## Several Provisions of the Supreme People's Court on the Trial of Cases of Disputes over the Limitation of Liability for Maritime Claim

The Several Provisions of the Supreme People's Court on the Trial of Cases of Disputes over the Limitation of Liability for Maritime Claims, which have been adopted at the 1484th session of the Judicial Committee of the Supreme People's Court on March 22, 2010, are hereby promulgated and shall come into force on September 15, 2010.

(Interpretation No.11 [2010] of the Supreme People's Court)

In order to correctly try cases of disputes over the limitation of liability for maritime claims, these Provisions are formulated in accordance with the provisions of the Special Maritime Procedure Law of the People's Republic of China (hereinafter referred to as the Special Maritime Procedure Law) and the Maritime Law of the People's Republic of China (hereinafter referred to as the Maritime Law) and in light of the actual situation of the judicial work.

**Article 1** The provisions of the Special Maritime Procedure Law and the Maritime Law shall be applied to the trial of cases of disputes over the limitation of liability for maritime claims; if there is no provision in the Special Maritime Procedure Law and the Maritime Law, the provisions of other relevant laws and administrative regulations shall apply.

**Article 2** Where different liable parties in the same maritime accident apply to different maritime courts for the establishment of the fund for limitation of liability for maritime claims in accordance with the provisions of Article 102 of the Special Maritime Procedure Law before filing a lawsuit, the maritime court which dockets the case later shall, in accordance with the provisions of the Civil Procedure Law, transfer it to the maritime court which dockets the case earlier for jurisdiction.

**Article 3** Where a liable party applies for the establishment of the fund for limitation of liability for maritime claims in litigation, it shall file an application with the maritime court which accepts the relevant maritime dispute case.

If the relevant maritime dispute case is accepted by different maritime courts, a liable party shall, in accordance with the jurisdiction agreement, file an application for the establishment of the fund for limitation of liability for maritime claims with the maritime court which first dockets the case; if no jurisdiction agreement is concluded between the parties concerned, the application shall be filed with the maritime court which dockets the case first.

**Article 4** Upon the establishment of the fund for limitation of liability for maritime claims, the maritime court in which the fund has been established shall have the jurisdiction over the lawsuit filed by the maritime claimant against the liable party on the relevant disputes over the maritime accident.

Where a maritime claimant files a lawsuit with another maritime court, the maritime court which accepts the case shall, in accordance with the provisions of the Civil Procedure Law, transfer the case to the maritime court in which the fund for limitation of liability for maritime claims has been established, except when a jurisdiction agreement has been concluded between the parties concerned.

**Article 5** The fifteen-day period for the maritime court to make a ruling as prescribed in Paragraph 2 of Article 106 of the Special Maritime Procedure Law shall be calculated from the 30th day from the day after the date on which the maritime court makes an announcement on the acceptance of the application for the establishment of the fund for limitation of liability for maritime claims for the last time.

**Article 6** The expiry date of the application period for the registration of creditor' rights as prescribed in Article 112 of the Special Maritime Procedure Law shall be the 60th day from the day after the date on which the maritime court makes an announcement on the acceptance of the application for the establishment of the fund for limitation of liability for maritime claims for the last time.

**Article 7** Where a creditor's application for the registration of creditor's rights meets the relevant provisions, the maritime court shall, upon the establishment of the fund for limitation of liability for maritime claims, make a ruling in accordance with the provisions of Article 114 of the Special Maritime Procedure Law; where the fund for limitation of liability for maritime claims is not established according to law, the maritime court shall make a ruling to terminate the registration procedure of creditor's rights. The application fee paid by the creditor shall be borne by the applicant who applies for the establishment of the fund for limitation of liability for maritime claims.

**Article 8** Upon the establishment of the fund for limitation of liability for maritime claims, a maritime claimant may apply for preservation of the liable party's property based on the maritime claims against which the liable party can not defense by quoting the limitation of liability for maritime claims according to law.

**Article 9** Where, upon the establishment of the fund for limitation of liability for maritime claims, a maritime claimant applies for detention of ships on the ground of exercising maritime liens about the maritime claims arisen from the same maritime accident which may be subject to limitation of liability as prescribed in Article 207 of the Maritime Law, the people's court shall not support such an application.

**Article 10** Where a creditor, in accordance with the provisions of Article 209 of the Maritime Law, claims that the liable party is not entitled to the limitation of liability when bringing a suit for recognition of right, he shall file an application in written form. The procedure of the recognition of right as prescribed in the Special Maritime Procedure Law shall not be applied to the trial of the case, and the parties concerned may proceed with an appeal against the judgment or ruling made by the maritime court according to law.

Where more than two creditors claim that the liable party is not entitled to the limitation of liability, the maritime court may try the relevant cases by the principle of joinder.

**Article 11** Where it needs to determine the proportion of degree of fault in ship collisions after a creditor brings a suit for recognition of right in accordance with the provisions of Paragraph 1 of Article 116 of the Special Maritime Procedure Law, the procedure of recognition of right as prescribed in the Special Maritime Procedure Law shall not be applied to the trial of the case, and the parties concerned may proceed with an appeal against the judgment or ruling made by the maritime court according to law.

**Article 12** Ship operators as prescribed in Article 204 of the Maritime Law shall refer to registered ship operators, or persons who accept the entrustment of the ship owners to actually use and control the ships and to undertake responsibilities for the ships, but not including non-vessel operating common carrier business operators.

**Article 13** If a liable party does not apply for the establishment of the fund for limitation of liability for maritime claims, it does not affect him in the defense of the limitation of liability for maritime claims against the maritime claims as prescribed in Article 207 of the Maritime Law in litigation.

**Article 14** If a liable party does not defend on the limitation of liability for maritime claims, the maritime court shall not initiatively make a ruling by applying the provisions on the limitation of liability for maritime claims of the Maritime Law.

**Article 15** If a liable party does not defend on the limitation of liability for maritime claims before the judgment of the first instance is made and the defense is filed in the second instance or retrial, the people's court shall not support such a defense.

**Article 16** If a liable party does not defend on the limitation of liability for maritime claims against the maritime claims as prescribed in Article 207 of the Maritime Law, and the creditor, in accordance with the relevant effective judgment or arbitral award, applies for the execution of the liable party's property other than the fund for limitation of liability for maritime claims, the people's court shall support such an application, except when the creditor applies for registration of creditor's rights by taking the above legal instruments as evidence for creditor's rights and is approved upon ruling of the maritime court.

**Article 17** The maritime claims which may limit the liability as prescribed in Article 207 of the Maritime Law do not include the claims raised from floating, removal, demolition or from making them harmless of the submerged, wrecked, stranded or abandoned ships, or from removal, demolition or from making them harmless of the cargo on board.

If a liable party is subject to the claims prescribed in the preceding paragraph because of ship collisions and makes recourse against the opposite ship on the losses caused therein, and the party against which the claim is filed claims to limit the liability in accordance with the provisions of Article 207 of the Maritime Law, the people's court shall support such a claim.

**Article 18** The “liable party” as prescribed in Article 209 of the Maritime Law refers to the liable person himself in a maritime accident.

**Article 19** Where a maritime claimant, on the ground of the unseaworthiness of the ship in a maritime accident, claims that the liable party is not entitled to the limitation of liability, but cannot prove that the losses which give rise to the claims are resulted from the reckless act or omission of the liable party himself done with the intent to cause such losses or with knowledge that such losses would probably occur, the people's court shall not support such a claim.

**Article 20** The fund for limitation of liability for maritime claims shall be established in RMB, and the amount thereof shall be calculated in terms of the Special Drawing Rights to RMB conversion method on the effective date of the ruling of the court on approving the establishment of the fund.

**Article 21** The interest as prescribed in Article 213 of the Maritime Law shall be calculated in terms of the benchmark interest rate in the same period of the one-year loan of the financial institutions determined by the People's Bank of China from the date of the occurrence of the maritime accident until the date of the establishment of the fund.

Where the fund for limitation of liability for maritime claims is established in the way of guarantee, the interest in the period of the establishment of the fund shall be calculated in terms of the benchmark interest rate in the same period of the one-year loan of the financial institutions determined by the People's Bank of China.

**Article 22** As to a case for which a final judgment has been made before these Provisions come into force, if the people's court retries the case, these Provisions shall not apply.

**Article 23** Where there is any discrepancy between these Provisions and the judicial interpretations made by this Court before these Provisions come into force, these Provisions shall prevail.