



GUIDE TO HANDLE MARITIME CLAIMS in CHINA

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Part I

The Main Applicable Laws Governing the Maritime Cases in China

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Main Applicable Laws

1. PRC Maritime Code, 1993.7.1

relevant international conventions

- Collision--1910 Collision Convention
- Marine salvage--1989 Salvage C~
- Marine claim--1976 Convention
- Carriage of Goods by Sea--Hague-Visby
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Main Applicable Laws

2. PRC Maritime Procedure Law, July 1, 2000
3. PRC Civil Procedure Law, Apr. 1, 2008
4. PRC General Principles of the Civil Law, Jan. 1, 1987
5. PRC Contract Law, Oct. 1, 1999
6. PRC Arbitration Law, Sept. 1, 1995
7. PRC Guaranty Law, Oct. 1, 1995
8. PRC Insurance Law Jan. 1, 2003

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Part II: GUIDE TO HANDLE MARITIME CLAIMS IN CHINA

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MAIN MARITIME CLAIMS AGAINST SHIPOWNERS



- CARGO LOSS /DAMAGE
- SHIP COLLISION
- LOSS OF LIFE OR PERSONAL INJURY
- SALVAGE/WRECK REMOVAL
- ENVIRONMENT DAMAGE/POLLUTION
- OTHER CLAIMS.....

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THE WAYS TO SECURE MARITIME CLAIMS

- FILING CLAIMS IN MARITIME COURT
 - --MAIN TYPE: CONTRACT DISPUTES; CARGO DAMAGE/TRADING DISPUTES ETC.(BRANCH OFFICES/REP OFFICE IN CHINA)
 - MAIN ISSUES TO BE CONSIDERED AND NOTED:
 - SERVICE ISSUE; WHETHER VALID SERVICE OR NOT;
 - FAX/MAIL SERVICE; GOVERNMENT JUDICIAL ASSISTANCE AGREEMENT;
 - ACCEPT SERVICE IN A PROPER WAY; CHALLENGE JURISDICTION IN TIME; RESPOND WITHIN COURT TIME LIMIT

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THE WAYS TO SECURE MARITIME CLAIMS

- ARREST SHIP TO ESTABLISH JURISDICTION AND GET SECURITY
- MAIN TYPE: CARGO LOSS/ DAMAGE AT THE DISCHARGING PORTS IN CHINA; SHIP COLLISION; ETC.
- MAIN ISSUES TO BE CONSIDERED AND NOTED:

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THE WAYS TO SECURE MARITIME CLAIMS



I. Why arrested/detained?

Commercial related ——arrested
by the Court upon claimant's
application



- ship operation
- damage to...
- cargo damage
- contract dispute
- general average
- collission

.....

Article 21 of the Section 2 of the PRC Maritime Procedure

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- (1) *loss of or damage to property caused by ship operation;*
- (2) *loss of life or personal injury in direct connection with ship operation;*
- (3) *salvage at sea;*
- (4) *damage or threat of damage caused by a ship to environment, coastline or interests of other parties; measures taken to prevent, minimize or remove such damage; compensation paid in respect of such damage; costs for reasonable measures taken or to be taken for reinstatement of the environment; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this paragraph;*
- (5) *Expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and expenses relating to the preservation of an abandoned ship and maintenance of its crew;*
- (6) *Any agreement relating to the use or hire of a ship;*
- (7) *Any agreement relating to the carriage of goods or passengers;*
- (8) *Loss of or damage to or in connection with goods (including luggage) carried on board a ship;*
- (9) *general average;*
- (10) *towage;*

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- (11) pilotage;*
- (12) goods supplied or services rendered to a ship for its operation, management, preservation or maintenance;*
- (13) construction, re-construction, repair, conversion or equipment of a ship;*
- (14) dues and charges of port, canal, dock, harbor and other waterway;*
- (15) crew's wages and other moneys, including costs of repatriation and social insurance contributions payable on behalf of the crew;*
- (16) disbursements incurred on behalf of a ship or its ship-owner;*
- (17) insurance premiums(including mutual insurance calls) in respect of a ship, payable by or on behalf of the ship-owner or demise charterer;*
- (18) any commissions, brokerages or agency fees payable in respect of a ship by or on behalf of the ship-owner or demise charterer;*
- (19) any dispute in connection with ownership or possession of a ship;*
- (20) a ship mortgage or rights of the same nature;*
- (21) any dispute arising out of a contract for sale of a ship.*

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I. Why arrested/detained?

Violate Maritime Traffic Safety Law ——detained / suspended by authorities



- Violates any PRC law
- Unsuitable for Navigation or towing
- Traffic accident
- Fees due & Security
-

Article 19 of the PRC Maritime Traffic Safety Law

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- According to the PRC Maritime Traffic Safety Law, a ship may be detained or suspended her voyage by competent authorities due to:
 - 1) *if it violates any law, administrative statute or other rule or regulation of the People's Republic of China;*
 - 2) *if it is in a condition unsuitable for navigation or towing;*
 - 3) *if it was involved in a traffic accident and has not completed the necessary formalities;*
 - 4) *if it has not paid the fees that are due or furnished appropriate security to the competent authorities or the department concerned; or*
 - 5) *if the competent authorities considers that there are other circumstances that will jeopardize or might jeopardize maritime traffic safety.*

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1. Communication: Owners——Master

- Clarify the fact and proper instruction
- Master must strictly follow the owner's instruction

2. Communication: Owners——P&I Club

- Appoint proper agent
- Appoint proper local lawyer

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3. Security negotiation & providing

- Wording of the LOG
- P&I CLUB LOG, PICC/China Re/CPI or other China insurance company's LOG, Bank Guarantee, Company Guarantee, Cash Security, etc..
- M/V “Crown” story;
- Huatai and China –Re;
- Alternative ways to provide security:

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SHIP COLLISION AND RELATED ISSUES

- Ships ---exchange security; collect evidences; inspections; jurisdiction issue; and meeting with MSA ; (the maritime court investigation form)
- Cargo---survey; notice to parties concerned;
- Personal injury --- cash prepayment as comfort; security negotiation;
- Pollution issue ---
- MSA ---how to cooperate

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MAIN ISSUES TO BE CONCERNED

- Collision with small fishing boat with death or personal injury in China sea ---
- security and cash comfort prepayment;
- cooperation with local authority and MSA;
- mediation or go to court?
- joint liability for personal injury/death claims with no hope of share of liability nor recover from the small boat side;
- Evidences and division of liability
- Collision with another big ship- direct negotiation or go to court;

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Pollution problems

Security & Cash prepayment for——

Penalty

Cleaning fees

---relation with MSA and local
authorities

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Salvage and wreck removal

- MSA –compulsory removal and costs;
- (Supreme Court regulation with effective on May.23,2008)
- Art. 9-- Owners/respondents are not entitle to limit their liability on claim for costs occurred for refloating;clear up, demolishing wrecks (sank; grounding and abandon) and cargo remain on board

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CHALLENGE JURISDICTION ISSUE

I. Relevant China laws regarding ~

1. PRC Civil Procedure Law

Art. 25

Art. 25: “The parties to a contract may agree to choose in their written contract the people’s court of the place where the defendant has his domicile, where the contract is performed, where the contract is signed, where the plaintiff has his domicile or where the object of the action is located to exercise jurisdiction over the case, provided that the provisions of this law regarding jurisdiction by forum level and exclusive jurisdiction are not violated.”

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CHALLENGE JURISDICTION ISSUE

I. Relevant China laws regarding ~

1. PRC Civil Procedure Law

Art. 25 Art. 243

Art. 243: “ In the case of an action concerning a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the People’s Republic of China, if the contract is signed or performed within the territory of the People’s Republic of China, or if the object of the action is located within the territory of the People’s Republic of China, or if the defendant has distrainable property within the territory of the People’s Republic of China, or if the defendant has its representative office within the territory of the People’s Republic of China, the people’s court of the place where the contract is signed or performed, or where the object of the action is, or where the defendant’s distrainable property is located, or where the torts are done, or where the defendant’s representative office is located, shall have jurisdiction.”

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CHALLENGE JURISDICTION ISSUE

I. Relevant China laws regarding ~

1. PRC Civil Procedure Law

Art. 25 Art. 243 Art. 244

Art. 244: “ Parties to a dispute over a contract concluded with foreign element or over property rights and interests involving foreign element may, through written agreement, choose the court of the place which has practical connections with the dispute to exercise jurisdiction. If a people’s court of the People’s Republic of China is chosen to exercise jurisdiction, the provision of this law on jurisdiction by forum level and on exclusive jurisdiction shall not be violated.”

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CHALLENGE JURISDICTION ISSUE

II. Whether you have chance to challenge?

- Jurisdiction clause in the B/L
- Arbitration clause in the C/P
- C/P arbitration clause to be incorporated into the B/L
- Agreement on election of forum

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CHALLENGE JURISDICTION ISSUE

III. How to properly challenge?

Being a defendant, in the court already

PRC Civil Procedure Law Art. 38

Art.38 : “ If a party to an action objects to the jurisdiction of a people’s court after the court has entertained the case, the party must raise the objection within the period prescribed for the submission of defence. The people’s court shall examine the objection. If the objection is established, the people’s court shall order the case to be transferred to the people’s court that has jurisdiction over it, if, not, the people’s court shall reject it.”

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CHALLENGE JURISDICTION ISSUE

III. How to properly challenge?

Being a defendant, in the court already

PRC Civil Procedure Law Art. 38 Art. 245

- raised within the prescribed period
- quick response and avoid delay

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CHALLENGE JURISDICTION ISSUE

III. How to properly challenge?

An arbitration clause or agreement

The PRC Civil Law Art. 257

Art.257 : “ In the case of a dispute arising from the foreign economic, trade, transport or maritime activities of China, if the parties have had an arbitration clause in the contract concerned or have subsequently reached a written arbitration agreement stipulating the submission of the dispute for arbitration to an arbitral organ in the People’ Republic of China handling cases involving foreign element, or to an other arbitral body, they may not bring an action in a people’s court.If the parties have not had an arbitration clause in the contract concerned or have not subsequently reached a written arbitration agreement, they may bring an action in a people’s court”

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CHALLENGE JURISDICTION ISSUE

III. How to properly challenge?

An arbitration clause or agreement

The PRC Civil Law Art. 257

The PRC Arbitration Law Art. 5

Art.5: “ If the parties have concluded an arbitration agreement and one party institutes an action in a people’s court, the people’s court shall not accept the case, unless the arbitration agreement is void.”

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CHALLENGE JURISDICTION ISSUE

IV. China court's attitude

- A procedural issue
- Validity——subject to the law of the forum
- a Jurisdiction clause in a B/L

Can not bind the shipper, carrier/actual carrier
a B/L holder is not bound by an C/P arbi. clause
if the cause of action is in tort, both parties shall not be bound by
the jurisdiction clause in the B/L

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CHALLENGE JURISDICTION ISSUE

V. Challenging jurisdiction as a tactic way to win more time—less costs and more effective, but should be cautious.

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RECOURSE /RECOVERY IN CHINA

SHIPOWNERS CLAIM AGAINST SHIPPER:

---time limit;

INSURANCE COMPANY'S RECOVERY / SUBROGATION RIGHT

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SUM UP

The proper way to handle case in China

- Find proper lawyer of surveyor
- clear instruction and necessary trust to them
- cooperation between the foreign lawyers and local lawyers
- direct communication channel should be set up with the local lawyer/agent

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Thank you all !

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