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Law on Wreck Removal of the People's Republic of China

**A Legislation Drafting Project submitted in partial fulfillment of the
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Part A Explanatory Notes

Law on Wreck Removal of the People's Republic of China

"Although the incidence of marine casualties has decreased dramatically in recent years, mainly thanks to the work of IMO and the persistent efforts of Governments and industry to enhance safety in shipping operations, the number of abandoned wrecks, estimated at almost thirteen hundred worldwide, has reportedly increased and, as a result, the problems they cause to coastal States and shipping in general have, if anything, become more acute. "¹ A wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews; secondly, a wreck, depending on the nature of the cargo, potentially causes substantial damage to the marine and coastal environments. In an age where goods and services are becoming increasingly expensive, costs involved in the marking and removal of hazardous wrecks have been highlighted.

1. China's Legislation on Wreck Removal

Until now, there is no specific law on wreck removal in China and the relevant legal provisions are witnessed in various laws, administrative

¹ Available at http://www.imo.org/Legal/mainframe.asp?topic_id=1319

regulations and rules which include *Maritime Code*², *Maritime Traffic Safety Law*³, *Special Maritime Procedure Law*⁴, *Port Law*⁵, *Regulations Concerning the Administration of Traffic Safety on Internal Waters*⁶, *Measures on Salvaging of Sunken Ships and Sunken Articles*⁷, *Procedures for Control of Participation by Foreign Businesses in the Salvaging of Sunken Ships and Sunken Articles in China's Coastal Waters*⁸, *measures regarding the qualification of companies engaging in removal of sunken ships and objects*⁹, etc.

Article 40 of *Maritime Traffic Safety Law* and Article 36 of *Regulations Concerning the Administration of Traffic Safety on Internal Waters* provide

² Adopted at the 28th Meeting of the Standing Committee of the Seventh National People's Congress on November 7, 1992, promulgated by Order No. 64 of the President of the People's Republic of China on November 7, 1992, and effective as of July 1, 1993.

³ Adopted at the Second Meeting of the Standing Committee of the Sixth National People's Congress, promulgated by Order No. 7 of the President of the People's Republic of China on September 2, 1983, and effective as of January 1, 1984

⁴ Adopted at the 13 Meeting of the Standing Committee of the Ninth National People's Congress, promulgated on December 25, 1999, entering into force on July 1, 2000;

⁵ Promulgated by the State Council on June 28, 2003, entering into force on January 1, 2004

⁶ Promulgated by the State Council on December 16, 1986

⁷ Approved by the State Council on September 7, 1957 and promulgated by the Ministry of Communications on October 1, 1957.

⁸ Promulgated by the State Council on July 12, 1992 by Decree No. 102 of the State Council of the People's Republic of China and effective as of the date of promulgation

⁹ Promulgated by the Ministry of Communication on December 31, 1998, entering into force on April 1, 1999

the general principles of wreck removal in coastal waters¹⁰ and internal waters respectively. Article 40 of *Maritime Traffic Safety Law* reads, "With respect to sunken or drifting objects that may affect the safety of navigation and the management of navigation lanes, as well as those constituting a threat of explosion, the owners or managers thereof shall salvage and remove such objects within a deadline set by the competent authorities. Otherwise, the competent authorities shall have the right to take measures to compel the salvage and removal of the objects, and their owners or managers shall bear all the expenses incurred thereby. The provisions of this Article shall not prejudice the rights of the owners or managers of the sunken or drifting objects to demand compensation from third parties." Article 36 of *Regulations Concerning the Administration of Traffic Safety on Internal Waters* reads, "Sunken and drifting objects that may affect the safety of navigation and constitute potential threats shall be removed with by the owners or operators before a deadline set by the competent authorities. If these objects are not duly cleared away, the competent authorities shall have the right to take coercive measures to that end, and all the costs thereof shall be borne by the owners or operators of the sunken or drifting

10 "Coastal waters" means the harbors, internal waters, territorial waters and all other sea areas under the jurisdiction of the state along the coast of the People's Republic of China, as defined by Article 50 of the *Maritime Traffic Safety Law*

objects. The provisions of the previous paragraph of this Article shall not affect the rights of owners and operators of sunken or drifting objects to demand compensation from third parties."

Measures on Salvaging of Sunken Ships and Sunken Articles promulgated in 1957 in the time of governmental controlled economics are still the most comprehensive administrative regulations and rules applicable until now. The *Measures* are constituted of 13 articles and the main provisions are as follows:

- a. Article 2 providing that the *Measures* apply to sunken ships and its cargo in internal waters and territorial sea, excluding war ships and wooden ships;
- b. Article 3 providing that sunken vessels, which render risks to safe navigation or construction, or can be utilized through reparation, or can be used though disassembly, should be retrieved;
- c. Article 4 providing that the competent authorities are empowered to remove the sunken ships severely affecting the safe navigation immediately;
- d. Article 7 providing that the ship-owners shall lose the ownership on

the ship if he fails to retrieve the ship within a time bar;

e. Article 8 providing that the competent authorities may sell the wreck and the ship-owners may claim the ship or the value of the ship within a time bar, otherwise all his rights in regards of the ship shall be extinguished. The ship-owners are obliged to compensate the cost of wreck removal, bailment and disposal.

Measures on Salvaging of Sunken Ships and Sunken Articles were made with an aim to reutilize the sunken ships and cargos. But the purpose of wreck removal has dramatically changed towards the safety of navigation and water environment protection nowadays. Since the Reform of China towards market-oriented economics, fundamental change has taken place and problems have arisen regarding the definition of sunken ships and cargos, liability for wreck removal, conditions of compulsory wreck removal, the expenditures in compulsory wreck removal and so on. For example, at the time the *Measures* were made, all Chinese registered ships and ship companies belonged to the state and the problem of who had to pay for the wreck removal was not so important, which comes to be a headache of the administrative authorities nowadays, as there are no provisions in budget for wreck removal expenses at all.

According to *Measures on Salvaging of Sunken Ships and Sunken Articles*, only the ship owners are liable to bear the costs of wreck removal but to the amount of the value of the ship. However, in the present days single ship companies are most usual and the beneficial ship-owners may disguise themselves as ship operators, charterers or ship managers to evade the legal liability. Later *Maritime Traffic Safety Law* makes it clear that the ship-owners together with ship operators shall be liable for the cost of wreck removal and pay the full amount of the cost of wreck removal, without any limitation of liability regarding wreck removal. The *Maritime Traffic Safety Law* seems to have filled up the legal lacuna and dispersed the liability to the wreck removal between the ship owners and ship operators. However, there are conflicts between judicial verdicts due to the lack of uniformity of law and the government still runs the risk of nobody paying for the large sums of wreck removal costs.

The above mentioned problem is only the tip of the iceberg and a new law on wreck removal is deadily needed to eliminate the legal embarrassment.

2. Nairobi International Convention on the Removal of Wrecks, 2007

As early as 1974, the Legal Committee of IMO has conducted a review of national legislations by member States on wreck removal, trying to introducing a harmonizing convention. But the member states did not pay full attention to it. The topic of wreck removal was raised again by Germany, Greece, the Netherlands and the United Kingdom at the 69th Session of the IMO Legal Committee in October 1993. Since then, discussions have taken place within IMO's Legal Committee about creating a convention that would fill gaps in international law regarding the removal of wrecks that pose a hazard to navigation and a danger to the marine environment. After years of negotiations, a new international convention on wreck removal has been adopted in Kenya, namely the *Nairobi International Convention on the Removal of Wrecks, 2007* (hereafter may referred to as "*the Convention*"), which will enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary General.

IMO Secretary-General Efthimios E. Mitropoulos said the global maritime organization will be promoting its excellent environmental record, along

with the development of new standards to address all possible sources of marine and atmospheric pollution from shipping operations. "In this context, therefore, the new convention will, certainly, be seen as yet another important milestone in IMO's efforts to address society's concerns regarding our fragile marine environment"¹¹.

The adoption of the *Convention* by the IMO has strongly demonstrated the universal support from the 167 member States. When the Convention was adopted, States were given an option as to whether to apply this Convention in their territorial seas.

The main provisions of the Convention deal with the procedure of wreck removal and the duty of the registered owner to obtain insurance or other financial security for liability regarding wreck removal:

- a. Article 5 obliges the master or operator of a ship to report the wreck to the Affected State without delay;
- b. Article 6 lists criteria for the Affected State to determine whether a wreck poses a hazard ;
- c. Article 7 and Article 8 provide the location of and marking of the wreck;

¹¹ Efthimios E. Mitropoulos' speech available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=1472&doc_id=7990

d. Article 9 provides the measures to be taken in order to remove the wreck; and

e. Article 10 and 11 regulate the liability of the registered owner;

f. Article 12 deals with the compulsory insurance or other financial security that must be obtained by the registered owner to cover the liability in regard of wreck removal.

The Convention is going to make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. It will also provide states with a right of direct action against insurers. What is more, the Convention will provide a legal basis for party states to remove from their exclusive economic zones wrecks that may pose a hazard to navigation or to marine and coastal environment once in force. Once adopted by China, the Convention may well meet the need to solve the current problems, especially the financial security for the wreck removal expenses.

3. Limitation of Liability Regarding Wreck Removal

Article 10(1) of the Convention provides that "Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976¹², as amended."

According to *Maritime Traffic Safety Law*, the ship-owner or operator of a ship is not allowed to limit their liability in regard of compulsory wreck removal. *Maritime Traffic Safety Law* is an administrative law mainly dealing with the administrative relationship between citizens and government in regard of safety at sea. When *Maritime Code* came into force 10 years after *Maritime Traffic Safety Law* was promulgated, the court is like to refer to this law when dealing with the civil relationship in maritime affairs between legal persons. A judge may sometimes find it difficult to decide whether liability under wreck removal falls within *Maritime Code*, of which chapter 11 regulates the limitation of maritime liability.

According to Article 207 of the *Maritime Code*, "the person liable may limit his liability in accordance with the provisions of this Chapter, whatever the basis of liability may be:

¹² China is not been a party to this Convention yet.

- (1) Claims in respect of loss of life or personal injury or loss of or damage to property including damage to harbor 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 there from;
- (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 this Chapter, 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. However, with respect to the remuneration set out in sub-paragraph (4) for which the person liable pays as agreed upon in the contract, in relation to the obligation for payment, the person liable may not invoke the provisions on limitation of liability of this Article."

And Article 208 of the *Maritime Code* provides that:

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

- (1) Claims for salvage payment or contribution in general average;
- (2) Claims for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage to which the 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 ship-owner of a nuclear ship for nuclear damage;
- (5) Claims by the servants of the ship-owner or salvor, if under the law governing the contract of employment, the ship-owner or salvor is not entitled to limit his liability or if he is by such law only permitted to limit his liability to an amount greater than that provided for in this Chapter. "

Article 207 of the *Maritime Code* lists the claims in respect of which the person liable may invoke limitation of liability, while Article 208 of the *Maritime Code* lists the claims in respect of which the person liable may not

invoke limitation of liability. And claims for payment of wreck removal seem to fall within none of the two lists.

There is conflicting interest between the ship-owner and the public. If the limitation of liability is too low, then no company is willing to enter into the contract of wreck removal, thus blocking the effective and prompt removal of the wreck representing a hazard to the safety of navigation and the protection of environment. If, however, the limitation of liability is too high or even if there is no limitation regime at all, then the shipping industry, which is vital to the nation's interest of China, will be greatly frustrated as the insurance fee will rise dramatically, or sometimes it may not even be possible to find an adequate underwriter. To compromise the conflicting interests of both sides, a middle road is proposed by the Convention that a separate limitation fund shall be established for claims in regard of wreck removal other than any limitation fund established for other maritime claims, whatsoever the basis is. Article 12.1 of the Convention provide that the registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall maintain insurance or other financial security to cover liability under the Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article

6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

The limitation of liability shall be calculated progressively according to the tonnage of the ship as article 210 of the *Maritime Code* does, which makes a distinction between ships under gross tonnage of 500 and above. The liability beyond the coverage of the insurance or other financial security may still be borne by the resisted ship owner.

4. Application of Treaties by China

The Chinese Government attaches importance to its international obligations and faithfully carries out its international treaty obligations in accordance with the Vienna Convention on the Law of Treaties.

China is a civil law country, but the Chinese Constitution does not contain any specific provisions regarding the legal status of treaties in Chinese law, nor do any other laws of constitutional nature.

However, in practice, the following principle applies to the relationship between national law and international law: if a treaty to which China is a party contains provisions inconsistent with Chinese laws, treaty provisions should prevail, unless China has made reservations to the relevant provisions. This principle is witnessed in dozens of present Chinese laws and regulations. The first example of such kind shall be the *Civil Procedural Law of China, 1982*, which provides in Article 189 that "if a provision of an international treaty which China has concluded or acceded to is inconsistent with that of the present law, the treaty provision shall apply, unless China has made reservation to that provision." Again this principle can be found in

Article 142 of the *General Principles of the Civil Law* of 1986, Article 72 of the *Administrative Procedural Law* of 1989, Article 238 of the *Civil Procedural Law* of 1991, Article 17 of the *Criminal Procedural Law* as revised in 1996 and many others.

Nevertheless, it should be pointed out that there is no explicit principle in the present Chinese Constitution or national laws that gives priority to treaties over domestic laws on a general basis. The above-mentioned provisions in regard to relations between treaty provisions and domestic laws in the Chinese legal system should be applied strictly in the specific context provided by each law.

With regards to incorporating treaties into domestic legal system, again there is no specific rule provided either in the Constitution or other laws on how a treaty shall be implemented in the legal system of China. Under some laws, treaty provisions are directly applied in China, while in most other cases, they have to be applied through national laws. For example, China acceded to the *Vienna Convention on Diplomatic Relations* in 1975 and the *Vienna Convention on Consular Relations* in 1979. China enacted the *Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities* and the *Regulations of the People's Republic of China*

Concerning Consular Privileges and Immunities in 1986 and 1990 respectively. Domestically, these regulations will be directly applied rather than the two conventions. Many Chinese administrative laws and regulations contain special provisions on how to implement treaty obligations. For example, Article 12 of the *Regulation of Maritime Transportation of Containers* promulgated by the State Council in 1990 stipulates that the transport of containers at sea should accord with international container standards, the fixed technical standards and the regulations of relevant international container transport conventions. On September 25, 1992, the State Council issued Decree No. 105 of the State Council of the People's Republic of China for the implementation of the *International Copyright Treaty*. In order to implement the *Patent Cooperation Treaty*, China's Patent Bureau promulgated the *Regulation on the Implementation of the Patent Cooperation Treaty* in 1995. In 1997, the State Council published the *Notice on China's Nuclear Export Policy*, which laid down specific rules and regulations in strict line with the provisions of the *Treaty on Non-Proliferation of Nuclear Weapons*.

Therefore it can be deduced that China has adopted a combination of Monism and Dualism regarding the relationship between international law and national law, although it is not explicitly established under any of its

laws. In most situations, the practice of Dualism prevails. If treaty provisions concern the fundamental laws of China, national legislation should be in place for their implementation. In case of incorporating *the Convention*, a further domestic law shall be legislated by the National People's Congress before China ratifies the Convention, because firstly, *the Convention* regulates the duties and rights between citizen and the government; secondly, the legitimacy of the governmental action shall be justified by the legislation body through legislation; thirdly, claim directly against the insurer in Article 12 of the *Convention* is in conflict with the present laws.

For the purpose that a specific law governing the regime of wreck removal shall be available and to pave the way for ratification of the *Convention*, a draft *Law on Removal of Wrecks of China* is proposed in the Annex. Once this Law is adopted and enters into force, the previous laws and regulations that conflicting with this Law shall be null and void wholly or partly.

Therefore, *Measures on Salvaging of Sunken Ships and Sunken Articles* promulgated by the State Council in 1957 will be void and provision regarding wreck removal in *Maritime Traffic Safety Law* will be replaced by the new law.

Part B Proposed Law Draft

Law of the People's Republic of China on Wreck Removal

(Adopted at the ___ Meeting of the Standing Committee of the ___ National People's Congress, promulgated by Order No. ___ of the President of the People's Republic of China on ___)

Article 1 This law is enacted in order to ensure the safety of navigation and protection of marine environment, by prompt and effective removal of wrecks which may pose a hazard to navigation or the environment.

Article 2 For the purposes of this law:

1. "Coastal area" means the exclusive economic zone, territorial sea and internal waters of the People's Republic of China.
2. "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3. “Maritime casualty” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4. “Wreck”, following upon a maritime casualty, means:

(a) a sunken or stranded ship; or

(b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

(c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

5. “Hazard” means any condition or threat that:

(a) poses a danger or impediment to navigation; or

(b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6. “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.

7. “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty.

8. “Operator of a ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

9. “Competent authority” means the Maritime Safety Administration of the People's Republic of China.

10. “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

Article 3 1. The competent authority may take measures in accordance with this Law in relation to the removal of a wreck which poses a hazard in the coastal area.

2. Measures taken by the competent authority in accordance with paragraph 1 shall be proportionate to the hazard.

3. Such measures shall not go beyond what is reasonably necessary to

remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.

Article 4 This law applies to wrecks located in the coastal area, except as other provided by this law.

Article 5 1. the master and the operator of a ship shall report to the competent authority without delay when that ship has been involved in a maritime casualty resulting in a wreck within 3 working days. To the extent that the reporting obligation under this Article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2. Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the competent authority to determine whether the wreck poses a hazard, including:

- (a) the precise location of the wreck;
- (b) the type, size and construction of the wreck;
- (c) the nature of the damage to, and the condition of, the wreck;

(d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and

(e) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 6 The following criteria should be taken into account by the competent authority to determine whether a wreck poses a hazard:

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) proximity of shipping routes or established traffic lanes;
- (e) traffic density and frequency;
- (f) type of traffic;
- (g) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the water environment;
- (h) vulnerability of port facilities;
- (i) prevailing meteorological and hydrographical conditions;
- (j) submarine topography of the area;
- (k) height of the wreck above or below the surface of the water at

lowest astronomical tide;

(l) acoustic and magnetic profiles of the wreck;

(m) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and

(n) any other circumstances that might necessitate the removal of the wreck.

Article 7 Upon becoming aware of a wreck or having reason to believe that a wreck poses a hazard, the competent authority shall ensure that all practicable steps are taken to establish the precise location of the wreck and publish navigation warning in an appropriate national newspaper including the particulars of the marking of the wreck. Such information shall be delivered to other State concerned simultaneously.

Article 8 1. If the competent authority determines that a wreck constitutes a hazard, it shall ensure that all reasonable steps are taken to mark the wreck.

2. In marking the wreck, all practicable steps shall be taken to ensure that buoyage in use to mark in the area where the wreck is located is appropriate.

Article 9 1. If the competent authority determines that a wreck constitutes a hazard, he shall immediately:

(a) inform the State of the ship's registry and the registered owner; and

(b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

2. a. If the wreck constitute hazard, the registered owner shall remove the wreck within a deadline set by the competent authority. The deadline shall be determined taking into account the nature and degree of the hazard;

b. If the wreck does not constitute a hazard, then the registered owner shall remove the wreck within a year.

3. When a wreck has been determined to constitute a hazard, the registered owner, or the operator of the ship, or other interested party, shall provide the competent authority with evidence of insurance or other financial security. In all circumstances, the registered owner shall be ultimately liable of providing such evidence.

4. The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard.

Before such removal commences, the competent authority may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment. No removal shall be allowed without the authorization of the competent authority.

5. When the removal, locating in the exclusive economic zone, has commenced, the competent authority may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment. When such removal locates in the territorial sea or internal water, the competent authority may at any time intervene in the removal when necessary.

6. The competent authority shall:

(a) inform the registered owner in writing of the deadline and specify that, if the registered owner does not remove the wreck within that deadline, it may contract with a qualified institution or organization to remove the wreck on behalf of the registered owner and at the registered owner's expense; and

(b) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

It is presumed that the above-mentioned notification shall have been received by the registered owner 7 days after notification being released, provided that the notification is properly addressed to the registered owner as designated in the report of maritime casualty according to this law.

(c) inform the state of the ship's registry and other affected states of the relevant information in paragraph a and b of this article and consult with them when necessary.

7. If the registered owner does not remove the wreck within the deadline, or the registered owner cannot be contacted, the competent authority may designate a qualified institution or organization to remove the wreck on behalf of the registered owner and at the registered owner's expense to remove the wreck, consistent with considerations of safety and protection of the marine environment.

8. In circumstances where immediate action is required and the competent authority has informed the state of the ship's registry and registered owner accordingly, it may contract with a qualified institution or organization to remove the wreck on behalf of the registered owner and at the registered owner's expense. Such removal of the wreck shall be the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

Article 10 1. Subject to Article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck, unless the registered owner proves that the maritime casualty that caused the wreck:

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;

(b) was wholly caused by an act or omission done with intent to cause damage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

2. No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Law.

3. Nothing in this Article shall prejudice any right of recourse against third parties.

Article 11 1. The registered owner shall not be liable under this Law for the costs mentioned in Article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

(a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;

(b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;

(c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or

(d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;
provided that the relevant convention is applicable and in force.

2. To the extent that measures under this Law are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Law.

Article 12 1.(a)The registered owner of a ship of 300 gross tonnage and above shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Law in an amount equal to the limits of liability defined in paragraph 2.

2. The limits of liability for claims in respect of wreck removal as defined under this Law, arising on any distinct occasion, shall be calculated as follows:

(a)500,000 Units of Account for a ship with a tonnage not exceeding 2,000 tons;

(b)for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (a):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

(c) The Unit of Account referred to in this Law is the Special Drawing Right as defined by the International Monetary Fund; the amount of the Chinese currency (RMB) in terms of the Special Drawing Right shall be that computed on the basis of the method of conversion established by the authorities in charge of foreign exchange control of this country on the date of the judgment by the court or the date of the award by the arbitration organization or the date mutually agreed upon by the parties.

3. With respect to a ship registered in China, a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Law shall be issued to each ship of 300 gross tonnage and above by the China Classification Society after determining that the requirements of paragraph 1 and 2 have been complied with.

With respect to a ship not registered in China, such certificate may be issued or certified by China Classification Society or by the appropriate authority of any State which is a party to the *Nairobi International Convention on the Removal of Wrecks, 2007*.

This compulsory insurance certificate shall be in the form of the model set out in the annex to this Law, and shall contain the following particulars:

(a) name of the ship, distinctive number or letters and port of registry;

- (b) gross tonnage of the ship;
- (c) name and principal place of business of the registered owner;
- (d) IMO ship identification number;
- (e) type and duration of security;
- (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

4. (a) If China Classification Society is entitled to issue the certificate referred to in paragraph 3 by and behalf of other States which is a party to the *Nairobi International Convention on the Removal of Wrecks, 2007*, he shall inform that State of the issue of each certificate.

(b) China Classification Society authorized to issue certificates in accordance with this paragraph shall withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases China Classification Society shall report such withdrawal to the State on whose behalf the certificate was issued.

5. The ship flying the flag of China shall carry the certificate on board and a copy of the certificate shall be deposited with China Classification Society.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate before three months have elapsed from the date on which notice of its termination is given to the China Classification Society unless the certificate has been surrendered to the China Classification Society or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this Article.

7. Certificates issued and certified under the authority of other State which is a party to the *Nairobi International Convention on the Removal of Wrecks, 2007* shall be accepted by the competent authority for the purposes of this Law and shall be regarded by the competent authority as having the same force as certificates issued or certified by China Classification Society, even if issued or certified in respect of a ship registered in a State which is not a party to the *Nairobi International Convention on the Removal of Wrecks, 2007*. The competent authority may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Law.

8. Any claim for costs arising under this Law may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defenses (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1 and 2. Moreover, the defendant may invoke the defense that the maritime casualty was caused by the willful misconduct of the registered owner, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

9. Unless a certificate has been issued under paragraph 3, any ship of 300 gross tonnages and above flying the flag of China may not be permitted to operate at any time.

10. Subject to the provisions of this Article, any ship of 300 gross tonnages and above, wherever registered, is not permitted to enter or leave a port of China, or arrive at or leave from an offshore facility in its territorial sea unless insurance or other security to the extent required by paragraph 1 and 2 is in force.

11. Notwithstanding the provisions of paragraph 5, for the purposes of paragraph 10, ships are not required to carry on board or to produce the certificate, when entering or leaving a port in the territory of China, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State which issues the certificate required by paragraph 3 has

notified the Secretary-General of International Maritime Organization that it maintains records in an electronic format, accessible to all other States, attesting the existence of the certificate.

Article 13 The competent authority has the power to inspect any ship calling at its port, wherever registered. Unless a certificate has been issued under Article 12 to the ship, the competent authority may at any time detain the ship within the port and keep it detained until the required certificate has been obtained by it under Article 12.

Article 14 Rights to recover costs under this Law shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Law. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

Article 15 The competent department of the State Council shall, on the basis of this Law, formulate rules for its implementation, which shall enter into force after being submitted to, approved and promulgated by the State Council.

Article 16 1. When a registered owner fails to comply with article 9, 10 and 12 of this Law, the competent authority, having taken into account of the severity of the circumstance, may:

- a. Order the registered owner to take corrective measures; and/or
- b. Impose a fine ranging from 100,000 yuan to 500,000 yuan.

2. The competent authorities shall, in the light of the circumstances, impose one or more of the following penalties on the master or the operator of the ship who violates Article 5 of this Law:

- a. warnings;
- b. withholding or revoking working certificates; or
- c. fine ranging from 10,000 yuan to 50,000 yuan.

Article 17 In cases of conflict between laws and regulations concerning wreck removal hitherto promulgated and this Law, this Law shall prevail.

Article 18 If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Law, the provisions of the relevant international treaty shall apply, unless the provisions are reserved by the People's Republic of China. Relevant provisions of international treaties, which the People's Republic of China is a party to, may apply to matters not covered by this Law, provided no reservation has been made.

International practice may be applied to matters for which neither the relevant laws of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China contain any relevant provisions.

Article 19 This Law shall enter into force on ____.

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS

Name of Ship	Gross tonnage	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the registered owner
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This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security

.....

...

Duration of Security

.....

Name and address of the insurer(s) and/or guarantor(s)

Name

.....

.....

Address

.....
.....
.....
.....

This certificate is valid until

.....

Issued or certified by the Government of the People's Republic of China

by (name of competent authority or designated institution
or organization)

At On

(Place) (Date)

.....

(Signature and Title of issuing or certifying official and Official Seal)

Explanatory Notes:

1. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
2. If security is furnished in several forms, these should be enumerated.
3. The entry "Duration of Security" must stipulate the date on which such security takes effect.
4. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.