



# The Legal 500 Country Comparative Guides

## China

# SHIPPING

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in China.

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## CHINA SHIPPING



The  
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### 1. What system of port state control applies in your jurisdiction? What are their powers?

The port state control authority in China is the Maritime Safety Administration (MSA). MSA's powers mainly include drafting and implementing national policies and regulations, supervising waterborne traffic safety and preventing pollution from ships, administering the survey of ships and off-shore facilities, administering seafarers and pilots' training, examination and certification, supervising waterborne traffic order and navigation condition, implementing laws and regulations, etc.

### 2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

China is a contracting state of the Nairobi International Convention on the Removal of Wrecks, 2007 (NAIROBI WRC 2007), the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992), the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION, 1969), Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973 as Amended (INTERVENTION PROT 1973), the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 (LC PROT 1996), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001), the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990), the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS 2000), and the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (1973/78 MARPOL).

### 3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

China established domestic emission control areas (ECA) that capped the sulphur content of marine fuels. While its structures reflect that of IMO ECAs, China's domestic ECA designations and rules are independent from the international IMO regulations. These ECAs are not MARPOL Annex VI designated emission control areas.

Starting January 1, 2019, all international ships entering China's coastal waters (coastal ECA), must use fuel with a maximum sulphur content of 0.5% m/m. Since January 1, 2020, a 0.1% m/m sulphur limit applies to ships entering inland ECA including Yangtze River (from Shuifu, Yunnan to the mouth of the Liuhe River, Jiangsu) and the main stream of the Xijiang River (from Nanning, Guangxi to Zhaoqing, Guangdong). From January 1, 2022, the 0.1% m/m sulphur limit will apply to the domestic area of Hainan Island.

### 4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

China is a contracting state of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as Amended (COLREG 1972), and the International Convention on Salvage, 1989 (SALVAGE 1989). The Maritime Code of the People's Republic of China also includes rules regarding collision and salvage.

### 5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

In Mainland China, the 1976 Convention on Limitation of Liability for Maritime Claims or its 1996 Protocol is not applicable. The equivalent domestic legislation is Chinese Maritime Code, according to which, the following parties can rely on the limitation of liability:

- a) Shipowners, including owners, charterers, and operators of ships;
- b) Salvors;
- c) Persons for whose act, neglect or default the Shipowners or Salvors are responsible;
- d) The insurer liable for the maritime claims.

In the Hong Kong Special Administrative Region, the 1976 Convention on Limitation of Liability for Maritime Claims and its 1996 Protocol are applicable.

**6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?**

If cargo arrives delayed, lost or damaged, under Chinese law, the receivers can apply for ship arrest to secure their claims. China is not a party to the 1952 Arrest Convention, or the 1999 Convention. The applicable domestic rule is Maritime Procedure Law of the People's Republic of China. According to it, a ship arrest application may be filed in case the maritime claim falls into one of the 22 categories, as follows:

- (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, minimise or remove such damage; compensation paid for such damage; costs for reasonable measures taken or intended to be taken to restore the environment; losses suffered or likely to be suffered by third parties as a result of such damage; and damage, costs or losses of a similar nature to those referred to in this subparagraph;

(5) expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and expenses relating to the maintenance of the abandoned ship and maintenance of its crew;

(6) Any agreement on the use or hire of a ship;

(7) Any agreement on the carriage of goods or passengers;

(8) loss of or damage to goods (including luggage) carried on board a ship;

(9) general average;

(10) towage;

(11) pilotage;

(12) goods supplied or services rendered to a ship for its operation, management, maintenance or repair;

(13) construction, re-construction, repair, conversion or equipping of a ship;

(14) dues and charges for port, canal, dock, harbour and other water-way;

(15) crew's wages and other payments, including costs of repatriation and social insurance premiums to be paid for crew;

(16) disbursements incurred on behalf of a ship or its shipowner;

(17) a ship's insurance premium (including P&I Clubs' premiums or calls) payable by or on behalf of the shipowner or bareboat charterer;

(18) any commissions, brokerage or agency fees related to a ship payable by or on behalf of the shipowner or bareboat charterer;

(19) any dispute concerning the ownership or possession

of a ship;

(20) any dispute among co-owners of a ship concerning the employment or earnings of the ship;

(21) a ship mortgage or rights of the same nature; and

(22) any dispute arising from contracts for the sale of ships.

As per the judicial interpretations of the Supreme Court of China, a vessel can be arrested in China to obtain security for claim to be pursued in court or arbitration in different jurisdictions. The judicial interpretations provide that "where a foreign court has already accepted a related maritime case or the relevant dispute has already been submitted for arbitration, but the property at issue is within the territory of the People's Republic of China, if the party applies for property preservation with the maritime court of the place where the property is located, the maritime court shall accept the application."

However, a claimant shall consider the practicality of such arrest, as even if a vessel is arrested or security is obtained before a Chinese court, foreign court judgments or foreign arbitral awards are not automatically enforceable in China against such arrested vessel or security. A foreign court judgment or foreign arbitral award shall firstly be recognized by a Chinese court, before it can be enforced.

### **7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?**

In terms of ship arrest, Chinese courts require submission of the original hard-copy application, power of attorney and the certification of identity of the legal representative. The certificate of good standing/certificate of incorporation, power of attorney and the certification of identity of the legal representative issued by a foreign party shall be notarized by the local notary public, and then affixed apostille/legalized by proper institutes.

### **8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?**

Recognizable maritime liens / maritime privileges include:

a) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members and other members of the complement in accordance with the relevant labour laws, administrative rules and regulations or labour contracts;

b) Claims in respect of loss of life or personal injury occurred in the operation of the ship;

c) Payment claims for ship's tonnage dues, pilotage dues, harbour dues and other port charges;

d) Payment claims for salvage payment;

e) Compensation claims for loss of or damage to property resulting from tortious act in the course of ship operation.

Maritime liens / maritime privileges are recognized as per the law of the forum.

### **9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?**

Yes, it is a requirement that the owner or demise charterer of the vessel shall be liable in personam for the maritime claim. If the owner or demise charterer of the vessel is not liable in personam for the unpaid bunkers or other necessities, the vessel cannot be arrested.

### **10. Are sister ship or associated ship arrests possible?**

A claimant can arrest a sister ship or an associated ship if the owner, demise charterer, time charterer, or voyage charterer of the ship directly involved is liable in personam for the maritime claim, and such owner, demise charterer, time charterer, or voyage charterer is the owner of the sister ship or associated ship at the time of the arrest.

### **11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be**

### liable for damages if the arrest is set aside?

The arresting party is required to put up counter-security with the Chinese maritime court. An arrestor would be held liable if the arrest is proved out of intentional misconduct or gross negligence, and the arrest causes losses. In China's judicial practice, the claim of wrongful ship detention/arrest is rarely upheld, for the burden of proof of malicious intention or gross negligence is demanding.

### 12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

For purposes of ship release, an owner shall provide the security in amount and form as mutually agreed with the claimants, or if an agreement cannot be reached, in amount and form decided by the court. In some circumstances, the parties can agree on a Club LOU as an acceptable security for the claim. But if an agreement cannot be reached, the court always requests for security provided by Chinese financial institutions such as a bank or insurance company, and some maritime courts now also allow CPI's LOU.

### 13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

The procedure for the judicial sale of arrested ships is as follows:

- A. The applicant submits an application for ship auction to the maritime court which orders the arrest of the ship.
- B. The court reviews the application and makes a ruling accordingly.
- C. The court sets up an auction committee to proceed with the auction. Evaluation of the ship will be arranged.
- D. Public notice and announcements regarding the ship sales and claims registration.
- E. Auction of the ship.
- F. Delivery of the ship to the successful buyer.
- G. The sale proceeds distributed to successful claimants or held by court as security for claims in ongoing court or arbitral proceedings.

The priority ranking of claims is as follows:

- A. Claims for court fee, expenses incurred for preservation, evaluation, auction of the ship, or for distribution of the ship auction proceeds, and other expenses paid for the common interests of creditors;
- B. Maritime claims secured by maritime lien;
- C. Maritime claims secured by a possessory lien;
- D. Maritime claims secured by mortgage;
- E. Other claims.

### 14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

The shipowner, demise charterer, time charterer, or voyage charterer can be liable under a bill of lading in different scenarios. Under Chinese laws, carriers include a Contractual Carrier, meaning the person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper, and/or an Actual Carrier meaning 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. In different scenarios, the shipowner, demise charterer, time charterer, or voyage charterer can be identified as either Carrier or Actual Carrier.

### 15. Is the proper law of the bill of lading relevant? If so, how is it determined?

Yes, it is relevant. The parties to the contract of carriage of goods by sea can choose the applicable law by agreement. If there is no choice of law, or the choice is ineffective, the court will decide the applicable law by applying the doctrine of the closest connection.

### 16. Are jurisdiction clauses recognised and enforced?

Under Chinese law, contracting parties have the right to agree on the jurisdiction for dispute resolution in the contract between them. However, Chinese courts adopt a very strict stance when reviewing the jurisdiction clauses in bills of lading, especially when the disputes are between carriers and consignees, as consignees normally have less chance to negotiate the jurisdiction clauses on the bills of lading.

**17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

Chinese courts adopt a very strict stance when reviewing the incorporation clause in bills of lading. In many cases, clauses in bills of lading trying to incorporate the arbitration clauses in charterparties are decided by courts as ineffective.

**18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

No, China is not a party to any of the international conventions concerning bills of lading. Issues concerning bills of lading are covered by Chinese Maritime Code.

**19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

Yes, China is a party to the 1958 New York Convention. China has made two reservation declarations, i.e., Reciprocity Reservation (i.e., China only recognizes and enforces arbitration awards made in state parties to the New York Convention) and Commercial Reservation (i.e., China only applies the New York Convention to disputes arising out of legal relationships, whether contractual or not, considered commercial under the national law of China).

**20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

1. Tort claim under civil law (other than claims under Chinese Maritime Code):

The time bar for a tort claim is three years, counting

from the day on which the obligee knows or should have known that his or her right has been infringed upon and who the obligor is, except as otherwise provided for by any law.

2. Contractual claim under civil law (other than claims under Chinese Maritime Code):

The time bar for a contractual claim is three years, counting from the day on which the obligee knows or should have known that his or her right has been infringed upon and who the obligor is, except as otherwise provided for by any law.

3. Personal injury and other passenger claim:

The time bar for claims against the carrier with regard to the carriage of passengers by sea is usually two years. In particular:

A. Time bar for claims for personal injury counts from the day on which the passenger disembarked or should have disembarked;

B. Time bar for claims for death of passengers that occurred during the period of carriage counts from the day on which the passenger should have disembarked; whereas those for the death of passengers that occurred after passengers' disembarkation but resulted from an injury during the period of carriage by sea counts from the day of the death of the passenger concerned, provided that this period does not exceed three years from the time of disembarkation;

C. Time bar for claims for loss of or damage to luggage counts from the day of disembarkation or the day on which the passenger should have disembarked.

4. Cargo claims under bills of lading:

The time limit 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.

5. Claim under Charterparty:

The time limit for claims 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.

6. Salvage and collision claim:

A. The time bar for claims with regard to salvage at sea is two years, counting from the day on which the salvage operation was completed.



B. The time bar for claims with regard to collision of ships is two years, counting from the day on which the collision occurred.

**21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?**

Force majeure is recognized by Chinese legal system and relief maybe be granted if the force majeure rule is applicable. Under Chinese law, a force majeure event is an unforeseeable, unavoidable, and insurmountable objective event. For a Covid-19 pandemic matter to be regarded as a Force Majeure event, the above three criterions are supposed to be met, and the party tries to rely on it also need to prove such matter and loss thereof are free from human factors, namely, it is an objective event.

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