loss of life or personal injury:

a) 333,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;

b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be applicable to the first 500 tons and the following amounts in addition to that set out under a) shall be applicable to the gross tonnage in excess of 500 tons:

For each ton from 501 to 3,000 tons: 500 Units of Account;

For each ton from 3,001 to 30,000 tons: 333 Units of Account;

For each ton from 30,001 to 70,000 tons: 250 Units of Account;

For each ton in excess of 70,000 tons: 167 Units of Account;

(2) In respect of claims other than that for loss of life or personal injury:

a) 167,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;

b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be applicable to the first 500 tons, and the following amounts in addition to that under a) shall be applicable to the part in excess of 500 tons:

For each ton from 501 to 30,000 tons: 167 Units of Account;

For each ton from 30,001 to 70,000 tons: 125 Units of Account;

For each ton in excess of 70,000 tons: 83 Units of Account.

(3) Where the amount calculated in accordance with sub-paragraph (1) above is insufficient for payment of claims for loss of life or personal injury set out therein in full, the amount calculated in accordance with sub-paragraph (2) shall be available for payment of the unpaid balance of claims under sub-paragraph (1), and such unpaid balance shall rank rateably with claims set out under sub-paragraph (2).

(4) However, without prejudice to the right of claims for loss of life or personal injury under sub-paragraph (3), claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over other claims under sub-paragraph (2).

(5) The limitation of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which, he is rendering salvage services, shall be calculated according to a gross tonnage of 1,500 tons.

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

Article 211 In respect of claims for loss of life or personal injury to passengers carried by sea, the limitation of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's

relevant certificate, but the maximum amount of compensation shall not exceed 25,000,000 Units of Account.

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

Article 212 The limitation of liability under Articles 210 and 211 of this Code shall apply to the aggregate of all claims that may arise on any given occasion against shipowners and salvors themselves, and any person for whose act, neglect or fault the shipowners and the salvors are responsible.

Article 213 Any person liable claiming the limitation of liability under this Code may constitute a limitation fund with a court having jurisdiction. The fund shall be constituted in the sum of such an amount set out respectively in Articles 210 and 211, together with the interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund.

Article 214 Where a limitation fund has been constituted by a person liable, any person having made a claim against the person liable may not exercise any right against any assets of the person liable. Where any ship or other property belonging to the person constituting the fund has been arrested or attached, or, where a security has been provided by such person, the court shall order without delay the release of the ship arrested or the property attached or the return of the security provided.

Article 215 Where a person entitled to limitation of liability under the provisions of this Chapter has a counter-claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Chapter shall only apply to the balance, if any.

## **Chapter XII Contract of Marine Insurance**

### Section 1 Basic Principles

Article 216 A contract of marine insurance is a contract whereby the insurer undertakes, as agreed, to indemnify the loss to the subject matter insured and the liability of the insured caused by perils covered by the insurance against the payment of an insurance premium by the insured.

The covered perils referred to in the preceding paragraph mean any maritime perils agreed upon between the insurer and the insured, including perils occurring in inland rivers or on land which is related to a maritime adventure.

Article 217 A contract of marine insurance mainly includes:

(1) Name of the insurer;

- (2) Name of the insured;
- (3) Subject matter insured;
- (4) Insured value;
- (5) Insured amount;
- (6) Perils insured against and perils excepted;
- (7) Duration of insurance coverage;
- (8) Insurance premium.

Article 218 The following items may come under the subject matter of marine insurance:

- (1) Ship;
- (2) Cargo;
- (3) Income from the operation of the ship including freight, charter hire and passenger's fare;
- (4) Expected profit on cargo;
- (5) Crew's wages and other remuneration;
- (6) Liabilities to a third person;
- (7) Other property which may sustain loss from a maritime peril and the liability and expenses arising therefrom.

The insurer may reinsure the insurance of the subject matter enumerated in the preceding paragraph. Unless otherwise agreed in the contract, the original insured shall not be entitled to the benefit of the reinsurance.

Article 219 The insurable value of the subject matter insured shall be agreed upon between the insurer and the insured.

Where no insurable value has been agreed upon between the insurer and the insured, the insurable value shall be calculated as follows:

- (1) The insurable value of the ship shall be the value of the ship at the time when the insurance liability commences, being the total value of the ship's hull, machinery, equipment, fuel, stores, gear, provisions and fresh water on board as well as the insurance premium;

(2) The insurable value of the cargo shall be the aggregate of the invoice value of the cargo or the actual value of the non-trade commodity at the place of shipment, plus freight and insurance premium when the insurance liability commences;

(3) The insurable value of the freight shall be the aggregate of the total amount of freight payable to the carrier and the insurance premium when the insurance liability commences;

(4) The insurable value of other subject matter insured shall be the aggregate of the actual value of the subject matter insured and the insurance premium when the insurance liability commences.

Article 220 The insured amount shall be agreed upon between the insurer and the insured. The insured amount shall not exceed the insured value. Where the insured amount exceeds the insured value, the portion in excess shall be null and void.

## Section 2 Conclusion, Termination and Assignment of Contract

Article 221 A contract of marine insurance comes into being after the insured puts forth a proposal for insurance and the insurer agrees to accept the proposal and the insurer and the insured agree on the terms and conditions of the insurance. The insurer shall issue to the insured an insurance policy or other certificate of insurance in time, and the contents of the contract shall be contained therein.

Article 222 Before the contract is concluded, the insured shall truthfully inform the insurer of the material circumstances which the insured has knowledge of or ought to have knowledge of in his ordinary business practice and which may have a bearing on the insurer in deciding the premium or whether he agrees to insure or not.

The insured need not inform the insurer of the facts which the insurer has known of or the insurer ought to have knowledge of in his ordinary business practice if about which the insurer made no inquiry.

Article 223 Upon failure of the insured to truthfully inform the insurer of the material circumstances set forth in paragraph 1 of Article 222 of this Code due to his intentional act, the insurer has the right to terminate the contract without refunding the premium. The insurer shall not be liable for any loss arising from the perils insured against before the contract is terminated.

If, not due to the insured's intentional act, the insured did not truthfully inform the insurer of the material circumstances set out in paragraph 1 of Article 222 of this Code, the insurer has the right to terminate the contract or to demand a corresponding increase in the premium. In case the contract is terminated by the insurer, the insurer shall be liable for the loss arising from the perils insured against which occurred prior to the termination of the contract, except where the material circumstances uninformed or wrongly informed of have an impact on the occurrence of such perils.

Article 224 Where the insured was aware or ought to be aware that the subject matter insured had suffered a loss due to the incidence of a peril insured against when the contract was concluded, the insurer shall not be liable for indemnification but shall have the right to the premium. Where the

insurer was aware or ought to be aware that the occurrence of a loss to the subject matter insured due to a peril insured against was impossible, the insured shall have the right to recover the premium paid.

Article 225 Where the insured concludes contracts with several insurers for the same subject matter insured and against the same risk, and the insured amount of the said subject matter insured thereby exceeds the insured value, then, unless otherwise agreed in the contract, the insured may demand indemnification from any of the insurers and the aggregate amount to be indemnified shall not exceed the loss value of the subject matter insured. The liability of each insurer shall be in proportion to that which the amount he insured bears to the total of the amounts insured by all insurers. Any insurer who has paid an indemnification in an amount greater than that for which he is liable, shall have the right of recourse against those who have not paid their indemnification in the amounts for which they are liable.

Article 226 Prior to the commencement of the insurance liability, the insured may demand the termination of the insurance contract but shall pay the handling fees to the insurer, and the insurer shall refund the premium.

Article 227 Unless otherwise agreed in the contract, neither the insurer nor the insured may terminate the contract after the commencement of the insurance liability.

Where the insurance contract provides that the contract may be terminated after the commencement of the liability, and the insured demands the termination of the contract, the insurer shall have the right to the premium payable from the day of the commencement of the insurance liability to the day of termination of the contract and refund the remaining portion. If it is the insurer who demands the termination of the contract, the unexpired premium from the day of the termination of the contract to the day of the expiration of the period of insurance shall be refunded to the insured.

Article 228 Notwithstanding the stipulations in Article 227 of this Code, the insured may not demand termination of the contract for cargo insurance and voyage insurance on ship after the commencement of the insurance liability.

Article 229 A contract of marine insurance for the carriage of goods by sea may be assigned by the insured by endorsement or otherwise, and the rights and obligations under the contract are assigned accordingly. The insured and the assignee shall be jointly and severally liable for the payment of the premium if such premium remains unpaid up to the time of the assignment of the contract.

Article 230 The consent of the insurer shall be obtained where the insurance contract is assigned in consequence of the transfer of the ownership of the ship insured. In the absence of such consent, the contract shall be terminated from the time of the transfer of the ownership of the ship. Where the transfer takes place during the voyage, the contract shall be terminated when the voyage ends.

Upon termination of the contract, the insurer shall refund the unexpired premium to the insured calculated from the day of the termination of the contract to the day of its expiration.

Article 231 The insured may conclude an open cover with the insurer for the goods to be shipped or received in batches within a given period. The open cover shall be evidenced by an open policy to be issued by the insurer.

Article 232 The insurer shall, at the request of the insured, issue insurance certificates separately for the cargo shipped in batches according to the open cover.

Where the contents of the insurance certificates issued by the insurer separately differ from those of the open policy, the insurance certificates issued separately shall prevail.

Article 233 The insured shall notify the insurer immediately on learning that the cargo insured under the open cover has been shipped or has arrived. The items to be notified of shall include the name of the carrying ship, the voyage, the value of the cargo and the insured amount.

### Section 3 Obligation of the Insured

Article 234 Unless otherwise agreed in the insurance contract, the insured shall pay the premium immediately upon conclusion of the contract. The insurer may refuse to issue the insurance policy or other insurance certificate before the premium is paid by the insured.

Article 235 The insured shall notify the insurer in writing immediately where the insured has not complied with the warranties under the contract. The insurer may, upon receipt of the notice, terminate the contract or demand an amendment to the terms and conditions of the insurance coverage or an increase in the premium.

Article 236 Upon the occurrence of the peril insured against, the insured shall notify the insurer immediately and shall take necessary and reasonable measures to avoid or minimize the loss. Where special instructions for the adoption of reasonable measures to avoid or minimize the loss are received from the insurer, the insured shall act according to such instructions.

The insurer shall not be liable for the extended loss caused by the insured's breach of the provisions of the preceding paragraph.

### Section 4 Liability of the Insurer

Article 237 The insurer shall indemnify the insured promptly after the loss from a peril insured against has occurred.

Article 238 The insurer's indemnification for the loss from the peril insured against shall be limited to the insured amount. Where the insured amount is lower than the insured value, the insurer shall indemnify in the proportion that the insured amount bears to the insured value.

Article 239 The insurer shall be liable for the loss to the subject matter insured arising from several perils insured against during the period of the insurance even though the aggregate of the amounts

of loss exceeds the insured amount. However, the insurer shall only be liable for the total loss where the total loss occurs after the partial loss which has not been repaired.

Article 240 The insurer shall pay, in addition to the indemnification to be paid with regard to the subject matter insured, the necessary and reasonable expenses incurred by the insured for avoiding or minimizing the loss recoverable under the contract, the reasonable expenses for survey and assessment of the value for the purpose of ascertaining the nature and extent of the peril insured against and the expenses incurred for acting on the special instructions of the insurer.

The payment by the insurer of the expenses referred to in the preceding paragraph shall be limited to that equivalent to the insured amount.

Where the insured amount is lower than the insured value, the insurer shall be liable for the expenses referred to in this Article in the proportion that the insured amount bears to the insured value, unless the contract provides otherwise.

Article 241 Where the insured amount is lower than the value for contribution under the general average, the insurer shall be liable for the general average contribution in the proportion that the insured amount bears to the value for contribution.

Article 242 The insurer shall not be liable for the loss caused by the intentional act of the insured.

Article 243 Unless otherwise agreed in the insurance contract, the insurer shall not be liable for the loss of or damage to the insured cargo arising from any of the following causes:

- (1) Delay in the voyage or in the delivery of cargo or change of market price;
- (2) Fair wear and tear, inherent vice or nature of the cargo; and
- (3) Improper packing.

Article 244 Unless otherwise agreed in the insurance contract, the insurer shall not be liable for the loss of or damage to the insured ship arising from any of the following causes:

- (1) Unseaworthiness of the ship at the time of the commencement of the voyage, unless where under a time policy the insured has no knowledge thereof;
- (2) Wear and tear or corrosion of the ship.

The provisions of this Article shall apply " mutatis mutandis" to the insurance of freight.

Section 5 Loss of or Damage to the Subject Matter Insured and Abandonment

Article 245 Where after the occurrence of a peril insured against the subject matter insured is lost or is so seriously damaged that it is completely deprived of its original structure and usage or the insured is deprived of the possession thereof, it shall constitute an actual total loss.

Article 246 Where a ship's total loss is considered to be unavoidable after the occurrence of a peril insured against or the expenses necessary for avoiding the occurrence of an actual total loss would exceed the insured value, it shall constitute a constructive total loss.

Where an actual total loss is considered to be unavoidable after the cargo has suffered a peril insured against, or the expenses to be incurred for avoiding the total actual loss plus that for forwarding the cargo to its destination would exceed its insured value, it shall constitute a constructive total loss.

Article 247 Any loss other than an actual total loss or a constructive total loss is a partial loss.

Article 248 Where a ship fails to arrive at its destination within a reasonable time from the place where it was last heard of, unless the contract provides otherwise, if it remains unheard of upon the expiry of two months, it shall constitute missing. Such missing shall be deemed to be an actual total loss.

Article 249 Where the subject matter insured has become a constructive total loss and the insured demands indemnification from the insurer on the basis of a total loss, the subject matter insured shall be abandoned to the insurer. The insurer may accept the abandonment or choose not to, but shall inform the insured of his decision whether to accept the abandonment within a reasonable time.

The abandonment shall not be attached with any conditions. Once the abandonment is accepted by the insurer, it shall not be withdrawn.

Article 250 Where the insurer has accepted the abandonment, all rights and obligations relating to the property abandoned are transferred to the insurer.

## Section 6 Payment of Indemnity

Article 251 After the occurrence of a peril insured against and before the payment of indemnity, the insurer may demand that the insured submit evidence and materials related to the ascertainment of the nature of the peril and the extent of the loss.

Article 252 Where the loss of or damage to the subject matter insured within the insurance coverage is caused by a third person, the right of the insured to demand compensation from the third person shall be subrogated to the insurer from the time the indemnity is paid.

The insured shall furnish the insurer with necessary documents and information that should come to his knowledge and shall endeavour to assist the insurer in pursuing recovery from the third person.

Article 253 Where the insured waives his right of claim against the third person without the consent of the insurer or the insurer is unable to exercise the right of recourse due to the fault of the insured, the insurer may make a corresponding reduction from the amount of indemnity.

Article 254 In effecting payment of indemnity to the insured, the insurer may make a corresponding reduction therefrom of the amount already paid by a third person to the insured.

Where the compensation obtained by the insurer from the third person exceeds the amount of indemnity paid by the insurer, the part in excess shall be returned to the insured.

Article 255 After the occurrence of a peril insured against, the insurer is entitled to waive his right to the subject matter insured and pay the insured the amount in full to relieve himself of the obligations under the contract.

In exercising the right prescribed in the preceding paragraph, the insurer shall notify the insured thereof within seven days from the day of the receipt of the notice from the insured regarding the indemnity. The insurer shall remain liable for the necessary and reasonable expenses paid by the insured for avoiding or minimizing the loss prior to his receipt of the said notice.

Article 256 Except as stipulated in Article 255 of this Code, where a total loss occurs to the subject matter insured and the full insured amount is paid, the insurer shall acquire the full right to the subject matter insured. In the case of under-insurance, the insurer shall acquire the right to the subject matter insured in the proportion that the insured amount bears to the insured value.

### **Chapter XIII Limitation of Time**

Article 257 The limitation period for claims against the carrier with regard to the carriage of goods by sea is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier. Within the limitation period or after the expiration thereof, if the person allegedly liable has brought up a claim of recourse against a third person, that claim is time-barred at the expiration of 90 days, counting from the day on which the person claiming for the recourse settled the claim, or was served with a copy of the process by the court handling the claim against him.

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

Article 258 The limitation period for claims against the carrier with regard to the carriage of passengers by sea is two years, counting respectively as follows:

(1) Claims for personal injury: Counting from the day on which the passenger disembarked or should have disembarked;

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

(3) Claims for loss of or damage to the luggage: Counting from the day of disembarkation or the day on which the passenger should have disembarked.

Article 259 The limitation period for claims with regard to charter parties is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 260 The limitation period for claims with regard to sea towage is one year, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 261 The limitation period for claims with regard to collision of ships is two years, counting from the day on which the collision occurred. The limitation period for claims with regard to the right of recourse as provided for in paragraph 3 of Article 169 of this Code is one year, counting from the day on which the parties concerned jointly and severally paid the amount of compensation for the damage occurred.

Article 262 The limitation period for claims with regard to salvage at sea is two years, counting from the day on which the salvage operation was completed.

Article 263 The limitation period for claims with regard to contribution in general average is one year, counting from the day on which the adjustment was finished.

Article 264 The limitation period for claims with regard to contracts of marine insurance is two years, counting from the day on which the peril insured against occurred.

Article 265 The limitation period for claims with regard to compensation for oil pollution damage from ships is three years, counting from the day on which the pollution damage occurred. However, in no case shall the limitation period exceed six years, counting from the day on which the accident causing the pollution occurred.

Article 266 Within the last six months of the limitation period if, on account of force majeure or other causes preventing the claims from being made, the limitation period shall be suspended. The counting of the limitation period shall be resumed when the cause of suspension no longer exists.

Article 267 The limitation of time shall be discontinued as a result of bringing an action or submitting the case for arbitration by the claimant or the admission to fulfill obligations by the person against whom the claim was brought up. However, the limitation of time shall not be discontinued if the claimant withdraws his action or his submission for arbitration, or his action has been rejected by a decision of the court.

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

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

#### Chapter XIV Application of Law in Relation to Foreign-related Matters

Article 268 If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are those on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the relevant laws of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China contain any relevant provisions

Article 269 The parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply.

Article 270 The law of the flag State of the ship shall apply to the acquisition, transfer and extinction of the ownership of the ship.

Article 271 The law of the flag State of the ship shall apply to the mortgage of the ship.

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

Article 272 The law of the place where the court hearing the case is located shall apply to matters pertaining to maritime liens.

Article 273 The law of the place where the infringing act is committed shall apply to claims for damages arising from collision of ships.

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

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

Article 274 The law where the adjustment of general average is made shall apply to the adjustment of general average.

Article 275 The law of the place where the court hearing the case is located shall apply to the limitation of liability for maritime claims.

Article 276 The application of foreign laws or international practices pursuant to the provisions of this Chapter shall not jeopardize the public interests of the People's Republic of China.

#### **Chapter XV Supplementary Provisions**

Article 277 The Unit of Account referred to in this Code is the Special Drawing Right as defined by the International Monetary Fund; the amount of the Chinese currency (RMB) in terms of the Special Drawing Right shall be that computed on the basis of the method of conversion established by the authorities in charge of foreign exchange control of this country on the date of the judgment by the court or the date of the award by the arbitration organization or the date mutually agreed upon by the parties.

Article 278 This Code shall come into force as of July 1, 1993.