## Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Marine Freight Forwarding

The Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Marine Freight Forwarding, as adopted at the 1538th meeting of the Judicial Committee of the Supreme People's Court on January 9, 2012, are hereby issued, and shall come into force on May 1, 2012.

(No. 3 [2012] of the Supreme People's Court)

To correctly try cases of disputes over marine freight forwarding and protect the legal rights and interests of parties, these Provisions are made pursuant to the General Principles of the Civil Law of the People's Republic of China, the Contract Law of the People's Republic of China, the Maritime Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China, the Special Maritime Procedure Law of the People's Republic of China and other relevant provisions and in light of trial practice.

**Article 1** These Provisions apply to the following disputes arising when freight forwarding enterprises handle marine freight forwarding affairs upon the entrustment of consignors:

1. disputes arising from the rendering of services such as booking space, customs declaration, quarantine declaration, inspection declaration and insurance services;

2. disputes arising from the rendering of services such as packaging, loading inspection, unloading inspection, container packing and unpacking, allocation and transshipping;

3. disputes arising from the making or delivery of documents or the settlement of expenses;

4. disputes arising from the rendering of storage and overland transport services; and

5. other disputes arising from the handling of other marine freight forwarding affairs.

**Article 2** In the trial of a case of a dispute over marine freight forwarding, if it is to determine whether the freight forwarding enterprise has formed with the consignor legal relationships such as agency, transport, or storage in the course of handling marine freight forwarding affairs, a people's court shall apply different governing laws.

**Article 3** A people's court shall decide whether a marine freight forwarding contractual relationship is established according to the nature of the rights and obligations stipulated in the written contract, the name and manner in which the freight forwarding enterprise receives payment, the type of invoice issued, the fees charged, the trade usage between the two parties and other information on the actual performance of the contract.

**Article 4** When a freight forwarding enterprise issues bills of lading, seaway bills or other shipping documents in its own name in the course of handling marine freight forwarding affairs, if the consignor claims that the freight forwarding enterprise assume carrier's liability on those grounds, a people's court shall uphold such a claim.

When a freight forwarding enterprise issues bills of lading, seaway bills or other shipping documents in the name of the carrier's agent but fails to prove that it has obtained authorization from the carrier, if the consignor claims that the freight forwarding enterprise assume carrier's liability on those grounds, a people's court shall uphold such a claim.

**Article 5** If a consignor and a freight forwarding enterprise have agreed on the power of entrustment, when a party claims that the consignor has agreed on the re-entrustment of marine freight forwarding affairs within the scope of power of re-entrustment, a people's court shall uphold such a claim.

If the consignor and the freight forwarding enterprise have not agreed on the power of re-entrustment, when the freight forwarding enterprise or a third party claims that the consignor agreed to the re-entrustment of marine freight forwarding affairs on the ground that the consignor knew that the freight forwarding enterprise had re-entrusted all or some marine freight forwarding affairs to the third party but did not make any objection, a people's court shall not uphold such a claim, unless the consignor's conduct clearly proves that it accepted the re-entrustment arrangement.

**Article 6** If a party, based on the trade usage of both parties, has reason to believe that an actor has the right to conclude a marine freight forwarding contract on behalf of the other party, when it claims that the contract is established under Article 49 of the Contract Law, a people's court shall uphold such a claim.

**Article 7** If a marine freight forwarding contract stipulates that the freight forwarding enterprise shall deliver documents obtained from the handling of marine freight forwarding affairs after the consignor's payment of relevant expenses, when the freight forwarding enterprise refuses to deliver the said documents on the ground that the consignor has not paid the relevant expenses, a people's court shall uphold such a refusal.

If the contract makes no such stipulations or such stipulations are ambiguous, when the freight forwarding enterprise refuses to deliver the said documents on the ground that the consignor has not paid the relevant expenses, a people's court shall uphold such a refusal, except in the case of bills of lading, seaway bills or other shipping documents.

**Article 8** If a freight forwarding enterprise books space upon the entrustment of the contracting shipper and also delivers goods to the carrier upon the entrustment of the actual shipper, when the actual shipper requests the freight forwarding enterprise to deliver the bill of lading, seaway bill or any other shipping document obtained by the freight forwarding enterprise, a people's court shall uphold such a request.

“Contracting shipper” means a party that concludes a marine shipping contract with a carrier, authorizes another party to do so in its name, or authorizes another party to do so on its behalf.

“Actual shipper” means a party that delivers goods to a carrier with which it has concluded a marine shipping contract, authorizes another party to do so in its name, or authorizes another party to do so on its behalf.

**Article 9** If, after completing marine freight forwarding affairs within the generally authorized powers, a freight forwarding enterprise claims that the consignor pay reasonable expenses, a people's court shall uphold such a claim.

**Article 10** If a consignor claims that a freight forwarding enterprise should assume corresponding liability for compensation on the ground that the enterprise has caused losses to the consignor in the course of handling marine freight forwarding affairs, a people's court shall uphold such a claim, unless the freight forwarding enterprise is able to prove that it is without fault.

**Article 11** If a freight forwarding enterprise, as a result of failure to fulfill the duty of prudence, concludes a marine shipping contract with a non-vessel operating common carrier which has not handled bill of lading registration formalities at the competent Chinese transport department, thus causing losses to the consignor, the freight forwarding enterprise shall assume corresponding liability for compensation.

**Article 12** If a freight forwarding enterprise issues a bill of lading upon the entrustment of a non-vessel operating common carrier which has not handled bill of lading registration formalities at the competent Chinese transport department, when a party requests that the freight forwarding enterprise and the non-vessel operating common carrier assume joint and several liabilities for losses incurred under the bill of lading, a people's court shall uphold such a request.

After assuming its liability for compensation, the freight forwarding enterprise has the right to recover compensation from the non-vessel operating common carrier.

**Article 13** Lawsuits regarding disputes mentioned in Article 1 of these Provisions shall be under the jurisdiction of maritime courts.

**Article 14** If a people's court, in the course of hearing a case, discovers that a freight forwarding enterprise unqualified for non-vessel operations issues bills of lading, seaway bills or other shipping documents in its own name to violate the Regulation of the People's Republic of China on International Marine Transportation, the people's court shall issue judicial advice to the competent transport department recommending that the enterprise be punished.

**Article 15** These Provisions are not applicable to freight forwarding disputes arising from coastal or inland waterway transport.

**Article 16** In the case of any discrepancy between these Provisions and the judicial interpretations issued by the Supreme People's Court before these Provisions enter into force, these Provisions shall prevail.

If a case is pending at the stage of first or second trial after these Provisions enter into force, these Provisions shall apply; if a final judgment has been made for a case before these Provisions enter into force, and a party petitions for retrial of the case or a decision on retrial of the case is made under trial supervision procedures after these Provisions enter into force, these Provisions shall not apply.