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China: Law & Practice

John Wang, Xu Jun, Song Jia and Zhao Yuxuan
Wang Jing & Co

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Law and Practice

Contributed by:

John Wang, Xu Jun, Song Jia and Zhao Yuxuan
 Wang Jing & Co see p.21



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1. MARITIME AND SHIPPING LEGISLATION AND REGULATION

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The following articles in the Special Maritime Procedure Law of the People's Republic of China (PRC) establish the authorities of both maritime and appellate courts:

- 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 in which those maritime courts are located, and the Supreme People's Court, shall apply this Law.

There are 11 maritime courts in the PRC. In practice, the maritime and shipping claims are generally categorised into claims of maritime tort, maritime contract, maritime lien, marine insurance, ship ownership/possessory lien/mortgage, salvage, general average and other claims as stipulated by the law.

The appellate courts for these claims are the Higher People's Courts of the provinces where the maritime courts are located. Those Higher Courts can also entertain maritime/shipping claims as courts of first instance with an amount equal to or above RMB5 billion or which have a major impact in that area (although there is no clear standard for "major impact"). In that scenario, the Supreme People's Court will be the appellate court for those cases.

1.2 Port State Control

The PRC is a member of the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region. The Maritime Safety Administration, and their branches, (MSA) are the port state control authorities in the PRC. The MSA is responsible for maritime safety supervision on vessels registered outside mainland China.

Where the MSA notices serious deficiencies affecting the seaworthiness of the vessel or the crew safety or causing damages to the marine environment, they will detain the foreign ship, and that ship may not be permitted to leave the PRC port until the deficiencies are rectified.

In cases of marine casualties, such as grounding, pollution and wreck-removal, the MSA are responsible for effecting emergency response and developing/implementing plans according to the circumstances.

When possible, the MSA will also attend on board to undertake investigations of the marine casualties and issue investigation reports in which the cause and liability of the marine casualties will be analysed and determined. The MSA will open their investigation reports to the public through their websites.

1.3 Domestic Legislation Applicable to Ship Registration

Domestic Legislation Applicable to Ship Registration

For registration of vessels other than fishing vessels, the Regulations of the PRC Governing the Registration of Ships shall apply.

For registration of fishing vessels, the Measures of PRC on the Registration of Fishing Vessels shall apply.

Competent Authority of Ship Registration

The Ministry of Transport and the MSA handle the registration of vessels other than fishing vessels.

The Ministry of Agriculture and the affiliated fishery administration handle the fishing vessels' registration.

1.4 Requirements for Ownership of Vessels

As a general rule, the vessels owned by domestic individuals and/or enterprises can be registered at the ship registration authorities. If an enterprise possessing foreign capitals is registering a vessel, it is required that the domestic capitals be no less than 50% of the whole.

As an exception, PRC authorities will accept those registrations of international trading vessels filed by those China-invested enterprises, Sino-foreign joint ventures or Sino-foreign co-operative joint ventures that are established in the free trade zones in accordance with PRC law, and those filed by the wholly foreign-owned enterprises and wholly Hong Kong-Macao-Taiwan-owned enterprises that are established in accordance with the regime of free trade zones specified by the State Council. The international trading vessels registered under this exceptional rule shall sail international routes and/or Hong Kong, Macao and Taiwan routes only.

For the ownership registration of fishing vessels, domestic ownership is required.

PRC law permits the registration of vessels that are still under construction.

1.5 Temporary Registration of Vessels

PRC law permits the temporary registration of vessels.

For vessels other than fishing vessels, the temporary registration can be granted, and a temporary certificate of ship's nationality can be obtained in the following circumstances:

- for a ship newly built and to be sold overseas, the ship-owner may apply at the place of construction;
- for a newly built ship purchased from overseas, the ship-owner may apply at the local embassy or consulate of the PRC;
- for a ship built in a place within the PRC other than its intended port of registry, the ship-owner may apply at the place of ship-building;
- for a ship built overseas, the ship-owner may apply at the local embassy or consulate of the PRC;
- for a ship bareboat-chartered overseas, the bareboat charterer may make the application;
- for a second-hand ship bought from abroad, the ship-owner may apply at the place of its domicile or principal place of business;
- for a change of port of registry due to the ship sale and purchase, the new ship-owner may apply at the new ship registration authority;
- for a change of port of registry due to the change of the ship-owner's domicile or the ship's route, the ship-owner may apply at the original ship registration authority;
- If a ship's nationality certificate is lost or contaminated overseas, temporary registration may also be granted.

For fishing vessels, usually the temporary registration of the ship's nationality will be granted by the ship registration authority if the fishing vessel is bareboat-chartered from abroad. If the ship's nationality certificate is lost or missing overseas, temporary registration may also be granted.

Dual nationality of a vessel is banned under PRC law.

1.6 Registration of Mortgages

The mortgage of a ship may be registered in the MSA where the port of registry is located.

The following documents are required for registering a mortgage:

- an application for mortgage registration in writing, executed by both parties;
- a ship mortgage contract and its master contract;
- a register certificate or ship-building contract;
- where a ship is owned by joint owners, the documents proving the agreement of the ship mortgage by all joint owners or joint owners holding more than two thirds of the shares thereof;
- where a bareboat charter is registered, the documents proving the charterer's agreement of the mortgage.

In registering the mortgage of a ship under construction, except as provided for in the first four points above, an affidavit by the mortgagor shall be submitted, warranting that the ship is not registered for mortgage in other ship-registration authorities, nor that any law or regulation prohibits the ship from being mortgaged.

1.7 Ship Ownership and Mortgages Registry

The ship ownership and mortgages' registry in the PRC is available to interested parties.

Apart from the owners, the following entities and persons may apply to the competent authority to view the ship-registration file as interested parties:

- the obligee of a ship and its successor, recipient and legatee and their agents may each apply to the competent authority to view the ship-registration file in their own name;

- the national department of administration and politics, the department of discipline inspection and supervision, the auditing department and the arbitration institution may apply to the competent authority to view the ship-registration file directly related to their work;
- law firms may apply to the competent authority to view the ship-registration file in relation to the cases they are handling which have been formally accepted by the court.

For the purpose of viewing the ship-registration file, the following documents shall be submitted:

- an application;
- a certificate of identity or qualification of the ship obligee, and proof of the mortgage;
- a certificate of identity or qualification of the successor, recipient or legatee, together with the materials proving the facts of the inheritance, gifting or legacy;
- a power of attorney specifying the specific matters to be inquired about, and the identify certificate of the agent (for an agent inquiry);
- a certificate issued by the national department of administration and politics, the discipline inspection and supervision department, the auditing department and the arbitration institution together with the work certificate of the official responsible for the inquiry;
- a letter of introduction of the law firm, proof of case acceptance, and documents proving the inquiry is related to the cases they are handling, as well as the practising licence of the lawyer making the inquiry.

2. MARINE CASUALTIES AND OWNERS' LIABILITY

2.1 International Conventions: Pollution and Wreck Removal

The following are the applicable international conventions and relevant laws which have been

ratified by the PRC and will impact upon the liability of owners and interested parties in events of pollution and wreck removal:

- the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997;
- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and the Protocol 1973;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, and the 1996 London Protocol;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;
- the International Convention on Civil Liability for Oil Pollution Damage, 1992;
- the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001;
- the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-induced Oil Pollution Damage; and
- the Nairobi International Convention on the Removal of Wrecks.

2.2 International Conventions: Collision and Salvage

The following international conventions and relevant laws have been ratified by the PRC and will impact upon the liability of owners and interested parties in events of collision and salvage:

- the Convention on the International Regulations for Preventing Collisions at Sea, 1972;

- the International Convention for the Safety of Life at Sea, 1974;
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;
- the Maritime Code of the PRC;
- the Provisions of the Supreme People's Court on Some Issues about the Trial of the Cases of Ship Collision Disputes;
- the Provisions of the Supreme People's Court on the Trial of the Cases of Property Damage Compensation arising from Ship Collision and Allision;
- the International Convention on Salvage, 1989.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims is not applicable in PRC jurisdiction. The Maritime Code of the PRC, as a domestic legislation, applies in this regard, and its specific provisions are set out as follows:

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

(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 minimise 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, in whatever 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 states:

“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 PRC is a party;

(3) Claims for nuclear damage under the International Convention on Limitation of Liability for Nuclear Damage to which the PRC is a party;

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

(5) Claims by the servants of the ship-owners or salvor, if under the law governing the contract of employment, the ship-owner 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.”

Articles 210 and 211 regulate the calculation of limitations of liability, which is generally identical to the limitation level regulated by the 1976 Convention on Limitation of Liability for Maritime Claims.

The PRC sets a relatively low standard for limitations of liability for ships with a gross tonnage ranging from 20 tons to 300 tons and those exceeding 300 tons but engaged in domestic transport services and other coastal works.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Application for the constitution of a limitation fund can be made before or during litigation proceedings, but no later than the issuance of the first-instance judgment.

The court will notify known interested parties and make an announcement to unknown interested parties via public media within seven days after the application.

Announcement of the constitution shall be produced in public media for three days consecutively; the announcing period is 30 days from the last announcement.

Notified parties can raise dissension against the constitution within seven days upon receipt of notice; parties not notified can raise dissension against the constitution within 30 days from the last announcement date.

The court's decision shall be made within 15 days upon receipt of dissension against the constitution. The time limit to appeal against the court's decision is seven days upon receipt. The Appeal Court's decision on dissension is 15 days upon receipt.

If no dissent is received, the court will permit the constitution within 30 days from the last announcement made on public media.

The creditor's registration period against the limitation fund is 60 days, beginning from when the last announcement is made.

The ship-owner, charter, operator, salvor and insurer may apply to the maritime court to constitute a limitation fund.

Cash or a guarantee shall be made available for the fund within three days after the court's decision to allow constitution, otherwise the application will be treated as withdrawn. A limitation fund is successfully constituted by a successful cash deposit or guarantee.

3. CARGO CLAIMS

3.1 Bills of Lading

The laws and regulations applicable to the carriage of goods by sea and bills of lading (B/L) in the PRC are:

- the Maritime Code of the PRC (CMC); and
- the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases of Delivery of Goods Without Original Bill of Lading (Provisions of Delivery of Goods without B/L).

The PRC is not a party to the Hague Rules (except Hong Kong and Macau), the Hague-Visby Rules (except Hong Kong), the Hamburg Rules, or the Rotterdam Rules.

3.2 Title to Sue on a Bill of Lading

The shipper, the lawful holder of the B/L, and the carrier have the title to sue.

The Shipper

In PRC law, "shipper" means both the contractual shipper who concludes the contract of carriage of goods by sea with the carrier, and the actual shipper who delivers the goods to the carrier.

The contractual shipper has the title to sue the carrier directly under the contract of carriage of goods by sea. The B/L serves as evidence of the contract.

The actual shipper who holds the original "to-order" B/L, even if his or her name is absent from the B/L, is still entitled to sue the carrier. The Supreme Court held that the actual shipper who holds the straight B/L also has the right to sue the carrier for the delivery of the goods without the original B/L in the case (2016) Supreme Court Min Shen No 2284.

The Holder of the Bill of Lading/Consignee

The lawful holder of the B/L has the right to sue the carrier under the B/L.

The Carrier

The contractual and actual carriers have the title to sue the shipper under the contract of carriage of goods by sea and the B/L.

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Ship-Owner's Liability

The ship-owner, whether it is a contractual or actual carrier, shall be liable for the loss of or damage to the goods during the period in which the carrier is in charge of the goods (with the exception stipulated in Article 51 of the Provisions of Delivery of Goods without B/L) and the loss caused by the delay in delivery within the time expressly agreed upon, if any; in general, the ship-owners (two types of carriers) should:

- exercise due diligence to make the ship seaworthy before and at the beginning of the voyage;
- perform duty of care for cargo properly; and
- make no unreasonable deviation.

However, the actual carrier may not have the obligation to issue the B/L or deliver the cargo, subject to his or her charterparty with the charterers. In addition, the contractual carrier shall be responsible for the entire carriage, while the actual carrier is only responsible for his or her segment. They can both seek recovery from each other under Article 65 of the CMC.

Limitation of Liabilities for Cargo Damages

Article 56 of the CMC states:

“The liability of the carrier for the loss resulting from loss of or damage to 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 kilogram 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 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.”

According to Article 61, the above limitation of liability applies to both the contractual and the actual carrier.

In addition, according to Articles 204 and 207, except for the unit limitation of limitation for the carrier, the ship-owner (including the charterer

and the ship operator) and the salvor could be protected by the limitation of liability for maritime claims stipulated in Article 210 of the same law.

However, the carrier or the person liable will not be entitled to the benefit of limitations of liabilities stipulated in Articles 56 and 207 if the loss, damage or delay in delivery of the goods resulted from an act or omission of the carrier or the person which was done with the intention to cause that loss, damage or delay, or recklessly and with the knowledge that such a loss, damage or delay would probably result under Articles 59 and 209.

“A person liable” in Article 209 refers to the person himself or herself and does not include his or her servant and agent. Therefore, the ship-owner is still entitled to benefit from the limitation of liability for a maritime claim if it is proved that the loss, damages or delay in delivery of goods resulted from the wilful or reckless acts of the Master, crews or agent, rather than himself or herself.

3.4 Misdeclaration of Cargo

The shipper shall indemnify the carrier against any loss resulting from the misdeclaration of general and dangerous cargo.

In practice, for general cargo, in order to lodge a successful claim, the carrier needs to prove that the damage was caused by the fault of the shipper or his or her servant or agent.

However, for dangerous goods, the court would normally apply the principle of strict liability. As per the case (2016) Supreme Court Min Shen No 1271, the Supreme Court held that, for dangerous cargo, if:

- the shipper, including the actual shipper and Non-Vessel Operating Common Carrier, fails

- to notify or notifies the actual carrier inaccurately;
- the actual carrier has fulfilled its duty of care for the goods; and
- the loss or damage was caused by the dangerous cargo that was not properly declared,

the shipper shall be liable for the loss or damage resulting from the misdeclaration of dangerous cargo.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Time Bar

The time limit for bringing a claim against the carrier for damaged or lost cargo (either for breach of contract or in tort) is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier and within the limitation period or after the expiry thereof. If the person allegedly liable has brought a recourse claim against a third party, that claim has a time limit 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 claim documents by the court.

Extension, Suspension and Discontinuance

The time limit for actions for maritime disputes cannot be extended by agreement. It can be suspended or discontinued pursuant to the CMC.

Regarding suspension, Article 266 states: "Within the last six months of the limitation period if, on account of force majeure or other causes, the claims could not be made, the limitation period shall be suspended. The counting of the limitation period shall be resumed when the cause of suspension no longer exists."

Regarding the discontinuance, Article 267 states: "The limitation of time shall be discontinued as a result of the claimant bringing an action or submitting the case for arbitration or

the admission to fulfil obligations by the person against whom the claim was brought. 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... The limitation period shall be counted anew from the time of discontinuance."

4. MARITIME LIENS AND SHIP ARRESTS

4.1 Ship Arrests

The PRC has not participated in any international convention regarding the arrests of vessels. The domestic laws that cover vessel arrests in China are:

- the CMC;
- the Special Maritime Procedure Law;
- the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Law in the Arrest and Judicial Sale of Ships.

4.2 Maritime Liens

PRC law differentiates between maritime liens and maritime claims. The following maritime claims are entitled to maritime liens:

- crew wages, repatriation and social insurance costs, other remuneration;
- personal injury and casualty that occurred in ship-operation;
- ship's tonnage dues, pilotage dues, harbour dues and other port charges;
- salvage;
- loss of or damage to property resulting from a tortious act in ship operation.

However, claims for oil pollution damage caused by a ship carrying more than 2,000 tons of oil 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 the above-mentioned maritime liens.

The following maritime claims are entitled to require the arrest of a ship:

- loss of or damage to the property occurred in ship-operation;
- personal injury and casualty directly related to ship-operation;
- salvage at sea;
- damage or threat of damage caused by the vessel to the environment, the coast or relevant interested parties, the measures taken for prevention, reduction and elimination of any such damage, payment for compensation of any such damage, the reasonable cost for potential or actual measures taken for restoring the environment, losses the third party suffered or will probably suffer due to that damage, the damages, fees or losses which are similar in nature to those specified in this point;
- expenses relating to the re-floating, removal, reclamation or destruction of a sunken ship, shipwreck, stranded ship, abandoned ship or to making them harmless, including expenses relating to the re-floating, removal, reclamation or destruction of the objects which have, or have no longer, remained on board the ship or to making them harmless, and expenses relating to the maintenance of the abandoned ship and her crew;
- agreement in respect of employment or chartering of a ship;
- agreement in respect of carriage of goods or passengers;
- goods (including luggage) on board or loss or damage related thereto;
- general average;
- towage;
- pilotage;
- providing supplies or rendering of services in respect of ship operation, management, maintenance or repair;
- construction, reconstruction, repair, refurbishment or equipment of a ship;
- dues or charges for ports, canals, wharves, harbours or other waterways;
- crew wages or other payments, including repatriation and social insurance premiums payable for the crew;
- expenses paid for a ship or ship-owner;
- a ship's insurance premium (including protection and indemnity calls) payable by or paid for by a ship-owner or bareboat charterer;
- a commission, brokerage or agency fee related to a vessel payable by or paid for by a ship-owner or bareboat charterer;
- disputes over the ownership or possession of a ship;
- disputes between co-owners of a ship over the employment or earnings of the ship;
- a ship mortgage or right of a similar nature;
- disputes arising from the sale and purchase of a ship.

4.3 Liability in Personam for Owners or Demise Charterers

A ship can be arrested regardless of its owners' or demise charterers' personal liability on the merits constituting a recognised maritime lien on the ship. Even if the ship's ownership has changed, the ship can be arrested within the time limit to exercise a maritime lien.

4.4 Unpaid Bunkers

A bunker supplier is entitled to arrest a vessel for unpaid bunkers, and there is no difference whether it is a contractual or an actual supplier.

However, if the bunkers were supplied to a chartered vessel and the bunkers were ordered by the charterer and not by the owner, things will be different. A vessel operated or chartered by

a time charterer or voyage charterer may not be arrested.

4.5 Arresting a Vessel

The following formalities are required to arrest a ship:

- a power of attorney and an identify certificate of a legal representative;
- a Certificate of Incorporation or Good Standing of the applicant.

These documents shall be duly notarised and legalised:

- an application for arrest;
- supporting evidence and translation into the Chinese language (if the original language is not Chinese). Originals or notarised copies of supporting evidence are required.

The court always requires the applicant to lodge a counter security in the case of a wrongful arrest.

4.6 Arresting Bunkers and Freight

The applicant is entitled to arrest bunkers. However, it is very difficult to enforce such an arrest, due to complex customs formalities, safety, and storage requirements, etc.

The applicant is entitled to apply for a court order to preserve the freight for debts that are due.

4.7 Sister-Ship Arrest

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

4.8 Other Ways of Obtaining Attachment Orders

The applicant may apply for the arrest of cargo, or property preservation against the respondent's real estate or other assets.

4.9 Releasing an Arrested Vessel

The owner or any interested party may lodge a satisfied security to release the vessel. The court only accepts security lodged in cash or a Letter of Undertaking (LOU) issued by a domestic bank or insurance company or any other entity they deem appropriate. Nonetheless, the ship-owner or the interested party is at liberty to negotiate the security with the applicant. In the event that the applicant agrees to accept a club LOU or a foreign bank's guarantee, the court may release the vessel.

4.10 Procedure for the Judicial Sale of Arrested Ships

A judicial sale of an arrested ship must follow the steps set out below:

- set up an auction committee;
- appraise the ship value;
- issue the auction notice;
- display the ship;
- set the price;
- register the bidders;
- conduct the ship auction and bidding (online);
- make the auction confirmation and delivery;
- the court releases the ship and announces the auction result.

While the ship is under arrest, the ship-owner or bareboat charterer is liable for maintaining the ship until it has been sold by the court.

After being sold by auction, the payment sequence is:

- maritime claims with maritime liens;
- maritime claims secured by possessory liens;

- maritime claims secured by ship mortgages;
- other maritime claims in relation to the judicial sale and/or sell-off of the ship.

4.11 Insolvency Laws Applied by Maritime Courts

The PRC has its Enterprise Bankruptcy Law, which provides that all the bankruptcy cases shall be submitted to the Intermediate People's Court instead of the maritime court. According to the Interpretations to the Civil Procedure Law and the Interpretations to the Special Maritime Procedure Law, the Intermediate People's Court may request the maritime court to assist in the arrest and/or auction of the vessel owned by owners that are under bankruptcy proceedings. However, the enforcement of such a request or arrest is subject to the communication and coordination between the courts.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

The applicant shall indemnify the respondent for the wrongful arrest of a vessel. It is clear that the arrest is wrongful if the applicant loses in the substantive proceeding. In other scenarios, it is subject to the court's discretion.

5. PASSENGER CLAIMS

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

The Applicable Laws and Conventions to the Resolution of Passenger Claims in China

- The Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974: its 1976 Protocol;
- the CMC;
- the Provisions on limitation of liability for carriage of passengers by sea between ports of the PRC.

Time Bar

Article 258 of the CMC states:

"The time limit for bringing a claim 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 passengers disembarked or should have disembarked;

(2) Claims for death of passengers that occurred during the carriage period: 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 carriage period 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."

Limitation of Liabilities for a Ship-Owner

Article 117 of the CMC states:

"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 that mentioned in subparagraphs (2) and (3) in this Article: 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...

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..."

In addition, according to Article 207, a ship-owner (including a charterer and a ship-operator) or a salvor could enjoy the limitation of liability for maritime claims stipulated in Article 211 of the same law.

However, Articles 118 and 209 regulate that the carrier or a person liable shall not be entitled to limit his or her liability based on the above provisions, if it is proved that the loss resulted from his or her act or omission done with the intent to cause that loss or damage or recklessly and with the knowledge that such loss would probably result.

Meanwhile "a person liable" in Article 209 refers to the carrier/owner rather than the Master, crews or agent. This means that the carrier/owner is still entitled to benefit from the limitation of liability for maritime claims if it is proved that the loss, damages or delay in delivery of goods resulted from the wilful or reckless acts of the Master or crews rather than the carrier/owner.

6. ENFORCEMENT OF LAW AND JURISDICTION AND ARBITRATION CLAUSES

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

PRC courts rarely recognise the validity of law or jurisdiction clauses stated in the B/L, due to the lack of negotiation between the consignee, the receiver, the holder of the original B/L, the cargo underwriters and the carrier about such clauses.

6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading

PRC courts rarely recognise the validity of law and arbitration clauses incorporated into a B/L.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The PRC joined the 1958 New York Convention in 1986. Civil Procedure Law is the domestic law that governs the recognition and enforcement of foreign arbitral awards.

A foreign arbitral award needs to be notarised and legalised before being submitted to the PRC courts for recognition and enforcement.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

The applicant is entitled to apply to the PRC courts for the arrest of a vessel in dispute which is subject to foreign arbitration or jurisdiction. This application shall be made before the applicant commences the arbitration/litigation proceeding. Once the arrest is granted, the applicant shall commence the arbitration/litigation proceeding within 30 days.

6.5 Domestic Arbitration Institutes

The China Maritime Arbitration Commission (CMAC) and the China International Economic and Trade Arbitration Commission (CIETAC) specialise in maritime claims.

6.6 Remedies where Proceedings are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

If the claimant commences proceedings before a PRC court in breach of foreign jurisdiction or arbitration clauses, the respondent is entitled to file a jurisdiction objection within the defence period to challenge the court's jurisdiction. If the court sustains the objection, it will dismiss the claimant's action. In that case, the claimant shall bear the court fee, and there will be no further remedies available to the respondent/defendant.

7. SHIP-OWNER'S INCOME TAX RELIEF

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

A PRC-incorporated ship-owner is subject to corporate income tax on its worldwide income earned by its vessels and is subject to relief for any tax paid on the same income elsewhere.

8. IMPLICATIONS OF THE CORONAVIRUS PANDEMIC

8.1 COVID-19-Related Restrictions on Maritime Activities

After the outbreak of the COVID-19 pandemic, PRC ports took strict prevention and control measures. So far, PRC ports are mainly taking the following measures, as suggested by the Ministry of Transport of China.

Regulation and Improvement of Operational Procedures

- Before a ship enters the port, port enterprises will hold a pre-meeting to study the COV-ID-19 risks on board, declare specific prevention measures and matters to be noted, and confirm the personnel in charge.
- Vessels which intend to carry out operations at Chinese ports shall report, within 24 hours before her ETA at the calling port, the health information of all on-board crew members to the port authority. If the sailing time is less than 24 hours, the report shall be made immediately upon departure from the last port.
- If the vessel intends to have a crew change in China, the crew's health information must be reported to the competent maritime authority within 48 hours before the ETA. If the sailing time is less than 48 hours, the report shall be made immediately when she sails out of the last port.
- Ships are urged to undergo disinfection and ventilation, duties are arranged and identity information of the personnel on and off the ships is recorded.
- Cargo operation of vessels on international voyages will only be allowed if:
 - (a) the vessel passes the sanitary quarantine and obtains a Free Pratique Certificate; and
 - (b) the ship-owners or the ship agent make a commitment about the crew's health.
- From 29 September 2021 to 30 June 2022, vessels on international voyages which plan to shift to domestic trading will only be allowed to carry out cargo operations after it is confirmed that:
 - (a) during a waiting period of 14 days at the port of entry, none of the vessel's crew members has any symptoms of suspected COVID-19 and two nucleic acid tests of all crew members conducted during the waiting period are negative; and

- (b) the relevant competent authority's approval has been obtained.
- The strict prevention and control measures include non-direct contact between ship and shore personnel. The crew on board vessels on international voyages are not allowed to disembark, except for production and living requirements and emergencies.
- No crew change, ship supply, ship inspection or emergency rescue of injured crew is allowed without approval from the port competent authority.
- Anyone with a body temperature over 37.3°C shall be prohibited from entering the port and it shall be reported to the local competent department according to the procedure.

Prevention and Protective Requirement for International Trading Ship Agents and Other Boarding Personnel

- They shall be fully vaccinated against COVID-19 before boarding vessels.
- They shall wear masks, gloves and goggles correctly and record body temperature, and register that information.
- They are prohibited from entering the crew's living area and shall avoid unnecessary direct contact with the crew.
- They shall avoid eating, going to the toilet or resting on board. After completion of their works, they shall leave the ship without delay.
- They shall be disinfected after disembarkation. The prevention and protective equipment shall be disposed of according to the relevant regulations.
- If COVID-19 test results of imported bulk refrigerated goods are positive, stevedores shall get a nucleic acid test without delay and shall also take other actions according to requirements imposed by the local Joint Prevention and Control Mechanism.
- Boarding personnel shall be encouraged to get the third dose of the COVID-19 vaccine.

Emergency Handling

- In the event that a crew member has a fever, cough or any other abnormal symptoms, the boarding pilots must be correctly equipped with protective suits, goggles, high-level medical protective masks and gloves, the ships must be ventilated and disinfected thoroughly, and all crew members must wear high-level protective masks.
- In the event that a person with suspected symptoms of new coronary pneumonia vomits, the vomit shall be covered by a disposable absorbent material and a sufficient amount of disinfectant or a disinfectant towel. After removing the vomit, the surface shall also be disinfected.
- After the person who is suspected of being infected is quarantined, the temporary observation room where he or she stays shall be disinfected. In addition, the boats and vehicles carrying that person shall also be disinfected.
- If a crew member is confirmed as infected with COVID-19 on a vessel where a boarding operation was in process, the pilotage agency and port enterprise shall immediately notify the local joint prevention and control mechanism and co-operate with the relevant departments to carry out quarantine, nucleic acid detection and epidemiological investigation. In the meantime, a written report should be submitted to the transportation management department.

Crew Restrictions

- Seafarers who have completed their course of vaccinations are preferred to be on board. Seafarers are encouraged to get the third dose of the COVID-19 vaccine. (v8.0 1.6).
- Crew change shall be conducted in areas with medium or low risk of infection.
- The new boarding crew shall be in normal good health within 14 days before their shift, and must check their body temperatures no

less than twice a day, fill in their health record and sign it, and submit it to the shipping company or seafarer-manning agency for approval; crew members who meet the health requirements should head for the port on “point-to-point” routes and directly embark on board in a timely manner.

- The new boarding crew must do their best to self-quarantine on board during the first 14 days.
- The crew members who are going ashore shall have their body temperatures checked at least twice a day within 14 days before the end of their shift, and shall fill in the health record, which shall be signed and confirmed by the Master.
- Where the crew is replaced at the last foreign port or within 14 days before arrival in China:
 - (a) the new boarding crew shall have a nucleic acid test within three days before boarding and can board the ship only with a negative test report. The test should be carried out in the institutions designated or recognised by PRC embassies and consulates overseas;
 - (b) when handling port-entry formalities, a ship shall submit the duplicate of the negative nucleic acid test reports of newly boarded crew issued at the last port or issued within 14 days before arrival;
 - (c) where a member of the crew does not board with such a test report, or boards with a fake report which causes the risk of the spread of COVID-19 in domestic China, he or she will be investigated for criminal liability.
- After a ship comes alongside, except for the normal duty shift of PRC crew and emergency rescue for the injured crew, the crew on board shall not be permitted to go ashore.
- After the formalities for the duty shift are completed, any crew with abnormal symptoms or a positive test result shall be taken into the care of the government. For crew

without abnormal symptoms or a positive test result, they shall act in accordance with the local regulations and requirement.

- The crew shall follow personal protection measures carefully during their duty shift and observe the quarantine requirements strictly during quarantine and report their daily health conditions to the shipping company or seafarer-manning agency.

8.2 Non-performance of a Shipping Contract

Non-performance of a shipping contract due to the implications of the pandemic may be considered by PRC courts as force majeure, provided that all statutory requirements have been satisfied. Since the outbreak of the COVID-19 pandemic, the PRC Supreme Court has handed down some guidance concerning non-performance of contractual obligations, following which the party claiming liability exemption shall bear the burden to prove the existence of force majeure events which are unavoidable, and, more importantly, necessarily resulting in the non-performance. PRC courts have been dealing with numerous disputes of this nature.

8.3 Enforcement of the “IMO 2020” Rule Relating to Limitation on the Sulphur Content of Fuel Oil

As China is a contracting state to Annex VI of MARPOL Convention, the 2020 sulphur content limit applies to China. The China Maritime Safety Administration has issued the Implementation Scheme of Global Marine Fuel Oil Sulphur Limit by 2020, which provides that:

- From 1 January 2020, vessels engaged in international voyages, when entering China waters, shall use fuel oil with a sulphur content not exceeding 0.50% m/m (mass by mass).
- From 1 March 2020, vessels engaged in international voyages when entering China waters

shall not carry fuel oil with a sulphur content exceeding 0.50% m/m.

- From 1 January 2020, vessels engaged in international voyages, when operating in the inland river emission control area, shall not use fuel oil with a sulphur content exceeding 0.1% m/m.
- From 1 January 2022, vessels engaged in international voyages, when operating in the coastal emission control area of Hainan waters, shall not use any fuel oil with a sulphur content exceeding 0.1% m/m.
- Vessels of international voyages with alternative measures which comply with Article 3 of MARPOL Annex VI could be exempted from the foregoing requirements.
- From 1 January 2020, the wash-water of open-loop exhaust gas cleaning systems shall not be discharged into waters of Domestic Emission Control Areas (DECAs).
- From 1 January 2020, where Chinese vessels on international voyages use or carry non-compliant fuel oil, due to non-availability of compliant fuel oil, and where their next ports of call are foreign ports, the vessels shall report to the maritime authorities of the registered ports immediately and notify the competent authorities of the next ports of call with a Fuel Oil Non-Availability Report (FONAR).
- From 1 January 2020, where vessels with Chinese nationality on international voyages use or carry non-compliant fuel due to non-availability of compliant fuel and, where their next ports of call are Chinese ports, the vessels shall submit a FONAR to the maritime authorities of those ports.
- From 1 January 2020, if foreign vessels on international voyages use or carry non-compliant fuel, due to non-availability of compliant fuel, and where their next ports of call are Chinese ports, the vessels shall notify the maritime authorities of the Chinese ports with a FONAR, before entering the China waters.

- From 1 March 2020, vessels on international voyages carrying non-compliant fuel in China waters shall discharge non-compliant fuel oil or keep the non-compliant fuel oil on board with a commitment letter of not using it in China waters. Such vessels shall obtain consent of the maritime authorities of the ports, according to MEPC.1/Circ.881.
- When discharging non-compliant fuel oil from vessels, reports shall be made to the local maritime authority, whilst safety and pollution prevention measures shall be implemented.
- Should there be any violation to the Implementation Scheme, maritime authorities shall act according to relevant laws, regulations and Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution, which provides, in the case of consumption of non-compliant fuel oil, a fine ranging from CNY10,000 to CNY100,000 may be imposed.

8.4 Trade Sanctions

PRC law does not incorporate any international trade sanctions. However, if the UN Security Council passes any sanction resolution, the Ministry of Foreign Affairs of the PRC may officially notify relevant governmental authorities for enforcement.

In recent years, certain PRC individuals and entities have been sanctioned by some foreign countries in commercial trading and they have attempted to seek remedy by legal actions. In general terms, the PRC government does not recognise the enforceability of any unilateral trade sanctions imposed by any foreign country. If any such sanction applies discriminatory and restrictive measures against PRC individuals and entities resulting in interference to public interests, the PRC will consider taking corresponding countermeasures.

9. ADDITIONAL MARITIME OR SHIPPING ISSUES

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

PRC judicial practice is controversial with regard to certain seafarer-related disputes. In 2020, the PRC Supreme Court promulgated Provisions on Several Issues Concerning Trial of Cases Involving Seaman-related Disputes, which mainly focused on the following aspects.

- Providing guidelines for identifying the nature of and resolving disputes about the various seafarer-related contracts, ie, employment contracts, service contracts and brokerage contracts (Articles 1 to 5). This part highlights that if a seafarer-related claim is irrelevant to a maritime lien, the claim shall first be referred to a labour-dispute arbitration commission for arbitration according to the Labour Dispute Mediation and Arbitration Law. For other disputes over a labour service contract between a seafarer and a vessel-owner, the claim shall be brought to a competent Maritime Court.
- Giving guidelines for the recognition, enforcement and assignment of maritime liens (Articles 6 to 10). This part highlights that a seafarer has the right only to seek judicial recognition of his or her entitlement of a maritime

lien without requesting a ship arrest, when a vessel-owner fails to pay wages, other labour remuneration, seafarer-repatriation expenses, or social insurance expenses arising from embarkation, employment on a vessel, or disembarkation and repatriation of a seafarer as agreed, and when the seafarer assigns his or her corresponding maritime claim to a third party which advances all or part of the money.

- Components and calculation of a seafarer's wages and other remunerations and specifying legal protection for seafarers' entitlement to salaries in the case of them conducting illegal activities under fraud or duress (Articles 11 to 14).

Other issues such as:

- when a seafarer sustains damage because of labour service, if the seafarer is found to be at fault, he or she shall assume the corresponding liability (Article 15);
- a third party who is liable for a work-related injury substantiated by a seafarer cannot seek exemption of its civil liability on the ground that the seafarer has obtained relevant insurance benefits (Article 16);
- laws applicable to foreign-related disputes (Article 17).

Wang Jing & Co is one of the leading shipping law firms in China, with a team comprising 60 lawyers and marine consultants and offices in Guangzhou and Shanghai (dual heads), Beijing, Tianjin, Qingdao, Xiamen, Fuzhou and Shenzhen. The firm specialises in providing professional legal services in matters concerning collisions, pollution, salvage and wreck removal, cargo claims, piracy, charterparty, marine insurance, ship sale and purchase, shipping arbitration, etc. It has represented international clients, such as P&I clubs, H&M underwriters and ship-owners, in numerous complicated

maritime issues, and is particularly adept at designing solutions, and providing efficient on-site assistance and considerate follow-up service. The team has participated in legislative discussions organised by the PRC Supreme Court and the China Maritime Safety Administration concerning mechanisms on limitation of liability for maritime claims, pollution damage compensation and the establishment of the oil pollution civil liability insurance system, with the aim of improving the maritime legal environment in China.

AUTHORS



John Wang is executive managing partner at Wang Jing & Co. John's practice spans shipping, admiralty, banking, insurance and international trading disputes in court, arbitration and mediation proceedings. John acts for foreign and domestic vessel owners and operators, charterers, P&I clubs, hull and machinery underwriters, marine engineering companies, traders and banks, and adopts a practical approach to each client's needs. John has also acquired extensive experience in international maritime arbitration in London, Singapore and Hong Kong.



Xu Jun is the director of Wang Jing & Co Shanghai Office. He spent more than ten years in a shipping company and acquired extensive experience in shipping practices before he joined Wang Jing & Co. Jun has practised law for nearly 15 years and has extensive experience of dealing with matters relating to bills of lading, charterparties, admiralty, maritime engineering, shipping finance and property/liability/credit insurance. In addition, Jun is also an excellent negotiator and has extensive experience in litigation.



Song Jia is a senior associate at the Shanghai Office of Wang Jing & Co. His practice areas cover maritime, insurance, ship-building and trading, dispute solution and non-

litigation. He acquired extensive experience in dealing with charterparty disputes and corporate affairs while he worked in a shipping company in Singapore and a well-known domestic law firm, before joining Wang Jing & Co. Mr Song has an LLM degree in maritime law from Bristol University and received his GDL and LPC diploma from the University of Law. He has conducted a considerable amount of research on legal issues involving sanctions and import/export control.



Zhao Yuxuan is a senior associate at the Guangzhou Office of Wang Jing & Co. His primary practice areas cover maritime, admiralty, insurance and international trade,

international civil affairs, and dispute resolution. Mr Zhao mainly deal with cases concerning ships' collision, ship fire, bills of lading, charter parties, insurance, and has recently accumulated substantial experience in dealing with matters arising from ship crew infection with COVID-19.

Wang Jing & Co

Guangzhou Headquarter
Suite 1504
Bank of Guangzhou Square
No. 30 Zhujiang East Road
Zhujiang New Town
Guangzhou
China (510623)

Tel: +86 20 8393 0333
Fax: +86 20 3808 2910
Email: info@wjnco.com

Shanghai Dual Head
Suite C, 14 Floor
New Shanghai International Tower
360 Pu Dong South Road
Shanghai 200120, PRC

Tel: +86 21 5887 8000
Fax: +86 21 5882 2460
Email: shanghai@wjnco.com
Web: www.wjnco.com

敬海律师事务所
WANG JING & CO.