

THE SHIPPING LAW
REVIEW

EIGHTH EDITION

Editors

Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

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PREFACE

The aim of the eighth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year. This year, we welcome Costa, Albino & Lasalvia Sociedade de Advogados as the new contributors of the chapter focusing on maritime law within Brazil. There are also two new jurisdictions in this edition – Israel (Harris & Co) and Mexico (Adame Gonzalez De Castilla Besil) – and Portugal makes a return, with Andrade Dias & Associados as the new contributors.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US\$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2019, the total value of annual world shipping

trade had reached more than US\$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), swift recovery is anticipated. The pandemic truly brought to the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

Finally, mention should be made of the environmental regulation of the shipping industry, which has been gathering pace this year. At the International Maritime Organization's (IMO) Marine Environment Protection Committee, 72nd session (MEPC 72) in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement will now lead to some of the most significant regulatory changes in the industry in recent years, as well as much greater investment in the development of low-carbon and zero-carbon dioxide fuels. The IMO's agreed target is intended to pave the way for phasing out carbon emissions from the sector entirely. The IMO Initial Strategy, and the stricter sulphur limit of 0.5 per cent mass/mass introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies. Decarbonisation of the shipping industry is, and will remain, the most important and significant environmental challenge facing the industry in the coming years. Unprecedented investment and international cooperation will be required if the industry is to meet the IMO's targets on carbon emissions. The 'Shipping and the Environment' chapter delves further into these developments.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon

HFW

London

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CHINA

*Nicholas Poynder and Jean Cao*¹

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

China plays an increasingly pivotal role in the global shipping industry. It is home to seven of the world's 10 busiest ports by cargo tonnage, with Shanghai consistently topping the list.² In 2020, China was the third-largest shipowner in terms of cargo-carrying capacity (228 million dead-weight tonnage (DWT)).³ In 2019, China had the largest share of global shipbuilding gross tonnage (GT) (23.074 million gross tons) and of the construction of dry bulk carriers, general cargo ships, container ships and offshore vessels.⁴ China's expertise in this sector continues to develop.

Although known for its exports of manufactured products to all corners of the globe, China is also a major importer of commodities. According to customs information,⁵ from January 2020 to October 2020, China imported 81.261 million tonnes of natural gas, 83.217 million tonnes of soybeans, 975.204 million tonnes of iron ore and 458.56 million tonnes of crude oil. Despite the recent slowdown in the growth of China's economy, this level of demand ensures China's place as one of the most significant players in the shipping business.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

The Chinese Maritime Code governs commercial contracts (carriage of goods and passengers by sea, charter parties, towage), admiralty (collisions, salvage, general average, limitation of liability) and marine insurance. It adopts many provisions of international rules and conventions, including many of the elements of the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules), the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention), the International Convention on Salvage 1989 (the 1989 Salvage Convention), the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) and the York Antwerp Rules. In addition, China is party to a number of international shipping conventions on safety. Those international conventions will prevail if there is a conflict between them and Chinese laws.

1 Nicholas Poynder is a partner and Jean Cao is an associate at HFW.

2 UNCTAD, 'Review of Maritime Transport', 2020, at page 18, https://unctad.org/system/files/official-document/rmt2020_en.pdf.

3 *ibid.*, at page 41.

4 *ibid.*, at page 45.

5 <http://www.customs.gov.cn/customs/302249/302274/302275/3357139/index.html>.

III FORUM AND JURISDICTION

i Courts

Shipping disputes are heard by 11 maritime courts in China, located in Beihai, Dalian, Guangzhou, Haikou, Nanjing, Ningbo, Qingdao, Shanghai, Tianjin, Wuhan and Xiamen.

The maritime courts do not normally recognise foreign jurisdiction clauses in shipping contracts if the jurisdiction has no material connection with the contract or its performance; however, as China is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention – see Subsection iii), international arbitration clauses will generally be recognised by China's maritime courts when it comes to enforcement. If the parties to a shipping contract are Chinese persons (natural or legal) and there is no foreign element involved, the maritime courts will hold the international arbitration clause as invalid.

Limitation periods

The limitation periods for shipping disputes are as follows:

- a* contracts of carriage of goods by sea: one year from the time of cargo delivery or the time when the cargo should have been delivered;
- b* charter parties: two years from the date on which the breach was discovered;
- c* towage contracts: one year from the date on which the breach was discovered;
- d* collisions: two years from the date of the collision;
- e* salvage: two years from the conclusion of the salvage operation;
- f* marine insurance: two years from the date on which the insured event occurred;
- g* oil pollution: three years from the date on which the damage occurred, but no more than six years from the date of the event causing the damage;
- h* carriage of passengers: two years from disembarkation from the ship for personal injury, death before disembarkation and luggage loss or damage; two years from the date of death if death occurs after disembarkation, but not exceeding three years in total after disembarkation; and
- i* general average: one year from when the general average adjustment is issued.

ii Arbitration and ADR

There is no specific maritime arbitration procedure in China. It is governed by the rules of the particular arbitration committee chosen by the parties to the dispute. The China Maritime Arbitration Commission is an example of a domestic arbitration committee nominated by parties.⁶

Equally, China has no specific mediation, expert determination or alternative dispute resolution procedures. Mediation is normally conducted by the judge or the arbitration tribunal hearing the case. If the parties cannot reach a resolution following the mediation, the judge or the tribunal will proceed with the case in the usual way. Clearly, this is a very different situation from that found in England, for example, where it is unusual for any details of settlement discussions to be disclosed to the presiding judge or tribunal other than

⁶ Its rules are published on its website, <http://www.cmac.org.cn/en/>.

details regarding the question of costs. Since the announcement of the Administrative Rules over Maritime Mediation,⁷ parties can submit their disputes relating to marine casualties to local maritime safety administration bureaus for mediation.

iii Enforcement of foreign judgments and arbitral awards

In practice, foreign judgments or rulings will be enforced in China only when there is an international treaty or agreement concluded between or acceded to by the foreign state and China or a finding of reciprocity. There are a few such foreign states but they do not include the key dispute resolution centres for shipping.

Fortunately, the position is different in terms of foreign arbitration awards. China is a signatory to the New York Convention; consequently, China is bound to recognise an award issued in another signatory state as binding and to enforce it. The United Kingdom, Singapore, the United States and other key maritime centres are signatory states.

The first step to enforcement is applying to have the award recognised by the local courts. This must be done within two years of the final date provided for in the award for compliance with the award or, if no such period is stated, the date on which the award takes effect.

The New York Convention provides five grounds for refusing recognition or enforcement, which will be applied by the local courts when considering an application for recognition. Apart from these five grounds, the Convention permits a refusal of recognition or enforcement if the recognition or enforcement would be contrary to local public policy. Accordingly, the Chinese courts may also, as a matter of Chinese law:

- a* consider whether there is any social or public interest reason not to recognise the award (there is no clear guidance on what exactly this means); and
- b* if petitioned by one of the parties, investigate whether the arbitration agreement contained in the relevant contract is valid. An arbitration clause should be valid under Chinese law if it is in writing and if it:
 - contains an expressed intention to resolve disputes via arbitration;
 - describes which issues will be decided through arbitration (e.g., all disputes); and
 - identifies which arbitration tribunal or institution the parties agree to use.

If the local court of first instance (the Intermediate People's Court) refuses to recognise the award, it must refer the case to the Higher People's Court. If the Higher People's Court also refuses recognition, it must refer the decision to the Supreme People's Court, which is the only court that can ultimately refuse recognition of a foreign arbitration award.

In practice, enforcement of a foreign arbitral award in China, even though governed by the New York Convention, is not straightforward. It is well known that there can be problems. For example, some judges in the local courts may lack experience of applying the Convention. This can lead to inconsistent decisions and can slow down the recognition process.

Moreover, it can take a long time for the recognition application to be dealt with. First, it will take some time to put together the application and supporting documents (with translations). Second, it will take time for the local courts to respond to the application once

7 *HaiAnQuan* [2014] No. 513, announced on 18 August 2014 by the Maritime Safety Administration.

submitted. In one unreported case, the Chinese court had not responded 16 months after a party applied for recognition of a foreign award. In two other cases, it took seven months and 21 months, respectively, before the Chinese court's decision was issued.

IV SHIPPING CONTRACTS

i Shipbuilding

China has a very active shipbuilding industry and was ranked the largest shipbuilding country in the world in terms of GT in 2019.⁸ China has the largest market shares in dry bulk carriers, general cargo ships, container ships and offshore vessels and ranks second for oil tankers.⁹

Like the Japanese and Korean shipyards, Chinese shipyards tend to base their contracts on the SAJ Form (published by the Shipbuilders' Association of Japan), the AWES Form (issued by the Association of European Shipbuilders and Shiprepairers) or the Norwegian Form (Norwegian Standard Form Shipbuilding Contract 2000). The China Maritime Arbitration Commission published its own Standard Newbuilding Contract (the Shanghai Form) in March 2011, which is increasingly used by Chinese shipyards.

English law is the typical choice in contracts, coupled with dispute resolution provisions for arbitration in either London or Singapore. As such, a buyer wanting to contract with a Chinese shipyard must take into account very similar legal considerations to those that would apply if it were buying from other key shipbuilding centres.

As regards title, this will normally transfer at the time of delivery as per the standard clauses in the aforementioned contracts. If the yard refuses to deliver a vessel, depending on the reason for refusal, the buyer may be able to apply to a Chinese maritime court for an injunction ordering the yard to deliver the vessel in accordance with the contract. Otherwise, for this and any other issues that may arise in the process, the parties would need to follow the dispute resolution procedure agreed in the contract – as noted above, this tends to be London or Singapore arbitration.

However, the buyer should be wary of potential pitfalls. If the buyer is successful at arbitration and the shipyard is ordered to pay a sum of money to the buyer – perhaps by way of a refund of the instalments already paid – then the buyer may experience the enforcement issues described in Section III. The industry has attempted to avoid such risks by establishing a system whereby the shipyard's bank will guarantee to the buyer, at the outset, that in certain circumstances the bank will refund to the buyer the instalments already paid. This system is not exclusive to China; it is adopted worldwide. The problem in China, however, is that some shipyards have persuaded local courts to issue injunctions preventing the bank from paying out under the guarantee even if the relevant arbitral tribunal has found in favour of the buyer.

ii Contracts of carriage

Contracts of carriage are governed by the Chinese Maritime Code, which contains similar provisions to the Hague-Visby Rules, although China is not itself a signatory to the International Convention for the Unification of Certain Rules of Law relating to Bills

8 UNCTAD, 'Review of Maritime Transport', 2019, at page 45, https://unctad.org/system/files/official-document/rmt2020_en.pdf.

9 *ibid.*, at page 45.

of Lading 1924 (the Hague Rules), the Hague-Visby Rules, the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) or the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules).

Trade between Chinese ports was governed by the Rules of Transportation of Goods by Waterway in China, which were abolished by the Ministry of Transport (MOT) on 30 May 2016.¹⁰ Now trade between Chinese ports is generally governed by the Contract Law and General Principle of the Civil Law of the People's Republic of China.¹¹

Duties of the shipper

Under the Maritime Code, the shipper is obliged to pack the goods properly and to provide accurate information about the goods. Failing this, the shipper will be liable for the carrier's losses so caused (Article 66).

Further, the shipper is obliged to complete relevant formalities (port, customs, quarantine, etc.) in relation to the goods and submit documents to the carrier. Failing this, the shipper will be liable for the carrier's losses so caused (Article 67).

In respect of dangerous goods, the shipper is additionally obliged to mark the goods and to notify the carrier in writing of the description of the goods, their nature and any relevant safety measures to be taken. The shipper will be liable for any losses suffered by the carrier as a result of carrying the dangerous goods (Article 68).

Liens

A carrier is entitled to exercise a lien over cargo on board for unpaid freight, general average contributions, demurrage and other necessary charges paid by the carrier on behalf of the owner of the cargo.¹² The lien can be exercised only over cargo owned by the party that is liable for the claim.¹³ Further, unless the relevant bill of lading states clearly to the contrary, the bill of lading holder is not liable for demurrage, dead freight or any other expenses at the loading port; accordingly, a carrier cannot usually exercise a lien over the cargo for those matters unless the holder of the bill of lading is also the charterer.

Interestingly, in a case heard by the Shandong Province High People's Court in 2013, it was held that the carrier (in this case, the shipowner) could not exercise a lien over cargo if the shipper named on the bill of lading had already paid freight to the charterers but the charterers had failed to pay the shipowner. This was so even though the shipper had promised to pay the shipowner the freight and demurrage at the port of loading, and requested the shipowner to carry the cargo to the discharge port.

10 Order No. 2016 [57] of the Ministry of Transportation (30 May 2016).

11 Guiding Opinions No. 2012 [28] of The Supreme People's Court of the People's Republic of China on Legal Issues in Dispute over the Transportation of Goods by Waterway in China.

12 Maritime Code, Article 87.

13 Maritime Special Procedure Code, promulgated in 1999, Article 44.

Multimodal bills

Under the Maritime Code, the multimodal transport operator is responsible for all stages of multimodal transportation (Article 104). Importantly, if loss of or damage to the goods occurs during a certain leg of the voyage, liability will be limited according to the rules applicable to that leg only (Article 105). If it is impossible to ascertain on which leg the loss or damage occurred, the limitation of liability of the sea leg will be applied (Article 106).

iii Cargo claims

Under the Maritime Code, both the bill of lading holder and the subrogated cargo underwriter who has compensated the bill of lading holder for cargo loss have title in China to sue the carrier who entered into a contract with the shipper, as well as the actual carrier (the registered owner or the demise charterer of the carrying vessel at the material time). This choice is beneficial to a bill of lading holder as, in other jurisdictions, the option to sue may be restricted by demise clauses; those clauses have accordingly not been an issue in China.

It is important to note that in dealing with cargo claims, the maritime courts will normally ignore the incorporation into the contract of carriage of charter-party terms (including dispute resolution clauses).

Confusion was caused by Article 16 of the Supreme Court's Judicial Interpretation II on Insurance Law,¹⁴ which provides that the limitation period for an insurer's right of action against a carrier or actual carrier starts to run at the time the insurance payment is made. The carrier or actual carrier could face a claim by the cargo underwriter when that same claim would otherwise be barred if brought by the bill of lading holder. This confusion has been resolved by the Supreme Court's Official Reply to Shanghai Senior People's Court on the Starting Date of the Statutory Time Limit for Subrogated Marine Insurer. Now it is clear that a marine cargo insurer will step into the shoes of the insured.

iv Limitation of liability

Although China is not a party to the LLMC Convention 1976, its regime for limitation of liability for maritime claims, contained in Chapter XI of the Maritime Code, is largely modelled on the LLMC Convention 1976. Save for claims in respect of wreck removal, destruction or rendering harmless a ship that is sunk, wrecked, stranded or abandoned or cargo on board, which cannot be limited, the scope of claims subject to limitation under the Maritime Code is the same as under the LLMC Convention 1976; in short:

- a* owners (including charterers and operators) and salvors are entitled to limit their liability unless it is proved that the loss resulted from their act or omission with intent to cause such loss, or that they acted recklessly with knowledge that such loss would probably result; and
- b* for cargo loss or damage, a carrier or actual carrier (the shipowner or demise charterer) may limit its liability on the basis of 'package limitation' (i.e., its liability is limited to the higher of 2 special drawing rights (SDRs) per kilogram or 666.67 SDRs per package.¹⁵ For delays, the liability is limited to the amount of freight.¹⁶ The carrier will lose the right to limit liability if it is proved that the loss, damage or delay in delivery of

¹⁴ Promulgated on 13 May 2013 and entered into force on 1 March 2015.

¹⁵ Maritime Code, Article 56.

¹⁶ *ibid.*, Article 57.

the goods resulted from an act or omission of the carrier with the intent to cause such loss, damage or delay, or from the carrier recklessly acting with knowledge that such loss, damage or delay would probably result.¹⁷

Limitation of liability for vessels below 300 GT and vessels trading or operating along the coast of mainland China is subject to the Regulation of the MOT,¹⁸ which is 50 per cent of the figure calculated under the Maritime Code. When there is a collision between international vessels and vessels trading or operating along the coast line or below 300 GT, the limitation of liability under the Maritime Code will apply, provided that the limitation fund is set by interests of the international vessel.

Procedures in relation to setting up a limitation fund, claim registration and distribution are governed by the Maritime Special Procedure Code and the Supreme Court's Provisions on Trial of Cases in relation to Limitation of Liability for Maritime Claims.¹⁹

V REMEDIES

i Ship arrest

Ship arrest is governed by the Maritime Special Procedure Code and the Supreme Court's Provisions on Issues in Relation to Ship Arrest and Auction (the Supreme Court's Provisions on Ship Arrest and Auction).²⁰ The Maritime Special Procedure Code adopts many of the provisions of the International Convention on the Arrest of Ships 1999.

To obtain an arrest order from a Chinese maritime court, the claimant must submit an arrest application to the court with the following items:

- a* power of attorney or a certificate of legal representation in favour of the appointed Chinese lawyer;
- b* documents supporting the underlying maritime claims;
- c* proof that the person alleged to be liable for the maritime claims is the owner of the vessel at the time of the application; and
- d* counter security.²¹

The court should make a decision within 48 hours of receiving the application.

The amount of the counter security required by the court is normally equivalent to 30 days' hire at the vessel's market rate at the time of the arrest or 30 per cent of the amount of the claim, whichever is higher. With the entry into force of the Supreme Court's Provisions on Ship Arrest and Auction, the counter security shall also cover costs and expenditure of ship maintenance during the arrest period and costs incurred by the respondent to provide security for lifting the arrest.²² The counter security will take the form of either cash or a letter of undertaking issued by a Chinese bank or insurance company. Some Chinese insurance

17 *ibid.*, Article 59.

18 Promulgated on 15 November 1993 and entered into force on 1 January 1994.

19 Promulgated on 27 August 2010 and entered into force on 15 September 2010.

20 Promulgated on 28 February 2015.

21 Under Article 4 of the Supreme Court's Provision On Ship Arrest and Auction, applicants for crew contract claims or personal injury claims may be relieved from the requirement to provide counter-security.

22 Supreme Court's Provision on Ship Arrest and Auction, Article 5.

companies would provide counter security to support an arrest in China, if the claimant purchases an insurance policy from them. The premium is roughly between 0.3 per cent and 0.5 per cent of the counter security amount.

It is possible to arrest sister ships; any ship that is owned by the party in question can be arrested. However, a ship that is not directly involved in the underlying dispute can be arrested only if that dispute does not relate to the ownership, mortgage or management of the ship.

Arrest of bunkers is also possible. This can be achieved if the claim is against the owner of the bunkers. The claimant must consider the practical difficulties and cost of removing and storing the bunkers while arrested. The Supreme Court's Provisions on Ship Arrest and Auction now clarifies that a ship arrested under a bareboat charter can be sold,²³ thereby putting an end to the controversy that a ship can be sold only when it belongs to the debtor.

Arrest orders can be issued for security purposes only. However, the claimant must commence litigation or arbitration proceedings on the underlying claim within 30 days of the arrest, no matter in which jurisdiction those proceedings will take place.

In terms of the mechanics of the arrest, it is not necessary for the vessel to be in the berth; a vessel can be arrested at anchor in territorial waters by traffic boat or, infrequently, by helicopter.

If, after obtaining an arrest order, a claimant loses the substantive proceedings, it will be arguable that the arrest was wrongful. However, there are no provisions under Chinese law setting out the basis on which an arrest can be wrongful, so the point is unclear.

ii Court orders for sale of a vessel

When a vessel has been arrested in China for more than 30 days, the respondent has failed to provide security for its release and it is not appropriate to maintain the arrest, the claimant that commenced litigation or arbitration proceedings may apply to a Chinese maritime court for sale of the vessel by auction. If a sale order is granted, an affected party may apply for review within five days of receipt of the order. The court will then make its decision within five days of receiving the review application.

The maritime court ordering the auction of a vessel will issue an announcement in newspapers or other news media. In the case of foreign vessels, an announcement will be published in newspapers or other news media for overseas distribution for at least 30 days. The court will also issue a notice 30 days before the auction to the registrar of the registry state of the vessel and to any known maritime lien holders, mortgagees and shipowners.

Auctions are conducted by ship auction committees via online platform Taobao. Bidders must register with a ship auction committee within the prescribed time limit and pay the required deposit, which is usually about 10 per cent of the estimated price. Following payment of the full price of the ship by the successful bidder, the original owner must deliver the vessel to that bidder – the buyer – within the designated period under the supervision and guidance of the auction committee. The auction committee will sign a protocol of delivery and acceptance with the buyer, and the maritime court will then issue a release order and public announcement. The buyer can then register its ownership.

The auction committee will return the deposits paid by unsuccessful bidders within three to five days.

23 Supreme Court's Provision On Ship Arrest and Auction, Article 7.

VI REGULATION

i Safety

China is a party to the following international conventions relating to safety at sea:

- a* Convention on Facilitation of International Maritime Traffic 1965 (the FAL Convention);
- b* International Convention on Load Lines 1966 (the Load Lines Convention) and the Load Lines Protocol 1988;
- c* International Convention on the Tonnage Measurement of Ships 1969 (the Tonnage Convention);
- d* International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (the Intervention Convention);
- e* Special Trade Passenger Ships Agreement 1971;
- f* the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the Oil Pollution Fund Convention);
- g* the International Regulations for Preventing Collisions at Sea 1972 (COLREGs);
- h* the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention) and its 1996 Protocol;
- i* the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973 (the Intervention Protocol);
- j* the Protocol on Space Requirements for Special Trade Passenger Ships 1973;
- k* the Athens Convention and its 1976 Protocol;
- l* the International Convention for the Safety of Life at Sea 1974 (SOLAS) and its 1978 and 1988 Protocols;
- m* the Convention on the International Maritime Satellite Organization 1976 (the INMARSAT Convention);
- n* the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the STCW Convention);
- o* the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 1979);
- p* the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation 1988 (SUA);
- q* the 1989 Salvage Convention;
- r* the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (the OPRC Convention);
- s* the Protocol on the Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (the OPRC-HNS Protocol);
- t* the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001 (the Anti-Fouling Convention);
- u* the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunker Convention);
- v* the 1992 Protocol replacing International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC Convention);
- w* the 1972 International Convention for Safe Containers;
- x* the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)) (Annexes I to V); MARPOL Protocol 97 (Annex VI);

- y the Nairobi International Convention on the Removal of Wrecks 2007 (the Nairobi WRC 2007); and
- z the Maritime Labour Convention 2006.

ii Port state control

The Maritime Safety Administration (MSA) is the port state control authority in China and bears responsibility for maritime safety, security, prevention of pollution from ships and protection of seafarers' rights. The MSA's main responsibilities include:

- a drafting and implementing guidance, policies, regulations and technological codes and standards in national water safety supervision, marine pollution prevention, navigational aids and other relevant matters;
- b comprehensively supervising water safety and preventing marine pollution;
- c investigating and handling water traffic accidents, marine pollution from vessels and water transport violation cases;
- d supervising statutory surveys and certification for vessels and offshore facilities;
- e checking the qualifications of ship survey organisations and marine surveyors, and approving and supervising the resident representative offices of foreign ship survey organisations within China;
- f controlling Chinese flag vessels' registration, certification, survey and certificate endorsement, and the entry into and exit from Chinese ports and waters; and
- g administering seafarers' and pilots' training, examination and certification, and monitoring the qualification and quality systems of training institutions for seafarers and pilots.

Although the MSA has power to detain vessels, in 2014 (the most recent records available), vessels were detained in just 6.55 per cent of cases following an MSA inspection. When compared to numerous other flag states, such as the United Kingdom (7.45 per cent), Germany (10.78 per cent) and Russia (16.9 per cent), it can be seen that China's detention rate is relatively low. Information about vessels detained by the MSA after 2014 is not publicly available.

iii Registration and classification

Registration

Registration of shipping interests in China is governed by the Regulations Governing the Registration of Ships and is administered by the MSA. The interests of ownership, mortgage and demise charter can all be registered.

To register ownership, the owner must file an application with the registry, submitting documents that show its identity, technical information about the ship and proof of ownership. If the application is in order, the registry will normally issue the ownership certificate within seven days.

To register a mortgage, the mortgagor and the mortgagee must apply together to the registry with a certificate of ownership or shipbuilding contract and the mortgage agreement.

If the application is in order, the registry will record the mortgage in the ship's certificates and ownership certificate, and will issue a certificate of mortgage to the mortgagee within seven days.

The owner or demise charterer must register a demise charter in the event that:

- a a Chinese-flagged ship is demise chartered to a Chinese company;

- b* a Chinese company is demise chartered-in to a foreign-flagged ship; or
- c* a Chinese-flagged ship is demise chartered-out to a foreign company.

To register a demise charter, the owner and demise charterer must submit the original demise charter party, the certificate of nationality and certificate of ownership in the case of a charter-in of a foreign-flagged ship, class technical certificates and termination or cancellation of the nationality certificate issued by the previous port of registry.

Classification

The China Classification Society (CCS) is the only approved domestic classification society. Consequently, if a vessel is to fly the Chinese flag, the CCS must oversee its construction. However, if the vessel will fly another flag, the shipyard is entitled to engage any other classification society it wishes to oversee the build.

Interestingly, there is no reported case in China in which the CCS (or any other classification society) has been held liable for negligent work.

iv Environmental regulation

The key Chinese legislation, rules and conventions in force regulating air and sea pollution and a brief outline of their terms are as follows.

Marine Environment Protection Law

The law was enacted to protect and improve the marine environment, conserve marine resources and prevent pollution damage. It applies to internal waters, territorial seas and the contiguous zones, exclusive economic zones and continental shelves of China and all other sea areas under Chinese jurisdiction. All entities and individuals engaged in navigation, exploration, exploitation, production, tourism, scientific research and other operations in such sea areas, or engaged in operations in coastal areas that have an effect on the marine environment, must comply with this law.

Regulations on Administration of the Prevention and Control of Marine Environment Pollution Caused by Vessels

These regulations aim to prevent pollution caused by the discharge and carriage of pollutants by ships, and shipping-related operations such as hold clearing or cleaning, fuel supply, loading and unloading, shipbuilding, salvage, ship breaking and containerisation of hazardous cargo. The regulations also cover the response to, handling and investigation of ship pollution incidents, and liability for such incidents. Further, they require cargo owners and their agents receiving oil cargoes in Chinese waters to pay into a compensation fund to cover oil pollution damage from ships.

Regulations on Emergency Preparedness and Response on Marine Environment Pollution from Ships

These Regulations require that owners or operators of (1) any ship carrying polluting and hazardous cargoes in bulk, or (2) any other ship above 10,000 GT, enter into a pollution clean-up contract with an MSA-approved ship pollution response company before the ship enters a Chinese port.

Prevention and Control of Atmospheric Pollution Law

This law was formulated for the purpose of preventing and controlling atmospheric pollution. It sets out the duties of the government in the prevention and control of atmospheric pollution, including that caused by the burning of coal and fuel by motor-driven vehicles and vessels. Motor-driven vehicles and vessels are prohibited from discharging atmospheric pollutants in excess of the prescribed discharge standards.²⁴ The MOT has promulgated the Implementation Scheme of Domestic Emission Control Area for Atmospheric Pollution from Vessels,²⁵ which provides a sulphur limit of 0.5 per cent mass/mass (m/m) from 1 January 2019 and of 0.1 per cent m/m limit from 1 January 2020 for any fuel oil used on board seagoing vessels operating in domestic emission control areas.

International conventions

In addition to the above-mentioned domestic laws, China is a signatory to the following:

- a* the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basle Convention);
- b* the Anti-Fouling Convention;
- c* the CLC Convention 1992; and
- d* the Bunker Convention.

v Collisions, salvage and wrecks

Collisions

Collisions are governed by the Maritime Code, the Supreme Court's Judicial Interpretation on Trial of Collision Cases 2008 and the Supreme Court's Judicial Interpretation on Compensation for Property Loss and Damage Due to Ship Collision and Allision 1995.

Vessels involved in collisions are liable for loss and damage according to the proportion of their liabilities. They are jointly and severally liable for personal injury.

Salvage and wreck removal

China is a party to the 1989 Salvage Convention, and the Chinese Maritime Code contains similar provisions to that Convention.

Recycling

China is a party to the Basle Convention. In 2003, the Convention issued 'Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships',²⁶ which offer information and recommendations on procedures, processes and practices that should be implemented. The Guidelines also provide advice on monitoring and verification of environmental performance. In 2005, China's Development and Reform Commission promulgated the Green Ship Recycling General Regulation, which has similar provisions to the Guidelines and is the industrial standard to be followed by ship recycling industries in China.

24 Prevention and Control of Atmospheric Pollution Law, Article 51.

25 <http://www.msa.gov.cn/public/documents/document/mtex/mzm1/-edisp/20181219111335546.pdf>.

26 Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships (2003), www.basel.int/Portals/4/Basel%20Convention/docs/meetings/sbc/workdoc/techships-e.pdf.

vi Passengers' rights

China is a party to the Athens Convention. Contracts for the carriage of passengers by sea are governed by the Maritime Code.

vii Seafarers' rights

A significant proportion of the world's seafarers are Chinese. Their rights and obligations are governed by the Labour Law, Labour Contract Law, Crew Regulations, Crew Assignment Regulations, and Administrative Measures on Seafarers' Working and Living Conditions on Board. China ratified the Maritime Labour Convention 2006 on 12 November 2015 and the Convention came into force in China on 12 November 2016.

Seafarers may arrest a ship for unpaid salaries and personal injury on board without putting up counter-security.

VII OUTLOOK

China's change of leadership in 2012 brought with it the promise of a new industrial era for the country.

In September 2013, the first new free trade area was established in Shanghai to promote economic reform. The Chinese government has published incentives on registration, tax, banking, financing, customs supervision and foreign currency exchange. By September 2016, there were 42 insurance institutions in the Shanghai free trade area, including one insurance group, 18 life insurance companies, 13 property and casualty insurance companies, three reinsurance companies, seven insurance asset management companies and 51 provincial branches of insurance companies. The existence of a cluster of these companies has promoted the vitality of the market. In shipping insurance, reinsurance and other key areas, the effect of the establishment of the Shanghai Free Trade Zone is obvious.²⁷ As this new area develops, Shanghai port is expected to expand further.

In addition to the Shanghai Free Trade Zone, by 13 April 2018, the Chinese government had approved proposals to set up free trade areas in Fujian, Guangdong, Tianjin, Liaoning, Zhejiang, Henan, Hubei, Chongqing, Sichuan, Shaanxi and Hainan.²⁸ The government promulgated a 144-hour transit visa policy for citizens of 51 countries to promote cruise development.²⁹ In recent years, China's cruise market has grown at an average annual growth rate of 40 per cent. According to relevant agencies, the number of tourists will reach 10 million by 2030 and the cruise market will become the most important in the world.³⁰ The outlook for trade, and the scope for continued growth in the shipping industry, is therefore encouraging.

It may be argued, however, that China's maritime laws have not kept up with the pace of growth in trade and shipping. Since the entry into force of the Maritime Code in July 1993, there has been rapid development in shipping industry. Issues commonly faced, such as the legal position of non-vessel operating common carriers and cargo forwarders, and delivery of cargo without production of an original bill of lading, are not covered in the

27 <http://insurance.hexun.com/2016-10-09/186325838.html>.

28 http://www.gov.cn/zhengce/content/2018-10/16/content_5331180.htm.

29 www.mot.gov.cn/guowuyuanxinxi/201610/t20161012_2098204.html.

30 https://sh.cevs.com/research/report/1/711125.html?b_scene_zt=1.

Maritime Code. As a result, there are some significant areas of uncertainty in maritime law. Against the background of China vigorously pushing forward to develop as a maritime power and the One Belt One Road programme, research work for the revision of China's maritime laws has now formally been put on the agenda.

In response to this, the Supreme People's Court issued 'Several Opinions on Providing Judicial Services and Guarantee for the Building of One Belt One Road by People's Courts' (No. 9 [2015]) to bring the trial function of the people's courts into full play and provide effective services and to guarantee the smooth building of One Belt, One Road, which includes maritime trial and arbitration services. The Supreme Court also asked local courts to broaden judicial reforms to help foreigners to attend trials. As a result, the Shanghai Maritime Court has, for example, simplified the legislative procedure for obtaining power of attorney (POA) for lawyers representing international clients. A foreign company may now legalise one POA with general authority for all its disputes before the Shanghai Maritime Court.

The MOT drafted and issued the Revised Draft of Maritime Code for Comment on 5 November 2018 (the Draft for Comment), according to which several revisions have been introduced, including:

- a* expanding the scope of legal regulation:
 - the contract of carriage by sea is enlarged to carriage of goods and passengers by sea and navigable waterways connected with sea; and
 - the meaning of 'vessels' is extended to include mobile units at sea or navigable waters connected with sea;
- b* adding two chapters: one deals with contracts of carriage of goods by domestic waterways, the other deals with compensation for pollution damage caused by vessels;
- c* improving title and property rights in vessels:
 - clarifying the process for obtaining possessory liens and the circumstances required to terminate a possessory lien; and
 - clarifying the ownership of vessels under construction and the process of obtaining a mortgage;
- d* standardising the rights, and obligations, of crew;
- e* improving the legal system in relation to the contract for international carriage of goods by sea;
- f* clarifying the connection between the 1989 Salvage Convention and the Maritime Law;
- g* improving the limitation of liability for maritime claims from the 1976 LLMC standard to the 1996 Protocol standard and abolishing the regime for limitation of liability for vessels below 300 GT and vessels trading or operating along the coast of mainland China;
- h* creating a supplement to the guarantee and notification obligation system;
- i* refining maritime litigation procedure; and
- j* improving the rules concerning the application of law to foreign-related matters.

Among other things, the Draft for Comment introduces systematic improvements to the existing compensation system for vessel-caused pollution damage, as well as comprehensively regulating oil-related pollution and fuel pollution caused by vessels, poisonous and harmful substances, and the fund of damage compensation for oil pollution.

We will be watching developments with interest during the next few years to see how China's proposed reforms play out. Undoubtedly, China can only become increasingly important in the global shipping industry.

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