

Special Maritime Procedure Law of the People's Republic of China

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Chapter I General Principles

Article 1 This Law is enacted with a view to safeguarding the rights to litigation of the parties to maritime cases and ensuring that the people's courts shall ascertain the facts, establish the liabilities, properly apply the laws and promptly hear and determine maritime cases.

Article 2 The Civil Procedure Law of the People's Republic of China and this Law shall be applicable to maritime actions brought in the People's Republic of China. Where the provisions of this Law are applicable, they shall prevail.

Article 3 Where any provisions concerning foreign-related maritime actions contained in international conventions entered into or acceded to by the People's Republic of China are different from those contained in the Civil Procedure Law of the People's Republic of China and in this Law, the provisions of such international conventions shall apply, except those on which the People's Republic of China has announced reservation.

Article 4 The maritime courts shall entertain actions brought by the parties in respect of maritime tort, disputes over maritime contracts and other maritime disputes as provided for by law.

Article 5 In hearing and determining maritime cases, the maritime courts, the higher people's courts of the places where such maritime courts are located and the Supreme People's Court shall apply this Law.

Chapter II Jurisdiction

Article 6 The relevant provisions of the Civil Procedure Law of the People's Republic of China shall apply to territorial jurisdiction of maritime actions.

The territorial jurisdiction of the maritime actions listed hereunder shall be determined as follows:

(1) apart from jurisdiction exercised in accordance with the provisions of Articles 29 to 31 in the Civil Procedure Law of the People's Republic of China, an action brought for maritime tort may also be under the jurisdiction of the maritime court of the place where the ship's port of registry is located;

(2) apart from jurisdiction exercised in accordance with the provisions of Article 28 in the Civil Procedure Law of the People's Republic of China, an action arising from a dispute over a contract for carriage by sea may also be under the jurisdiction of the maritime court of the place where the port of transshipment is located;

(3) an action arising from a charter-party dispute of a seagoing ship shall be under the jurisdiction of the maritime court of the place where the port of delivery, the port of re-delivery, the ship's port of registry and the domicile of the defendant is

located;

(4) an action arising from a dispute over a protection and indemnity contract shall be under the jurisdiction of the maritime court of the place where the subject-matter of insurance is located, where the accident occurred or where the domicile of the defendant is located;

(5) an action arising from a dispute over the service contract of the crew of a sea-going ship shall be under the jurisdiction of the maritime court of the place where the domicile of the plaintiff is located, where the contract is signed, where the port of embarkation or disembarkation of the ship's crew is located, or where the domicile of the defendant is located;

(6) an action arising from a dispute over maritime security shall be under the jurisdiction of the maritime court of the place where collateral is located or where the domicile of the defendant is located; an action arising from a dispute over ship mortgage may also be under the jurisdiction of the maritime court of the place where the ship's port of registry is located;

(7) an action arising from a dispute over the ownership, possession, employment and maritime lien of a sea-going ship shall be under the jurisdiction of the maritime court of the place where the ship is located, where the ship's port of registry is located, or where the domicile of the defendant is located.

Article 7 The following maritime actions shall be under the exclusive jurisdiction of maritime courts specified in this Article respectively:

(1) an action arising from a dispute over coastal port operation shall be under the jurisdiction of the maritime court of the place where the port is located;

(2) an action brought against pollution damage to sea areas caused by discharge, spill or dumping of oil or other hazardous substances from ships, by production or operation at sea or by ship demolition or repair shall be under the jurisdiction of the maritime courts of the place where the pollution occurred, the place that is suffering from the harmful consequences or the place where pollution prevention measures were taken; and

(3) an action arising from a dispute over an offshore exploration and exploitation contract performed within the territory of the People's Republic of China or in the sea area under the jurisdiction of the People's Republic of China shall be under the jurisdiction of the maritime court of the place where the contract is being performed .

Article 8 Where all the parties to a maritime dispute are aliens, stateless persons, foreign enterprises or organizations and have agreed in writing to be subject to the jurisdiction of a maritime court of the People's Republic of China, notwithstanding that the place that is actually related to the dispute is not within the territory of the

People's Republic of China, the said maritime court of the People's Republic of China shall have jurisdiction of the dispute.

Article 9 Any party who wishes to apply for a positive decision that certain property at sea is ownerless shall file an application with the maritime court of the place where the said property is located; anyone who wishes to apply for a declaration that a person is dead in an accident at sea shall file an application with the maritime court of the place where the competent authority dealing with the accident is located or with the maritime court that entertains the relevant maritime case.

Article 10 Any controversy that arises between a maritime court and a local people's court over jurisdiction shall be resolved by the two courts through consultation; if consultation fails, the matter shall be submitted to their common superior people's court for designation of jurisdiction.

Article 11 Any party who wishes to apply for the enforcement of a maritime arbitration award, the recognition and enforcement of a judgment or order of a foreign court or a foreign maritime arbitration award shall file an application with the maritime court of the place where the property against which enforcement is sought or the domicile of the person against whom enforcement is sought is located. In the absence of a maritime court at the said place, the application shall be filed with the intermediate people's court of the place where the property against which enforcement is sought or the domicile of the person against whom enforcement is sought is located.

Chapter III Preservation of Maritime Claims

Section I General Provisions

Article 12 Preservation of maritime claims means the compulsory measures taken by a maritime court on the application of a maritime claimant against the property of the person against whom a claim is made, for the purpose of ensuring fulfillment of the claim of the maritime claimant.

Article 13 Any party who wishes to apply for preservation of a maritime claim before instituting an action shall file an application with the maritime court of the place where the property subject to preservation is located.

Article 14 Preservation of a maritime claim shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties to an action in respect of the maritime claim.

Article 15 A maritime claimant who wishes to apply for preservation of a maritime claim shall file an application in writing with a maritime court. In the application the particulars of the maritime claim, reasons for the application, subject-matter to be preserved and the amount of security required shall be specified with relevant

evidence attached.

Article 16 The maritime court, having entertained an application for preservation of a maritime claim, may enjoin the maritime claimant to provide security. If the maritime claimant fails to do so, the court shall reject the application.

Article 17 The maritime court, having accepted an application, shall make an order within 48 hours. Where the order involves adoption of measures for preservation of the maritime claim, it shall be executed forthwith; where the conditions for the preservation of the maritime claim are not met, it shall make an order to reject the application.

Any party who is dissatisfied with such an order may, within 5 days after receipt thereof, apply for review not more than once. The maritime court shall give the result of the review within 5 days after receipt of the application therefor. Execution of the order shall not be suspended during the period of review.

Where preservation of a maritime claim is objected by an interested person, the maritime court, having examined the objection and considering the reasons justified, shall discharge preservation against his property.

Article 18 Where a person against whom a claim is made provides security or a party applies for discharge of preservation of the maritime claim on justified grounds, the maritime court shall discharge the preservation promptly.

If within the time limit prescribed by this Law a maritime claimant fails to bring an action or apply for arbitration in accordance with an arbitration agreement, the maritime court shall discharge the preservation or return the security promptly.

Article 19 Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after execution of the preservation of a maritime claim, any party may bring an action in respect of the maritime claim in the maritime court that adopts measures for preservation of the maritime claim or another maritime court that has jurisdiction, unless a jurisdiction agreement or arbitration agreement has been reached between the parties.

Article 20 A maritime claimant who has wrongly applied for preservation of a maritime claim shall indemnify the person against whom the claim is made or the interested person for the losses thus incurred.

Section II Arrest and Auction of Ships

Article 21 With respect to the following maritime claims, an application may be made for the arrest of a ship:

(1) loss of or damage to property caused by ship operation;

- (2) loss of life or personal injury in direct connection with ship operation;
- (3) salvage at sea;
- (4) damage or threat of damage caused by ship to environment, coast or relevant interested persons; measures adopted to prevent, diminish or eliminate such damage; compensation paid for such damage; expenses for reasonable measures actually adopted or to be adopted to restore environment; losses caused by such damage to or likely to a third party; and damage, expenses or losses of a similar nature as those specified in this subparagraph;
- (5) expenses related to re-floating, removal, reclamation or destroying of a sunken ship, wreck, aground ship, abandoned ship or to making them harmless, including the expenses related to re-floating, removal, reclamation or destroying of the things which have or no longer remained on board the ship or to making them harmless and expenses related to maintaining of an abandoned ship and her crew;
- (6) agreement in respect of employment or charting of a ship;
- (7) agreement in respect of carriage of goods or passengers;
- (8) cargo (including luggage) carried by a ship or loss or damage relating thereto;
- (9) general average;
- (10) towage;
- (11) pilotage;
- (12) providing of supplies or rendering of services in respect of ship operation, management, maintenance or repair;
- (13) construction, re-construction, repair, refurbishment or equipment of a ship;
- (14) dues or expenses for ports, canals, docks, harbours or other waterways;
- (15) crew's wages and other moneys, including repatriation expenses and social insurance premium payable for the crew;
- (16) expenses paid for a ship or a ship-owner;
- (17) insurance premium for a ship (including protection and indemnity calls) payable by or paid for a ship-owner or bareboat charterer;
- (18) commission, brokage or agency fee related to ships payable by or paid for a ship-owner or bareboat charterer;

(19) a dispute over ownership or possession of a ship;

(20) a dispute between joint owners of a ship over the employment or earnings of the ship;

(21) ship mortgage or rights of a similar nature; and

(22) a dispute arising out of a ship sale contract.

Article 22 No application may be made for the arrest of a ship on account of maritime claims other than the ones specified in Article 21 of this Law, except for the enforcement of a judgment, an arbitration award or other legal documents.

Article 23 The maritime court may arrest the ship concerned in any of the following circumstances:

(1) the ship-owner is liable for the maritime claim and is the owner of the ship at the time of arrest;

(2) the bareboat charterer of the ship is liable for the maritime claim and is the bareboat charterer or owner of the ship at the time of arrest;

(3) a maritime claim that gives rise to ship mortgage or to rights of a similar nature;

(4) a maritime claim related to ownership or possession of a ship; and

(5) a maritime claim that gives rise to maritime lien.

The maritime court may arrest other ships owned, at the time of arrest, by the ship-owner, bareboat charterer, time charterer or voyage charterer who is liable for the maritime claim, except for claims related to ownership or possession of a ship.

No ships engaged in military or governmental services may be subject to arrest.

Article 24 No maritime claimant may, on account of the same maritime claim, apply for arrest of a ship which was once arrested, except in any of the following circumstances:

(1) the person against whom the claim is made fails to provide sufficient security;

(2) it is likely that the surety cannot perform the obligations under the security in full or in part; or

(3) the maritime claimant agrees, on reasonable grounds, to release the arrested ship or to return the security provided; or the maritime claimant cannot, by reasonable means, stop the release of the arrested ship or the return of the security provided.

Article 25 A maritime claimant who wishes to apply for arrest of the ship concerned but cannot promptly ascertain the name of the person against whom the claim is made may still apply for its arrest.

Article 26 While the maritime court issues an order for arresting of a ship, it may send a notice to relevant departments for assistance in execution of the order. In the notice shall be stated the scope and specific tasks of the assistance in execution of the order, and the relevant departments have the obligation to assist in the execution. When the maritime court deems it necessary, it may directly send officers to go aboard for purposes of supervision.

Article 27 After ordering to preserve a ship, the maritime court may, with the consent of the maritime claimant, allow continued operation of the ship by means of restraining disposition or mortgaging of the ship.

Article 28 The time limit for ship arrest in preservation of a maritime claim is 30 days.

Where a maritime claimant brings an action or applies for arbitration within the 30 days, or where a maritime claimant applies for arrest of a ship in the process of a legal action or arbitration, arrest of the ship is not subject to the time limit prescribed in the preceding paragraph.

Article 29 Where on the expiry of the time limit for ship arrest, a person against whom a claim is made fails to provide security and it is not appropriate to keep the ship under arrest, the maritime claimant, having brought an action or applied for arbitration, may apply to the maritime court ordering the ship arrest for auction of the ship.

Article 30 The maritime court shall, after receipt of an application for auction of a ship, examine the application and make an order to allow or disallow the auction.

Any party who is dissatisfied with such an order may, within 5 days after receipt thereof, apply for review not more than once. The maritime court shall, within 5 days after receipt of the application therefor, give the result of the review. During the period of review, execution of the order shall be suspended.

Article 31 Where a maritime claimant, having applied for auction of a ship, applies for termination of the auction, the maritime court shall make an order to approve or disapprove the application. If the maritime court makes an order to terminate the auction of the ship, the expenses incurred in preparation for auction of the ship shall be borne by the maritime claimant.

Article 32 The maritime court which orders auction of a ship shall issue an announcement in newspapers or other news media. In the case of auction of a foreign ship, such announcement shall be issued in the newspapers or other news media of overseas distribution.

Such announcement shall contain:

- (1) name and nationality of the ship for auction;
- (2) reasons and grounds for auction of the ship;
- (3) composition of the ship auction committee;
- (4) time and venue of the ship auction;
- (5) time and venue for display of the ship for auction;
- (6) formalities to be completed for taking part in bidding;
- (7) particulars necessary for registration of debts; and
- (8) other matters which need to be announced.

The period of announcement for ship auction shall be not less than 30 days.

Article 33 The maritime court shall, 30 days before an auction of a ship, issue a notice to the ship registrar of the state of registry of the ship for auction and to the maritime lien holder, mortgagee and ship-owner already known.

Such notice shall contain the name of the ship for auction, time and venue of the ship auction, reasons and grounds for the ship auction, registration of debts, etc.

Such notice shall be despatched in written form or by other appropriate means where the receipt thereof can be confirmed.

Article 34 A ship auction shall be conducted by a ship auction committee. A ship auction committee shall consist of three or five persons, including the person of the maritime court in charge of execution designated by the court, the auctioneer and ship surveyor invited by the maritime court.

The ship auction committee shall arrange the assessment and evaluation of the ship; arrange and preside over the auction; sign auction confirmation with the bidder; and complete ship delivery formalities.

The ship auction committee is responsible to and under the supervision of the maritime court.

Article 35 Bidders shall register with the ship auction committee within the prescribed time limit. At the time of registration, certificates of identification of the person who registers with the committee, the legal representative of the enterprise or the leading official of other organization, and the power of attorney of the authorized proxy shall be submitted for examination and a certain amount of

bidding deposit shall be paid.

Article 36 The ship auction committee shall, before auction of a ship, display the ship for auction and make the ship available for inspection and provide information about the ship.

Article 37 A buyer, having signed the auction confirmation, shall pay forthwith not less than 20% of the purchase price, and the balance shall be paid within seven days after the date of the purchase, unless the ship auction committee has agreed otherwise with the buyer.

Article 38 When a buyer has paid the purchase price in full, the ship-owner shall, within the designated time limit, deliver to the buyer the ship as is at the berthing place. The ship auction committee shall arrange and supervise the delivery of the ship and sign the letter of confirmation of delivery and acceptance with the buyer after delivery of the ship.

After delivery of the ship, the maritime court shall issue an order to release the ship.

Article 39 When a ship is delivered, the maritime court shall issue an announcement in newspapers or other news media stating that the ship has been sold by auction and delivered to the buyer.

Article 40 A buyer, having taken delivery of the ship, shall by virtue of the auction confirmation and other relevant documents, complete the formalities of registration with the ship registrar in respect of ownership of the ship. The former ship-owner shall cancel the registration with the previous ship registrar in respect of ownership of the ship. Ownership of the ship is transferred notwithstanding that the former ship-owner fails to cancel such registration.

Article 41 An auction is void if there is malicious collusion between the bidders. The bidders who take part in malicious collusion shall be liable for the expenses of the ship auction and make good the relevant losses. The maritime court may impose on the bidders who takes part in malicious collusion a fine of not less than 10% but not more than 30% of the highest bidding.

Article 42 In addition to the provisions of this Section, the relevant provisions of the Auction Law of the People's Republic of China shall apply to auction.

Article 43 Where a ship under arrest is to be auctioned for satisfaction of debts during the process of the procedure for execution, the relevant provisions of this Section may be applied *mutatis mutandis*.

Section III Attachment and Auction of Cargo Carried By Ships

Article 44 A maritime claimant may apply for attachment of the cargo carried by a

ship to ensure fulfillment of his maritime claim.

The cargo against which an attachment is applied for shall be that owned by the person against whom the claim is made.

Article 45 The value of the cargo against which an attachment is applied for by a maritime claimant shall be equal to the amount of his claim.

Article 46 The time limit for attachment of the cargo carried by a ship for preservation of a maritime claim is 15 days.

Where within the 15 days a maritime claimant brings an action or applies for arbitration or, in the process of legal action or arbitration, applies for attachment of the cargo carried by a ship, attachment of the cargo carried by the ship is not subject to the time limit prescribed in the preceding paragraph.

Article 47 Where on the expiry of the time limit for cargo attachment, the person against whom a claim is made fails to provide security and it is not appropriate to keep the cargo under attachment, the maritime claimant, having brought an action or applied for arbitration, may apply to the maritime court ordering the attachment of the cargo carried by the ship for auction of the cargo.

Where the cargo cannot be preserved or is difficult to preserve, or the expenses for its preservation are likely to exceed its value, a maritime claimant may apply for an earlier auction.

Article 48 The maritime court shall, after receipt of an application for auction of the cargo carried by a ship, examine the application and, within 7 days, make an order to allow or disallow the auction.

Any party who is dissatisfied with such an order may, within five days after receipt thereof, apply for review not more than once. The maritime court shall, within five days after receipt of the application therefor, give the result of the review. During the period of review, execution of the order shall be suspended.

Article 49 Auction of the cargo carried by a ship shall be conducted by an auction committee composed of the person of the maritime court in charge of execution designated by the court and the auctioneer invited by the maritime court, or conducted by an organization entrusted by the maritime court.

Where there are no provisions in this Section to govern certain auction of the cargo carried by a ship, the provisions of Section 2 of this Chapter regarding auction of ships may be applied *mutatis mutandis*

Article 50 Where a maritime claimant applies for preservation of a maritime claim in respect of a ship's bunkers and provisions related to the claim, the provisions of this Section shall apply.

Chapter IV Maritime Injunction

Article 51 A maritime injunction means the compulsory measures adopted on the application of a maritime claimant by the maritime court to compel the person against whom a claim is made to do or not to do certain things, so as to prevent the lawful rights and interest of the claimant from being infringed upon.

Article 52 A party who wishes to apply for a maritime injunction before bringing an action shall file an application with the maritime court of the place where the maritime dispute arose.

Article 53 A maritime injunction shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties in respect of the maritime claim.

Article 54 A maritime claimant who wishes to apply for a maritime injunction shall file an application in writing with the maritime court. In the application shall be stated the reasons therefor, with relevant evidence attached.

Article 55 The maritime court, having entertained an application for a maritime injunction, may enjoin the maritime claimant to provide security. Where the maritime claimant fails to do so, It shall reject the application.

Article 56 The following conditions shall be met before a maritime injunction is granted:

- (1) the claimant has a specific maritime claim;
- (2) a breach of legal provisions or contractual provisions by the person against whom a claim is made needs to be redressed; and
- (3) in a situation of emergency, losses will be caused or will become worse if a maritime injunction is not granted forthwith.

Article 57 The maritime court, having accepted an application, shall make an order within 48 hours. Where the order grants a maritime injunction, it shall be executed forthwith; where the conditions for a maritime injunction are not met, it shall make an order to reject the application.

Article 58 A party who is dissatisfied with an order may, within five days after receipt thereof, apply for review not more than once. The maritime court shall, within five days after receipt of the application therefor, give the result of the review. Execution of the order shall not be suspended during the period of review.

Where a maritime injunction is objected by an interested person, the maritime court, having examined the objection and considering the reasons therefor justified, shall cancel the maritime injunction.

Article 59 Where a person against whom a claim is made refuses to comply with the maritime injunction, the maritime court may, according to the seriousness of the case, impose a fine or put him under detention; if his act constitutes a crime, criminal liability shall be investigated in accordance with law.

A fine imposed upon an individual shall be not less than RMB 1,000 yuan but not more than RMB 30,000 yuan. A fine imposed upon a unit shall be not less than RMB 30,000 yuan but not more than RMB 100,000 yuan.

The detention period shall be not more than 15 days.

Article 60 A maritime claimant who has wrongly applied for a maritime injunction shall indemnify the person against whom the claim is made or the interested person for the losses thus incurred.

Article 61 Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after execution of the maritime injunction, any party may bring an action in respect of the maritime claim in the maritime court granting the maritime injunction or in another maritime court having jurisdiction, unless a jurisdiction agreement or arbitration agreement has been concluded between the parties.

Chapter V Preservation of Maritime Evidence

Article 62 Preservation of maritime evidence means the compulsory measures adopted, on the application of a maritime claimant, by the maritime court to take, preserve or seal up the evidence related to a maritime claim.

Article 63 A party who wishes to apply for preservation of maritime evidence before instituting an action shall file an application with the maritime court of the place where the evidence is to be preserved.

Article 64 Preservation of maritime evidence shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties in respect of the maritime claim.

Article 65 A maritime claimant who wishes to apply for preservation of maritime evidence shall file an application in writing with the maritime court. In the application shall be stated the evidence to be preserved, the connection of the evidence with the maritime claim and the reasons therefor.

Article 66 The maritime court, having entertained an application for preservation of maritime evidence, may enjoin the maritime claimant to provide security. When the maritime claimant fails to do so, it shall reject the application.

Article 67 The following conditions shall be met before preservation of maritime evidence is granted:

- (1) the applicant is a party to the maritime claim;
- (2) the evidence, preservation of which is requested, substantiates the maritime claim;
- (3) the person against whom the application is made is a party relevant to the evidence, preservation of which is requested; and
- (4) in a situation of emergency, the evidence relevant to the maritime claim might be lost or hard to obtain, unless the evidence is immediately preserved.

Article 68 The maritime court, having accepted an application, shall make an order within 48 hours. Where the order involves adoption of measures for preservation of the maritime evidence, it shall be executed forthwith; where the conditions for preservation of the maritime evidence are not met, the court shall make an order to reject the application.

Article 69 A party who is dissatisfied with the order may, within five days after receipt thereof, apply for review not more than once. The maritime court shall, within five days after receipt of the application therefor, give the result of the review. Execution of the order shall not be suspended during the period of review. If the reasons given by the person against whom a claim is made are justified, the evidence under preservation shall be returned to that person.

Where preservation of the maritime evidence is objected by an interested person, the maritime court, having examined the objection and considering the reasons therefor justified, shall make an order to cancel preservation of the maritime evidence.

Article 70 To preserve maritime evidence, the maritime court may, taking into account the specific circumstances, seal up the evidence, or take the reproductions, duplicates, photographs, or make video recording, extracts or records of inquests. It may also take the original evidence where definitely necessary.

Article 71 A maritime claimant who has wrongly applied for preservation of maritime evidence shall indemnify the person against whom the claim is made or the interested person for the losses thus incurred.

Article 72 Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after preservation of the maritime evidence, any party may bring an action in respect of the maritime claim in the maritime court that adopts the measures for preservation of the evidence or another maritime court that has jurisdiction, unless a jurisdiction agreement or arbitration agreement has been concluded between the parties.

Chapter VI Maritime Security

Article 73 Maritime security consists of securities involved in such procedures as preservation of maritime claims, maritime injunction and preservation of maritime evidence provided for in this Law.

The types of security include cash, guarantee, mortgage or pledge.

Article 74 The security of a maritime claimant shall be submitted to the maritime court; the security of a person against whom a claim is made may be submitted to the maritime court or the maritime claimant.

Article 75 The type and amount of the security provided by a maritime claimant shall be determined by the maritime court. The type and amount of the security provided by a person against whom the claim is made shall be determined through consultation by the maritime claimant and the person against whom the claim is made; if consultation fails, the matter shall be determined by the maritime court.

Article 76 The amount of the security requested for preservation of a maritime claim by a maritime claimant from a person against whom the claim is made shall be equal to the amount of his credit, but shall not exceed the value of the property preserved.

The amount of the security provided by a maritime claimant shall be equal to the loss the person against whom the claim is made may suffer as a result of his application. The exact amount shall be determined by the maritime court.

Article 77 After providing security, the provider may apply to the maritime court for reduction, alteration or cancellation of such security, if he has good reasons to do so.

Article 78 If the amount of the security requested by the maritime claimant is so excessive as to cause losses to the person against whom the claim is made, the maritime claimant shall bear the liability to compensate for the losses.

Article 79 The provisions of this Chapter may apply *mutatis mutandis* to securities involved in the procedures such as constitution of maritime limitation fund and advance execution.

Chapter VII Service

Article 80 The service of legal documents in maritime actions is governed by the relevant provisions of the Civil Procedure Law of the People's Republic of China and may also be conducted in the following ways:

(1) on the agent *ad litem* duly entrusted by the person on whom the document is to be served;

(2) on the representative office or branch established in the People's Republic of

China by the person on whom the document is to be served, or on the business agent appointed by the person on whom the document is to be served ; or

(3) in other appropriate ways whereby such service can be acknowledged.

The legal documents in respect of arrest of a ship may be served on the master of the ship concerned.

Article 81 Where a person who is under an obligation to accept legal documents refuses to acknowledge the receipt thereof, the server shall make a record on the receipt of service of the fact and, having the receipt of service signed or sealed by the server and the witness, leave the legal documents in the domicile or on the business premises of the person on whom the documents are to be served, in which case the service shall be deemed to be completed.

Chapter XIII Trial Procedure

Section 1 Provisions for Trial of Collision Cases

Article 82 Both the plaintiff and the defendant shall fill in the Investigation Form for Maritime Accident truthfully at the time of bringing an action and of submitting defence respectively.

Article 83 No evidential documents shall be attached to the bill of complaint or the bill of defence served by the maritime court on the parties.

Article 84 The burden of proof shall be discharged by the parties before a court hearing. After the parties have discharged their burden of proof and furnished the maritime court with the statement to this effect, they may apply to consult the evidential documents concerning the ship collision.

Article 85 The parties may not reverse the statement previously made in the Investigation Form for Maritime Accident or the evidence adduced in discharging the burden of proof, unless new evidence has come to light and there is good reason for being unable to submit such new evidence within the period for producing evidence.

Article 86 The survey and appraisal of a ship shall be conducted by institutions or individual with due authorization of the State or by professionally qualified institutions or individuals. The maritime court shall not accept any conclusion of the survey or appraisal made or drawn up by institutions or individuals without authorization of the State or without professional qualifications.

Article 87 A case of ship collision shall be tried and concluded by the maritime court within one year after filing of the case. Where an extension of the period is necessary under special circumstances, it shall be subject to approval by the president of the court.

Section 2 Provisions for Trial of General Average Cases

Article 88 With respect to general average, the parties may either mutually agree to entrust average adjusters with the adjustment, or directly bring an action in a maritime court. In dealing with an unadjusted average dispute, the maritime court may entrust average adjusters with the adjustment.

Article 89 The general average statement made by average adjusters may be admissible as the proper basis for contribution if no objection is raised by any of the parties; otherwise, the maritime court shall decide whether to accept the statement or not.

Article 90 A party may bring an action against the liable person for non-general average losses without being prejudiced by the proceedings commenced for the general average claim arising from the same maritime accident.

Article 91 Actions brought by the parties in respect of the same maritime accident for non-general average losses and for general average contribution by recourse claim against the liable person in the maritime court that entertains the general average case can be consolidated by the same court.

Article 92 A case of general average shall be tried and concluded by a maritime court within one year after filing of the case. Where an extension of the period is necessary under special circumstances, it shall be subject to approval by the president of the court.

Section 3 Provisions for Exercising Right of Subrogation by Marine Insurers

Article 93 Where an accident covered was caused by a third party and the insurer has indemnified the insured, the insurer is entitled to claim compensation against the third party by exercising the right of subrogation up to the amount of the indemnity paid.

Article 94 In exercising the right of subrogation, an insurer shall, bring an action in its own name against the third party that caused the accident covered, if no action has been brought by the insured against that third party.

Article 95 In exercising the right of subrogation, an insurer may apply to the court entertaining the case for an alteration of the party to the lawsuit and subrogate the rights of the insured against the third party that caused the accident covered, if an action has been brought by the insured against that third party.

Where the losses of the insured caused by a third party cannot be fully covered by insurance indemnity, the insurer and the insured may act as co-plaintiffs to claim compensation against the third party.

Article 96 Where an action is brought or an application for participating in the

action is filed by an insurer pursuant to the provisions provided for in Articles 94 and 95 of this Law, the insurer shall submit to the maritime court that entertains the case the certificate evidencing payment of indemnity by the insurer and other documents necessary for participating in the action.

Article 97 An aggrieved party may claim for oil pollution damage caused by a ship either against the owner of the ship causing oil pollution damage or directly against the insurer who is answerable for the liabilities of the owner of the ship causing oil pollution damage, or against the person who provides financial security therefor.

Where the insurer for oil pollution damage or the person who provides financial security therefor is sued in an action, such insurer or person is entitled to demand the owner of the ship causing oil pollution damage to join the proceedings.

Section 4 Summary Procedure, Procedure for Hastening Debt Recovery and Procedure for Public Exigence

Article 98 In hearing simple maritime cases in which the facts are evident, the rights and obligations are clear and the dispute is a minor one, the maritime court may apply the provisions governing summary procedure in the Civil Procedure Law of the People's Republic of China.

Article 99 Where a creditor, on the basis of a maritime-related matter, requests a debtor to pay a debt in cash or in securities, if it is found to be in conformity with the relevant provisions in the Civil Procedure Law of the People's Republic of China, the creditor may apply to the maritime court that has jurisdiction for an order of payment.

Where the debtor is an alien, a stateless person or a foreign enterprise or organization that has a domicile or representative office or branch within the territory of the People's Republic of China on which the order of payment can be served, the creditor may apply to the maritime court that has jurisdiction for an order of payment.

Article 100 A holder of a bill of lading or similar documents for taking delivery of cargo may apply for public exigence to the maritime court of the place where the cargo is located in case such documents are out of control or lost.

Chapter IX Procedure for Constitution of Limitation Fund for Maritime Claims

Article 101 After the occurrence of a marine accident, the ship-owner, charterer, operator, salvor or insurer, who wishes to apply for liability limitation in accordance with law, may apply to a maritime court for constitution of the limitation fund for maritime claims.

In the event of oil pollution damage caused by a ship, the ship-owner and the insurer or the person who provides financial security therefor shall, for the purpose

of obtaining the right of liability limitation provided for by law, constitute with the maritime court a limitation fund for maritime claims in respect of oil pollution damage.

Constitution of limitation fund may be applied for either before an action is brought or during the process of legal proceedings, or, at the latest, before the judgement of first instance is given.

Article 102 A party who wishes to apply for constitution of a limitation fund for maritime claims before an action is brought shall file an application therefor with the maritime court of the place where the accident occurred, the contract is performed or the ship is under arrest.

Article 103 Constitution of a limitation fund for maritime claims shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties.

Article 104 A person who wishes to apply for constitution of a limitation fund for maritime claims shall file an application in writing with a maritime court. In the application shall be stated the amount of the limitation fund to be constituted for maritime claims, the reasons therefor as well as the names, addresses and means of correspondence of the interested persons already known, with relevant evidence attached.

Article 105 The maritime court shall, within seven days of the acceptance of an application for constitution of a limitation fund for maritime claims, notify all the interested persons already known and issue an announcement of the same in the newspapers or other news media.

Such notice and announcement shall contain:

- (1) name of the applicant;
- (2) facts and reasons for application;
- (3) particulars for constitution of the limitation fund for maritime claims;
- (4) particulars necessary in registration of claims; and
- (5) other matters which need to be announced.

Article 106 Any interested person who objects to the application filed by the applicant for constitution of a limitation fund for maritime claims shall file in writing with the maritime court within seven days from the date of receipt of the notice, or within 30 days from the date of the announcement if no notice is received.

The maritime court, having received the written objection filed by an interested

person, shall examine the objection and make an order within 15 days. If the objection is well founded, it shall make an order to reject the application of the applicant. Otherwise, it shall make an order to allow the applicant to constitute a limitation fund for maritime claims.

The party who is dissatisfied with such an order may appeal within seven days from the date of receipt thereof. The people's court of second instance shall make an order within 15 days from the date of receipt of the appeal.

Article 107 Where no objection is raised by an interested person within the prescribed time limit, the maritime court shall make an order to allow the applicant to constitute a limitation fund for maritime claims.

Article 108 After the order to allow the applicant to constitute a limitation fund for maritime claims becomes effective, the applicant shall constitute the fund with the maritime court.

A limitation fund for maritime claims may be constituted either by depositing cash or by providing security acceptable to the maritime court.

The sum of the limitation fund for maritime claims shall cover the amount of liability to be limited and any interest accruing from the date of the accident up to the date of constitution. Where the fund is constituted by way of security, the amount of the security shall cover the amount of the fund and any interest accruing thereon during the period of such constitution.

Where the fund is constituted with cash deposited, the date on which the fund is transferred into the bank account designated by the maritime court shall be deemed to be the date of constitution of the fund. Where the fund is constituted with security provided, the date on which the maritime court accepts the security shall be deemed to be the date of constitution of the fund.

Article 109 After a limitation fund for maritime claims has been constituted, the parties shall bring an action in respect of the maritime dispute with the maritime court with which the limitation fund for maritime claims has been constituted, unless a jurisdiction agreement or arbitration agreement has been reached between the parties.

Article 110 A person, having wrongly applied for constitution of a limitation fund for maritime claims, shall indemnify the interested person for the losses thus incurred.

Chapter X Procedure for Registration and Repayment of Debts

Article 111 After announcement of the maritime court's order for forced auction of a ship, the creditors shall, within the time limit announced, apply for registration of their claims pertaining to the ship to be auctioned. Creditors who fail to register

their claims before expiry of the said time limit period shall be deemed to have abandoned their rights to be satisfied from the proceeds of the auction.

Article 112 After the maritime court's announcement of acceptance of the application to constitute a limitation fund for maritime claims, the creditors shall, within the time limit announced, apply for registration of their claims relevant to the maritime accident that occurred at a particular scene. The creditors who fail to register their claims before expiry of the time limit announced shall be deemed to have abandoned their rights to debt.

Article 113 A creditor who wishes to apply for registration of his claims shall file an application in writing with the maritime court and provide relevant debt evidence.

Debt evidence includes legally-binding judgements, written orders, conciliation statements, arbitral awards, notarised documents concerning creditors' rights to debt and other evidential material substantiating the maritime claim.

Article 114 The maritime court shall examine the application submitted by a creditor, and make an order to allow the registration if debt evidence is provided, and to reject the application if it is not.

Article 115 Where the maritime court, having examined the judgements, written orders, conciliation statements, arbitral awards, or the notarised documents concerning creditors' rights to debt provided by the creditors, firmly believe that they are all true and lawful, it shall make an order to confirm them.

Article 116 Where a creditor wishes to provide other maritime claim evidence, he shall, after having registered his claims, bring an action to confirm his rights before the maritime court where the claims are registered. Where an arbitration agreement has been concluded between the parties, they shall apply for arbitration promptly.

The judgements and written orders made by the maritime court to confirm the rights are legally binding, no parties may appeal against them.

Article 117 After examining and confirming the debts, the maritime court shall issue a notice to the creditors for a creditors' meeting, and make arrangements for and convene the creditors' meeting.

Article 118 The creditors' meeting may through negotiation put forward a plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims and sign an agreement on satisfaction.

The agreement on satisfaction shall be legally binding after the maritime court makes an order to confirm it.

Where consultation at the creditors' meeting fails, the maritime court shall,

according to the ranking of claims provided for in the Maritime Code of the People's Republic of China and other related laws, decide on the plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims.

Article 119 The proceeds from auction of a ship and interest thereon, or the limitation fund for maritime claims and interest thereon, shall be distributed at the same time.

In distribution of the proceeds from auction of a ship, the legal costs to be borne by the person liable, expenses incurred in order to preserve the ship or to procure its auction and to distribute the proceeds from the auction, as well as other expenses incurred in the common interest of the creditors, shall first be paid out of the proceeds from such auction.

The balance, after satisfaction of the debts, shall be refunded to the former ship-owner or the person constituting the limitation fund for maritime claims.

Chapter XI Procedure for Exigence of Maritime Liens

Article 120 Where a ship is transferred, the transferee may apply to the maritime court for exigence of the maritime lien, demanding the maritime lien holder to assert his right promptly so as to extinguish the maritime lien attached to the ship.

Article 121 A transferee who wishes to apply for exigence of the maritime lien shall file an application with the maritime court of the place where the ship is to be delivered or where the domicile of the transferee is located.

Article 122 A person who wishes to apply for exigence of the maritime lien, shall submit to the maritime court a written application, the contract for ship transfer, technical data of the ship and other documents. In the written application shall be stated the name of the ship, the facts and grounds therefor.

Article 123 The maritime court, having received the application and the relevant documents, shall examine them and, within seven days, make an order to approve or disapprove the application.

A transferee who is dissatisfied with such an order may apply for review not more than once.

Article 124 After an order to approve an application becomes effective, the maritime court shall issue an announcement in newspapers or other news media urging the maritime lien holder to assert his right within the period of exigence.

The period for exigence of a maritime lien is 60 days.

Article 125 A maritime lien holder who asserts his right within the period of

exigence shall complete registration with the maritime court; if the lien holder fails to assert his right, he shall be deemed to have waived the maritime lien.

Article 126 Where on the expiry of the period of exigence, no one asserts the maritime lien, the maritime court shall, on the application of a party, make a judgement, declaring that the ship to be transferred is free from maritime lien. The judgement shall be published.

Chapter XII Supplementary Provisions

Article 127 This Law shall go into effect as of July 1, 2000.