Maritime Code of PRC 1/7/1993

(28/10/2008)

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To: Transport Industry Operators  

16 September 2008

Seminar

Maritime Code of PRC 1/7/1993

The Maritime Code of the People’s Republic of China has been in force for more than 15 years.

This is such an important law that forwarders, NVOCs and shipping companies should know about its details. It determines the liability of forwarders, NVOCs and shipping companies for cargo claims under the carriage contracts e.g. bill of lading in respect of shipments to and from China. As part of our risk management services to the transport industry, we together with the Hong Kong Shippers’ Council hold a seminar about the basics of the PRC Maritime Code in relation to cargo claims. The details are as follows:

1. Date: Tuesday, 28 October 2008 (2:15pm – 4:30pm)
2. Venue: YMCA of Hong Kong – Assembly Hall, 4/F North Tower
   41 Salisbury Road, Tsimshatsui, Kowloon, Hong Kong
3. Speaker: Mr Richard Chan
4. Language: Cantonese
5. Fee: HK$250 per person
6. Outline:
   - PRC Maritime Code application
   - Carriers’ different responsibilities for containerised and non-containerised goods
   - Carriers’ liability exemptions e.g. navigational error, fire...
   - Carriers’ liability limitation of 2SDR/kg or 666.67SDR/packet of goods lost/damaged, whichever is higher
   - Carriers’ liability limitation of one time of freight charges for goods delayed
   - Himalaya Clause benefitting carriers’ servants and agents
   - Carriers’ no liability limitation for intentional or reckless conduct
   - Bills of lading (functions, and different forms e.g. straight, order and bearer B/L)
   - 7-day and 60-day notice time limits for claims
   - Carriers’ lien and auction of goods after 60 days from ship’s arrival
   - Multimodal Transport Contract
   - Shippers’/charterers’ liability limitation based on ship tonnage
   - One year suit time limit with additional 90 days for indemnity claims
   - Freedom to choose applicable law

Please fill in the attached enrollment form and send it to Sun Mobility Insurance and Claims Services Limited or the Hong Kong Shippers’ Council with your cheque for payment of the attendance fee.

Yours faithfully
For and on behalf of
SUN MOBILITY INSURANCE AND CLAIMS SERVICES LIMITED

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Objectives (Article 1)

This Code is enacted with a view to regulating the relations arising from maritime transport and those pertaining to ships, to securing and protecting the legitimate rights and interests of the parties concerned, and to promoting the development of maritime transport, economy and trade.

Shipments to and from China (Article 2)

The provisions concerning contracts of carriage of goods by sea as contained in this Code shall not be applicable to the maritime transport of goods between the ports of the People’s Republic of China.

Ships (Article 3)

“Ship” as referred to in this Code means sea-going ships and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage.

Contracts of carriage (Article 41)

A contract of carriage of goods by sea is a contract under which the carrier, against payment of freight, undertakes to carry by sea the goods contracted for shipment by the shipper from one port to another.
Definitions (Article 42)

(1) “Carrier” means the person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper;
(2) “Actual carrier” means the person to whom the performance of carriage of goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted under a sub-contract;
(3) “Shipper” means:
   a) The person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier;
   b) The person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea;
(4) “Consignee” means the person who is entitled to take delivery of the goods;
(5) “Goods” includes live animals and containers, pallets or similar articles of transport supplied by the shipper for consolidating the goods.

Contracts in writing (Article 43)

The carrier or the shipper may demand confirmation of the contract of carriage of goods by sea in writing. However, voyage charter shall be done in writing, Telegrams, telexes and telefaxes have the effect of written documents.

Conflicting terms null & void (Article 44)

Any stipulation in a contract of carriage of goods by sea or a bill of lading or other similar documents evidencing such contract that derogates from the provisions of this Chapter shall be null and void.

Responsibilities for containerized and non-containerized goods (Article 46)

The responsibilities of the carrier with regard to the goods carried in containers covers the entire period during which the carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharge. The responsibility of the carrier with respect to non-containerized goods covers the period during which the carrier is in charge of the goods, starting from the time of loading of the goods onto the ship until the time the goods are discharged therefrom. During the period the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods except as otherwise provided for in this Code.

The provisions shall not prevent the carrier from entering into any agreement concerning carrier’s responsibilities with regard to non-containerized goods prior to loading onto and after discharging from the ship.

Seaworthy due diligence (Article 47)

The carrier shall, before and at the beginning of the voyage, exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
Carriers’ duties (Article 48)

The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

Routing (Article 49)

The carrier shall carry the goods to the port of discharge on the agreed or customary or geographically direct route.

Delay (Article 50)

Delay in delivery occurs when the goods have not been delivered at the port of discharge within the time expressly agreed upon.

The carrier shall be liable for the loss of or damage to the goods caused by delay in delivery due to the fault of the carrier, except those arising or resulting from causes for which the carrier is not liable as provided for in the relevant Articles of this Code.

The carrier shall be liable for the economic losses caused by delay in delivery of the goods due to the fault of the carrier, even if no loss of or damage to the goods had actually occurred, unless such economic losses had occurred from causes for which the carrier is not liable as provided for in the relevant Articles of this Code.

The person entitled to make a claim for the loss of goods may treat the goods as lost when the carrier has not delivered the goods within 60 days from the expiry of the time for delivery as expressly agreed.

Liability exemptions (Article 51)

The carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier’s responsibility arising or resulting from any of the following causes:

1. Fault of the Master, crew members, pilot or servant of the carrier in the navigation or management of the ship;
2. Fire, unless caused by the actual fault of the carrier;
3. Force majeure and perils, dangers and accidents of the sea or other navigable waters;
4. War or armed conflict;
5. Act of the government or competent authorities, quarantine restrictions or seizure under legal process;
6. Strikes, stoppages or restraint of labour;
7. Saving or attempting to save life or property at sea;
8. Act of the shipper, owner of the goods or their agents;
9. Nature or inherent vice of the goods;
10. Inadequacy of packing or insufficiency or illegibility of marks;
11. Latent defect of the ship not discoverable by due diligence;
12. Any other cause arising without the fault of the carrier or his servant or agent.

The carrier who is entitled to exoneration from the liability for compensation shall, with the
exception of the causes given in sub-paragraph (2), bear the burden of proof.

**Shipped on deck** (Article 53)

In case the carrier intends to ship the goods on deck, he shall come into an agreement with the shipper or comply with the custom of the trade or the relevant laws or administrative rules and regulations.

When the goods have been shipped on deck in accordance with the provisions of the preceding paragraph, the carrier shall not be liable for the loss of or damage to the goods caused by the special risks involved in such carriage.

**Compensation amount** (Article 55)

The amount of indemnity for the loss of the goods shall be calculated on the basis of the actual value of the goods so lost, while that for the damage to the goods shall be calculated on the basis of the difference between the values of the goods before and after the damage, or on the basis of the expenses for the repair.

The actual value shall be the value of the goods at the time of shipment plus insurance and freight.

From the actual value referred to in the preceding paragraph, deduction shall be made, at the time of compensation, of the expenses that had been reduced or avoided as a result of the loss or damage occurred.

**Liability limitation** (Article 56)

The carrier’s liability for the loss of or damage to the goods shall be limited to an amount equivalent to 666.67 Units of Account per package or other shipping unit, or 2 Units of Account per kilogramme of the gross weight of the goods lost or damaged, whichever is the higher, except where the nature and value of the goods had been declared by the shipper before shipment and inserted in the bill of lading, or where a higher amount than the amount of limitation of liability set out in this Article had been agreed upon between the carrier and the shipper.

Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or other shipping units enumerated in the bill of lading as packed in such article of transport shall be deemed to be the number of packages or shipping units. If not so enumerated, the goods in such article of transport shall be deemed to be one package or one shipping unit.

Where the article of transport is not owned or furnished by the carrier, such article of transport shall be deemed to be one package or one shipping unit.

**Delay liability limitation** (Article 57)

The liability of the carrier for the economic losses resulting from delay in delivery of the goods shall be limited to an amount equivalent to the freight payable for the goods so delayed. Where the loss of or damage to the goods has occurred concurrently with the delay in delivery thereof, the limitation of liability of the carrier shall be that as provided for in paragraph 1 of Article 56 of this Code.
Contract or tort; Himalaya clause (Article 58)

The defence and limitation of liability provided for in this Chapter shall apply to any legal action brought against the carrier with regard to the loss of or damage to or delay in delivery of the goods covered by the contract of carriage of goods by sea, whether the claimant is a party to the contract or whether the action is founded in contract or in tort.

The provisions of the preceding paragraph shall apply if the action referred to in the preceding paragraph is brought against the carrier’s servant or agent, and the carrier’s servant or agent proves that his action was within the scope of his employment or agency.

Intentional or reckless conduct (Article 59)

The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 56 or 57 of this Code if it is proved that the loss, damage or delay in delivery of the goods resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

The servant or agent of the carrier shall not be entitled to the benefit of limitation of liability provided for in article 56 or 57 of this Code, if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the servant or agent of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Carrier’s liability (Article 60)

Where the performance of the carriage or part thereof has been entrusted to an actual carrier, the carrier shall nevertheless remain responsible for the entire carriage. The carrier shall be responsible, in relation to the carriage performed by the actual carrier, for the act or omission of the actual carrier and of his servant or agent acting within the scope of his employment or agency.

Actual carrier’s responsibility (Article 61)

The provisions with respect to the responsibility of the carrier contained in Chapter IV shall be applicable to the actual carrier. Where an action is brought against the servant or agent of the actual carrier, the provisions contained in paragraph 2 of Article 58 and paragraph 2 of Article 59 of this Code shall apply.

Joint & several liability (Article 63)

Where both the carrier and the actual carrier are liable for compensation, they shall jointly and severally be liable within the scope of such liability.

Aggregate liability limitation (Article 64)

If claims for compensation have been separately made against the carrier, the actual carrier and their servants or agents with regard to the loss of or damage to the goods, the aggregate amount of compensation shall not be in excess of the limitation provided for in Article 56 of this Code.
Cargo packing & information (Article 66)

The shipper shall have the goods properly packed and shall guarantee the accuracy of the description, mark, number of packages or pieces, weight or quantity of the goods at the time of shipment and shall indemnify the carrier against any loss resulting from inadequacy of packing or inaccuracies in the above-mentioned information.

Customs & quarantine (Article 67)

The shipper shall perform all necessary procedures at the port, customs, quarantine, inspection or other competent authorities with respect to the shipment of the goods and shall furnish to the carrier all relevant documents concerning the procedures the shipper has gone through. The shipper shall be liable for any damage to the interest of the carrier resulting from the inadequacy or inaccuracy or delay in delivery of such documents.

 Dangerous goods (Article 68)

At the time of shipment of dangerous goods, the shipper shall, in compliance with the regulations governing the carriage of such goods, have them properly packed, distinctly marked and labelled and notify the carrier in writing of their proper description, nature and the precautions to be taken. In case the shipper fails to notify the carrier or notified him inaccurately, the carrier may have such goods landed, destroyed or rendered innocuous when and where circumstances so require, without compensation. The shipper shall be liable to the carrier for any loss, damage or expense resulting from such shipment.

Notwithstanding the carrier's knowledge of the nature of the dangerous goods and his consent to carry, he may still have such goods landed, destroyed or rendered innocuous, without compensation, when they become an actual danger to the ship, the crew and other persons on board or to other goods.

Freight (Article 69)

The shipper shall pay the freight to the carrier as agreed.

The shipper and the carrier may reach an agreement that the freight shall be paid by the consignee. However, such an agreement shall be noted in the transport documents.

B/L functions (Article 71)

A bill of lading is a document which serves as an evidence of the contract of carriage of goods by sea and the taking over or loading of the goods by the carrier, and based on which the carrier undertakes to deliver the goods against surrendering the same. A provision in the document stating that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

Issuing B/L (Article 72)

When the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading.
B/L particulars (Article 73)

A bill of lading shall contain the following particulars:
(1) Description of the goods, mark, number of packages or pieces, weight or quantity, and a statement, if applicable, as to the dangerous nature of the goods;
(2) Name and principal place of business of the carrier;
(3) Name of the ship;
(4) Name of the shipper;
(5) Name of the consignee;
(6) Port of loading and the date on which the goods were taken over by the carrier at the port of loading;
(7) Port of discharge;
(8) Place where the goods were taken over and the place where the goods are to be delivered in case of a multimodal transport bill of lading;
(9) Date and place of issue of the bill of lading and the number of originals issued;
(10) Payment of freight;
(11) Signature of the carrier or of a person acting on his behalf.
In a bill of lading, the lack of one or more particulars referred to in the preceding paragraph does not affect the function of the bill of lading as such, provided that it nevertheless meets the requirements set forth in Article 71 of this Code.

B/L particulars suspicion (Article 75)

If the bill of lading contains particulars concerning the description, mark, number of packages or pieces, weight or quantity of the goods with respect to which the carrier has the knowledge or reasonable grounds to suspect that such particulars do not accurately represent the goods actually received, or if he has had no reasonable means of checking, the carrier may make a note in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking.

Carriers not allowed to deny B/L particulars (Article 77)

Except for the note made in accordance with the provisions of Article 75 of this Code, the bill of lading issued by the carrier is prima facie evidence of the taking over or loading by the carrier of the goods as described therein. Proof to the contrary by the carrier shall not be admissible if the bill of lading has been transferred to a third party, including a consignee, who has acted in good faith in reliance on the description of the goods contained therein.

B/L as contract terms (Article 78)

The relationship between the carrier and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clauses of the bill of lading.

Straight, Order or Bearer B/L (Article 79)

The negotiability of a bill of lading shall be governed by the following provisions:
(1) A straight bill of lading is not negotiable;
(2) An order bill of lading may be negotiated with endorsement to order or endorsement in blank;
(3) A bearer bill of lading is negotiable without endorsement.

**Carrier’s receipt** (Article 80)

Where a carrier has issued a document other than a bill of lading as an evidence of the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage of goods by sea and the taking over by the carrier of the goods as described therein.

Such documents that are issued by the carrier shall not be negotiable.

**Notice time limit** (Article 81)

Unless notice of loss or damage is given in writing by the consignee to the carrier at the time of delivery of the goods by the carrier to the consignee, such delivery shall be deemed to be prima facie evidence of the delivery of the goods by the carrier as described in the transport documents and of the apparent good order and condition of such goods.

Where the loss of or damage to the goods is not apparent, the provisions of the preceding paragraph shall apply if the consignee has not given the notice in writing within 7 consecutive days from the next day of the delivery of the goods, or, in the case of containerized goods, within 15 days from the next day of the delivery thereof.

The notice in writing regarding the loss or damage need not be given if the state of the goods has, at the time of delivery, been the subject of a joint survey or inspection by the carrier and the consignee.

**Delay notice time limit** (Article 82)

The carrier shall not be liable for compensation if no notice on the economic losses resulting from delay in delivery of the goods has been received from the consignee within 60 consecutive days from the next day on which the goods had been delivered by the carrier to the consignee.

**Lien** (Article 87)

If the freight, contribution in general average, demurrage to be paid to the carrier and other necessary charges paid by the carrier on behalf of the owner of the goods as well as other charges to be paid to the carrier have not been paid in full, nor has appropriate security been given, the carrier may have a lien, to a reasonable extent, on the goods.

**Sale of the liened goods** (Article 88)

If the goods under lien in accordance with the provisions of Article 87 of this Code have not been taken delivery of within 60 days from the next day of the ship’s arrival at the port of discharge, the carrier may apply to the court for an order on selling the goods by auction; where the goods are perishable or the expenses for keeping such goods would exceed their value, the carrier may apply for an earlier sale by auction.

The proceeds from the auction sale shall be used to pay off the expenses for the storage and auction sale of the goods, the freight and other related charges to be paid to the carrier. If the proceeds fall short of such expenses, the carrier is entitled to claim the difference from the shipper, whereas any
amount in surplus shall be refunded to the shipper.

**Voyage C/P (Article 92)**

A voyage charter party is a charter party under which the shipowner charters out and the charterer charters in the whole or part of the ship’s space for the carriage by sea of the intended goods from one port to another and the charterer pays the agreed amount of freight.

**V. C/P (Article 93)**

A voyage charter party shall mainly contain, inter alia, name of the shipowner, name of the charterer, name and nationality of the ship, its bale or grain capacity, description of the goods to be loaded, port of loading, port of destination, laydays, time for loading and discharge, payment of freight, demurrage, dispatch and other relevant matters.

**V. C/P (Article 94)**

The provisions in Article 47 and Article 49 of this Code shall apply to the shipowner under voyage charter party.

The other provisions in Chapter IV regarding the rights and obligations of the parties to the contract shall apply to the shipowner and the charterer under voyage charter only in the absence of relevant provisions or in the absence of provisions differing therefrom in the voyage charter.

**V. C/P (Article 95)**

Where the holder of the bill of lading is not the charterer in the case of a bill of lading issued under a voyage charter, the rights and obligations of the carrier and the holder of the bill of lading shall be governed by the clauses of the bill of lading. However, if the clauses of the voyage charter party are incorporated into the bill of lading, the relevant clauses of the voyage charter party shall apply.

**V. C/P (Article 97)**

If the shipowner has failed to provide the ship within the laydays fixed in the charter, the charterer is entitled to cancel the charter party. However, if the shipowner had notified the charterer of the delay of the ship and the expected date of its arrival at the port of loading, the charterer shall notify the shipowner whether to cancel the charter within 48 hours of the receipt of the shipowner’s notification.

Where the charter has suffered losses as a result of the delay in providing the ship due to the fault of the shipowner, the shipowner shall be liable for compensation.

**V. C/P (Article 98)**

Under a voyage charter, the time for loading and discharge and the way of calculation thereof, as well as the rate of demurrage that would incur after the expiration of the laytime and the rate of dispatch money to be paid as a result of the completion of loading or discharge ahead of schedule, shall be fixed by the shipowner and the charterer upon mutual agreement.
V. C/P  (Article 99)

The charterer may sublet the ship he chartered, but the rights and obligations under the head charter shall not be affected.

V. C/P  (Article 100)

The charterer shall provide the intended goods, but he may replace the goods with the consent of the shipowner. However, if the goods replaced is detrimental to the interests of the shipowner, the shipowner shall be entitled to reject such goods and cancel the charter.

Where the shipowner has suffered losses as a result of the failure of the charterer in providing the intended goods, the charterer shall be liable for compensation.

Multimodal transport contract  (Article 102)

A multimodal transport contract means a contract under which the multimodal transport operator undertakes to transport the goods, against the payment of freight for the entire transport, from the place where the goods were received in his charge to the destination and to deliver them to the consignee by two or more different modes of transport, one of which being sea carriage.

The multimodal transport operator as referred to in the preceding paragraph means the person who has entered into a multimodal transport contract with the shipper.

M.T.C.  (Article 104)

The multimodal transport operator shall be responsible for the performance of the multimodal transport contract or the procurement of the performance therefor, and shall be responsible for the entire transport.

The multimodal transport operator may enter into separate contracts with the carriers of the different modes defining their responsibilities with regard to the different sections of the transport under the multimodal transport contracts.

M.T.C.  (Article 105)

If loss of or damage to the goods has occurred in a certain section of the transport, the provisions of the relevant laws and regulations governing that specific section of the multimodal transport shall be applicable to matters concerning the liability of the multimodal transport operator and the limitation thereof.

M.T.C.  (Article 106)

If the section of transport in which the loss of or damage to the goods occurred could not be ascertained, the multimodal transport operator shall be liable for compensation in accordance with the stipulations regarding the carrier’s liability and the limitation thereof as set out in Chapter IV.

Charter Parties  (Article 127)
The provisions concerning the rights and obligations of the shipowner and the charterer in Chapter VI shall apply only when there are no stipulations or no different stipulations in this regard in the charter party.

C/P (Article 128)

Charter parties including time charter parties and bareboat charter parties shall be concluded in writing.

Time C/P (Article 129)

A time charter party is a contract under which the shipowner provides a designated manned ship to the charterer, and the charterer employs the ship during the contractual period for the agreed service against payment of hire.

Time C/P (Article 130)

A time charter party mainly contains the name of the shipowner, the name of the charterer; the name, nationality, class, tonnage, capacity, speed and fuel consumption of the ship; the trading area; the agreed service, the contractual period, the time, place and conditions of delivery and readelivery of the ship; the hire and the way of its payment and other relevant matters.

Time C/P (Article 131)

The shipowner shall deliver the ship within the time agreed upon in the charter party.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer is entitled to cancel the charter. However, if the shipowner has notified the charterer of the anticipated delay in delivery and has given an estimated time of arrival of the ship at the port of delivery, the charterer shall notify the shipowner, within 48 hours of the receipt of such notice from the shipowner, of his decision whether to cancel the charter or not.

The shipowner shall be liable for the charterer’s loss resulting from the delay in delivery of the ship due to the shipowner’s fault.

Time C/P (Article 132)

At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the intended service.

Where the shipowner acts against the provisions in the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom.

Time C/P (Article 133)

During the charter period, if the ship is found at variance with the seaworthiness or the other conditions agreed upon in the charter, the shipowner shall take all reasonable measures to have them restored as soon as possible.
Where the ship has not been operated normally for 24 consecutive hours due to its failure to maintain the seaworthiness or the other conditions as agreed upon, the charterer shall not pay the hire for the operating time so lost, unless such failure was caused by the charterer.

**Time C/P (Article 134)**

The charterer shall guarantee that the ship shall be employed in the agreed maritime transport between the safe ports or places within the trading area agreed upon.

If the charterer acts against the provisions of the preceding paragraph, the shipowner is entitled to cancel the charter and claim any losses resulting therefrom.

**Time C/P (Article 135)**

The charterer shall guarantee that the ship shall be employed to carry the lawful merchandise agreed.

Where the ship is to be employed by the charterer to carry live animals or dangerous goods, a prior consent of the shipowner is required.

**Time C/P (Article 136)**

The charterer shall be entitled to give the Master instructions with respect to the operation of the ship. However, such instructions shall not be inconsistent with the stipulations of the time charter.

**Time C/P (Article 137)**

The charterer may sublet the ship under charter, but he shall notify the shipowner of the sublet in time. The rights and obligations agreed upon in the head charter shall not be affected by the sub-charter.

**Time C/P (Article 138)**

Where the ownership of the ship under charter has been transferred by the shipowner, the rights and obligations agreed upon under the original charter shall not be affected. However, the shipowner shall inform the charterer thereof in time. After such transfer, the transferee and the charterer shall continue to perform the original charter.

**Time C/P (Article 140)**

The charterer shall pay the hire as agreed upon in the charter. Where the charterer fails to pay the hire as agreed upon, the shipowner shall be entitled to cancel the charter party and claim any losses resulting therefrom.

**Time C/P (Article 141)**

In case the charterer fails to pay the hire or other sums of money as agreed upon in the charter, the shipowner shall have a lien on the charterer’s goods, other property on board and earnings from the sub-charter.
**Time C/P (Article 142)**

When the charterer redelivers the ship to the shipowner, the ship shall be in the same good order and condition as it was at the time of delivery, fair wear and tear excepted.

**Time C/P (Article 143)**

If, on the basis of a reasonable calculation, a ship may be able to complete its last voyage at around the time of redelivery specified in the charter and probably thereafter, the charterer is entitled to continue to use the ship in order to complete that voyage even if its time of redelivery will be overdue. During the extended period, the charterer shall pay the hire at the rate fixed by the charter, and, if the current market rate of hire is higher than that specified in the charter, the charterer shall pay the hire at the current market rate.

**Bareboat C/P (Article 144)**

A bareboat charter party is a charter party under which the shipowner provides the charterer with an unmanned ship which the charterer shall possess, employ and operate within an agreed period and for which the charterer shall pay the shipowner the hire.

**Bareboat C/P (Article 145)**

A bareboat charter party mainly contains the name of the shipowner and the name of the charterer; the name, nationality, class; tonnage and capacity of the ship; the trading area, the employment of the ship and the charter period; the time, place and condition of delivery and redelivery; the survey, maintenance and repair of the ship; the hire and its payment; the insurance of the ship; the time and condition for the termination of the charter and other relevant matters.

**Bareboat C/P (Article 146)**

The shipowner shall deliver the ship and its certificates to the charterer at the port or place and time as stipulated in the charter party. At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the agreed service.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom.

**Bareboat C/P (Article 147)**

The charterer shall be responsible for the maintenance and repair of the ship during the bareboat charter period.

**Bareboat C/P (Article 148)**

During the bareboat charter period, the ship shall be insured, at the value agreed upon in the charter and in the way consented to by the shipowner, by the charterer at his expense.

**Bareboat C/P (Article 149)**
During the bareboat charter period, if the charterer’s possession, employment or operation of the ship has affected the interests of the shipowner or caused any losses thereto, the charterer shall be liable for eliminating the harmful effect or compensating for the losses.

Should the ship be arrested due to any disputes over its ownership or debts owed by the shipowner, the shipowner shall guarantee that the interest of the charterer is not affected. The shipowner shall be liable for compensation for any losses suffered by the charterer thereby.

**Bareboat C/P** (Article 150)

During the bareboat charter period, the charterer shall not assign the rights and obligations stipulated in the charter or sublet the ship under bareboat charter without the shipowner’s consent in writing.

**Bareboat C/P** (Article 151)

The shipowner shall not establish any mortgage of the ship during the bareboat charter period without the prior consent in writing by the charterer.

Where the shipowner acts against the provisions of the preceding paragraph and thereby causes losses to the charterer, the shipowner shall be liable for compensation.

**Bareboat C/P** (Article 152)

The charterer shall pay the hire as stipulated in the charter. In default of payment by the charterer for seven consecutive days or more after the time as agreed in the charter for such payment, the shipowner is entitled to cancel the charter without prejudice to any claim for the loss arising from the charterer’s default.

Should the ship be lost or missing, payment of hire shall cease from the day when the ship was lost or last heard of. Any hire paid in advance shall be refunded in proportion.

**Bareboat C/P** (Article 153)

The provisions of Article 134, paragraph 1 of Article 135, Article 142 and Article 143 of this Code shall be applicable to bareboat charter parties.

**Bareboat C/P** (Article 154)

The ownership of a ship under bareboat charter containing a lease-purchase clause shall be transferred to the charterer when the charterer has paid off the lease-purchase price to the shipowner as stipulated in the charter.

**Tonnage limitation for shipowners, charterers, operators & salvors** (Article 204)

Shipowners and salvors may limit their liability in accordance with the provisions of Chapter XI for claims set out in Article 207 of this Code.

The shipowners referred to in the preceding paragraph shall include the charterer and the operator of a ship.
Servants, agents & sub-contractors (Article 205)

If the claims set out in Article 207 of this Code are not made against shipowners or salvors themselves but against persons for whose act, neglect or default the shipowners or salvors are responsible, such persons may limit their liability in accordance with the provisions of this Chapter.

Claims subject to tonnage limitation (Article 207)

Except as provided otherwise in Articles 208 and 209 of this Code, with respect to the following maritime claims, the person liable may limit his liability in accordance with the provisions of Chapter XI, whatever the basis of liability may be:

1. Claims in respect of loss of life or personal injury or loss of or damage to property including damage to harbour works, basins and waterways and aids to navigation occurring on board or in direct connection with the operation of the ship or with salvage operations, as well as consequential damages resulting therefrom;
2. Claims in respect of loss resulting from delay in delivery in the carriage of goods by sea or from delay in the arrival of passengers or their luggage;
3. Claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations;
4. Claims of a person other than the person liable in respect of measures taken to avert or minimize loss for which the person liable may limit his liability in accordance with the provisions of Chapter XI, and further loss caused by such measures.

All the claims set out in the preceding paragraph, whatever the way they are lodged, may be entitled to limitation of liability.

Claims not subject to tonnage limitation (Article 208)

The provisions of Chapter XI shall not be applicable to the following claims:

1. Claims for salvage payment or contribution in general average;
2. Claims for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage to which the People’s Republic of China is a party;
3. Claims for nuclear damage under the International Convention on Limitation of Liability for Nuclear Damage to which the People’s Republic of China is a party.
4. Claims against the shipowner of a nuclear ship for nuclear damage;
5. Claims by the servants of the shipowner or salver, if under the law governing the contract of employment, the shipowner or salver is not entitled to limit his liability or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Chapter XI.

Intentional or reckless conduct (Article 209)

A person liable shall not be entitled to limit his liability in accordance with the provisions of Chapter XI, if it is proved that the loss resulted from his act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

Tonnage limitation calculation (Article 210)

The limitation of liability for maritime claims except as otherwise provided for the Article 211 (which relates to carriage of passengers by sea) of this Code, shall be calculated as follows:
(1) In respect of claims for loss of life or personal injury:
   a) 333,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
   b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be
       applicable to the first 500 tons and the following amounts in addition to that set out under a) shall
       be applicable to the gross tonnage in excess of 500 tons:
       For each ton from 501 to 3,000 tons: 500 Units of Account;
       For each ton from 3,001 to 30,000 tons: 333 Units of Account;
       For each ton from 30,001 to 70,000 tons: 250 Units of Account;
       For each ton in excess of 70,000 tons: 167 Units of Account;

(2) In respect of claims other than that for loss of life or personal injury:
   a) 167,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
   b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be
       applicable to the first 500 tons, and the following amounts in addition to that under a) shall
       be applicable to the part in excess of 500 tons:
       For each ton from 501 to 30,000 tons: 167 Units of Account;
       For each ton from 30,001 to 70,000 tons: 125 Units of Account;
       For each ton in excess of 70,000 tons: 83 Units of Account.

The limitation of liability for ships with a gross tonnage not exceeding 300 tons and those engaging
in transport services between the ports of the People’s Republic of China as well as those for other
coastal works shall be worked out by the competent authorities of transport and communications
under the State Council and implemented after its being submitted to and approved by the State
Council.

**Tonnage limitation fund** (Article 213)

Any person liable claiming the limitation of liability under this Code may constitute a limitation fund
with a court having jurisdiction. The fund shall be constituted in the sum of such an amount set out
respectively in Article 210, together with the interest thereon from the date of the occurrence giving
rise to the liability until the date of the constitution of the fund.

**Release of security** (Article 214)

Where a limitation fund has been constituted by a person liable, any person having made a claim
against the person liable may not exercise any right against any assets of the person liable. Where
any ship or other property belonging to the person constituting the fund has been arrested or attached,
or, where a security has been provided by such person, the court shall order without delay the release
of the ship arrested or the property attached or the return of the security provided.

**Counter claim** (Article 215)

Where a person entitled to limitation of liability under the provisions of Chapter XI has a
counter-claim against the claimant arising out of the same occurrence, their respective claims shall be
set off against each other and the provisions of Chapter XI shall only apply to the balance, if any.

**Suit time limit** (Article 257)

The limitation period for claims against the carrier with regard to the carriage of goods by sea is one
year, counting from the day on which the goods were delivered or should have been delivered by the
carrier. Within the limitation period or after the expiration thereof, if the person allegedly liable has brought up a claim of recourse against a third person, that claim is time-barred at the expiration of 90 days, counting from the day on which the person claiming for the recourse settled the claim, or was served with a copy of the process by the court handling the claim against him.

The limitation period for claims against the carrier with regard to voyage charter party is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

**C/P suit time limit** (Article 259)

The limitation period for claims with regard to charter parties is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

**Freedom to choose law** (Article 269)

The parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply.

**SDR** (Article 277)

The Unit of Account referred to in this Code is the Special Drawing Right as defined by the International Monetary Fund.

**Effective date** (Article 278)

This Code shall come into force as of July 1, 1993.

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28/10/2008

Multi-modal transportation involves far more complicated liability regime than port-to-port or airport-to-airport carriage. Pure international sea or air transport often affords better protection by international conventions. Conversely, multi-modal transport entails a variety of operational risk elements on top when the cargo is in-transit warehouse and during overland delivery. Fortunately, these risks are controllable but not without deliberate efforts. Sun-Mobility is the popular risk managers of many multi-modal operators providing professional assistance in liability insurance, contract advice, claims handling, and as a matter of fact risk consultant for their staff around-the-clock.
The annual seminar was the Seventh of Sun Mobility (SMIC), and the Third jointly held with the Hong Kong Shippers’ Council. Continuing various legal updates SMIC constantly made, we chose this time the Maritime Code of PRC 1/7/1993 for its increasing importance evidenced by the lopsided expansion of China experts on one hand, and the tightening of NVOCC licensing control in China by the Ministry of Communication (MOC) on the other. We trust many sea forwarders are aware of the looming imperative liability insurance requirement before any NVOCC licence could be granted. Registration of the NVOCC house bill of lading may render the application of the Code unavoidable.

The joint seminar was therefore a timely introduction of the Maritime Code of PRC 1/7/1993 vis-a-vis other international conventions of transport by sea. The 150-minute session allowed a quick run through of the 278 clauses of the Code plus 17 questions from the floor of which 6 were answered on the spot. The remaining 11 questions were responded in detail by email directly to the participants after the seminar. They are compiled in this issue of the Chans Advice for the handy reference of discerning forwarders.

1Q. What typed of code, regulation can be used for determining liability if delivering goods from HK to Zhuhai port by barges?

A. It should be the Bill of Lading terms, the Hague Visby Rules or the PRC Maritime Code to determine the carrier’s cargo delivery liability for the carriage of goods from Hong Kong to Zhuhai by barges provided that a Bill of Lading has been issued. If the carrier is sued in Hong Kong, it is likely that the B/L terms or the Carriage of Goods by Sea Ordinance (Chapter 462) adopting the Hague Visby Rules will apply. However, if the carrier is sued in the Guangzhou Maritime Court, it is extremely likely that the PRC Maritime Code will apply.

2Q. Goods delivered from HK to Suzhou via sea port to Shanghai + truck to Suzhou consignee. If goods is total lost during trucking to Suzhou, what is the liability of forwarder? Limit of liability applied? Or full value? What is the current situation (or China court)?

A. On the assumption that the forwarder has issued its B/L covering the entire carriage from HK to Shanghai by sea and from Shanghai to Suzhou by road, the PRC Maritime Code theoretically would allow the B/L terms to apply to the cargo losses that happened during the road haulage from Shanghai to Suzhou. However, from our experience, the Shanghai Maritime Court would still likely apply the PRC Maritime Code instead of the B/L terms to the case that happened during the land leg from Shanghai to Suzhou. In fact, it is common that the PRC Maritime Courts would not consider B/L terms but would only apply the PRC Maritime Code no matter the cargo losses or damage happens during the sea or land leg as long as a B/L is issued. However, if the forwarder is sued in the Hong Kong Court, the Court will not apply the Hague Visby Rules but the B/L terms to this land leg case because the Hague Visby Rules only apply to the sea leg.

Unless the forwarder can submit sufficient evidence proving the cargo loss accident during the trucking is completely out of its control and not its fault, the forwarder should be liable for full value of the cargoes lost subject to the liability limitation as provided in the PRC Maritime Code (i.e. $666.67DR / package or $2DR / kg whichever is the higher) or the B/L term (e.g. US$50 / package or US$2 / kg) as appropriate. If the trucking company is the forwarder’s subcontractor, the forwarder should have a good indemnity claim against the trucking company based on the trucking contract.
3Q. When there is a claim case, to do the survey orto determine the survey, does the survey company have the expertise to carry it out? The other thing is whether it is likely the case will be litigated in a particular court. If yes, you have to find out if that court will only recognize survey reports of some designated surveyors. If yes, you have to instruct those particular surveyors. From our experience, most courts in the world do not have a system of only recognizing certain surveyors' reports. Theoretically, the report of any surveyors who are good at the things in question should be reliable. The surveyor is instructed by the cargo owner, forwarder or carrier because the surveyor is supposed to be an impartial third party expert. However, from our experience, it is common that a surveyor would look at the issues from the perspectives of the party instructing that surveyor. Moreover, if you instruct a surveyor, you naturally can ask him a lot of questions relating to the case. This may help your case. Therefore, it is advisable that each party e.g. cargo owner, forwarder and carrier should appoint its own surveyor to do the inspection and investigation in order to protect its own interests for processing the claim case later on.

4Q. - shipment (FCL) from Shanghai to Italy,
- cargo loss upon arrival destination but without supporting reasons / document that the forwarder rejected the claim from shipper,
- shipper claimed from the marine insurance and was compensated,
- months later, a staff of a trucking company admitted the stolen cargoes from that particular FCL during the transportation from the factory to the terminal,
- since insurance company compensated the shipper and asked for compensation from the forwarder who appointed the trucking company to pick up the cargoes from shipper.

A. On assumption that the forwarder issued its B/L for the shipment from Shanghai to Italy, the forwarder as the NVOC under its B/L should be liable for the cargo theft done by the forwarder's appointed trucking company's employee. The forwarder should base on its B/L terms (e.g. US$2 / kg or US$500 / package) to settle the cargo insurer's recovery claim. However, in case the cargo insurer having subrogated the shipper's rights sues the forwarder in the Shanghai Maritime Court, it is likely the Court would apply the PRC Maritime Code (i.e. 666.67SDR / package or 25DR / kg whichever the higher) to determine the forwarder's liability.

Of course, the trucking company should in turn indemnify the forwarder's losses based on the trucking contract terms, and the trucking company's employee should be reported to the Shanghai police for arrest and sending to court for prosecution and sentencing as appropriate. It is not likely that the stolen cargoes could be recovered or the trucking company's employee would have any money to pay any compensation.

5Q. ex Xiamen FCL consignments under routing / nomination from forwarder in Denmark under freight collect and shipping line nominated from Denmark under their service contract arrived destination and officially received advise after 3 months goods non-delivery with accumulated demurrage / storage and unpaid freight collect. Consignee now bankrupt and Denmark agent claim shipper should be responsible for outstanding payment. MBL consigned to Denmark against and HBL consigned to actual consignee. Is forwarder issued FIATA B/L need to take up responsibility to chase payment from shipper in Xiamen or is forwarder in Denmark giving routing / nomination of consignment responsible to hold consignee in Denmark for outstanding payment.

A. On the assumption the Xiamen forwarder as the NVOC issued its FIATA B/L to the shipper, it should be the shipper under the HB/L to pay all the outstanding charges including freight plus the extra costs e.g. demurrage & storage charges resulting from the uncollected cargoes. The consignee has bankrupted and not taken cargo delivery. The shipper under the B/L contract should assume liability for all the consequences arising from the cargoes being uncollected by the consignee as agreed per B/L terms. The Xiamen NVOC should press the shipper for immediate cargo delivery instruction and settlement of all outstanding charges. In case the shipper also disappears, the Xiamen NVOC as the carrier under its B/L will be the one to bear the losses resulting from this uncollected cargo case. The
Xiamen NVOC should settle the demurrage and storage charges with the shipping company based on the OB/L terms, and should sell or dispose of the uncollected cargoes according to its HB/L terms.

The fact that this was a nomination cargo or routing order from the Denmark forwarder does not change the fact that the final conclusion of the contract was evidenced by the issue of the Xiamen NVOC's B/L. The Xiamen forwarder is the NVOC whereas the Denmark forwarder is the NVOC's agent. The fact that the shipping line was nominated by the Denmark forwarder under its service contract should also not change the position as such could be viewed as some kinds of introduction and arrangement that the Xiamen principal asked its Denmark agent to perform. The Denmark forwarder being the agent for the Xiamen NVOC has not done anything in this uncollected cargo matter and therefore should have no liability. The Xiamen NVOC should also have no right against the consignee because there is no contractual relationship between the Xiamen NVOC and the consignee as it is assumed the bankrupted consignee has never presented the HB/L for cargo delivery.

6Q. 貨櫃在上海已交貨代及清關，但放行訊息未及時送船公司，因此貨櫃延遲一星期上船，現客人因貨延遲取消，可否追貨代責任？如可以金額按貨 CIF 計算一次運費計？

A. It depends on the contract terms between you and the forwarder. It is a universal customary practice in the shipping industry that forwarders and shipping companies do not agree in their contract terms to assume liability for delay. It is therefore unlikely the forwarder would have liability for the delay of one week. Even in the remote case that the forwarder does agree in the contract to assume liability for delay, you still have to prove your actual losses (not necessarily the CIF value) resulting from the one week delay e.g. you find another new buyer who only takes your delayed goods at 60% of the original price and hence your actual losses of 40% of the original price. Furthermore, it is also a very common practice in the shipping industry worldwide that forwarders and shipping companies in their contracts limit their liability for delay to one or at most two times of the freight charges. If that applies to your contract in question, the forwarder will only be liable to compensate you no more than one or two times of the freight charges even if you can prove your actual losses arising from the delay. Moreover, according to the PRC Maritime Code, the forwarder as carrier under its HB/L is entitled to limit its liability to one time of the freight charges for your economic losses of 40% in the example.

7Q. 如船公司失誤引致貨櫃不見了，應該怎樣處理？有買保險和沒有買保險在處理上有何分別？

A. If you have bought cargo insurance, the cargo insurer should compensate you 100% or 110% (depending on the insured value as agreed between you and the insurer in the policy) of the cargo value. Thereafter, the cargo insurer will subrogate your rights and sue the shipping company for recovery. However, if you do not have any cargo insurance, you have to instruct your lawyer to sue the shipping company for the cargo losses. If you take action in the Shanghai Maritime Court, the PRC Maritime Code will apply to your claim. The Court will order the shipping company to compensate the cargo value to you subject to the carrier’s liability limitation (666.67SDR / package or 25SDR / kg whichever is the higher) if it is proved the cargo losses was caused by the shipping company's negligence. In general, legal proceedings against shipping companies are very time consuming and costly, it is most advisable that cargo owners should buy cargo insurance to protect their interests for fuller and quicker compensation in case of cargo losses or damage.

8Q. Can a carrier delivery a shipment to the named consignee without B/L (under a straight B/L)?

A. In the USA, it should be still legally acceptable for the carrier to deliver the cargoes to the named consignee without production of the straight B/L, and the carrier should not assume any liability for such cargo delivery. In the English legal system places including Hong Kong, the courts would not allow the carrier to deliver the cargoes to the named consignee without production of the straight B/L unless there are very clear B/L contract terms to the contrary as agreed by the parties in the B/L. In most of other countries including China, the carrier should not deliver the cargoes to the named consignee without production of the straight B/L. Otherwise, the carrier would have the legal liability to compensate the cargo value to the shipper who is still holding the full set of the straight B/L.

9Q. 在去年七月，本公司為客人安排經船公司運往 1x40' 櫃到 Jakarta。但因遇到天氣問題，船隻延遲到港一星期。客人因急需將這批貨送至目的地，所以本公司為此客人以空運送了另一批到 Jakarta。最後客人認
A. As the delay was caused by the weather condition, such should be out of the shipping company’s control and hence the shipping company should have no liability for your claims of sea and air freight charges. You in turn should have no liability to your customer, who should pay the sea and air freight charges to you as agreed according to the contracts (your HB/L and your HAWB?). Failure to pay freight charges is a breach of contract by your customer. You may take legal action against your customer to recover your losses.

10Q. 一隻輪寄往目的地，收貨人已收貨，才發現貨物已損毀，consignee有無權利控告forwarder?

A. It all depends on the evidence. For example, if the consignee having discovered the damage immediately appointed a surveyor to conduct inspection and investigation, and the surveyor subsequently issued a report opining e.g. it was seawater damage to the cargoes, the forwarder being the NVOC under its HB/L should have the liability to compensate the consignee in accordance with the HB/L terms. Accordingly, the consignee should have a valid claim to sue the forwarder, which in turn should sue the shipping company under the OB/L for indemnity.

11O. Can a “yacht” be regarded as one unit based on the limitation clause? But even settle by weight, if this is a total loss, the yacht owner still can only get back a small amount!

A. On the assumption that the yacht has no packing, the yacht should be regarded as one shipping unit according to the PRC Maritime Code’s liability limitation of SDR666.67 (per package or other shipping unit) or SDR2 (per kg) whichever is the higher. For example, if the weight of the yacht is 3,000kg, the carrier’s liability limitation will be 3,000kg x 2SDR = 6,000SDR, which is about US$9,000. This should only represent a tiny part of the yacht’s full value. It is therefore very important the cargo owner should buy cargo insurance to protect its interests, and to get fuller and quicker compensation from the cargo insurer in the unfortunate event of cargo losses or damage during the carriage.

Like all other previous SMIC seminars, we attempted to give the trade a précis of the otherwise complicated content of the prevailing transport laws. The real time application of them of course would need professional understanding and experience to enable full use of them to any NVOC’s better protection. Please feel free to talk to us by contact anyone of us at www.sun-mobility.com.

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Forwarders, airlines, shipping lines and alike have difficulties concluding space booking agreements for 2009. The consensus in the trade invariably become ‘to proceed with caution’ as most expected the freight demand would fall by as much as 50% next year. The economic outlook for 2009 of the logistics industry seems to be dismal in the wake of the financial tsunami.

That said, while focus is absolute on the cost side of the business equation, prioritising agenda that could leverage chance to stay afloat and weather through the bad times becomes more essential. - it is proven that bad times DO attract more claims.

What is it like piggybacking and skating on thin ice at the same time? It is analogous to having a bad claim when margin is thin. If skating on thin ice is inevitable, is it not safer to unload the piggyback first?

SMIC works around the clock to fortify YOU by letting you know more transport laws (Seminars), perfecting your transport documents (1000 documents we edited), handling your claims professionally (6000 claims concurrently), and predicting problem areas in logistics (Daily review). All these means additional costs to SMIC but at NO additional cost to you apart from insurance premium; they are done for the sole purpose of unloading your piggyback and allow you to withstand trouble times.
Photos