

**PROVISIONS ON BILLS OF LADING AND OTHER SHIPPING  
DOCUMENTS TO SUPPLEMENT AND AMEND CHAPTER IV  
OF THE MARITIME CODE OF THE PEOPLE'S REPUBLIC OF  
CHINA**

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# **Provisions on Bills of Lading and Other Shipping Documents**

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## **Background**

### *1. The Chinese Maritime Policy and The Existing Maritime Legal System*

The ‘open-door’ policy and the fast development of foreign trade and the shipping industry demanded a long-term maritime policy. In this sense, the adoption of the maritime code and some regulations is a very important step in maritime development and reform. These legislative maritime policies, some of which have been practised for a long time and others which are new philosophies will dominate the Chinese shipping industry in the long-term future. These legislative policies are generally reflected in the following aspects:

1) to work within the confine of international laws and to respect the international commonly accepted practices when seeking economic development and international co-operation.

2) a great change in Chinese maritime policy is from protectionism to non-protectionism.

3) different regimes for different trades. The Maritime Code adopted different regimes for international trade and domestic trade and carriers have different liabilities in different trades.

4) strict conditions for ship registration.

On 2 June 1994 China adopted the Regulations on Ship Registration of the PRC, in which a strict policy of the ‘genuine link’ was endorsed to grant its nationality.

5) cabotage reservation

This policy was reflected in article 4 of the Maritime Code. Maritime transport and towage services between the ports of the People’s Republic of China shall be undertaken by ships flying the national flag of the People’s Republic of China, except as otherwise provided for by laws or administrative rules and regulations.

The Law on the Territorial Sea and Contiguous Zone, the Maritime Code, the Law of Maritime Traffic Safety and the Law of Marine Environmental Protection Law are considered as four corner stones of China’s maritime legal system. Moreover, a large number of specific provisions and regulations for the implementation of the maritime laws have been made by the Ministry of

Communications. Last year, the People's Congress enacted the Law on the Exclusive Economic Zone and Continental Shelf to complete the law of the Chinese dominion of maritime zone.

At the same time, China ratified or acceded to almost all the important IMO international conventions and entered into a great number of bilateral maritime agreements. It is fair to say China has a completed maritime legal system that is considered to meet international standards. However, there are still some important maritime laws and regulations needing to be enacted, such as ports law and seaman's law ( these two laws have been drafted and will be adopted in the near future ). Although the Maritime Code has a Chapter dealing with carriage of goods by sea, in respect of shipping documents some provisions need to be added and specified, especially as to bills of lading being a document of title, its negotiation needing to be specifically regulated; and the legal status of sea waybill and electronic shipping documents necessarily being confirmed to meet the development of technology in shipping industry.

## *2. Introduction to Hague Rules, Hague- Visby Rules and Hamburg Rules*

At the beginning of this century, the terms of bills of lading were becoming very onerous; shipowners, burdened with the onerous absolute warranty of seaworthiness, were inserting a multiplicity of exemption clauses, protecting themselves from almost every conceivable loss or damage which was likely to occur to the goods during the course of the voyage. The security of bills of lading in the hands of third parties became impaired.

To redress this imbalance, and to achieve international uniformity in the terms of bills of lading, the international law Association and the Committee Maritime International organised a series of conferences in 1921 and 1922. Their efforts culminated in the adoption in 1924, in Brussels, of the convention for the Unification of Certain Rules relating to Bills of Lading-commonly known as the Hague Rules. These Rules were amended (slightly) in 1968 by a Protocol signed in Brussels- the trip of representatives to the Swedish island of Visby during drafting the Protocol had been hosted by Swedish Government, to appreciate the Swedish Government's generous, the amended Rules were named by the draftsman as the Hague-Visby Rules.

The Hague rules radically changed the legal status of sea carriers under bills of lading, imposing upon shipowners a precise liability, and giving them precisely defined rights and remedies in place of the freedom to contract in any terms they chose. But the Hague Rules ( and the Hague- Visby Rules ) are out of step with rules adopted for the international carriage of goods by land, rail, and air. To bring the rules relating to the international carriage of goods by sea into line with those of other modes of transport, new rules were formulated by a United Nations Conference held in Hamburg in 1978-the Hamburg Rules.

### *1) The Hague Rules*

The Hague Rules have been adopted by some 89 States, and are thus of wide adoption; and, since many States have yet to incorporate the 1968 Protocol to the Rules ( the Hague - Visby Rules, ) into their domestic legislation, the Hague Rules are still very much alive in some jurisdictions. The Rules may apply **ex-contractu** by a Paramount Clause expressly incorporating the Rules into the bill of lading- or by law, in those countries in which the Rules are adopted.

The International Convention does not apply the Rules to charter parties; the relationship between a charterer and the shipowner is governed by the terms and conditions of the charter party. It is usual, however, for charter parties to provide that all bills of lading issued for shipments made under the charter shall contain a Paramount Clause.

The Rules govern the relationship between the carrier of the cargo and the shipper, and by endorsement or consignment of the bill of lading, between the carrier and the endorsee or consignee. The theme of the Hague/Hague-Visby Rules is the Carrier's responsibility for the care and carriage of the cargo. Where the Rules apply, liability is based on fault; mere proof of lost or damaged cargo is not, without more, sufficient to found a claim- there is no strict liability.

### *2) The Hague- Visby Rules*

More than 40 years after the Brussels Convention was signed, the international shipping community was persuaded that the time had come to look again at the Hague rules and to revise areas that those representing key interests

regarded as having become unduly onerous or anachronistic.

Such 'persuasion' resulted, via an international conference in the 1960's, in amendments being made to the Hague Rules in the form of a protocol— the Brussels Protocol 1968. The Hague Rules as amended by the Brussels Protocol are known as the Hague- Visby Rules. Now, some twenty four years later, pitifully few nations have adopted the Protocol and incorporated into their legislation.

At with the Hague Rules, the Hague-Visby Rules may apply **ex-contractu-**by a Paramount Clause expressly incorporating the Rules into the bill of lading--or by law, in those countries in which the Rules are adopted.

The Brussels Protocol does not make sweeping changes to the Hague Rules --the Protocol amends some of the rules, while maintaining the same format as the Hague Rules.

### *3) The Hamburg Rules*

On the 31<sup>st</sup> day of March, 1978, a United Nations Conference on the Carriage of Goods by Sea, attended by representatives from some seventy states, agreed on a convention formulating new rules for the carriage of goods by sea: the Hamburg Rules-rules which make profound changes to the existing Hague/Hague-Visby regime; rules which bring the carriage of goods by sea into line with the carriage of goods by land, rail and air; rules where the liability of the carrier is based on the principle of presumed fault or neglect.

Perhaps the most important of the changes to the existing Hague/Hague-Visby based bills of lading law is that where the Rules apply, the carrier: '...is liable for loss resulting from loss of or damage to the goods, as well as delay in delivery...unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence or its consequences' ( Article 5, rule 1; c. f. Hague Rules, Article IV rule 2).

Under the Hamburg Rules, the carrier will bear more responsibility for the goods than he bears under the Hague Rules regime--thus, the Hamburg Rules have not found favour with shipowners or with those states with ship owning and chartering interests.

It is not surprising, therefore, that it took until November 1991 before the necessary 20 states ratifications could be obtained to enable the Rules to enter force in November 1992.

The Rules do not globally replace the Hague/ Hague-Visby Rules; they are binding only on parties to contracts of carriage by sea where the shipment is from and to (c. f. Hague Rules ) those countries which have ratified the Rules and incorporated the Rules into their domestic law, or where the contract of carriage expressly incorporates the Hamburg Rules.

### *3. The Position of China*

China has neither ratified or acceded to the Hague Rules and Hague-Visby Rules nor Hamburg Rules. However, the significant character of the Maritime Code is the adoption of universally recognized international maritime conventions and usages. The Maritime Code has provided, on the basis of domestic situation and more than 40 years' practice of shipping and trade, a comprehensive and specific regulations on the relationship arising from vessels and transportation, which are both of absorbing currently prevalent provisions of international convention and of considering the direction of international legislation. Chapter IV of the Maritime Code was drafted on the basis of Hague - Visby Rules, and concurrently absorbed several provisions of Hamburg Rules which complied with the development of modern transport. For instance, article 46 provides that 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 responsibilities 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.

This drafting project has consolidated section 4 of Chapter IV of the Maritime Code of the People's Republic of China and has made supplements and amendments to it, especially has added several essential provisions with regard to the negotiation of bill of lading, rights and liabilities under shipping

documents and provisions on sea waybills and electronic shipping documents.

## **Chapter I General Provisions**

### *Article 1 Purpose of the Provisions*

The Provisions aim to, by regulating the relations arising from contract of carriage of goods by sea concerning bills of lading and analogous shipping documents, protect the legitimate rights and interest of the parties concerned, and to promote the development of maritime transport, economy and trade.

### *Article 2 Application*

The Provisions apply to the following documents:

- (1) bills of lading;
- (2) sea waybills; and
- (3) ship's delivery orders.

### *Article 3 Interpretations*

(1) "Bill of Lading" is a document which-

(a) is evidence of a contract of carriage by sea and of the carrier having received or loaded the goods and

(b) is designated by the term 'bill of lading' or contains an undertaking by the carrier to deliver the goods only against the surrender of the document.

(2) "Sea Waybill" is any document which is not a bill of lading but-

(a) is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and

(b) identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract.

(3) "Ship's Delivery Order" is a document which is neither a bill of lading nor a sea waybill but which contains an undertaking-

(a) that is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those



goods; and

(b) by the carrier to a person identified in the document that he will deliver the goods to which the document relates to that person.

(4) “Contract of Carriage”, for the purpose of the Provisions,-

(a) in relation to a bill of lading or sea waybill, means the contract contained in or evidenced by that bill or waybill; and

(b) in relation to a ship’s delivery order, means the contract under or for the purposes of which the undertaking contained in the order is given.

(5) “Holder of a Bill of Lading” is any of the following persons-

(a) a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;

(b) a person with possession of the bill as a result of the completion, by delivery of the bill, of any endorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill,

and a person shall be regarded for the purposes of the Provisions as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith.

(6) “ Data Message” means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange ( EDI ), electronic mail, telegram, telex or telecopy.

(7) “ Electronic Data Interchange ( EDI )” means the electronic transfer from computer to computer of information using an agreed standard to structure the information.

## **Chapter II Issue of Bill of Lading**

### *Article 4 Issue of Bill of Lading*

When the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipowner, issue to the shipper a bill of lading.

### *Article 5 Signature on Bill of Lading*

The bill of lading may be signed by a person authorized by the carrier. A bill of lading signed by the Master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

*Article 6 Usual Authority of Master*

(1) The master who signs a bill of lading shall be considered to possess the authority usual in the line of business in which he was employed.

(2) No limitation in derogation of the usual authority is binding except as against persons who are or ought to have been aware of it.

*Article 7 Exceeding of Master's Authority*

Where the master has exceeded his authority in signing the bill of lading and the shipowner in consequence successfully repudiates liability the master, if he signed the bill of lading as agent only, will be liable for breach of warranty of authority, but if he made himself a party to the contract he will be liable on the bill of lading.

*Article 8 Date on Bill of Lading*

A bill of lading shall not be dated earlier than the date by which all the cargo referred to in the bill of lading has been loaded.

**Chapter III Bill of Lading as Evidence**

*Article 9 Statement in Bills of Lading*

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 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;

(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 paragraph(1) Article 3 of the Provisions.

#### *Article 10 Reservation in Bill of Lading*

(1) Where a carrier or other person issuing the bill of lading on his behalf has knowledge or reasonable grounds to suspect that the particulars contained in the bill of lading concerning the description, mark, number of packages or pieces, weight or quantity of the goods do not accurately represent the goods actually received, or where a shipped bill of lading is issued, the goods actually loaded, or if he has no reasonable means of checking, the carrier or such other person may make a reservation in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking.

(2) If the carrier or the other person issuing the bill of lading on his behalf made no note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent goods order and condition.

#### *Article 11 Probative Effect of Bill of Lading*

Except for the note made in accordance with the provisions of Article 10 of the Provisions, the bill of lading issued by the carrier or the other person acting on his behalf 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.

#### *Article 12 Received for Shipment Bill of Lading*

If the carrier has issued, on demand of the shipper, a received for shipment bill of lading or other similar documents before the goods are loaded on board, the shipper may surrender the same to the carrier as against a shipped bill of lading when the goods have been loaded on board. The carrier may also note on the received for shipment bill of lading or other similar documents the name of the carrying ship and the date of loading, and, when so noted, the received for shipment bill of lading or other similar documents shall be deemed to constitute a shipped bill of lading.

#### *Article 13 Relationship Between the Carrier and the Holder of Bill of Lading*

(1) 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. Stipulations in the contract of carriage which have not been inserted in the bill of lading shall not be invoked against such a holder unless the bill of lading contains a reference to them.

(2) Neither the consignee nor the holder of the bill of lading shall be liable for the demurrage, dead freight and all other expenses in respect of loading occurred at the loading port unless the bill of lading clearly states that the aforesaid demurrage, dead freight and all other expenses shall be borne by the consignee and the holder of the bill of lading.

### **Chapter IV Transfer and Negotiation of Bill of Lading**

#### *Article 14 Transfer of Bill of Lading in a Set*

Where a bill of lading is issued in a set, any one of the set being accomplished, the others are to be void. If the shipper is in possession of more than one part, he shall not transfer the different parts to different persons so as

to give each of them an indefeasible right to claim the goods from the carrier.

*Article 15 Straight Bill of Lading*

A bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill of lading.

*Article 16 Non negotiable of Straight Bill*

A straight bill shall have placed plainly upon its face by the carrier issuing it ' non-negotiable' or ' not negotiable'.

*Article 17 Order of Bill of Lading; Negotiability*

A bill of lading in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, or in any contract that it is non-negotiable shall be null and void and shall not affect its negotiability within the meaning of the Provisions unless upon its face and agreed to in writing by the shipper.

*Article 18 Negotiation of Order Bill of Lading by Delivery*

An order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent endorsee of the bill has indorsed it in blank.

*Article 19 Negotiation of Order Bill by the Indorsement*

An order bill of lading may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

*Article 20 Negotiation of Order Bill by Person in Possession*

An order bill may be negotiated by any person in possession of the same, howsoever such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

#### *Article 21 Negotiation of a Bearer Bill of Lading*

If a bill of lading does not name the consignee but makes the goods deliverable to bearer or to order or assigns, the space for the name of the consignee being left blank, it may be transferred by delivery without indorsement.

### **Chapter V Rights under Shipping Documents**

#### *Article 22 The Right of Stoppage*

(1) The right of a seller, in the event of the buyer's insolvency or failure to fulfil his obligations according to the contract of sale, to prevent the handing over of the goods to the buyer or to reclaim the goods applies also where a bill of lading concerning the goods has been transferred to the buyer

(2) The right according to paragraph (1) above shall not be invoked against a third party who in good faith has acquired an order or bearer bill of lading.

#### *Article 23 Right to Sue*

A person who-

(1) becomes the lawful holder of a bill of lading;

(2) becomes ( without being an original party to the contract of carriage ) the person to whom delivery of goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or

(3) becomes the person to whom delivery of goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order,

shall ( by virtue of becoming the holder of the bill or, as the case may be , the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that

contract after the goods arrival.

*Article 24 Rights in Ship's Delivery Order*

The rights vested in any person by virtue of the operation of Article 23 in relation to a ship's delivery order-

- (1) shall be so vested subject to the terms of the order; and
- (2) where, the goods to which the order relates, form a only part of the goods to which the contract of carriage relates, shall be confined to rights in respect of the goods to which the order relates.

**Chapter VI Liabilities under Shipping Documents**

*Article 25 Warrantees Arising out of Transfer of Bill of Lading*

A person who negotiates or transfers for value a bill of lading by indorsement or delivery, unless a contrary intention appears, warrants--

- (1) That the bill of lading is genuine;
- (2) That he has a legal right to transfer it;
- (3) That he has knowledge of no fact which would impair the validity or worth of the bill of lading;
- (4) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill of lading the goods represented thereby.

*Article 26 Liabilities of Person who Becomes Lawful Holder of Transferred Bill of Lading*

Where Article 23 operates in relation to any document to which the Provisions apply and the person in whom rights are vested by virtue of that Article-

- (1) takes or demands delivery from the carrier of any of the goods to which the document relates;
- (2) makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
- (3) is a person who, at a time before those rights were vested in him, took

or demanded delivery from the carrier of any of those goods, that person shall ( by virtue of taking or demanding delivery or making the claim or, in a case falling within paragraph (3) hereof, of having the rights vested in him) become subject to the same liabilities under that contract as if he had been a party to that contract.

#### *Article 27 Liabilities under Ship's Delivery Order*

Where the goods to which a ship's delivery order relates form a only part of the goods to which the contract of carriage relates, the liabilities to which any person is subject by virtue of the operation of this article in relation to that order shall exclude liabilities in respect of any goods to which the order does not relate.

#### *Article 28 Liabilities of Original Parties*

This Chapter, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract.

### **Chapter VII Sea Waybill**

#### *Article 29 Right of Control*

(1) Unless the shipper has exercised his option under paragraph (2) below, he shall be the only party entitled to give the carrier instructions in relation to the contract of carriage. He shall be entitled to change the name of the consignee at any time up to the consignee claiming delivery of the goods after their arrival at destination, provided he gives the carrier reasonable notice in writing, or by some other means acceptable to the carrier, thereby undertaking to indemnify the carrier against any additional expense caused thereby.

(2) The shipper shall have the option, to be exercised not later than the receipt of the goods by the carrier, to transfer the right of control to the consignee. The exercise of this option must be noted on the sea waybill or similar document, if any. Where the option has been exercised the consignee shall have such rights as are referred to in paragraph (1) above and the shipper



shall cease to have such rights.

### *Article 30 Delivery of the Goods*

The carrier shall deliver the goods to the consignee upon production of proper identification.

## **Chapter VIII Electronic Shipping Documents**

### *Article 31 Scope of Application*

This Chapter shall apply to any transaction using one or more data messages including but not limited to:

- (1) (a) furnishing any particulars provided in Article 9;  
(b) issuing a receipt for goods;  
(c) confirming that goods have been loaded;
- (2) (a) notifying a person of terms and conditions of the contract;  
(b) giving instructions to a carrier;
- (3) (a) claiming delivery of goods;  
(b) authorizing release of goods;  
(c) giving notice of loss of, or damage to, goods;
- (4) giving other notice or statement in connection with the performance of the contract;
- (5) undertaking to deliver goods to a named person or a person authorized to claim delivery;
- (6) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (7) acquiring or transferring rights and obligations under the contract.

### *Article 32 Rules on Electronic Shipping documents*

(1) Subject to paragraph (2) below, any transaction referred to in Article 31 using one or more data messages shall be equivalent to writing.

(2) The right may be granted to, or the obligation may be acquired by, and the right or obligation may be conveyed by using one or more data messages

provided that a reliable method is used to render such data message or messages unique.

(3) For the purposes of paragraph (2) above, the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement between the parties.

(4) Where one or more data messages are used to effect any of transactions mentioned in subparagraph (6) and (7) of Article 31, no paper document used to effect any such transaction shall be valid unless the use of data messages has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of data messages by paper documents shall not affect the rights or obligations of the parties involved.

(5) If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be inapplicable to such a contract of carriage of goods which is evidenced by one or more data messages by reason of the fact that the contract is evidenced by such data message or messages instead of by a paper document.

