

# **MARITIME PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA**

**Order of the President of the People's Republic of China  
No. 28**

The Maritime Procedure Law of the People's Republic of China, adopted at the 13th meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on 25th December 1999, is hereby promulgated and shall enter into force as of 1st July 2000.

Jiang Zemin  
President of the People's Republic of China  
25th December 1999

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## **CHAPTER I      GENERAL PRINCIPLES**

### **Article 1**

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

### **Article 2**

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

### **Article 3**

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

### **Article 4**

Maritime courts shall entertain actions brought by the parties in respect of maritime tort, disputes arising out of maritime contracts and other maritime disputes as provided for by law.

### **Article 5**

Maritime courts, the high people's courts at the place where such maritime courts are located and the Supreme People's Court shall apply this Law in hearing and determining maritime cases.

## **CHAPTER II      JURISDICTION**

### **Article 6**

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

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

- (1) in addition to application of Articles 29, 30 and 31 of the Civil Procedure Law of the People's Republic of China, the maritime court at the place of the ship's port of registry may also have jurisdiction in an action brought in respect of maritime tort;
- (2) in addition to application of Article 28 of the Civil Procedure Law of the People's Republic of China, the maritime court at the place of the port of transshipment may also have jurisdiction in an action brought in respect of contract for carriage by sea;
- (3) the maritime court at the place of the port of delivery, the port of re-delivery, the ship's port of registry and the domicile of the defendant shall have jurisdiction in an action brought in respect of charter-party disputes of seagoing ships;
- (4) the maritime court at the place of the subject-matter of insurance, the place of accident or the domicile of the defendant shall have jurisdiction in an action brought in respect of disputes in protection and indemnity contracts;
- (5) the maritime court at the domicile of the plaintiff, the place of signature of the contract, the place of the port of embarkation or disembarkation of the crew, and the domicile of the defendant shall have jurisdiction in an action brought in respect of crew's service contract for sea-going ships;
- (6) the maritime court at the place where collateral is provided and the domicile of the defendant shall have jurisdiction in an action brought in respect of maritime security; the maritime court at the place of the ship's port of registry may also have jurisdiction in an action brought in respect of ship mortgage; and
- (7) the maritime court at the place of the ship, the place of the ship's port of registry, and the domicile of the defendant shall have jurisdiction in an action brought in respect of ownership, possession, employment and maritime liens of sea-going ships.

#### **Article 7**

The maritime courts specified in this Article shall have exclusive jurisdiction in the following maritime actions:

- (1) the maritime court at the place of the port shall have jurisdiction in an action brought in respect of coastal port operations;

- (2) the maritime court at the place of pollution, the place of damaging consequences or the place where pollution prevention measures are taken shall have jurisdiction in an action brought in respect of pollution damage to sea caused by discharge, spill or dumping of oil or other hazardous substances from ships, by production or operation at sea or by ship demolition or repair; and
- (3) the maritime court at the place of performance of the contract shall have jurisdiction in an action brought in respect of disputes arising out of an offshore exploration and exploitation contract performed within the territory of the People's Republic of China and the sea areas under the jurisdiction of the People's Republic of China.

### **Article 8**

Where all the parties to a maritime dispute are aliens, stateless persons, foreign enterprises or organisations and have agreed in writing to be subject to the jurisdiction of a maritime court of the People's Republic of China, such maritime court shall have jurisdiction over the dispute notwithstanding that the place that has genuine link with the dispute is not within the territory of the People's Republic of China.

### **Article 9**

A party who applies for determination of certain property at sea as being ownerless shall file the application with the maritime court at the place of the property; one who applies for declaration of a person as dead in an accident at sea shall file the application with the maritime court at the place of the competent authority dealing with the accident or with the maritime court that has entertained the relevant maritime case.

### **Article 10**

Any controversy between a maritime court and a local people's court in respect of jurisdiction shall be resolved by the two courts through consultation, failing which the matter shall be submitted to their common superior people's court for designation of jurisdiction.

### **Article 11**

A party who applies for enforcement of a maritime arbitration award, recognition and enforcement of a judgement or order of a foreign court or a foreign maritime arbitration award shall file the application with the maritime court at the place of the property against which enforcement is sought or the domicile of the person against whom enforcement is sought. In the absence of a maritime court at such

place or domicile, the application shall be filed with the intermediate people's court at the place of the property against which enforcement is sought or the domicile of the person against whom enforcement is sought.

## **CHAPTER III      PRESERVATION OF MARITIME CLAIMS**

### **SECTION 1 GENERAL PROVISIONS**

#### **Article 12**

Preservation of maritime claims means the compulsory measures taken by a maritime court on the application of a maritime claimant against the property of the person against whom a claim is made to ensure realisation of the claim of the maritime claimant.

#### **Article 13**

A party who applies for preservation of maritime claims before institution of an action shall file the application with the maritime court at the place of the property subject to preservation.

#### **Article 14**

Preservation of maritime claims shall not be prejudiced by the jurisdiction agreement or arbitration agreement between the parties in respect of the maritime claim.

#### **Article 15**

A maritime claimant who applies for preservation of a maritime claim shall file the application in writing with a maritime court. Such an application shall specify the particulars of the maritime claim, reasons therefor, subject-matter of the preservation and the amount of security required, and enclose the relevant evidence.

#### **Article 16**

The maritime court, having entertained an application for preservation of a maritime claim, may enjoin the maritime claimant to provide security. The application shall be rejected if the maritime claimant fails to do so.

#### **Article 17**

The maritime court, having accepted an application, shall make an order within 48 hours. Where the order is to adopt measures for preservation of a maritime

claim, it shall be executed forthwith; where the conditions for preservation of the maritime claim are not met, the application shall be rejected by order.

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

Where preservation of a maritime claim is objected by an interested person, the maritime court shall examine the objection and discharge preservation against his property if the reasons therefor are justified.

### **Article 18**

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

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

### **Article 19**

Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after execution of the preservation of a maritime claim, any party may bring an action in respect of the maritime claim in the maritime court ordering preservation of the maritime claim or any other maritime court that has jurisdiction, unless the jurisdiction agreement or arbitration agreement between the parties provides otherwise.

### **Article 20**

A maritime claimant who has wrongfully applied for preservation of a maritime claim shall indemnify the person against whom the claim is made or any interested person for loss sustained thereby.

## **SECTION 2 ARREST AND AUCTION OF SHIPS**

### **Article 21**

An application may be made for the arrest of a ship with respect to the following

maritime claims:

- (1) loss of or damage to property caused by ship operation;
- (2) loss of life or personal injury in direct connection with ship operation;
- (3) salvage at sea;
- (4) damage or threat of damage caused by a ship to the environment, coastline or related interests; measures taken to prevent, minimise or remove such damage; compensation paid in respect of such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph;
- (5) expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- (6) any agreement relating to the use or hire of a ship;
- (7) any agreement relating to the carriage of goods or passengers;
- (8) loss of or damage to or in connection with goods (including luggage) carried on board a ship;
- (9) general average;
- (10) towage;
- (11) pilotage;
- (12) goods supplied or services rendered to a ship for its operation, management, preservation or maintenance;
- (13) construction, re-construction, repair, conversion or equipment of a ship;
- (14) dues and charges of port, canal, dock, harbour and other waterway;
- (15) crew's wages and other moneys, including costs of repatriation and social insurance contributions payable on behalf of the crew;
- (16) disbursements incurred on behalf of a ship or its ship-owner;

- (17) insurance premiums (including mutual insurance calls) in respect of a ship, payable by or on behalf of the ship-owner or demise charterer;
- (18) any commissions, brokerages or agency fees payable in respect of a ship by or on behalf of the ship-owner or demise charterer;
- (19) any dispute in connection with ownership or possession of a ship;
- (20) any dispute between co-owners of a ship in connection with the employment or earnings of the ship;
- (21) a ship mortgage or rights of the same nature; and
- (22) any dispute arising out of a contract for sale of a ship.

## **Article 22**

A ship may only be arrested in respect of maritime claims specified in Article 21 of this Law, except for the enforcement of a judgement, arbitration award or other legal documents.

## **Article 23**

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

- (1) the ship-owner is liable for the maritime claim and is the owner of the ship when the arrest is effected;
- (2) the demise charterer of the ship is liable for the maritime claim and is the demise charterer or owner of the ship when the arrest is effected;
- (3) the maritime claim is based upon a ship mortgage or rights of the same nature;
- (4) the maritime claim relates to ownership or possession of a ship; or
- (5) the maritime claim is secured by a maritime lien.

The maritime court may arrest other ship or ships which, when the arrest is effected, is or are owned by the ship-owner, demise charterer, time charterer or voyage charterer who is liable for the maritime claim, except for claims with respect to ownership or possession of a ship.

Ships engaged in military or governmental services are not subject to arrest.

## **Article 24**

A maritime claimant may not apply for arrest of a ship which has been arrested and released in respect of the same maritime claim except in any of the following circumstances:

- (1) the person against whom a claim is made fails to provide sufficient security;
- (2) the surety is unlikely to be able to perform the obligations under the security in whole or in part; or
- (3) the maritime claimant agrees to release the ship under arrest or return the security provided on reasonable grounds; or the maritime claimant could not by taking reasonable steps prevent the release of the ship under arrest or the return of the security provided.

## **Article 25**

A maritime claimant may apply for arrest of the ship concerned notwithstanding that the name of the person against whom the claim is made cannot be ascertained forthwith.

## **Article 26**

When issuing an order for arresting or releasing a ship, the maritime court may give a notice to relevant organisations for assistance in execution of the order. Such a notice shall specify the scope and requirements of the assistance in execution, and the relevant organisations have the obligation to assist the execution. The maritime court may directly send officers on board for purpose of supervision if it thinks necessary.

## **Article 27**

Where preservation of a ship has been adopted by order, the maritime court may, with the consent of the maritime claimant, allow the ship to resume operation with restraints on disposing or mortgaging the ship.

## **Article 28**

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

Where a maritime claimant brings an action or applies for arbitration within 30 days, or where a maritime claimant applies for arrest of a ship during legal proceedings or arbitral proceedings, the arrest of the ship is not subject to the

time limit prescribed in the foregoing paragraph.

### **Article 29**

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

### **Article 30**

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

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

### **Article 31**

Where a maritime claimant, having filed an application for auction of a ship, applies for termination of the auction, the maritime court has discretion to allow or disallow the application by order. If the maritime court terminates the auction of the ship by order, the expenses incurred in preparation for auction of the ship shall be borne by the maritime claimant.

### **Article 32**

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

Such an announcement shall contain:

- (1) name and nationality of the ship for auction;
- (2) reasons and grounds for auction of the ship;
- (3) constitution of the ship auction committee;
- (4) time and venue of the ship auction;
- (5) time and venue for demonstration of the ship for auction;

- (6) formalities to be completed for taking part in bidding;
- (7) particulars necessary for registration of claims; and
- (8) other matters which need to be announced.

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

### **Article 33**

The maritime court shall issue a notice 30 days before auction of a ship to the ship registrar of the state of registry of the ship for auction and to the known maritime lien holders, mortgagees and ship-owners.

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

Means of such a notice include written form and other appropriate forms the receipt thereof can be confirmed.

### **Article 34**

Auction of a ship shall be conducted by a ship auction committee. A ship auction committee shall consist of 3 or 5 persons, including the enforcement officer of the maritime court and the auctioneer and ship surveyor retained by the maritime court.

The ship auction committee is responsible for arranging assessment and evaluation of the ship; arranging and presiding over the auction; signing auction confirmation with the bidder; and completing ship delivery formalities.

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

### **Article 35**

Bidders shall register with the ship auction committee within the prescribed time limit. Certificates of identification of the person who registers with the committee, the legal representative of the enterprise or the responsible officer of other organisation and the power of attorney of the authorized proxy shall be submitted at the time of registration for examination together with payment of a certain amount of bidding deposit.

### **Article 36**

The ship auction committee shall, before auction of a ship, demonstrate the ship for auction and make the ship available for inspection and provide relevant documents and information of the ship.

### **Article 37**

A buyer, having signed the auction confirmation, shall pay forthwith not less than 20% of the purchase price; the balance shall be paid within 7 days after the date of the purchase, unless the ship auction committee has agreed otherwise with the buyer.

### **Article 38**

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

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

### **Article 39**

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

### **Article 40**

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

### **Article 41**

An auction is void if there is malicious collusion between the bidders. The bidders who take part in malicious collusion shall be liable for the expenses of the auction and make good the consequential loss. The maritime court may impose upon the bidders taking part in malicious collusion a fine of not less than 10% but not more than 30% of the highest bidding.

#### **Article 42**

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

#### **Article 43**

The relevant provisions of this Section may be applied *mutatis mutandis* to auction of a ship under arrest for discharge of debts in the procedure for execution.

### SECTION 3 ATTACHMENT AND AUCTION OF CARGO CARRIED BY SHIPS

#### **Article 44**

A maritime claimant may apply for attachment of the cargo carried by a ship to ensure realisation of his maritime claim.

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

#### **Article 45**

The value of the cargo against which an attachment is sought by a maritime claimant shall be in line with the amount of his claim.

#### **Article 46**

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

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

#### **Article 47**

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

A maritime claimant may apply for an earlier auction if the cargo cannot be preserved, or it is difficult to preserve, or the preserving expenses are likely to exceed the value of the cargo.

#### **Article 48**

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

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

#### **Article 49**

Auction of the cargo carried by a ship shall be conducted by an auction committee consisting of the enforcement officer of the maritime court and the auctioneer retained by the maritime court, or conducted by an organisation entrusted by the maritime court.

The relevant provisions of Section 2 of this Chapter in respect of auction of ships may be applied *mutatis mutandis* to auction of the cargo carried by a ship in the absence of applicable provisions in this Section.

#### **Article 50**

The provisions of this Section shall apply to the application by a maritime claimant for preservation of a maritime claim in respect of ship's bunkers and provisions relating thereto.

## **CHAPTER IV MARITIME INJUNCTION**

#### **Article 51**

A maritime injunction means the compulsory measures taken by a maritime court on the application of a maritime claimant compelling the person against whom a claim is made to do or refrain from doing certain things to prevent the legitimate rights and interests of the claimant from being infringed.

#### **Article 52**

A party who applies for a maritime injunction before institution of an action shall file the application with the maritime court at the place where the maritime

dispute arises.

### **Article 53**

A maritime injunction is not prejudiced by the jurisdiction agreement or arbitration agreement between the parties in respect of the maritime claim.

### **Article 54**

A maritime claimant who applies for a maritime injunction shall file the application in writing with a maritime court. Such an application shall specify the reasons therefore, and enclose the relevant evidence.

### **Article 55**

The maritime court, having entertained an application for a maritime injunction, may enjoin the maritime claimant to provide security. The application shall be rejected if the maritime claimant fails to do so.

### **Article 56**

The following conditions shall be met before a maritime injunction can be granted:

- (1) the claimant has a specific maritime claim;
- (2) a breach of legal provisions or contractual provisions by the person against whom a claim is made needs to be redressed; and
- (3) as a matter of urgency, loss will occur or increase if a maritime injunction is not granted forthwith.

### **Article 57**

The maritime court, having accepted an application, shall make an order within 48 hours. Where the order is to grant a maritime injunction, it shall be executed forthwith; where the conditions for a maritime injunction are not met, the application shall be rejected by order.

### **Article 58**

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

Where a maritime injunction is objected by an interested person, the maritime court shall examine the objection and cancel the maritime injunction by order if the reasons therefor are justified.

#### **Article 59**

Where a person against whom a claim is made refuses to comply with the maritime injunction, the maritime court may impose a fine or order a detention according to the seriousness of the case; if a crime is committed, criminal liability shall be fixed in accordance with the law.

A fine imposed upon an individual shall be not less than RMB1,000 yuan but not more than RMB 30,000 yuan. A fine imposed upon a body corporate shall be not less than RMB 30,000 yuan but not more than RMB 100,000 yuan.

The detention period shall not exceed 15 days.

#### **Article 60**

A maritime claimant who has wrongfully applied for a maritime injunction shall indemnify the person against whom the claim is made or any interested person for loss sustained thereby.

#### **Article 61**

Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after the execution of a maritime injunction, any party may bring an action in respect of the maritime claim in the maritime court granting the maritime injunction or any other maritime court that has jurisdiction, unless a jurisdiction agreement or arbitration agreement between the parties provides otherwise.

## **CHAPTER V      PRESERVATION OF MARITIME EVIDENCE**

#### **Article 62**

Preservation of maritime evidence means the compulsory measures taken by a maritime court on the application of a maritime claimant to take, preserve or seal up the evidence relating to a maritime claim.

#### **Article 63**

A party who applies for preservation of maritime evidence before institution of an action shall file the application with the maritime court at the place where the evidence to be preserved is located.

#### **Article 64**

Preservation of maritime evidence shall not be prejudiced by the jurisdiction agreement or arbitration agreement between the parties in respect of the maritime claim.

#### **Article 65**

A maritime claimant who applies for preservation of maritime evidence shall file the application in writing with a maritime court. Such an application shall specify the evidence to be preserved, the connection of the evidence with the maritime claim and the reasons therefor.

#### **Article 66**

The maritime court, having entertained an application for preservation of maritime evidence, may enjoin the maritime claimant to provide security. The application shall be rejected if the maritime claimant fails to do so.

#### **Article 67**

The following conditions shall be met before preservation of maritime evidence can be granted:

- (1) the applicant is a party to the maritime claim;
- (2) the evidence, preservation of which is applied for, substantiates the maritime claim;
- (3) the person against whom the application is made is a party relevant to the evidence preservation of which is applied for; and
- (4) as a matter of urgency, the evidence relevant to the maritime claim might be lost or hard to obtain, unless immediate preservation is resorted to.

#### **Article 68**

The maritime court, having accepted an application, shall give an order within 48 hours. Where the order is to adopt measures for preservation of maritime evidence, it shall be executed forthwith; where the conditions for preservation of maritime evidence are not met, the application shall be rejected by order.

#### **Article 69**

Any party who is dissatisfied with such an order may apply for review not more

than once within 5 days after receipt thereof. The maritime court shall give the result of the review within 5 days after receipt of the application therefor. Execution of the order shall not be suspended during the period of the review. If the reasons given by the person against whom a claim is made for the review are justified, the evidence under preservation shall be returned to that person.

Where preservation of maritime evidence is objected by an interested person, the maritime court shall examine the objection and cancel the preservation of maritime evidence if the reasons therefor are justified; where preservation of maritime evidence has been executed, the evidence concerns the interested person shall be returned to him.

#### **Article 70**

For preservation of maritime evidence, a maritime court may, taking into account the specific circumstances, seal up the evidence, take reproductions or duplicates, take photographs, or make video recording, extracts or records of inquests, etc. The maritime court may take the original evidence if necessary.

#### **Article 71**

A maritime claimant who has wrongfully applied for preservation of maritime evidence shall indemnify the person against whom the claim is made or any interested person for loss sustained thereby.

#### **Article 72**

Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after the preservation of maritime evidence, any party may bring an action in respect of the maritime claim in the maritime court granting the preservation of evidence or any other maritime court that has jurisdiction, unless the jurisdiction agreement or arbitration agreement between the parties provides otherwise.

## **CHAPTER VI MARITIME SECURITY**

#### **Article 73**

Maritime security includes the security involved in such procedures as preservation of maritime claims, maritime injunction and preservation of maritime evidence provided for in this Law.

Security can take the form of cash, guarantee, mortgage or pledge.

#### **Article 74**

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

#### **Article 75**

The type and amount of the security to be provided by a maritime claimant shall be determined by the maritime court. The type and amount of the security to be provided by a person against whom a claim is made shall be determined by the maritime claimant and the person against whom the claim is made through negotiation, failing which they shall be determined by the maritime court.

#### **Article 76**

The amount of the security requested by a maritime claimant from a person against whom a claim is made for preservation of a maritime claim shall be in line with the amount of his claim, but shall not exceed the value of the property under preservation.

The amount of the security provided by a maritime claimant shall be in line with the loss the person against whom the claim is made may suffer as a result of such an application. The exact amount shall be determined by the maritime court.

#### **Article 77**

After having provided security, the surety may apply to the maritime court to reduce, alter or cancel such security, if he has justifiable reasons to do so.

#### **Article 78**

Where the amount of the security requested by a maritime claimant is so excessive as to cause loss to the person against whom the claim is made, the maritime claimant shall be liable for such loss.

#### **Article 79**

The provisions of this Chapter may apply *mutatis mutandis* to the security involved in such procedures as constitution of a limitation fund for maritime claims and advance execution.

## CHAPTER VII SERVICE

### Article 80

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

- (1) on the agent *ad litem* duly instructed by the person on whom the document is to be served;
- (2) on the representative office or branch in the People's Republic of China established by the person on whom the document is to be served, or on the business agent appointed by such person; or
- (3) in other appropriate forms the receipt thereof can be confirmed.

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

### Article 81

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

## CHAPTER XIII TRIAL PROCEDURES

### SECTION 1 PROVISIONS FOR TRIAL OF COLLISION CASES

### Article 82

An Investigation Form for Maritime Accident shall be faithfully filled in by the plaintiff when bringing an action and the defendant when submitting a defence.

### Article 83

The maritime court, when serving the bill of claim or the bill of defence on the parties, shall not enclose the relevant evidential materials.

### Article 84

The parties shall discharge the burden of proof before a hearing. Any party who has discharged the burden of proof and furnished the maritime court with a statement to that effect may apply to consult the evidential materials concerning the ship collision.

#### **Article 85**

The parties may not reverse the statement made in the Investigation Form for Maritime Accident or the evidence adduced, unless new evidence has come to light and there are justifiable reasons for being unable to submit such new evidence within the period for submission of evidence.

#### **Article 86**

Survey and appraisal of a ship shall be conducted by institutions or individuals that have been duly authorised by the State or duly professionally qualified. A maritime court shall not accept any survey or appraisal report made by institutions or individuals without authorisation of the State or professional qualifications.

#### **Article 87**

Collision cases shall be tried and closed by a maritime court within 1 year after placing on file of the case. Where an extension of the period is necessary under special circumstances, such an extension shall be subject to approval of the president of the court.

### SECTION 2 PROVISIONS FOR TRIAL OF GENERAL AVERAGE CASES

#### **Article 88**

With respect to a general average dispute, the parties may either agree to appoint an average adjuster for the purpose of an adjustment, or directly bring an action in a maritime court. The maritime court, having entertained an action in respect of an unadjusted general average dispute, may appoint an average adjuster for the purpose of an adjustment.

#### **Article 89**

The general average adjustment report made by an average adjuster may be admissible as the basis for contribution if no objection is raised by any party; where an objection is raised, the maritime court shall decide whether to accept the report or not.

#### **Article 90**

A party may bring an action against the liable person for non-general average loss notwithstanding the proceedings commenced in respect of the general average claim arising out of the same maritime accident.

#### **Article 91**

The maritime court may consolidate the action brought by a party in respect of a non-general average claim and the action brought by the party against the liable person in respect of the recourse for general average contribution provided they arose out of the same maritime accident.

#### **Article 92**

General average cases shall be tried and closed by a maritime court within 1 year after placing on file of the case. Where an extension of the period is necessary under special circumstances, such an extension shall be subject to approval of the president of the court.

### SECTION 3 PROVISIONS FOR EXERCISING THE RIGHT OF SUBROGATION BY MARINE INSURERS

#### **Article 93**

Where an accident covered is caused by a third party, the insurer, after having indemnified the insured, is entitled to claim compensation against the third party by exercising the right of subrogation in so far as the assured has been indemnified.

#### **Article 94**

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

#### **Article 95**

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

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

#### **Article 96**

Where an action is brought or an application to join in an action is filed by an insurer pursuant to the provisions provided for in Articles 94 and 95 of this Law, the insurer shall submit to the maritime court entertaining the case the certificate evidencing payment of indemnity by the insurer and other documents necessary for joining in the action.

#### **Article 97**

A claim may be made by an aggrieved party in respect of oil pollution damage caused by a ship either against the owner of the ship causing oil pollution or directly against the insurer who underwrites the oil pollution liability of the ship-owner, or the person who has provided financial security therefor.

Where the insurer who underwrites the oil pollution liability of the ship-owner or the person who has provided financial security therefor is sued in an action, such insurer or person is entitled to demand the owner of the ship causing oil pollution to join the proceedings.

### SECTION 4 SUMMARY PROCEDURE, PROCEDURE FOR EXHORTATION AND PROCEDURE FOR PUBLIC INTERPELLATION

#### **Article 98**

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

#### **Article 99**

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

Where the debtor is an alien, a stateless person or a foreign enterprise or organisation that has a domicile or representative office or branch within the jurisdiction of the People's Republic of China on which the order of payment can

be served, the creditor may apply to a maritime court that has jurisdiction for an order of payment.

#### **Article 100**

A holder of a bill of lading or similar documents for taking delivery of cargo may apply for public interpellation to the maritime court at the place of the cargo in case such documents are out of control or lost.

### **CHAPTER IX    PROCEDURE FOR CONSTITUTION OF LIMITATION FUND FOR MARITIME CLAIMS**

#### **Article 101**

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

Where oil pollution damage is caused by a ship, the ship-owner and the liability insurer or the person who has provided financial security therefor shall, for the purpose of availing themselves of the benefit of the limitation of liability provided for by law, constitute with a maritime court a limitation fund for maritime claims in respect of the oil pollution damage.

An application for constitution of a limitation fund may be filed either before an action is brought or during the legal proceedings, provided such application is filed before the judgement of the first instance is given.

#### **Article 102**

A party who applies for constitution of a limitation fund for maritime claims before institution of an action shall file the application with the maritime court at the place of the accident, the place of performance of the contract or the place of ship arrest.

#### **Article 103**

The constitution of a limitation fund for maritime claims is not prejudiced by the jurisdiction agreement or arbitration agreement between the parties.

#### **Article 104**

A person who applies for constitution of a limitation fund for maritime claims with a maritime court shall file the application in writing. Such an application shall

specify the amount of the limitation fund to be constituted for maritime claims, the reasons therefor as well as the names, addresses and means of correspondence of the interested persons known, and enclose the relevant evidence.

### **Article 105**

The maritime court, having entertained an application for constitution of a limitation fund for maritime claims, shall notify all the interested persons known within 7 days, and issue an announcement in the newspapers or other news media.

Such a notice and announcement shall contain:

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

### **Article 106**

An interested person who objects to the application filed by the applicant for constitution of a limitation fund for maritime claims shall file the objection in writing with the maritime court within 7 days after the receipt of the notice, or within 30 days after the date of the announcement if no such notice is received.

The maritime court, having received the written objection from the interested person, shall examine the objection and make an order within 15 days. The application of the applicant shall be rejected by order if the objection is well founded; the application for constitution of a limitation fund for maritime claims shall be allowed by order if the objection is groundless.

Any party who is dissatisfied with such an order may appeal within 7 days after receipt thereof. The people's court of second instance shall make an order within 15 days after receipt of the appeal.

### **Article 107**

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

### **Article 108**

A limitation fund for maritime claims shall be constituted by the applicant with the maritime court after the order to allow the constitution of such a fund becomes effective.

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

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

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

### **Article 109**

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

### **Article 110**

An applicant who has wrongfully applied for constitution of a limitation fund for maritime claims shall indemnify the interested person for loss sustained thereby.

## **CHAPTER X      PROCEDURE FOR REGISTRATION AND SATISFACTION OF CLAIMS**

### **Article 111**

After the announcement of an order by a maritime court for the forced auction of a ship, the creditors shall apply for registration of their claims pertaining to the ship to be auctioned within the time limit of the announcement. The creditors who fail to register their claims on the expiry of the time limit of the announcement shall be deemed to have waived their rights to be satisfied from the proceeds of the auction.

## **Article 112**

After the announcement of the acceptance by a maritime court of an application for constitution of a limitation fund for maritime claims, the creditors shall apply for registration of their claims pertaining to the maritime accident that occurred in the particular circumstance within the time limit of the announcement. The creditors who fail to register their claims on the expiry of the time limit of the announcement shall be deemed to have waived their claims.

## **Article 113**

A creditor who applies for registration of a claim with a maritime court shall file the application in writing together with relevant evidence of the claim.

Evidence of claims includes legally-binding judgements, written orders, conciliation documents, arbitral awards and notarised documents substantiating the claims and other evidential materials substantiating the maritime claims.

## **Article 114**

The maritime court shall examine the application filed by a creditor, and make an order to allow the registration if evidence of the claim is provided, and to reject the application if it is not.

## **Article 115**

The maritime court shall examine the judgements, written orders, conciliation documents, arbitral awards, or notarised documents provided by the creditors to substantiate the claims, and shall confirm such evidence by order if it is found to be true and lawful.

## **Article 116**

A creditor who provides other evidence of a maritime claim shall, after having registered the claim, bring an action in the maritime court that has accepted registration of the claim to have the claim confirmed. Where there is an arbitration agreement between the parties, arbitration shall be promptly applied for.

A judgement or an order made by a maritime court confirming the claim is legally binding subject to no appeal by any party.

## **Article 117**

The maritime court shall, after having examined and confirmed the claims, issue a notice to the creditors for a creditors' meeting, and arrange and convene the meeting.

#### **Article 118**

At the creditors' meeting a plan for distribution of the proceeds of auction of the ship or the limitation fund for maritime claims may be put forward through consultation and an agreement for distribution may be signed.

The agreement for distribution shall be legally binding after it has been approved by the maritime court by order.

Where consultation fails at the creditors' meeting, the maritime court shall determine a plan for distribution of the proceeds of auction of the ship or the limitation fund for maritime claims in accordance with the ranking of the claims provided for in the Maritime Code of the People's Republic of China and other related laws.

#### **Article 119**

The proceeds of auction of a ship or the limitation fund for maritime claims shall be distributed together with the interest thereon.

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

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

## **CHAPTER XI      PROCEDURE FOR INTERPELLATION OF MARITIME LIENS**

#### **Article 120**

In a ship transfer, the transferee may apply to a maritime court for interpellation of maritime liens, demanding the maritime lien holders to assert their rights promptly so as to extinguish the maritime liens attached to the ship.

#### **Article 121**

A transferee who applies for interpellation of maritime liens shall file the

application with the maritime court at the place of delivery of the ship or the domicile of the transferee.

#### **Article 122**

A person who applies for interpellation of maritime liens shall submit to the maritime court a written application, the contract for ship transfer, technical materials of the ship etc. The written application shall specify the name of the ship, the facts and the grounds therefor.

#### **Article 123**

The maritime court, having received the application and the relevant documents, shall examine the application and make an order within 7 days to allow or disallow the application.

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

#### **Article 124**

The maritime court shall, after an order to allow an application becomes effective, issue an announcement in newspapers or other news media urging the maritime lien holders to assert their rights within the period of the interpellation.

The period for interpellation of maritime liens is 60 days.

#### **Article 125**

A maritime lien holder who asserts his rights within the period for interpellation shall complete registration with the maritime court, failing which the maritime lien holder shall be deemed to have waived the maritime lien.

#### **Article 126**

Where there is no assertion of maritime liens on the expiry of the period for interpellation, the maritime court shall, on the application of a party, make a judgement declaring that the ship in transfer is free from maritime liens. The judgement shall be published.

## **CHAPTER XII SUPPLEMENTARY PROVISION**

#### **Article 127**

This Law shall come into force as of 1st July 2000.