

## New Provisions on the Shipper's Right of Control Over Cargo under the 2025 Maritime Code

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### I. Introduction

A dilemmatic scenario probably encountered by the carrier by sea is when a shipper, after vessel departure, seeks cargo return or redirection to an alternative consignee while the consignee is claiming the cargo at the same time. Shippers' requests constitute material alterations or even rescissions of the carriage contract, giving rise to profound disputes regarding the respective rights and obligations of parties involved.

For shippers, having right to modify or rescind the contract equates to the right of control over cargoes, and deprivation of this right may result in loss of both goods and money. Meanwhile, carriers may be put in a quandary of concurrent return/delivery demands from shippers and consignees.

The previous version of Maritime Code had no stipulations governing the shipper's right of control over cargoes and restricted the shipper's right of contract rescission to the period prior to vessel departure from the loading port, leaving substantial gaps of parties during performance of the contract.

The 2025 Maritime Code introduces new clauses to explicitly affirm the shipper's right of control over after vessel departure. Specifically, during the period of carrier responsibility, the shipper may submit written instructions to the carrier, provided the shipper compensates the carrier for any resultant losses, to: 1) suspend carriage; 2) return the cargo; 3) change the port of discharge; or 4) deliver the cargo to an alternative consignee.

Nevertheless, the exercise of the shipper's right of cargo control is subject to limitations. The carrier may reject the shipper's request, but must immediately notify the shipper, under any of the following circumstances:

- 1) The carrier is unable to fulfill the request for objective cause, or fulfillment would interfere with the carrier's normal operations;
- 2) The carrier reasonably anticipates fulfillment will incur additional expenses or economic losses, and the shipper fails to provide appropriate security when required;
- 3) The shipper fails to present the issued transport documents as requested by the carrier.

We believe the acknowledgement of shipper's right of control over cargoes in 2025 Maritime Code will bring on significant and far-reaching consequences.

### II. Sources of the Shipper's Right of Cargo Control

The recognition of the shipper's right of cargo control in 2025 Maritime Code aligns with the provisions on transportation contracts in Chinese Civil Code, reflecting the broader trend of alignment and unification between the Maritime Code (as a special law) and the Civil Code. Notably, similar provisions on the shipper's right of cargo control exist in air transport. Under the Montreal Convention, shippers in air transport enjoy rights to suspend carriage, retrieve goods, or change consignees.

Also, Rotterdam Rules provide detailed regulations on cargo control rights under different types of bills of lading and identify authorized controlling parties. However, since the Rotterdam Rules have not entered into force and China has not ratified them, the revisions to cargo control rights in the 2025 Maritime Code cannot be directly equated to those in the Rotterdam Rules.

### III. Interpretation and Application

Under the 2025 Maritime Code, while shippers are entitled to the right of cargo control, this right is not absolute: carriers may refuse the shipper's requests under specific circumstances. Among these, particular attention should be paid to the scenario where "the shipper fails to present the issued transport documents as requested by the carrier."

A literal interpretation suggests that for a shipper to exercise cargo control, they must ensure the carrier is free from delivery claims by the consignee, which implies as a matter of fact the cargoes remain under the shipper's control. If the consignee has already acquired the right to demand delivery from the carrier, the carrier may lawfully reject the shipper's request.

However, this provision may spark new debates in practice: Is presenting transport documents a mandatory legal requirement, or merely a condition at the carrier's discretion? If a carrier refuses the shipper's control request without first demanding the presentation of documents,

would the carrier still be liable for breach of contract?

An ensuing issue arises when a shipper unable to present transport documents insists on exercising right of control, while the consignee demands delivery with an original bill of lading, are these provisions sufficient grounds to exempt the carrier from incurred liability to the shipper by directly rejecting the shipper's request and delivering to the consignee? Based on our experience, the answer is definitely no.

In previous cases involving such disputes, the judicial opinions always impliedly anticipate the carriers bearing a duty to exercise due diligence in verifying the circulation of transport documents. When facing conflicting return/delivery demands from shippers and consignees, carriers should prudently consider both parties' claims and obtain adequate security to indemnify itself against liability.

There is no denying that after the official implementation of the 2025 Maritime Code, the likelihood of carriers facing simultaneous delivery/return requests from both shippers and consignees will significantly increase, regardless of how the provisions are ultimately enforced.

Additionally, given the alignment between the 2025 Maritime Code and the Civil Code regarding the shipper's right of control, we expect that matters not expressly stipulated in the Maritime Code will be supplemented by the Civil Code and its judicial interpretations, with rights and obligations of parties involved to be determined based on their underlying contractual principles and legal logic.

From a practical standpoint, even with explicit cargo control rights, shippers must still prioritize preventing the loss of control over transport documents as a critical prerequisite for exercising these rights. For carriers, when confronting with conflicting requests from shippers and consignees, they should respond with caution and diligence. Regardless of to whom the carrier ultimately delivers the cargoes, they must demonstrate that their decision was made after reasonable and careful review.

We have extensive experience in handling disputes over the control of goods. Should you encounter any similar disputes, you are welcome to consult us. We will provide effective and practical solutions.

## Amendments to “Delay in Delivery” under the 2025 Maritime Code of PRC

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The 2025-promulgated Maritime Code of PRC (2025 Maritime Code)<sup>1</sup>, set to take effect on May 1, 2026, has been drawing widespread attention recently. This amendment represents not only an upgrade in legislative technique, providing a new framework for the innovative, prosperous, and evolving shipping industry, but will also offer fresh guidance for a wide range of participants of industry. We will provide a series of brief summaries of the significant revisions in the 2025 Maritime Code compared to the 1992 Maritime code, based on our case handling experience, offer our analysis on how judicial interpretations might adapt after its implementation.

This article focuses on the amendments concerning “delay in delivery” in the new Maritime Code. We have chosen “delay in delivery” as our first topic because its significance within maritime law is emphasized. “Delay in delivery” is no longer a neglected issue but has become noticeable, constituting an independent legal consequence in the carriage of goods by sea.

### I. The change in criteria for delay in delivery

By recalling the previous cases we dealt with, while “delay in delivery” is an extremely common phenomenon that was supposed to cause disputes, it has rarely led to successful claims. A core reason, in our view, is that under the 1992 Maritime Code, establishing “delay in delivery” determined by laws was difficult. As the provisions required a failure to

deliver within “the expressly agreed time”<sup>2</sup>, while the judicial practice mostly did not recognize the shipping schedule as an agreement on timeframe of delivery, claims for delay in delivery were seldom successful because “the expressly agreed time” can hardly be proved. Consequently, claims for delay often had to be attached to claims for loss of or damage to cargo, without being fully addressed as an independent issue. As for the one of the prominent amendment 2025 Maritime Code introduces, the application is extended to the carriage of goods between Chinese ports (domestic carriage by sea), correspondingly, the criteria stipulated for delay in delivery has been relaxed from “the expressly agreed time” to “within a reasonable time” for the domestic carriage by sea<sup>3</sup>. We believe this significant change will lead to a noticeable increase in claims for “delay in delivery”.

### II. Delay in delivery becoming an independent legal consequence

As mentioned, 2025 Maritime Code has granted “delay in delivery” an equal status in every aspect with loss of or damage to cargo, establishing it as an independent legal consequence that the carriers should take responsible for. While the 1992 Maritime Code allowed claimants to sue for both cargo loss/damage and delay concurrently, “delay in delivery” has seemed to occupy a secondary place. For instance, the exemptions of carrier's liability did not extend to liability for delay in delivery; and the “localized damage

system” for multimodal transport operators appeared not to cover delay in delivery. The 2025 Maritime Code comprehensively resolves these issues.

When discussing carrier liability, loss of or damage to cargo and delay in delivery are now treated in parallel in abovementioned respect. Regarding the liability other than cargo loss/damage caused by delay in delivery, it may relate to market loss or liability for breach of contract to a third party. Although the 2025 Code does not provide further details, such liability should still be subject to the “principle for foreseeability” under the Civil Code.

### III. Exemptions and limitation for carrier’s liability for delay in delivery

#### A. Exemptions

Under 1992 Maritime Code, carriers were exempted from liability for loss of or damage to cargo but delay in delivery in certain circumstances. However, there is a favorable change for carriers that their liability for delay in delivery has also been explicitly included in circumstances which carrier may exempt from. In addition to the circumstances for exemptions<sup>4</sup>, 2025 Maritime Code also makes the following amendments:

- Piracy or terrorist activity is newly added as a circumstance for exemption
- The acts of the consignee are included as a circumstance for exemption, which we see as a logical refinement in legislation;
- For domestic carriage by sea, the carrier is not stipulated to invoke exemptions for “fault in navigation or management of the ship” or “fire on board”
- Other improvements and adjustments in legislative expression.

Regarding the burden of proof, except for the exemption concerning fire on board in international carriage, the carrier bears the burden of proving his entitlement to any exemption.

#### B. Limitations

Apart from exemptions, a carrier’s liability for delay in

delivery is limited to the amount of freight. Furthermore, if delay in delivery occurs concurrently with loss/ damage to cargo, the total liability limit shall not exceed the packaging limitation as the higher between 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, which remains unchanged.

### IV. Possible effects of the amendments in Delay in delivery

In summary, we believe “delay in delivery” is becoming a more “actionable” cause of claim, particularly in domestic carriage by sea. Not only is a vessel’s schedule more likely to be considered meeting “reasonable time” requirement, but carriers for domestic carriage also cannot rely on the “fault in navigation/management” or “fire on board” exemptions. For international carriage, although a schedule may still not constitute an “expressly agreed time” under the 2025 Maritime Code, as the evolving supply-demand dynamics in transport, driven by new business models like cross-border e-commerce, there is a tendency that many multimodal transport operators may make delivery time promises (explicit or implicit) to attract clients, which will potentially lead to related disputes in near future.

From an insurance perspective, P&I cover does not in general indemnify losses due to delay; and losses are also usually excluded from cargo insurance policies either. With the implementation of the 2025 Maritime Code, there may be some growing demand for insurance products for delay-related coverage.

Should you have any interest in the topics related to the amendments of the Maritime Code, please do not hesitate to contact us.

#### FOOTNOTES:

1 See full version of 2025 Maritime Code of The People’s Republic of China at: [http://www.npc.gov.cn/npc/c2/c30834/202510/t20251028\\_449061.html](http://www.npc.gov.cn/npc/c2/c30834/202510/t20251028_449061.html)

2 See Article 50 of the 1992 Maritime Code;

3 See Article 51 of the 2025 Maritime Code

4 See Article 52 of the 2025 Maritime Code

## Is International Carriage of Goods with Chinese Ports involved Mandatorily Governed by Chinese Law after 1st May 2026?

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### I. Introduction

The new *Maritime Code of PRC* will come into force on 1st May 2026. One of the most significant amendments is the interpretation and application of Article 295, which has drawn extensive attention.

Article 295 of the 2025 *Maritime Code of PRC* stipulates:

*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 nation having the closest connection with the contract shall apply.*

*An international contract for the carriage of goods by sea where the port of loading or the port of discharge is located within the territory of the People's Republic of China shall be governed by the provisions of Chapter IV of this Code.*

Compared with the 1993 *Maritime Code*, the first paragraph remains substantively unchanged, while the second paragraph is newly added. This addition raises a direct question: May parties be allowed to agree on the applicable law for a contract of international carriage by sea with the port of loading/dischARGE in China?

Our answer is: When a dispute over such contract is accepted and tried by Chinese courts, Chapter IV of the *Maritime Code* shall apply mandatorily, which means any agreement by the parties on the applicable laws shall be invalid.

### II. Whether law application is subject to Party Autonomy or Mandatory Rules?

Before discussing law application, jurisdiction as the inevitable prerequisite hereto shall be addressed first and foremost. When will a case with Chinese ports involved may fall within the jurisdiction of Chinese courts? Two circumstances are specified:

- i) The parties have not agreed on jurisdiction.
- ii) The parties have agreed on the jurisdiction of a Chinese court.

If a party files a case before Chinese courts, the court will first make examination over the jurisdiction. When a valid jurisdiction agreement precluding the jurisdiction of Chinese courts has been recognized by the court, the case will be dismissed (unless it is considered a new jurisdiction agreement is reached thereafter).

Once Chinese courts acknowledge its jurisdiction, given the case of international carriage by sea is genuinely foreign-related, the court will determine the law application according to *Law of the People's Republic of China on the*

*Law Applicable to Foreign-Related Civil Relationships*.

Pursuant to this Law, party autonomy in applicable law shall acquire the express authorization by Chinese laws. Where Chinese laws impose mandatory rules on applicable law, such rules shall apply directly and override any party autonomy in this respect.

To be brief, party autonomy in law application becomes valid only if it is authorized by Chinese law and no mandatory rules are imposed to the contrary.

Back to Article 295 of 2025 *Maritime Code of PRC*: Parties may generally choose the applicable law for most matters under the *Maritime Code*. However, for contracts of carriage by sea with the loading/discharging port in China, law application on which is mandatorily stipulated and precluded from party autonomy.

### III. Case Scenarios on Law Application

As discussed above, Chinese courts respect party autonomy on jurisdiction, based on which, we select several case scenarios to analyze the possible law application:

Scenario 1, where the loading/discharging port in China; the charterparty is used with the bill of lading, stipulating arbitration in London and English law applies, one party brings the case before Chinese courts.

i) The court will examine the validity of the arbitration agreement. If valid, the court will not accept the case.

ii) If the arbitration agreement is considered invalid and the Chinese court has jurisdiction over the case, Chapter IV of the *Maritime Code* applies regardless of the parties' choice of law.

Scenario 2, where the loading/discharging port in China; parties agree to refer to arbitration in China and apply English law.

In such case, whether parties have express agreement in applicable law to the arbitral proceeding shall be determined at the beginning. If not, according to the arbitration rules, the law application will likely be recognized under laws of the seat of the arbitration (say Chinese laws). The parties' agreement on applying English laws may be invalid.

Scenario 3, Neither loading nor discharging port is in China; parties agree to jurisdiction of Chinese courts or arbitration in China.

Chinese laws impose no mandatory rules of law application for such cases. The parties' choice of foreign law will be respected, and the case will be heard pursuant to the chosen foreign law.

## IV. Recognition and enforcement of foreign arbitral awards in China

Where a case with the loading/discharging port in China is tried by a foreign arbitral institution with application of foreign law, will the award be recognized and enforced in China?

Our view to this situation is: any valid arbitration agreement

is respected by Chinese laws. Recognition and enforcement of foreign arbitration awards is governed by the New York Convention and Arbitration Law of PRC, where law application is not a substantial ground to be reviewed as to the validity of an arbitration award.

Should you have questions regarding applicable law after the new Maritime Code takes effect, please feel free to contact us.



**Mr. Zhang Changtao** has been practicing since 2007 and now is a partner in Shanghai Office. Changtao has rich experience in dealing with litigation and arbitration and handled hundreds of dispute cases ranging from maritime, admiralty, international trade, corporate, shipping finance, crossed case of civil law and criminal law, marine related criminal cases and labor law. Changtao acts for underwriters, P&I clubs, ship owners, traders, logistics companies and freight forwarders, leasing companies and production companies. (Mobile: 86 13585955664, Email: zhangchangtao@wjnc.com)



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