

THE MARITIME CODE OF VIETNAM

*Passed by the National Assembly on
30 June 1990*

CHAPTER I

GENERAL PROVISIONS

Article 1

1. The Maritime Code of Vietnam shall apply to legal relations arising from the economic, scientific and technological research, cultural, sporting, social and State service activities of sea-going ships. (herein referred to as *maritime activities*).

Sea-going ships as referred to in this Code means floating vessels, with or without engines which engage in activities at sea and in navigable waters.

2. In cases involving legal relations which arise from maritime activities which are not provided for in this Code, the relevant laws of Vietnam shall be applied depending on the circumstances of each specific case.

Article 2

Maritime activities engaged in by Vietnamese and foreign organizations and by the parties to Vietnamese joint ventures and business co-operation contracts, are encouraged and protected on the basis of respect for the independence, sovereignty and laws of Vietnam and for the international agreements which Vietnam has signed or recognized.

Article 3

Application of this Code :

1. These provisions shall apply to all types of sea-going ships which engage in: carrying cargo, passengers and their effects; in exploiting, exploring, and processing maritime resources at sea; and in conducting other activities for economic purposes, which ships shall hereinafter be referred to as *merchant ships*.

2. The provisions which apply to the carriage of cargo, passengers and their effects, and to the inspection and arrest of merchant ships at sea, and to the civil responsibilities of ship owners shall not apply to sea-going ships engaged in: regulation of navigation; meteorology; hydrography; information and communications; inspection; administration of customs regulations; epidemic prevention; fire extinguishment; piloting; training; environmental protection; or search and rescue, all of which shall hereinafter be referred to as *State service ships*.

3. The provisions which relate to the carriage of cargo, passengers and their effects and to general average shall not apply to sea-going ships engaged in scientific and technical research or sporting activities.

4. Sea-going ships used for military or security purposes of the armed forces and foreign ships shall be subject only to certain provisions of these Regulations.

The provisions which apply to the carriage of cargo and passengers and their effects shall not apply to the transportation of the military by merchant ships.

Article 4

1. Parties to maritime contracts, unless otherwise limited by this Code, may conclude their own separate agreements.

2. Parties to maritime contracts, at least one of whom is a foreign organization or individual, may agree that those contracts be subject to foreign laws and international maritime practices and that any dispute be resolved by arbitration or a court in either of their countries or in a third country.

Article 5

In cases of legal disputes, the law to be applied shall be determined on the basis of the following principles:

1. In cases which involve: the ownership of property on board the ship; charter parties; contracts for the hire of crewmen and for the carriage of passengers and their effects; the division of rescue fees between the owner and the crew of the rescue ship; and the salvaging of wrecked property from the open sea; the laws of the country whose flag is displayed on the ship will prevail.

2. In cases which involve general average, the laws of the port of call immediately after the occurrence of general average shall prevail.

3. In cases which involve a collision, payment for rescue and for the salvage of wrecked property from the sea, the laws of the country having sovereignty over the inland or territorial waters where the accident took place shall prevail.

4. In cases which involve a collision or salvage taking place in the open sea, the laws applied by the arbitrator who, or court which hears the case shall prevail.

5. In cases which involve freight contracts, the laws of the country where the headquarters of the freight agency are located shall prevail.

Article 6

In the event that the provisions of any international agreement which Vietnam has signed or recognized are inconsistent with this Code, the provisions of the international agreement shall prevail.

Article 7

A foreign law shall apply to a maritime contract as provided in this Code or agreed upon in the contract concerned, that is not contrary to Vietnamese law.

CHAPTER II

SEA-GOING SHIPS

Section A

VIETNAMESE SEA-GOING SHIPS

Article 8

1. Only Vietnamese sea-going ships may display flags which indicate Vietnamese nationality.

2. Vietnamese sea-going ships are those which are owned by the Vietnamese State, Vietnamese organizations whose headquarters are located in Vietnam, Vietnamese citizens living permanently in Vietnam, and those ships owned by foreigners which have been allowed to be registered in Vietnam.

3. After registration in the *National Registry Book of Sea-going Ships of Vietnam* or the grant of a temporary permit to display a flag of nationality by a Vietnamese foreign diplomatic mission or consulate, Vietnamese sea-going ships shall be both entitled and obliged to display flags which indicate Vietnamese nationality.

Article 9

1. Vietnamese sea-going ships shall receive priority in their carriage of cargo and of passengers and their effects between Vietnamese seaports. Foreign sea-going ships shall be allowed to carry cargo and

passengers and their effects between Vietnamese seaports only in those cases specified by the Minister of Transport, Communications and Post.

2. The Council of Ministers shall specify the activities in which privately owned Vietnamese sea-going ships may engage.

Article 10

Each sea-going ship shall be given a name by its owner. The name must be acceptable to the Vietnam Register of Shipping.

Article 11

The ship owner is the person who owns the ship. A ship owner is entitled to display its own flag on its ship.

Article 12

1. Vietnamese ships shall be registered in the *National Registry Book of Sea-going Ships of Vietnam*.

The registration of sea-going ships in Vietnam shall be administered by a State-run ship registering agency and fees shall be collected accordingly.

Interested persons may request a copy of part or the full text of the *National Registry Book of Sea-going Ships of Vietnam*.

2. The Council of Ministers shall specify the circumstances where Vietnamese owned sea-going ships are to be registered abroad and where foreign owned sea-going ships are to be registered in Vietnam.

3. The Council of Ministers shall make regulations for the Vietnam Register of Shipping, the procedures for ship registration, and the administrative penalties to be imposed for breaches of regulations relating to the registration of ships in Vietnam.

Article 13

A sea-going ship shall be registered in the *National Registry Book of Sea-going Ships of Vietnam* only after its foreign nationality has been surrendered and the Vietnam Register of Shipping or a register of shipping of a foreign agency authorized by the Vietnam Register of

Shipping, has examined its technical condition, classified its grade, measured its capacity and granted it the necessary certificates.

Article 14

1. The *National Registry Book of Sea-going Ships of Vietnam* shall, in respect of each ship registered, contain the following information:

- a) Name of the ship, name of its owner and details of the location of its headquarters as registered by the ship owner, its international Code number and type, and the purpose of its operation.
- b) Date of registration and registered number.
- c) Name of shipyard and place where the ship was built and the date on which it was commissioned.
- d) Technical specifications of the ship.
- e) Minimum crew levels required.
- g) Ownership and any changes in ownership.
- h) Date of, and reason for, cancellation of ship registration.

2. Each amendment made to the contents of registration as specified in clause 1 of this article shall be the subject of a written entry in the *National Registry Book of Sea-going Ships of Vietnam*.

3. The details of registration which have been recorded in the *National Registry Book of Sea-going Ships of Vietnam* shall be legally binding upon all persons concerned.

4. After the completion of registration procedures, the ship shall be granted a *Ship Registration Certificate* of Vietnam. This certificate shall serve as confirmation of the Vietnamese nationality of the ship.

Article 15

1. The registration of Vietnamese sea-going ships shall be automatically removed from the *National Registry Book of Sea-going Ships of Vietnam* in the following cases:

- a) The ship is destroyed or wrecked.
- b) The ship is missing.
- c) The ship is damaged beyond repair or in need of repairs which are not financially viable.

d) There are not sufficient grounds to allow the ship to display flags of Vietnamese nationality.

e) The ship is no longer categorized as a sea-going ship.

2. In the cases mentioned in clause 1(c) and 1(e) of this article, or when the ship is arrested as security for a debt owned, its registration shall be officially cancelled provided the debtor agrees to such cancellation.

3. Registration of Vietnamese sea-going ships may be cancelled upon the request of the ship owners.

Article 16

1. Ship owners shall be responsible for the completion of procedures for ship registration no later than sixty (60) days from the date of delivery of the ship in Vietnam or, if it is received abroad, from the date on which it arrives at its first Vietnamese seaport.

2. Ship owners shall be responsible for promptly providing the shipping registration agency with all the particulars of their ships.

Section B

MARITIME SAFETY AND PREVENTION OF ENVIRONMENTAL POLLUTION

Article 17

Sea-going ships shall be used only for the purposes registered and only after the structure, equipment, documents, crew levels, and particular skills of the crew of the ships fully conform with the regulations issued by the Minister of Transport, Telecommunications and Post on the maritime safety of ships, their crew, and on the prevention of environmental pollution.

Article 18

1. After examination and confirmation by the Vietnam Register of Shipping or any registrar of a foreign shipping agency authorized by

Vietnam, that sufficient conditions exist to ensure seaworthiness in accordance with the State standards of Vietnam or those required under international agreements which Vietnam has signed or recognized, Vietnamese sea-going ships shall be issued with certificates of seaworthiness

2. A certificate of seaworthiness must clearly indicate its date of expiry. In the event that the ship is unable to attend an assigned port for regular checking of its condition to ensure seaworthiness, the date of expiry of its certificate shall be automatically extended for a period of up to ninety (90) days. This automatic extension shall terminate immediately upon the ship arriving at its assigned port for inspection.

3. In the event that major modifications are made to the ship which seriously affect its seaworthiness, its certificate of seaworthiness shall automatically become void.

4. Where sufficient grounds exist to doubt the seaworthiness of the ship, the Vietnam Maritime Safety Inspector may suspend all of its activities. He may undertake an examination of the ship's seaworthiness notwithstanding that the ship has acquired all certificates of seaworthiness.

Article 19

1. The owner of the ship and its captain shall be responsible for the creation of favourable conditions for inspection and review of its seaworthiness and technical condition.

2. The owner of the ship and its captain shall, before the ship commences operation, be responsible for its state of repair and for ensuring that the ship is maintained in a seaworthy condition upon the request of the Vietnam Register of Shipping and the Vietnam Maritime Safety Inspection Board.

Article 20

1. During their operation at sea or in permitted navigable waters, sea-going or river-going ships and amphibious vessels, including those

of the armed forces of Vietnam, shall observe the regulations on prevention of collisions issued by the Minister of Transport, Telecommunications and Post.

2. Structures built or vessels located at sea or within navigable waters in which sea-going ships are allowed to operate, shall be equipped with sufficient safety warning devices as stipulated in the regulations on maritime warning systems issued by the Minister of Transport, Telecommunications and Post.

Article 21

1. During their operation in the inland and territorial waters of Vietnam, foreign ships shall strictly observe the regulations on seaworthiness issued by Vietnam, unless other agreements exist which have been made between Vietnam and the country whose flag is displayed by the foreign ship concerned.

2. The Vietnam Maritime Safety Inspection Board is entitled to deal with and impose administrative penalties in respect of offences committed by foreign sea-going ships operating in the inland and territorial waters of Vietnam, provided it has sufficient grounds to suspect that the seaworthiness of the ships breaches the seaworthiness regulations of Vietnam.

Article 22

Inspections of maritime safety and review of the conditions of sea-going ships shall be conducted in accordance with the provisions of this Code. Searches which take place on board sea-going ships shall be conducted in full compliance with the law and must not affect the maritime safety of the ships concerned.

Article 23

1. While operating in the territorial waters of Vietnam, sea-going ships of Vietnam and of foreign countries shall observe strictly the

regulations of Vietnam on environmental protection and the provisions of any international agreements which Vietnam has signed or recognized.

2. The sea-going ships of Vietnam and foreign countries which specialize in the carriage of oil, oil products or any other dangerous cargo are required, when operating in the seaports or other maritime areas of Vietnam, to be insured in respect of the civil liability of their owners in the event of environmental pollution.

3. Foreign atomic powered sea-going ships shall be permitted to operate in the inland and territorial waters of Vietnam only after a permit to do so has been granted by the Chairman of the Council of Ministers.

Article 24

The Council of Ministers shall issue regulations on the organization and activity of the Vietnam Maritime Safety Inspection Board and the Vietnam Register of Shipping.

Section C

CONTROL OF CAPACITY OF SEA-GOING SHIPS

Article 25

1. Vietnamese and foreign sea-going ships must, while operating in the seaports or shipping channels of Vietnam have the requisite certificates on ship capacity issued by the Vietnam Register of Shipping, a relevant foreign shipping registry or an authorized foreign capacity control agency. The capacity certificates must strictly conform with the State standards of Vietnam or with the provisions of international agreements which Vietnam has signed or recognized.

2. In the event that the requirements referred to in clause 1 of this article are not satisfied, the ship owner or captain shall request that the Vietnam Register of Shipping examine the capacity of the ship and shall pay all associated costs.

Section D
DOCUMENTS OF SHIPS

Article 26

Vietnamese sea-going ships shall, in accordance with the regulations issued by the Minister of Transport, Telecommunications and Post, keep on board all requisite log books, certificates and other documents in relation to the ship and its crew.

Section E
RIGHTS TO OWNERSHIP OF SEA-GOING SHIPS

Article 27

1. A contract for the transfer of ownership of a sea-going ship in Vietnam shall be in writing and certified by a notary public. In the event that the contract is made in a foreign country, it shall be made in accordance with the procedures stipulated by the law of the country in which that contract is made.

2. The transfer of ownership of a Vietnamese sea-going ship shall take effect only after the transfer has been recorded in the *National Registry Book of Sea-going Ships of Vietnam* located at the place where the ship is registered.

3. Following completion of the procedures necessary for the transfer, the entire ship and all property on board shall transfer to the ownership of the transferee unless the parties to the contract agree otherwise. Property on board a ship includes those accessories and equipment which do not actually form fixtures of the ship.

Article 28

All regulations governing the transfer of ownership of sea-going ships shall also apply to the transfer of shares of ownership of those ships.

Article 29

1. Ship owners are entitled to mortgage a ship or to give possession of it as security to another person in accordance with the provisions of the law.

2. The mortgage charge or possession of a ship as security in Vietnam shall be governed by the law of Vietnam. Mortgages and security contracts relating to a ship in Vietnam shall be evidenced in writing and certified by a notary public.

3. The mortgage or possession of a Vietnamese ship as security in a foreign country shall be governed by the law of the country where the contract concerned was made.

4. The mortgage or possession of a Vietnamese ship shall take effect only after it has been registered in the *National Registry Book of Sea-going Ships of Vietnam*.

Article 30

1. Creditors are, in accordance with a signed contract or order of a court, entitled to a maritime lien over a ship as provided by the law in order to secure payment of their priority debts regardless of whether the ship has already been arrested, mortgaged or given as security for the payment of other debts.

2. A maritime lien over a ship shall not be affected by any change to its owner or operator regardless of whether their purchase of the ship was with or without notice of the fact that the ship was under arrest at the time of sale.

3. A declaration by a creditor of its maritime lien over a ship shall be valid only after it has been recorded in the *National Registry Book of Sea-going Ships of Vietnam* located at the place where the ship is registered.

Article 31

Priority debts are those which will be given priority over other debts and which shall be paid in the following order:

1. Compensation for loss of life, injury, or other damage to human health and in respect of rights generated by labour contracts.

2. All court fees, judgment execution fees, fees incurred in protecting the interests of creditors in the maintenance and sale of ships, and in dividing the proceeds of such sale, port fees, taxes, and other relevant public fees, fees for pilotage, and fees for the protection and maintenance of ships after arrival at their last port.

3. Cost of salvage and of general average.

4. Compensation to be paid in respect of collisions or other maritime casualties and the loss of cargo and luggage, damage to port equipment and the cost of berth hire, voyage fees, and wharfage facilities.

5. Other amounts of money owed under a contract signed by the captain or as the result of any other action taken by the captain within his powers as provided for by laws in force at the time when the ship was at a registered port for repair or during its voyage; claims for compensation lodged by the captain himself even when he is the owner or operator of the ship, or by the ship Chandler, repairer, creditor, or other persons who have entered a contract with the captain.

Article 32

1. The settlement of the claims of creditors which are within the value of the property being held shall be determined by a court.

2. Debts shall be settled one after another in accordance with the order of priority contained in clauses 1 to 3 of article 31 of this Code.

3. Priority debts which originate from the same voyage and which fall within the same category, as referred to in article 31 of this Code, shall, in the event that the amount of money allocated is insufficient to cover the total amount of each debt be settled in proportion to the value of each debt. Some of the debts referred to in clauses 3 and 5 of article 31 of this Code, may be settled earlier than other debts of the same type even though the former may have been incurred later than the latter.

4. Debts arising from the same event shall be considered as originating at the same time.

5. A maritime lien held over a ship, as the result of its last voyage, shall be given priority for settlement over other maritime liens held over it which arise out of other voyages.

6. Debts arising from the same labour contract but in relation to different voyages shall be settled at the same time as debts arising from the last voyage.

Article 33

1. Creditors are entitled to a maritime lien in respect of the following debts:

a) Costs of carriage of goods and luggage *and fares of passengers* connected with a debt owing under a labour contract, which costs are *incurred during the contract period* provided that such costs are incurred for the purpose of collecting the debts owing under the contract.

b) Compensation for damage to a ship which remains unrepaired and for payment of freight.

c) Compensation upon general average being declared for a ship provided that this includes other amounts of money referred to in this article.

d) Payment for the salvage of a ship excluding amounts paid to the ship's crew or other persons working for its owner.

2. The maritime lien referred to in clause 1 of this article shall not be available in respect of amounts of money paid as *compensation* by the insurer of the ship.

Article 34

1. A maritime lien held in respect of *priority debts*, as referred to in clause 5 of article 31 of this Code, shall terminate after one hundred and eighty (180) days and, in respect of all other debts, shall terminate after one year.

2. The duration of a maritime lien shall commence on:

- a) The date on which rescue operations ceased where the maritime lien is held in respect of rescue payments.
- b) The date on which loss or damage arose in cases where the maritime lien is held in respect of loss or damage arising from collisions or other maritime casualties.
- c) The date of delivery of cargo, passengers and their effects or the date on which such delivery should have taken place, in cases where the maritime lien is held in respect of damages arising out of the loss of or damage to cargo and passengers' effects.
- d) The date on which debts arose in cases involving the debts referred to in clause 5 of article 31 of this Code.
- e) In the case of all other costs, the due date for settlement.

3. The maritime lien held to secure payment of debts as referred to in article 33 of this Code shall terminate upon the ship owner discharging all relevant debts. In the event that a payment is withheld by the captain or other person designated by the ship owner or operator to make payment, the maritime lien shall remain in force.

4. In the event that a court fails to arrest a ship which is in the inland or territorial waters of Vietnam, in order to protect the interests of creditors who are permanent residents of, or whose head office is located in Vietnam, the duration of any maritime lien referred to in clauses 1,2 and 3 of this article shall expire after thirty (30) days from the date of arrival of the ship at its first port in Vietnam, provided that such date of expiry is not later than the date which is the second anniversary of the date on which the debt was incurred.

Article 35

1. Upon the request of the creditor, the port service director may temporarily detain for a period of up to seventy-two (72) hours the following property:

- a) Sea going ships as security for complaints made against them in respect of port fees or as compensation for damage to port facilities, quays, courses, anchorage, or docks.

h) Ship wrecks or other obstructions to maritime activities as security in respect of claims made in relation to their disposal.

2. It is the responsibility of the creditor to request that any of the properties referred to in clause 1 of this article be temporarily detained. Any claims made against such temporary detention must be made within two years from the date on which the detention occurred.

3. After seventy-two(72) hours, property temporarily detained as provided for in clause 1 of this article shall, unless a court orders otherwise, be released.

Article 36

1. Where it is necessary to ensure the resolution of disputes brought before them, the courts of justice at the provincial or city level directly under central authority and corresponding administrative units shall issue warrants for the arrest of ships.

2. Foreign sea-going ships may be arrested in Vietnam upon request being made by a foreign court of justice in order to ensure the settlement of a case which has been brought before it.

3. If after thirty days from the date on which the captain receives the warrant to arrest the ship, the ship owner fails to provide security for or pay any amounts outstanding, the court of justice which issued the warrant shall be entitled to auction the ship.

Article 37

1. If the ship has been arrested or temporarily detained, or is the subject of a maritime lien, it shall be released immediately upon the ship owner or ship operator providing security for or completely clearing all debts. Creditors shall not be entitled to take any action which violates the property or other rights of the ship owner or operator.

2. Sea-going ships may be released upon request by those who originally sought their arrest, temporary detention, or a maritime lien over them. All associated costs shall be borne by the maker of the request.

CHAPTER III

SHIP CREW

Article 38

The crew of a ship shall comprise a captain, commissioned officers, and other persons working within its manning level who shall hereinafter be referred to as *crewmen*.

Article 39

Crewmen working on board a Vietnamese sea-going ship must be Vietnamese citizens. In certain cases provided for by the Minister of Transport, Telecommunications and Post, Vietnamese citizens may be permitted to work on foreign sea-going ships and citizens of foreign countries may be permitted to work on Vietnamese sea-going ships.

Article 40

Crewmen working on Vietnamese sea-going ships must satisfy the requisite criteria in respect of health and specialized expertise and obtain certification of their area of specialization as provided by the Minister of Transport, Telecommunications and Post.

Article 41

1. Crewmen working on Vietnamese sea-going ships are obliged to fulfil their responsibilities in accordance with their positions.

2. The Minister of Transport, Telecommunications, and Post shall define the positions, and the corresponding responsibilities and tasks of crewmen working on board Vietnamese sea-going ships which

specialize in the exploitation and processing of maritime products shall be stipulated by the Minister of Marine Products.

Article 42

1. The labour regulations which govern Vietnamese crewmen working on Vietnamese sea-going ships and the rights and obligations of those crewmen shall be defined on the basis of Vietnamese law.

2. In the event that the owner of the ship or its captain requests that its Vietnamese crewmen leave the ship, the owner is obliged to pay their necessary living expenses during their journey back to the place provided for in the labour contract, or in the event that the labour contract does not provide otherwise, to the port at which they were originally recruited.

3. In cases where the private property of Vietnamese crewmen is damaged or lost due to accidents on board the ship, the ship owner shall pay compensation in respect of the loss in accordance with market prices at the place and time at which payment of compensation occurs. Crewmen who themselves are the direct cause of accidents are not entitled to demand compensation for damage to or loss of their property.

4. The labour regulations, which govern Vietnamese crewmen working on foreign sea-going ships and foreign crewmen working on Vietnamese sea-going ships, and the rights and obligations of those crewmen shall be defined on the basis of the crewmen-hiring contracts.

Article 43

The captain of a ship has the highest command on board the ship. All persons present on board the ship must obey every order and instruction of the captain.

Article 44

1. The captain is, except in cases of extreme necessity, not permitted to leave the ship while it is on its voyage or in danger.

2. The captain is obliged personally to command the ship when it enters or leaves a port, canal or river route and when particularly difficult and dangerous conditions arise.

3. The captain is obliged to use a pilot or tug to ensure the safety of the ship in the cases provided for by the law.

The use of a pilot shall not reduce or exempt the captain from his obligations as contained in clause 2 of this article.

Article 45

1. The captain is , in accordance with the ethical requirements of his occupation, obliged to exercise fully and strictly all duties falling within the area of his responsibility.

2. The captain is obliged to take due care of the ship both before and while the ship is on its voyage and ensure compliance with regulations relating to seaworthiness, equipment, the ship's hull, supplies, qualifications of the crew and other issues which relate to the maritime safety of the ship and persons on board.

3. The captain may refuse to allow the ship to commence its voyage if, in his opinion, the ship does not sufficiently satisfy the necessary seaworthiness regulations.

4. The captain is entitled to commend, reward or discipline crewmen under his command, to refuse to recruit crewmen or request that crewmen who fail to meet the requirements of their specialized skill, or who breach the regulations, leave the ship.

Article 46

1. The captain shall ensure that cargo is looked after, preserved while on board, and properly unloaded from the ship notwithstanding that these tasks have been delegated to other responsible people.

2. The captain shall take due care to ensure that the cargo on board the ship is not damaged or lost; to take measures necessary to protect the interests of persons interested in the cargo; and shall, as soon as

practicable, inform those people of any events which occur and specifically affect their cargo.

Article 47

1. The captain is obliged to take every measure necessary to protect the ship, and the people and property on board.

2. In the event that the port of destination is threatened by war or blocked, the captain is obliged to lead the ship to the nearest safe port and to take every measure necessary to protect the ship and the people and property on board as well as its documents.

3. In the event that a ship is in danger of sinking or being destroyed, the captain shall use all means available first to rescue passengers and then the crew.

The captain shall be the last person to leave the ship after attempting every possible means of retrieving its log books, navigational maps, funds, and other documents and objects of great value.

Article 48

1. The captain is obliged to search for and rescue those people in danger at sea provided that the performance of this obligation does not pose any serious danger to the ship or the people on board.

The ship owner shall not be responsible for any breach of this obligation which may be committed by the captain.

2. The captain of a ship which is in danger at sea may request assistance and after reaching agreement with a ship that arrives for this purpose, appoint a ship to carry out the rescue.

Article 49

1. In his ordinary work which includes the navigation and management of the ship and its cargo, the captain is the representative of the ship owner and of all other persons with interests in the cargo carried on the ship.

2. Within the scope of work referred to in clause 1 of this article, the captain has the right to institute legal proceedings on behalf of the ship owner and/ or persons with interests in its cargo, and may bring or take part in proceedings before a court when the ship is not docked at its registered port, except where the ship owner or person with interests in its cargo has declared that representation to be restricted either fully or in part. The declaration shall be binding on third parties who have knowledge of it.

Article 50

1. Where it becomes necessary, and the ship is not at its registered port, the captain may obtain credit on behalf of the ship owner, or borrow cash in a sufficient amount to repair the ship, recruit further crewmen, obtain further supplies or for other purposes necessary for the ship to resume its voyage.

2. In the event that it is not possible or practical to wait for money or instructions to be received from the ship owner, the captain may, within the limits referred to in clause 1 of this article, sell part of the property or excess supplies of the ship.

3. During the ship's voyage, the captain may, in order to ensure the completion of the voyage and, after using every available means and still unable to obtain instructions from the shipper of the cargo or the ship owner, mortgage or sell part of the cargo.

4. In selecting the method to be adopted to obtain the funds required to complete the voyage, the captain shall minimize the damage caused to the ship owner or persons with an interest in the cargo.

Article 51

1. In the event that the supplies of foodstuffs and food grains on board the ship become exhausted while it is on its voyage, the captain may requisition part of any cargo on board the ship which comprises foodstuffs and food grains. Where necessary, the captain may

requisition foodstuffs and food grains from the people on board the ship. This requisition shall be in writing.

2. The ship owner is obliged to compensate all persons whose foodstuffs or food grain is requisitioned.

Article 52

1. The captain is responsible for making entries in the ship's log book in the presence of the ship's medical personnel and two witnesses, in relation to any births or deaths which take place on board the ship and other related matters. The captain is obliged to make a list of and store the property left on board the ship of deceased persons.

2. The captain shall be responsible for informing the authorized *registry of births and deaths* at the first Vietnamese port where the ship anchors, or where the ship enters a foreign port, an authorized diplomatic representative or consulate of Vietnam, of all cases of birth and death which occur on board the ship and shall deliver to them the testament of the deceased and a list of all property left on board by him.

3. After making every effort to seek instructions from the ship owner and to contact the relatives of the deceased, the captain shall, on behalf of the ship owner, organize the funeral preparation and burial ceremony of the deceased.

All expenses incurred shall be met in accordance with the provisions of the law.

Article 53

1. Where a criminal act takes place on board the ship, the captain shall have the responsibility to:

- a) Undertake all necessary preventive measures and maintain a file on the matter as provided for by the law.
- b) *Collect evidence and, depending on the particular circumstances, deliver the person who has committed the criminal act and the relevant file to an authorized State body*

located at the first Vietnamese port at which the ship anchors; a ship of the Vietnam armed forces that it encounters while on its voyage at sea; and where the ship enters a foreign port, the captain shall have the power and duty to notify an authorized diplomatic representative or consulate of Vietnam of the matter and observe all of its instructions.

2. Where necessary, in order to maintain the safety and order of the ship, the people on board, and the cargo being carried by it, the captain may detain any person on board the ship and place that person in solitary confinement.

Article 54

1. When a ship enters a foreign port, and provided that it is possible to do so the captain shall be obliged immediately to inform an authorized diplomatic representative or consulate of Vietnam of its arrival.

2. The captain, upon the request of the diplomatic representative or consulate, is obliged to produce the documents of the ship.

Article 55

1. Immediately after any maritime casualty occurs or any maritime casualties or particular events relating to maritime safety are detected at the place where the ship operates, the captain is obliged to inform the nearest authorities of the casualty or events.

2. Upon the ship anchoring for the first time at a Vietnamese port after a maritime accident or the total loss of a ship has occurred, the captain shall report the matter in detail to the Vietnamese bodies responsible for maritime safety. The captain and other people concerned may be questioned by those bodies in the event that it is considered necessary to do so.

3. *Maritime accidents* as referred to in this Code are collisions, casualties, and other breakdowns which involve the ship and result in: the loss of human life; injuries; the ship being damaged, sunk, destroyed; explosions; the ship being stranded; environmental pollution.

Article 56

1. In the event that an accident occurs and the ship, any person on board, or the cargo being transported by it is or are damaged, injured or lost or there is an expectation of possible losses, the captain shall, no later than twenty four (24) hours after the casualty occurs or the ship arrives at its first port, submit a Note of Protest and report to an authorized body for confirmation of the submission of the Protest.

2. The Minister of Transport, Telecommunications and Post shall specify which bodies are to have the power to confirm the submission of a note of protest at a Vietnamese seaport, and the order and procedures to be followed for confirmation of a note of protest.

3. While a ship is on its voyage abroad, the captain shall submit the note of protest to an authorized diplomatic representative or consulate of Vietnam or to a local authorized body in order that its submission may be recorded.

CHAPTER IV

SEAPORTS AND PORT AUTHORITY

Article 57

1. A *seaport* as referred to in this Code is a port which is opened for the operation of sea-going ships. A seaport shall consist of the following:

- a) Depots, quays, docks, premises, shipyards, maritime administrative and service compounds, hereinafter referred to as *port complexes*.
- b) The waters in front of docks, mooring areas, port entrances and exits, and weather break areas, hereinafter referred to as *port waters*.

2. *Maritime zones* as referred to in this Code include the waters of various ports and shipping lanes.

3. The Council of Ministers shall make decisions regarding the opening of seaports.

The Minister of Transport, Telecommunications and Post shall declare the opening of seaports, and shall issue provisions which regulate maritime activity in seaport waters and maritime zones.

Article 58

1. The body responsible for *State management of maritime* activities in maritime zones and seaports is the port authority.
2. The Minister of Transport, Telecommunications and Post shall, following consultation with the people's committees of provinces and cities, directly under the central authority and corresponding administrative units, define the areas of responsibility of the port authority and shall determine its organization and supervise its operation.

Article 59

The person who has the highest command within the port authority is its director. The director of the port authority has the following duties and powers:

1. To organize the implementation of the regulations governing the activities of the port authority, supervise the implementation of rules and regulations designed to ensure maritime safety, prevent environmental pollution and ensure maritime hygiene and order.
2. To refuse to permit ships to enter or leave the port where those ships do not sufficiently satisfy safety conditions or have not discharged all debts or paid all fines imposed for breaches of the rules and regulations which govern the operation of the port.
3. To exercise a maritime lien over any ship or to execute a warrant of seizure issued by a State authority as stipulated by the law.
4. To grant permits to ships and crews to operate in controlled areas, and to revoke permits previously granted due to lack of compliance with maritime safety conditions.

5. To organize search and rescue operations for ships or persons in the areas under its control.

6. To impose administrative penalties in respect of breaches of the rules and regulations on maritime safety, prevention of environmental pollution, and the guarantee of maritime hygiene and order.

Article 60

1. State bodies for management of maritime activities, security, quarantine, customs, duties, culture, fire extinguishment, explosion prevention, environmental pollution and other State management bodies shall, within their respective powers and duties, operate at seaports in accordance with the provisions of the law.

2. State management bodies which are required to function permanently at a port may establish their headquarters at that port. The director of the port authority shall create favourable conditions for the functioning of those bodies.

3. The Council of Ministers shall issue regulations governing the co-ordination of work between the State management bodies operating at seaports.

CHAPTER V

GENERAL PROVISIONS

Section A

CARRIAGE CONTRACTS

Article 61

1. *Carriage contracts* are contracts signed by the carrier and the shipper under which the carrier receives fees paid as freight by the

shipper and uses sea-going ships to transport cargo from the port of loading to the port of destination.

Carriage contracts shall be signed in the form agreed upon by the parties and shall serve as the basis on which the legal relationship between the carrier and the shipper is to be defined.

2. The carriers are the users of sea-going ships either owned by them or chartered from other ship owners for the purpose of carrying cargo.

3. *The shipper may appoint a shipping agent to deliver cargo on its behalf to the carrier which agent shall hereinafter be referred to as the consignor.*

The provisions of the chapter in this Code which apply to consignors shall also apply to the shipper in the event that he delivers cargo to the carrier himself.

Article 62

1. A carriage contract may be signed on the condition that the carrier reserves the entire ship or part thereof for the sole use of a charterer to transfer cargo by voyage or within a certain period of time, *which contract shall hereinafter be referred to as a charter party.*

2. A carriage contract may be signed on the condition that the carrier shall not be required to reserve for the charterer the entire ship or any part thereof but rather shall carry cargo on the basis of its type, quantity, size, and weight which contract shall hereinafter be referred to as a *slot charter contract.*

Article 63

The charterer may transfer his rights under the contract to a third party without the consent of the carrier but shall remain responsible for the performance of the carriage contract based on the principle of joint liability with the third party to whom his rights have been transferred.

Article 64

The carrier shall carry cargo using the ship specified in the contract except in the following circumstances:

- a) A charter party: the carrier shall only substitute another ship for the chartered ship after he has obtained the consent of the charterer.
- b) Slot charter contract: the carrier may substitute another ship for the chartered ship provided that the substituted ship is of the same type and has sufficient capacity to carry the cargo and that the contract does not prohibit the replacement of ships and the charterer has been informed of the replacement.

Article 65

1. Claims in relation to the performance of carriage contracts shall be made within one year commencing from the date of payment of freight.

2. Claims made in relation to damage or loss of cargo as evidenced by a bill of lading or relevant invoice shall be made within one year commencing from the date of delivery of cargo to the consignee or the date on which such cargo should have been delivered.

Article 66

The provisions of this Code shall not apply to the shipment of postal items or parcels. The Council of Ministers shall issue regulations on the shipment of postal items or parcels by sea-going ships.

Section B

CARGO LOADING

Article 67

1. The carrier shall be bound to prepare the ship at the loading port to be capable of receiving the cargo at the time and place agreed, and shall deliver to the loading port all necessary materials in accordance with the terms agreed in the freight contract.

2. The carrier shall be bound before and at the commencement of the voyage to exercise due diligence to make the ship seaworthy,

properly manned, equipped and supplied and make the holds, silos, refrigerating and cooling chambers and all other parts of the ship in which the cargo are carried, *fit and safe* for their reception, carriage and preservation in accordance with the particular characteristics of the cargo concerned.

Article 68

1. Where the contract does not specify the place at which the cargo is to be loaded, the carrier shall make the ship available at the place locally regarded as the loading place.

2. Where the shipment is to be carried pursuant to a ship charter party the carrier shall make the ship available at the place proposed by the shipper. This place must be safe, and must not block the entrance or exit lanes or delay the loading of the cargo on the ship. Where there is more than one shipper and they are unable to agree among themselves on the place at which the cargo is to be loaded or they have not indicated that place clearly, the carrier shall make the ship available at the place locally regarded as the cargo loading point.

3. The charterer, except where chartering the ship by voyage charter, may request that the carrier make the ship available at a place other than the loading place specified in the contract. The charterer shall meet all costs which arise as a result of this request.

4. A slot charterer may request that the carrier change the loading place provided that such a change is provided for in the contract or permitted by local practice.

Article 69

1. Where a shipment is carried out on the basis of a charter party, the carrier shall inform the shipper and the consignor in writing, of the ship's arrival at the loading port and its readiness to receive cargo. That form shall hereinafter be referred to as a *notice of readiness*.

* The date and time for the *notice of readiness* to be provided shall be agreed by parties to the contract and in the event that no agreement is reached, local practice may be applied.

* The carrier shall indemnify the shipper and consignor in respect of all losses which arise from the *notice of readiness* containing false information at the time of its receipt.

2. Where the *shipment is carried on the basis of a slot charter*, the carrier shall give advance notice to the shipper or the consignor of the time and place of loading and of the date for cargo delivery. This requirement shall not apply to ships on special route except where a *change occurs to the ship's schedule*.

Article 70

1. The loading period shall be agreed upon by parties to the ship charter party and in the event that no agreement is reached, local practice shall be applied.

2. Any interruptions caused by the shipper or consignor as well as *any period required in order to change the loading ports of the ship at the request of the shipper* shall be included as part of the loading period.

3. Any period of interruption caused to the carrier by *force majeure*, or by weather conditions which *affect the proper loading of ships* or which cause danger to them, shall not be included as part of the loading period.

4. The shipper or consignor may agree with the carrier on *incentives to be provided for the loading of cargo ahead of schedule* or on the penalties to be imposed in respect of delays which occur in the scheduled loading period.

Article 71

1. Parties to a ship charter party may agree to include in the contract a provision allowing extra time for loading in addition to the period contained in article 70 of this Code, which time shall hereinafter be

referred to as the *extra period*. Where the contract does not specify the exact number of days or hours of the extra period, the duration of the extra period shall be determined in accordance with local practice.

2. Payment of costs of the extra period shall be agreed upon by the parties to the contract. In the event that no agreement is reached, the amount of costs shall be determined by local practice. Where there is no such local practice, the costs shall be determined according to the total actual cost of the ship's maintenance and the crew expenses incurred during the extra period.

3. The period of time for which a ship must remain at the loading port after the expiry of its loading period and of the extra period, which may arise due to the shipper or consignor, shall hereinafter be referred to as the *laytime period*. The carrier has the right to claim that it be indemnified for all losses arising from the laytime period.

Article 72

The shipper has the right to substitute other cargo for the cargo listed in the contract provided that other cargo has similar characteristics and the substitution does not affect the carrier or other shippers.

Freight for the carriage of the other cargo shall be no less than the freight which was originally agreed in respect of the cargo substituted.

Article 73

1. Cargo shall be loaded on the ship in accordance with the *cargo manifest* determined by the captain. The manner in which the cargo is to be arranged on the ship's deck shall be agreed to by the carrier in writing.

2. The carrier shall take due care in the loading of cargo, and its arrangement, lashing, and dunnaging on the ship. The payment of related costs shall be agreed upon in the contract by the two parties.

Article 74

The carrier has the right to move the ship out of the loading port when the loading period and extra period or in the case of a slot

charter, when the period for depositing cargo at the loading point expires, notwithstanding that some or all of the shipment has not been loaded due to the fault of the shipper. In such cases, the carrier shall remain entitled to collect full freight, including freight in respect of the cargo not shipped which freight shall hereinafter be referred to as *dead freight*

Article 75

1. In cases where the whole ship is chartered, the carrier may collect full freight provided that he satisfies the following requests of the shipper:

a) Set sail ahead of schedule.

b) To load all cargo deposited at the loading point of the ship although the extra period has expired. In the event that this loading delays the ship for less than fourteen (14) days, the carrier shall still enjoy the benefits contained in clause 3 of article 71 of this Code.

2. In cases where only part of a ship is chartered, the carrier may collect full freight and refuse to load on the ship any cargo sent for loading after the loading period or the extra period has expired due to the fault of either the shipper or the consignor.

Article 76

1. Cargo shall be loaded only in the ship compartments exclusively reserved for it, even when the shipper charters the entire ship.

2. The shipper may request that the carrier reduce the freight and compensate for losses which arise as the result of the shipper not receiving the use of all of the ship space chartered as agreed upon in the contract.

Article 77

1. Cargo shall be packed and marked with the symbols and serial numbers required by existing standards.

2. A carrier may refuse to load on the ship cargo which does not satisfy the necessary packing requirements.

3. In respect of easily explosive, flammable, and other dangerous cargo or cargo which requires special loading, carriage, storage and handling apart from the responsibilities contained in part 1 of this article, the shipper shall furnish the carrier in due time with all necessary information in relation to the cargo. The shipper shall pay compensation in respect of all losses incurred as the result of a delay in supply or inaccuracy of documents and other information provided.

Article 78

1. The shipper shall be liable to the carrier, passengers, crew members, and owners of other cargo for losses which arise from an inaccurate or false declaration of cargo, regardless of whether that declaration has been made intentionally or negligently.

2. The consignor shall also be liable for the losses referred to in clause 1 of this article where those losses arise as the result of his intentional acts or negligence.

3. The shipper or consignor shall only be responsible for the losses referred to in clause 1 of this article where the carrier is able to prove that the shipper or consignor actually caused those losses.

Article 79

1. In the event that a cargo inventory has been wrongly declared or the carrier has not been informed in advance of its dangerous nature and is unable to detect this through general professional knowledge at the time of loading, the carrier may remove from the ship, destroy, or neutralize the harmful effects of easily explosive, flammable or other dangerous cargo while receiving full freight and without being liable to pay any compensation.

The shipper shall be responsible for all losses incurred.

2. Where the carrier has agreed to load dangerous cargo on the ship, but notwithstanding that he has been informed in advance or is aware

through general maritime knowledge of the dangerous nature of the cargo and has taken measures necessary for preservation, the cargo threatens the safety of the ship, its passengers, and other cargo, the carrier may deal with the situation in the manner referred to in clause 1 of this article. In such cases, the carrier shall be responsible for any losses incurred in accordance with the principles of general average and only collect freight in proportion to the distance travelled.

Section C

BILL OF LADING

Article 80

1. Upon the request of the consignor, the carrier shall sign and provide to him a bill of lading.

2. The carrier and the consignor may agree to substitute for a bill of lading a consignment note or equivalent document and shall agree on the contents and validity of this note in accordance with international maritime practice.

Article 81

1. A bill of lading is evidence that the carrier has loaded on to the ship for shipment to its destination, cargo of the quantity, type and conditions specified.

2. An original bill of lading is a document which is valid for use in identifying and receiving cargo.

3. A bill of lading shall define the legal relationship between the carrier and the consignee. All provisions in the bill of lading shall be binding on the consignee provided that they are clearly specified therein.

Article 82

1. A bill of lading shall contain the following basic information:

- a) Name of the carrier and address of its head office;
- b) Name of the consignor;

- c) Name of the consignee or details of whether the bill of lading is to be signed and sent in the form "to order" or "to bearer";
- d) Name of the ship;
- e) Description of the cargo: including the type, size, capacity, quantity of units, and weight or value of the cargo, where applicable;
- g) Description of external appearance of the cargo or packaging materials used;
- h) Serial number, symbols, and identification details of which the consignor has provided written notice in advance prior to loading, and the marks made on each unit of cargo or on its packaging;
- i) Freight and other costs paid to the carrier and notice of the mode of payment;
- k) Loading point and loading port;
- l) Port of destination or details of the date and place of destination necessary to define the port of destination;
- m) Number of the original bill of lading delivered to the consignor;
- n) Date of and place at which the bill of lading is to be delivered;
- o) Signature of the carrier, captain or any other authorized representative of the carrier.

2. In the event that the name of the carrier is not included in the bill of lading, the ship owner shall be regarded as being the carrier. Where a bill of lading prepared in accordance with the provisions of clause 1 of this article falsely or inaccurately describes the carrier, the ship owner shall be liable to make compensation in respect of any losses incurred for which he shall be reimbursed by the carrier.

Article 83

1. Bill of lading may be in any of the following forms:

- a) *Straight bill of lading*: A straight bill of lading is a bill of lading which clearly indicates the name of the consignee.

- b) *Order bill of lading*: An order bill of lading is a bill of lading which clearly indicates the name of the consignor or the person authorized by him to receive the delivery.
- c) *Bearer bill of lading*: A bearer bill of lading is a bill of lading which does not indicate the name of the consignee or of the person authorized to receive the delivery.

2. Where no indication is given of the name of the person who is to receive the delivery under the bill of lading to order, the consignor shall automatically be considered as being the person who has that right.

Article 84

A bill of lading may be transferred in accordance with the following principles:

- a) A straight bill of lading shall be transferred in the same manner as that which applies to the transfer of ownership of property under the law. The person whose name is directly mentioned in the bill of lading shall be the legal consignee.
- b) An order bill of lading shall be transferred by way of writing in its countersigning square. The last person to have the right to issue an order for cargo delivery under the order bill of lading shall be the legal consignee, even where the counter signing square remains blank.
- c) A bearer bill of lading may be transferred by way of giving it to the transferee. The person who produces the bearer bill of lading shall be the legal consignee.

Article 85

1. The nature of the cargo shall be recorded in the bill of lading in accordance with the *declaration of consignment* made by the consignor.

2. The consignor shall be liable to the carrier for any losses which arise from the provision of inaccurate or false information in the declaration in relation to the type, size, weight, quantity of units, capacity, serial numbers, and symbols marked on the cargo.

The carrier shall remain responsible for the performance of obligations owed under the freight contract to third parties who are neither charterers nor carriers.

Article 86

1. The carrier may, where it has any doubts, record in the bill of lading his comments in relation to the external condition of the cargo or the packaging used.

2. The carrier may, if it has sufficient grounds to doubt the accuracy of the consignor's declaration at the time of loading, or is unable to verify the declaration, refuse to record in the bill of lading a description of the cargo.

3. The carrier may refuse to record in the bill of lading serial numbers and symbols where those numbers and symbols are *not* clearly marked on the container or packaging for the purpose of easy identification at the end of the voyage.

4. Where the cargo is packed prior to being deposited with the carrier for repacking, the carrier may record in the bill of lading any contents not declared.

Article 87

1. The carriage of cargo may take place with the participation of carriers by road, river, and air all of whom shall hereinafter be referred to as the *combined carriers*.

The bill of lading signed and issued during the course of such carriage shall hereinafter be referred to as the *through bill of lading*.

2. All provisions regarding bills of lading contained in this Code shall apply to through bills of lading signed and issued by sea carriers unless otherwise provided by other legal documents.

Article 88

1. A carrier who has signed and issued through bills of lading is obliged to organize the carriage and take due care of cargo in

accordance with the bill of lading until the time at which that cargo is delivered to the legal consignee.

2. The areas of responsibility of the person who sign and issues the through bill of lading and of the combined transport carriers shall be defined by the parties concerned on the basis of the principle of collective responsibility.

3. Any carrier who has compensated others for losses in relation to a through bill of lading on the basis of the principle of collective responsibility may request that other carriers reimburse him a sum of money in proportion while freight shall be calculated in accordance with the distance over which the cargo has been carried.

Any carrier who is able to prove that he is without fault in the matter shall not be required to reimburse the sum of money otherwise payable.

4. Combined transport carriers are obliged to discharge all of their responsibilities and to give due consideration to the preparation of the cargo for its carriage over remaining distances. The combined transport carrier who performs the last part of the carriage is obliged to protect the right of previous carriers particularly in relation to any detention of the cargo.

Section D

CARGO CARRIAGE

Article 89

1. Every carrier is obliged to carry its shipment within a reasonable period of time on the routes fixed provided an agreement to the contrary is not contained in the contract.

2. A carrier shall not be considered as breaching the contract where the ship is diverted from its voyage in order to rescue people or natural resources at sea or for other legitimate reasons provided that this diversion does not affect the carriage.

Carriers shall not be liable to pay compensation for any loss of cargo which arises as the result of the ship being diverted off course in the cases referred to above.

Article 90

1. Where, owing to circumstances beyond its control, a ship is unable to enter its port of destination and is unable to wait for a reasonable period of time in order to do so, the carrier may take the ship to the nearest safe port, inform the shipper of the matter and request his further instructions.

2. Where the entire ship is chartered, the captain shall, in specific circumstances, obtain and follow instructions from the shipper.

In the event that the captain is unable to carry out the instructions from the shipper or is unable to obtain those instructions within a reasonable period of time he may unload the cargo or carry it back to its port of loading in order that the interests of the shipper are duly protected. The shipper shall pay full freight and other associated costs of the exercise.

3. Where the ship is partially chartered, the captain may take the same action as that contained in part 1 of this article, if after five days from the date on which a request is sent for instructions, he does not receive those instructions from the shipper, or is unable to carry out those instructions. The shipper shall pay the carrier full freight and other associated costs.

Section E

DISCHARGE AND DELIVERY OF CARGO

Article 91

The provisions of this chapter relating to the loading of cargo shall also apply to the discharge and delivery of cargo.

Article 92

1. The shipper may continue to make decisions in relation to the cargo until the time at which it is delivered to the legal consignee and provided that this right has not been legally transferred to any other person. The right to make such decisions shall include the right to make a decision ordering the discharge of cargo before the ship commences its voyage, and to change the consignee or destination after the voyage has commenced, provided that the shipper makes compensation in respect of all losses and associated costs.

2. Where the cargo is shipped in accordance with a bill of lading, the rights contained in clause 1 of this article shall attach to the legal consignee in possession of the original bill of lading, in which case the carrier shall be obliged to carry out the instructions of that legal consignee after he has collected all original bills of lading signed and issued by him.

3. All of the rights contained in clause 1 of this article shall, unless the carrier decides otherwise, not apply where their exercise would result in the commencement of the voyage being considerably delayed.

Article 93

Upon the ship reaching its port of destination, the carrier shall deliver the cargo to the legal consignee in possession of at least one original bill of lading, or a document or equivalent voucher of cargo carriage as referred to in clause 2 of article 80 of this Code.

After the cargo has been delivered, no other bill of lading shall entitle its bearer to receipt of that cargo.

Article 94

1. Upon receiving the cargo, the consignee shall pay to the carrier all freight, compensation in respect of the ship's delay, and other costs related to transport not provided for.

Where cargo is carried in accordance with a bill of lading, the consignee shall pay the costs specified therein.

2. The carrier may refuse to deliver cargo where the shipper and the consignee have not discharged all debts or provided satisfactory guarantees in respect thereof.

Debts which are not paid and when they become due shall be compounded with interest in accordance with the applicable interest rate of the appropriate bank.

All debts referred to in this part shall include the costs of general average and of salvage levied on the cargo.

3. The carrier renounces all rights of claim against the shipper upon the cargo being delivered to the consignee.

Article 95

1. Prior to delivery of the cargo, the consignee or the carrier may request that it be surveyed. The survey fee shall be paid by the maker of the request.

The carrier shall, if he is unable to prove that he is not responsible for the loss of or damage to cargo, pay the survey fee, even where that examination has been requested by the consignee.

2. Cargo shall be deemed to have been delivered in full, in accordance with the bill of lading, where the consignee does not inform the carrier in writing of losses of or damage to cargo, upon its receipt, or if he is unable to detect the damage from the exterior of the cargo, within three days of such receipt.

In respect of the surveyed cargo referred to in clause 1 of this article, the consignee is not obliged to inform the carrier in writing of any loss or damage.

Any agreement between the parties which is contrary to the provisions of this article shall be deemed to be void and of no effect.

Article 96

1. In the event that the consignee does not arrive to collect the cargo, refuses to receive cargo or delays its discharge, the carrier may unload the cargo, deposit it in a proper and safe place, and inform the

shipper of this action taken. All costs and losses which rise as a result shall be reimbursed and compensated for by the consignee.

2. The carrier may act in the same manner as that contained in clause 1 of this article in cases where more than one person produces to him an original bill of lading, carriage document, way bill, or equivalent voucher of cargo carriage all of which entitle their bearers to receive the cargo.

3. Compensation for losses which arise from the need to anchor the ship in order to unload and deposit the cargo for the reasons referred to in part 1 of this article, shall be paid in the same manner as that provided for in cases where the ship's departure has been delayed due to the loading of cargo.

4. If, within sixty (60) days from the date of arrival of the ship at its port of destination, the deposited cargo is not delivered to the consignee or the consignee is unable to discharge his debts or to provide the necessary guarantees, the carrier may auction the cargo in order to satisfy the debts of the consignee. In the event that the cargo is perishable or the cost of storage will be greater than the actual value of the cargo, the carrier may auction the cargo prior to the expiry of the time limit referred to above.

The carrier shall inform the shipper of all cases referred to in clauses 1, 2 and 4 of this article which arise and of its intention to sell cargo in order to discharge debts as provided for in clause 4 of this article.

5. The Council of Ministers shall issue specific regulations on the procedures to be observed in the auction of cargo pursuant to this article.

Article 97

1. After deductions have been made for the debts of the consignee and in respect of the costs of storage and auction of the cargo referred to in article 96 of this Code, any proceeds remaining shall be deposited in a bank in order that they may be returned to the person entitled to receive them.

2. Where the proceeds from the sale of cargo are insufficient to cover the amounts referred to in clause 1 of this article, the carrier may issue demands against the persons concerned that payment be made of all amounts outstanding.

3. If after one hundred and eighty days from the date of auction, the remaining proceeds remain unclaimed, the carrier shall transfer them to the State treasury in accordance with the procedures stipulated by the law.

Section F

FREIGHT AND ADDITIONAL COSTS OF CARGO CARRIAGE

Article 98

1. Freight and additional costs of cargo carriage shall be determined on the basis of the list of prices fixed by the Council of Ministers. Where a particular price has not been fixed by the Council of Ministers, it shall be agreed upon by the parties to the contract. The period for and mode of payment for freight and any additional costs of carriage shall be agreed upon in the contract.

Article 99

1. Cargo which is damaged as the result of casualties which occur while the ship is on its voyage shall, irrespective of the cause of the casualty, be exempt from freight and in the event that the freight has already been collected, it shall be refunded. Where the cargo is salvaged or returned, the carrier shall only charge in distance cost provided that the person who has the interest in the cargo has not gained any material benefit from the distance over which the cargo has been carried by the ship.

2. *Distance charge* is the carriage charge calculated on the basis of the proportion of the real distance which the cargo has been carried as compared with the total carriage distance agreed upon in the contract or, on the basis of the ratio of risks or difficulties encountered during

the carriage distance covered as compared with those which are due to be encountered during the remaining distance.

3. In the event that cargo is damaged or reduced due to its own particular characteristics or is comprised of animals which die during the voyage of the carriage, the carrier shall remain entitled to receive full freight.

Article 100

1. In the event that cargo is loaded in excess of the load agreed upon in the contract, the carrier shall be entitled to collect freight in accordance with the agreed rate for the actual cargo loaded.

2. In the event that cargo is illicitly loaded on the ship, the carrier is entitled to charge twice the rate agreed upon in respect of carriage from the loading port to the port of destination and shall be compensated for any loss arising as the result of such illicit loading. The carrier is also entitled to unload this cargo at any port in the event that he deems it necessary to do so.

Section G

TERMINATION OF CONTRACT

Article 101

1. The shipper may terminate the contract in the following cases:

- (a) The carrier does not direct the ship to the loading place punctually at the time agreed, or is slow in loading the cargo or in commencing the voyage, in which event the shipper may also claim compensation for losses arising.
- (b) At the time at which cargo is loaded on a ship or while the ship is on its voyage, the shipper may request that the cargo be unloaded and shall pay full freight and all associated costs to the carrier.

2. The carrier is entitled to refuse the request of the shipper to unload cargo as provided for in sub-clause (b) of clause 1 of this article

where that request affects the interests of other persons involved due to the fact that it would require a predetermined schedule to be altered.

Article 102

1. In the event that an entire ship is chartered, the charterer may terminate the contract before the ship commences its voyage but shall pay all associated costs. In addition, the charterer shall, depending on the time of termination, pay freight in accordance with the following principles:

- (a) Half of the total freight shall be paid where the contract is terminated prior to the date of loading.
- (b) Full freight shall be paid where the contract is terminated after the date of loading or, in the event that the contract is valid for one voyage only, after the extra time for loading has expired.
- (c) Full freight for the entire voyage shall be paid where the termination occurs before the ship commences its voyage plus half of the freight for all further voyages in the event that the contract is valid for more than one voyage.

2. In the event that the shipper terminates a contract pursuant to clause 1 of this article, the carrier shall keep the ship at the terminal until the discharging is complete notwithstanding that this may lead to the period of loading and the extra period of loading being exceeded.

Article 103

In cases involving partially chartered ships, the shipper may terminate the contract and shall pay compensation in respect of costs arising. In addition, and depending on the timing of termination of the contract, the shipper shall pay freight in accordance with the following principles:

- (a) Where the contract is terminated after the date agreed for collection of the cargo, half of the freight shall be paid.
- (b) Where the contract is terminated while the ship is on its voyage, the full amount of freight shall be paid.

Article 104

The carrier may, unless the shipper has paid full freight or provided a satisfactory guarantee of such payment, terminate the contract before commencement of the voyage where the cargo loaded on the ship does not reach the contracted volume and the total value of the cargo is insufficient to cover the freight and other costs which the carrier shall be obliged to pay in respect of the cargo. In such cases the shipper shall pay all the expenses relating to the discharge of the cargo and half of the agreed freight.

Article 105

1. Parties to contracts may terminate those contracts without being liable to pay compensation where, before the ship commences its voyage from the port of loading, any of the following events occur:

- (a) A war threatens the safety of the ship or its cargo, and the port of loading or port of destination has been declared closed.
- (b) The ship is detained by the order of the local authority but not as the result of any fault of the parties to the contracts.
- (c) The ship is compulsorily acquired by the State.
- (d) A warrant is issued to ban the carriage of cargo out of the port of loading or into the port of destination.

2. A party terminating the contract pursuant to part 1 of this article shall bear all costs which arise from the discharge of the cargo.

3. Parties to contracts may terminate those contracts where any of the events referred to in clause 1 of this article occur while the ship is on its voyage and the shipper shall be obliged to pay distance costs and the costs of discharge of the cargo.

Article 106

1. Contracts shall automatically terminate with neither party being liable to compensate for losses if, after the signing of the contract and before the ship commences its voyage from the port of loading, and due to no fault of the parties, any of the following occurs:

(a) The ship mentioned in the contract is sunk, missing, hijacked or damaged beyond repair or in need of repairs which are not financially viable.

(b) The cargo specifically listed in the contract is lost.

2. In the event that casualties occur while the ship is on its voyage as

Referred to in clause 1 of this article, the carrier may collect its distance costs. Where the ship is damaged but its cargo is rescued or returned, the carrier is entitled to collect distance costs in respect of the cargo rescued or returned.

Article 107

Where a contract is terminated pursuant to this section, the carrier is obliged to take good care of the cargo until it is returned.

Section H

RESPONSIBILITY TO COMPENSATE FOR LOSS OF CARGO

Article 108

1. Carriers shall be obliged to take due care of the cargo and shall be liable for any losses arising from damage to and loss of cargo as from the time of loading until the time of delivery to the consignee. The carrier shall be obliged to compensate for the loss of cargo where he is unable to prove that he did not cause the loss.

2. Carriers shall be fully exempted from liability where the loss of cargo is caused by:

- (a) Act, neglect or default of the captain, crew members, the pilot or servants of the carrier in the navigation or in the management of the ship;
- (b) Fire unless caused by the actual fault of the carrier;
- (c) Perils, dangers, and casualties of the sea or other navigable water
- (d) Act of God (force majeure);
- (e) Act of war;

- (g) Acts in violation of public order and safety (act of public enemy);
- (h) Arrest or restraint by the authorities of persons or seizure under legal process;
- (i) Quarantine restrictions;
- (k) The acts or omissions of the shipper or owner of the cargo, his agent or representative;
- (l) Strikes, lock-outs, or stoppage or restraint of labour from whatever causes, whether partial or general, which are aimed at restricting the operations of the port;
- (m) Riots and civil commotions;
- (n) Rescuing or attempting to rescue lives at sea;
- (o) Wastage in bulk or weight or any other loss or damage arising from an inherent defect, quality or vice of the cargo;
- (p) Insufficiency of packing;
- (q) Cargo not being properly or suitably marked with serial numbers and symbols;
- (r) Latent defects not discoverable by due diligence;
- (s) Any other cause without the actual fault or privity of the carrier or without the fault or neglect of the agents or servants of the carrier.

In cases where a carrier is entitled to total exemption from liability to make compensation as provided for by the law or by the agreement contained in a contract, he must prove that it was neither his actual fault or privity nor fault or neglect of his servants or agents which contributed to the loss or damage.

Article 109

The shipper shall not be liable to pay compensation in respect of any loss or damage sustained by the ships or the carrier which arises or results from any cause without the act, fault or neglect of the shipper his servants or agents.

Article 110

1. In cases where the type and value of cargo is not declared by the consignor before loading or is not clearly indicated in the bill of

lading, the way bill or equivalent document of cargo transportation, the carrier or the ship shall only be liable to make compensation for losses of, and damage to cargo and other related losses up to a maximum limit of ten thousand (10,000) francs in gold for each package or established unit of cargo, or of thirty (30) francs in gold for each kilogram of the total weight of the lost and damaged cargo depending on which results in the highest amount.

The money paid as compensation shall be converted into Vietnamese currency in accordance with the official exchange rate published by the State Bank of Vietnam at the time at which such payment is made.

The value of cargo remaining shall be determined on the basis of market prices at the time and place of loading or at the time and place at which such loading should have taken place. Where such remaining value is not determined, the market prices at the time and place of loading together with freight for carriage to the port of destination shall be the basis.

Article 111

The carrier or the ship shall not be liable to make compensation for loss of or damage to cargo or other related losses, where the consignor intentionally makes a false declaration in respect of the type and value of cargo at the time of loading and that declaration has been acknowledged in the bill of lading, waybill or equivalent document of cargo carriage.

Article 112

1. In cases where cargo is carried in accordance with a bill of lading, any agreements made which would otherwise reduce the obligations and responsibilities of the carrier as contained in articles 67, 108, and 110 of this Code shall be null and void.

2. Where a bill of lading is signed and issued in accordance with a charter party, the provisions contained in clause 1 of this article shall apply to a third party as from the time the bill of lading is transferred to him.

3. Parties to a carriage contract are entitled to make agreements which reduce the liability of the carrier provided those agreements are not subject to the provisions contained in part 1 of this article and are made only in relation to:

- (a) The period of time from the receipt of cargo to the time of loading and from the completion of discharge to the completion of delivery;
- (b) The transport of living animals;
- (c) The transport of cargo on the ship's deck as agreed in the contract.

Section I

DETENTION OF CARGO

Article 113

1. A creditor may on the basis of a valid contract or order of a court detain cargo as provided by the law in order to guarantee payment of priority debts notwithstanding that the cargo may be already detained, mortgaged or charged to guarantee other debts.

2. Priority debts as referred to in clause 1 of this article shall be paid in the following order:

- (a) All court fees, judgment execution fees, storage fees, sales fees and costs of distribution of proceeds of sale, taxes, and other public expenditure;
- (b) Money allocated to pay for salvage of cargo or to contribute to general average;
- (c) Compensation for loss sustained by cargo;
- (d) Interests of the carrier.

Article 114

1. A creditor may withhold payment of compensation in respect of cargo which has been lost but has not been recovered and money allocated for the purpose of contribution to general average.

2. A creditor is not entitled to withhold money paid as compensation by the insurer of the cargo.

Article 115

1. The right to detain cargo shall terminate as from the date on which the cargo is delivered to the legal consignee.

2. The right to withhold money in relation to cargo shall terminate as from the time that money is paid to a legal consignee

CHAPTER VI

CONTRACTS ON TRANSPORTATION OF PASSENGERS AND LUGGAGE

Article 116

1. A contract for the carriage of passengers and luggage is one which is signed by a carrier and passengers pursuant to which a carrier receives payment of a fare from passengers in return for carrying them and their luggage and uses a sea-going ship to transport those passengers from the port of their embarkation to the port of their destination.

Contracts shall form the basis on which the legal relationship between the carrier and his passengers is defined. Ship tickets constitute proof of the signing of the contracts.

2. Passengers shall pay the fare, luggage charges, and other service fees to the carrier.

3. Any agreement aimed at restricting the rights of passengers or reducing the responsibility of the carrier as provided for in this Code shall be deemed to be null and void.

4. The carrier is entitled to substitute tickets with equivalent vouchers in the event that the ship on which passengers are to travel is not a passenger sea-going ship.

Article 117

1. Passengers are obliged to obey the orders of the captain and to observe strictly the rules and regulations of the ship.

2. Passengers shall enjoy all rights which correspond to the class of their tickets and shall not pay charges in respect of their hand luggage provided it is within the fixed weight allowed by the carrier.

Article 118

1. The carrier has a duty to ensure that the ship meets all requirements to prepare it for the voyage and cargo transport as provided for in article 67 of this Code.

2. The carrier is obliged to take care of and protect passengers and their luggage from the time at which they board until the time at which they disembark safely at the quay located at their port of destination, and to meet all expenses which arise from taking those passengers on board in respect of food, services and, in special cases, entertainment during the voyage.

Article 119

The carrier shall not be responsible for the detention of passengers by the authorities at a port of call during the ship's voyage provided that the detention is due to the fault of the passengers themselves.

Article 120

1. Illegal passengers shall pay full fare in respect of the distance that they travel together with an appropriate fine.

2. The captain is entitled to take illegal passengers ashore or to another ship in order that they may be returned to the port at which they boarded the ship and to inform the appropriate authority of their

names, ages, nationalities, name of the port of their departure and the place where they were hiding on the ship. Illegal passengers are also obliged to make payment of the amounts contained in clause 1 of this article.

Article 121

1. In the event that passengers fail to board the ship at scheduled times including when the ship is at a port of call in the course of its voyage, the carrier shall not be obliged to return to them any amount paid for their passage.

2. In the event that a passenger suffers from a fatal illness and is unable to board the ship; dies in the twenty four (24) hours prior to the ship commencing its voyage; dies during the voyage; or refuses to travel on a ship for reasons which are the fault of the carrier, the passenger shall be refunded all or part of the fare paid in proportion to the amount of travelling distance remaining.

3. In the event that a ship is unable to reach its port of destination or arrives at that port later than its scheduled time due to circumstances beyond the control of the carrier, the carrier is obliged to refund to passengers the amount of fare paid in proportion to the amount of distance remaining or to bear the costs of transporting the passengers back to their port of departure or to a port of destination requested by them and by means of transport other than passenger ship if no such ship is available.

Article 122

1. A passenger may terminate a contract and request to be refunded the fare paid provided he informs the carrier of his intention seven days in advance in cases of international transport and one day in advance in cases of domestic transport.

The carrier is entitled to retain twenty five (25) per cent of the fare paid in the event that the ticket is unable to be resold for travel on that ship.

2. A passenger may terminate a contract and be refunded the full fare paid if, three days after the scheduled date of departure, the ship

has not commenced its voyage and in respect of non-passenger ships, if seven days after its scheduled date of departure, it has not commenced its voyage.

Article 123

1. Where passengers are to be transported by non-passenger ships, the carrier may terminate contracts and refund to passengers the fares paid in the event that due to circumstances beyond the carrier's control the voyage is unable to be commenced.

2. The carrier shall also be entitled to exercise the rights referred to in clause 1 of this article while the ship is on its voyage and in doing so is obliged to implement the provisions of clause 3 of article 121 of this Code.

Article 124

Where the events referred to in clause 1 of article 105 of this Code take place before or during the course of the ship's voyage, the parties to a contract may terminate it without being liable to pay any compensation in which event the carrier shall, however, be obliged to refund to the passengers an amount of money proportionate to the *distance remaining, even where those passengers have also terminated* their contracts.

Article 125

1. A contract shall automatically terminate in the event that the ship is missing, *sunk, destroyed or damaged to the extent of being beyond repair or in need of repairs which are not financially viable.*

2. Fares shall be refunded to passengers in accordance with article 124 of this Code.

Article 126

1. The carrier shall be liable for any losses concerning the life of, or injury or other damage to the health of passengers which occur during

the voyage in the event that the carrier fails to prove that it or its agents or servants were without fault in the accident which caused the loss as the ship collided, sank, exploded or was destroyed, stranded, or scuttled. Any agreement aimed at reducing or exempting the carrier from liability pursuant to this article shall be null and void.

2. Where the carrier proves that the passengers, either intentionally or negligently, caused the accident, its liability as contained in part 1 of this article shall be reduced.

3. The duration of a voyage shall include the period during which passengers stay on board and leave the ship, and the period during which the carrier transports passengers from the shore to the ship and from the ship to the shore if that transportation is already included in the total ticket price or the means of that transport is provided by the carrier.

Article 127

1. The carrier shall be liable to pay compensation in respect of loss of life, injury or other damage to the health of passengers only within the limits defined by the Council of Ministers or in accordance with international agreements which Vietnam has signed or recognized.

2. The carrier shall not be entitled to benefit from the restriction contained in clause 1 of this article where he himself has caused the damage or his servants or agents are negligent the discharging in responsibilities entrusted to them by the carrier.

Article 128

1. The carrier shall be liable for the loss of or damage to luggage in accordance with the principles governing cargo contained in chapter V of this Code.

2. The carrier is liable only for the loss of or damage to passengers' hand luggage which is negligently or intentionally caused by the carrier or its agents or servants or by a lack of careful attention being paid to the luggage while it is deposited for storage.

3. The carrier shall be liable to make compensation only in respect of the loss of those precious articles, money, valuable documents, artistic works, and other items of great value whose characteristics and value have been declared by passengers to the captain or officers in charge of luggage at the time at which they were deposited for storage.

Article 129

1. The carrier may retain the luggage of passengers as security until other satisfactory assurances are received.

2. Unclaimed luggage shall be treated in accordance with article 96 of this Code.

Article 130

1. All loss of life, injury or other damage to the health of passengers shall be notified to the carrier immediately after a casualty occurs and notification of any claims shall be sent in writing to the carrier within fifteen (15) days from the date on which the passengers disembark from the ship.

2. Claims in respect of loss of and damage to luggage must be notified in written form to the carrier within seven days from the date of delivery of the luggage or in the case of lost luggage the date on which such luggage should have been delivered to the consignee.

3. Claims in respect of loss of human life, and injuries and other related damage to the health of passengers must be brought within two years from the date on which passengers disembark from the ship. Where passengers die on board the ship, the time limit for making claims shall begin to run as from the date on which the deceased was scheduled to leave the ship.

In the event that passengers die after disembarking from the ship, claims for compensation must be made within three years from the date on which the deceased disembarked from the ship. 4. Claims for compensation in respect of losses of and damage to luggage must be made within six months from the date on which the luggage was delivered or, in the case of lost luggage, the date on which such luggage should have been delivered to the consignee.

CHAPTER VII

CHARTER PARTY

Article 131

1. A *charter party* is a contract signed between a ship owner and a ship charterer whereby for a consideration the ship owner *transfers* to the charterer the right to use the ship for a fixed period of time or for a number of consecutive voyages, for the specified *purposes* agreed upon in the contract. A charter party forms the basis on which the legal relationship between the charter and the ship owner is *defined*.

2. A charter party shall be signed in the form agreed upon by the parties to the contract.

Article 132

A charter party whereby the ship owner transfers to the charterer the right to use both the ship and its crew shall hereinafter be referred to as a *time charter*.

A charter party whereby the ship owner transfers to the charter the right to use the ship but not its crew shall hereinafter be referred to as a *bare boat charter*.

Article 133

1. The charterer may, provided it is permitted to do so under the contract, allow a third party to sub-charter the ship but shall remain obliged to perform the contract signed with the ship owner.

2. The rights and duties of the ship owner provided for in *this* chapter shall also apply to the sub-charterer.

Article 134

1. A ship owner is obliged to deliver the ship to a charterer at a proper place, and in the necessary condition of technical safety, with sufficient supplies on board to satisfy the purpose of its use as agreed upon in the contract. This state of the ship shall be maintained by the charterer throughout the chartering period.

2. A ship owner who time-charters his ship is obliged to provide with the ship a competent crew suitable for the purposes for which the ship has been chartered as agreed upon in the contract, and to pay salaries to the crew members and ensure the other legal interests of those crew members throughout the chartering period.

Article 135

1. The charterer shall be entitled to use all specialized compartments of the ship for the purpose of carrying cargo or passengers.

2. The charterer shall not, without the agreement of the ship owner, use any other parts of the ship for the purpose of carrying cargo or passengers.

Article 136

1. The charterer shall not be obliged to pay the ship owner charter hire in respect of any period during the charter in which a time chartered ship does not function due to technical breakdown, shortage of supplies or incompetence of the crew.

2. Where the ship is unable to operate due to acts, omissions or defaults made by the charterer, the ship owner is entitled to charge full charter hire and shall be compensated for any damages incurred.

Article 137

1. During the period of time-charter of a ship the captain and other crew members are, in the performance of their duties, subject to the

management of the ship owner who shall remain fully responsible for all matters in relation to them.

2. In respect of the use of the ship, the captain shall be the representative of the charterer and shall be obliged to carry out his instructions.

3. The ship owner is, on the basis of the principle of joint liability, responsible to the charterer for the exercise by the captain of the powers contained in clause 2 of this article unless the captain clearly indicates that he will be exercising these powers on behalf of the charterer.

Article 138

Where a time-chartered ship takes part in salvage operations during the chartering period, the salvage fees paid shall be divided equally between the ship owner and the charterer after deductions have been made in respect of all losses which arise as the result of the salvage work and of salvage fees paid to the crew.

Article 139

1. The charterer is obliged to use the ship strictly for the purposes agreed in the contract and in consideration of the interests of the ship owner.

2. After the duration of the charter has expired, the charterer is obliged to return the ship to its owner at the proper place and time and in the technical condition previously agreed upon.

The charterer is obliged to pay charter hire to the ship owner until the date on which the ship is delivered to its owner.

3. The charterer is obliged to maintain the ship and its equipment unless agreed otherwise in the contract.

4. A bare boat charterer is obliged to inform the ship owner of and repair any breakdowns of the ship which occur during the period of its charter. The ship owner shall be liable for the cost of the repairs where those costs are beyond the area of liability of the charterer.

Article 140

1. The charterer may terminate the charter party and claim compensation in respect of losses which arise where the ship owner is negligent in exercising his duties as provided in clause 1 of article 134 of this Code.

2. Either party may terminate the charter party without being liable to pay compensation in the event of war, riots or restraint, or action by the authorities which hinders the performance of the charter party and which has not ceased after a reasonable period of time has elapsed.

Article 141

1. A charter party shall automatically terminate where the ship is missing, sunk, destroyed or so damaged as to be considered beyond repair or in need of repair which is not financially viable.

2. In the event that the chartered ship goes missing, the charter hire to be paid shall be calculated up to the date of receipt of the last information provided on the ship.

Article 142

A claim in relation to any matter regarding a charter party must be made within two years from the date of termination of the charter party.

CHAPTER VIII

SHIPPING AGENTS AND MARITIME BROKERS

Section A: Shipping Agents

Article 143

1. A shipping agent is a permanent representative of a ship owner at a specified port or within a certain area of agency

2. The ship owner and his agent shall sign agency contracts in respect of each voyage or for a specific duration in a form agreed by them.

The areas of authority delegated by the ship owner to the shipping agent shall be clearly specified in the contract.

3. The contract shall form the basis on which the legal relationship between the two parties is defined and serve as proof of the areas of authority delegated by the ship owner to the shipping agent in relation to third parties.

Article 144

1. The shipping agent shall, on behalf of the ship owner and in accordance with the contract, perform maritime business including carrying out the *necessary procedures for the ship's operations at a port*; the signing of contracts of carriage, maritime insurance, cargo shipping, and crew hiring; signing charter parties; signing and issuing bills of lading or equivalent documents for cargo carriage; receiving revenue and incurring expenditure relating to the ship; and resolving disputes regarding sea carriage contracts and maritime accidents.

2. A shipping agent may, with the agreement of the ship owner, act for the shipper, the charterer, or other persons engaged in a contractual relationship with the ship owner.

3. Where a shipping agent acts beyond the scope of the authority delegated to it by the ship owner, the ship owner shall be liable for its acts in the event that upon becoming aware of the acts it does not inform the persons concerned that it is not responsible for those acts.

Article 145

1. The agent shall be responsible for undertaking all activities necessary in order to take good care of and protect the interests of the ship owner, and shall be obliged to respond to the requests and obey the instructions of the ship owner, inform the ship owner promptly of events which occur that relate to the work delegated to the agent, and

to account for all revenue received and expenditure incurred as a result of the carrying out of that work.

2. The agent shall be liable to pay compensation to the ship owner in respect of all losses which arise due to his own negligence.

Article 146

The ship owner shall be responsible for the provision, when necessary, of assistance to his agent in the performance of the work delegated to him and shall, upon the request of his agent, provide him with cash in advance to be spent in the performance of such work.

Article 147

The parties to agency contracts shall agree on the amount of agent service fees to be paid. In the event that such fees are not agreed upon in the contract, they shall be determined in accordance with local practice.

Article 148

The parties to agency contracts shall be entitled to terminate them in accordance with their terms.

Article 149

Claims in respect of the performance of agency contracts must be made within two years from the date on which the subject matter of the complaint occurred.

Section B: Maritime Brokers

Article 150

1. A maritime broker shall act in accordance with the specific power delegated to him, as an intermediary in the signing of carriage contracts, maritime insurance contracts, charter parties, ship sales contracts, towing contracts, crew hiring contracts and contracts of other kinds which relate to maritime activities.

2. A maritime broker shall receive brokerage only when a contract is signed as the result of its intermediation. The broker and its principal shall agree upon the amount of brokerage to be charged. In the event that no such agreement is reached, brokerage shall be determined in accordance with local practice.

3. In accordance with the powers delegated to it, the maritime broker, on behalf of its principal, shall sign contracts and collect sums of money provided there is no clear restriction to its powers of which the other side has notice.

Article 151

A maritime broker may act for all contracting parties provided it informs all parties of its interest and gives proper attention to the legal interests of all parties concerned.

Article 152

Claims in relation to the performance of a contract between a maritime broker and his principal must be within two years from the date on which the subject matter of the claim occurred.

CHAPTER IX

MARITIME PILOTING

Article 153

1. A pilot acts as an adviser and aid to the captain in navigating the ship in accordance with maritime conditions and within the scope of his work.

The use of a pilot does not reduce or exempt the captain from his responsibility to command the ship, even where the use of the pilot is compulsory in accordance with the law.

2. The captain may select the pilot and request that he be changed or his activities suspended.

Article 154

1. The pilot, during the performance of his duties, shall be under the command of the captain of the ship being navigated.

2. A pilot shall be obliged regularly to inform the captain of the maritime conditions within the area being navigated and to advise him of any action being taken which does not conform with the regulations on maritime safety and the provisions of other laws.

Where the captain deliberately refuses to follow the reasonable guidance or adopt the recommendations made by the pilot, the latter, in the presence of a third person as witness, may refuse to pilot the ship.

3. A pilot shall be obliged to inform the port director of his piloting of the ship and of any navigational dangers which he encounters while piloting the ship.

4. A pilot shall be dedicated in the performance of his obligations.

Article 155

The captain has a duty accurately to inform the pilot of the particular characteristics of the ship, to ensure the pilot's safety when he boards and leaves the ship, and to provide the pilot with all necessary comfort and entertainment during the time in which he remains on board.

Article 156

The duties of the pilot shall be considered terminated while the ship is lying at anchor, when it reaches its designated quay, arrives at a scheduled place safely or when the pilot is replaced by another pilot. The pilot is not permitted to leave the ship without the consent of the captain.

In order to ensure safety, the pilot shall not leave the ship after he has performed his duties, but shall remain on board until the captain calls at the nearest port and the pilot is able to leave the ship. The ship owner shall meet all expenses which arise and shall be obliged to transport the pilot back to the place at which he was first received.

Article 157

1. The ship owner shall be liable to pay compensation in respect of any losses caused by the pilot in the same manner as if the losses were caused by his crewmen.

2. The pilot shall be subject only to administrative penalty or criminal prosecution in the cases referred to in clause 1 of this article.

Article 158

1. The Council of Ministers shall determine a list of fees which may be charged by pilots in Vietnam.

2. The Minister of Transport, Telecommunications and Post shall issue specific regulations on the organization of pilots, the criteria to be satisfied, the certificates of piloting qualifications required, and the areas of Vietnam in which the use of pilots shall be compulsory or non-compulsory.

CHAPTER X

SEA TOWAGE

Article 159

1. Sea towage is the exercise of expertise in towing, pushing or assisting sea-going ships and other vessels at sea and in navigable waters where those ships are allowed to operate, and includes the

travel alongside a ship of a tugboat for the purpose of providing assistance when necessary.

2. The sea-going ship concerned and the tugboat owner shall agree on the towing charge in the towing contract. Where no such agreement is reached in a contract, the amount to be charged shall be determined in accordance with local practice.

3. A towing contract shall be in writing except where that towage is provided to assist the manoeuvre of a ship or vessel within a port.

Article 160

1. Tugboats and sea-going ships or other vessels to be towed shall form a towing collective. Towing collectives are formed when tugboats and the other members of the collective are ready and have the professional expertise necessary to perform their tasks under the command of the head of the collective and shall dissolve when their final work is completed and their members have navigated clear of one another to a safe distance.

2. Parties to a towing contract shall agree on the appointment of a head to the towing collective. In the event that no such agreement is reached, the appointment of the head shall be determined in accordance with local practice.

Article 161

A tugboat owner shall be obliged to provide the tug at a proper time and place and in the technical condition agreed in the contract.

Article 162

1. The owner of a ship whose captain is head of a towing collective shall be liable for the loss of any ships, human lives and property on board those ships which are members of the towing collective unless that owner can prove that the loss is not due to its fault and the cause of the loss was beyond its area of responsibility.

2. Ships which are under the command of a captain of another ship shall not be exempted from or receive a reduction in their responsibility to observe the common safety of a towing collective and maritime safety. A ship owner shall, in the event that his ship is at fault in causing damage, be responsible for any damage to and loss of ships of the towing collective and for any loss of human life and property on board those ships.

Article 163

Claims in relation to the implementation of sea towing contracts must be made within two years from the date of termination of the towing contract.

CHAPTER XI

MARITIME SALVAGE

Article 164

1. *Maritime salvage* means the act of rescuing sea-going ships and the property on board them or relieving sea-going ships in peril on the basis of a maritime salvage contract.

2. Maritime salvage contracts shall be signed in a form agreed upon by the contracting parties.

Article 165

1. Salvage awards shall be made in respect of successful maritime salvage.

2. Salvage awards shall also be made in the following cases: where rescuers undertake direct or indirect action in assisting rescued persons and in protecting their interests in relation to fares paid and freight

where ships are rescued by other ships belonging to the same owner; or where river-going ships or amphibious vessels at sea or in inland waters are rescued.

3. Payment shall not be made in respect of acts of salvage which take place contrary to the clear and reasonable instructions of the captain of the rescued ship.

Article 166

1. A rescued person shall not be obliged to pay any money to his rescuer.

2. A life saver shall be awarded a reasonable amount of money from a property salvage award where his actions relate to the same incident as that in respect of which the property salvage award is made.

Article 167

A person who during the course of piloting or towing at sea extends, beyond his contractual obligations, special assistance for the purpose of rescuing the ship on which he is working, shall be rewarded

Article 168

A party to a salvage contract may request the cancellation of, or changes to, unreasonable clauses in a contract where those clauses were signed in a state of emergency as a direct result of that state or it can prove that it was deceived or misled at the time of signing or where a payment made in respect of salvage is far lower or higher than that which is actually deserved.

Article 169

1. A salvage award consists of a salvage reward, salvage charges, freight and expenses incurred in the protection of the salvaged ship and its property.

2. The amount of a salvage award shall be agreed in the contract be reasonable and not exceed the value of the ship or property salvaged.

3. In the event that the amount of a salvage award is not agreed in the contract, is unreasonable, or is to be distributed among many rescuers it shall be assessed by taking into account the following;

- (a) Results of the salvage work;
- (b) Labour required for the salvage and the amount of effort made by the rescuers;
- (c) Extent of danger to the ship and to the people and property on board;
- (d) *Extent of danger to rescuers posed by the ships themselves and the equipment used for their rescue;*
- (e) The period of time, and costs involved, and other losses which arise;
- (g) Risks and responsibilities, or other risks rescuers have to suffer;
- (h) *The value of salvage equipment used;*
- (i) Special adjustments made to the rescuer ship in order that salvage work may be carried out;
- (k) The value of property salvaged.

4. A salvage award may be reduced or refused where the rescuers themselves have created a situation which leads to a need for salvage or have committed acts of stealing, cheating or fraud whilst performing salvage contracts.

Article 170

The value of a rescued ship or rescued property is its real value at the place at which it is kept after its rescue or the value of the proceeds of its sale and valuation after expenses in respect of storage, auction and other similar items have been deducted.

Article 171

Salvaged ships or property may be detained or temporarily withheld as security for payment of a salvage award and of other expenses incurred in respect of valuation and auction.

Article 172

1. A salvage award shall be distributed equally between the ship owner and the crew of a rescuer ship after deductions have been made in respect of expenses incurred and losses suffered by the ship, the ship owner, and the crew as a result of the rescue work.

This principle shall not apply to specialized salvage ships.

2. The Minister of Transport, Telecommunications and Post shall issue specific regulations on the manner in which salvage awards are to be distributed among crewmen.

Article 173

1. The clauses contained in this chapter shall apply equally to all ships of the armed forces of Vietnam.

2. The Ministers of National Defence and Home Affairs shall issue regulations on the distribution of salvage awards among crewmen of the rescuer ships of the armed forces of Vietnam.

Article 174

Claims in relation to the performance of salvage contracts must be made within two years from the date of termination of rescue operations.

CHAPTER XII

RECOVERY OF SUNKEN PROPERTY

Article 175

1. *Wrecked property* as referred to in this chapter are ships, cargo or other objects which have sunk in the inland or territorial waters of Vietnam or which are drifting at sea or have run aground along the coastline of Vietnam

2. No later than one hundred and eighty (180) days from the date on which the property began to sink, its owner shall inform the Minister of Transport, Telecommunications and Post of his intention to recover it and of the estimated duration of expiry of his salvage operations.

Within sixty (60) days from the date of receipt of the above notice, the Minister of Transport, Telecommunications and Post shall make a decision on the duration of the salvage operations and shall determine a specific date by which the property owner shall complete such operations. The period for salvage shall not exceed one year from the date on which the property owner receives notice of this decision.

3. Where a property owner fails to conduct salvage operations in accordance with part 2 of this article or prolongs performance of those operations for a period of more than one year from the date of expiry of the period granted for recovery operations, the property being salvaged shall automatically become the property of the State of Vietnam.

Article 176

The recovery of sunken property in military areas or of military ammunition and equipment requires a licence granted by the Minister of National Defence or by a commanding officer of a military unit designated by the Minister.

Article 177

1. In cases where the sunken property is harmful to or obstructs maritime activities, port operations and sea resources, threatens human life and health or pollutes the ocean environment, its owner shall be obliged to recover it immediately after it has sunk. In the event that the property owner is unable to afford the cost of recovery operations, the Minister of Transport, Telecommunications and Post shall arrange for those operations to take place and set a deadline by which the property owner must pay all expenses incurred as a result of those operations.

A property owner shall be obliged to pay compensation in respect of losses which arise and pay fines which are imposed in accordance with the law, even where he has been divested of his right to ownership of the property pursuant to clause 3 of article 175 of this Code.

2. In the cases referred to in clause 1 of this article, the Minister of Transport, Telecommunications and Post may appoint persons to recover property, if he is of the opinion that the person appointed by the owner is unable to carry out salvage operations on schedule.

3. If, after one hundred and eighty (180) days from the date of receipt of a notice of completion of recovery operations, a property owner does not request the return of his property or pay the expenses within the time specified, the Minister of Transport, Telecommunications and Post or an authority designated by him, may auction the recovered property. After making deductions in respect of the expenses incurred in recovery, protection, auction preparation and other items, any proceeds of the auction which remain shall be deposited in a bank in order that they may be returned to the owner of the property.

4. Property owners are, in the cases referred to in this article, obliged to make payment only in respect of the real value of the property salvaged.

Article 178

Vietnamese organizations and individuals shall be entitled to priority in signing contracts for recovering property which has sunk in the inland and territorial waters of Vietnam.

Article 179

1. In the cases in accordance with the relevant principles of salvage, referred to in part 1 of article 177 of this Code, recovery workers shall receive recovery payments and be reimbursed for all expenses incurred.

2. In the event that the salvaged property referred to in part 1 of article 177 of this Code is perishable or the cost of its preservation is

high, salvage workers may deal with it in the manner provided in part 3 of article 177 of this Code.

3. If within forty (40) days from the date on which the notice was received, the property owner has not been identified or has not requested the return of its property or paid all debts, salvage workers shall be obliged to deposit the property with the people's committees of provinces and cities directly under central authority and corresponding administrative units.

If within one hundred and eighty (180) days from the date on which he receives the notice, the property owner does not take any action to protect his interests, the people's committees of provinces and municipalities directly under the central authority and the corresponding administrative units shall be entitled to dispose of the property in the manner provided for in clause 3 of article 177 of this Code.

Article 180

1. Any person who discovers, rescues or takes part in the rescue operations of property belonging to others which is afloat at sea shall be entitled to receive payment in accordance with the principles of salvage provided that he notifies the owners of the property of this entitlement no later than at the time at which the property is delivered to them.

2. Persons who discover and protect property which is drifting ashore shall be entitled to an award of an amount of money and shall be reimbursed for any expenses incurred in the protection of such property which do not exceed thirty (30) per cent of its market value and provided that they notify the owners of the property of their entitlements no later than at the time at which the property is delivered to them.

3. Clauses 1, 3 and 4 of article 179 of this Code shall apply to the cases referred to in clauses 1 and 2 of this article.

Article 181

The Council of Ministers shall issue specific regulations in relation to the settlement of property which has sunk at sea.

COLLISIONS

Article 182

1. *Collisions* as referred to in this Code are accidents caused by a collision between sea-going ships, between a sea-going ship and an amphibious vessel or other vessel in waters where sea-going ships are permitted to operate.

2. The ship responsible for causing a collision shall make compensation in respect of all damage to a ship, persons, and property which results from that collision. Where it is impossible to identify the parties at fault, no party shall be considered responsible for the collision.

3. The ship responsible for causing a collision is the ship which causes the collision as a result of its operation or as a result of the negligent use of its equipment navigation or management, or failure to observe the rules on the prevention of collisions at sea, regulations on seaworthiness, or failing to adopt necessary maritime practices.

Article 183

1. In the event that more than two ships are at fault in a collision, liability to pay compensation shall be divided in proportion to the degree of fault of each party. In cases where all parties are equally at fault or it is not possible to determine the degree of fault of each party, liability to pay compensation shall be divided equally among the parties.

2. In respect of compensation paid in relation to the loss of human life, injury or other damage to a person's health, the ships at fault shall be liable on the basis of the principle of joint liability. Any ship which has paid compensation in excess of the amount which it is required to

contribute may seek reimbursement of the excess amount paid from the other ships involved.

Any claims for reimbursement of amounts paid in excess of those required must be made within one year from the date on which the compensation was paid.

Article 184

In cases where collisions are caused by *force majeure* or by unexpected events or in relation to which it is impossible to identify the ship at fault, each ship shall bear the costs of its own damage, including that which arises from collisions which occur while the ships are anchored or moored.

Article 185

1. When a collision takes place, the captains of the ships involved are obliged to rescue the other ships and the people and property on board provided that such rescue will not pose any further threat to their own and the people and property on board.

2. Immediately after a collision takes place, the captains of the ships concerned are obliged to inform each other of the names of their respective ships, symbols, places of registration, their last ports of departure, and their scheduled ports of arrival.

3. Ship owners shall not be responsible for the failure of the captains under their command to fulfil the obligations contained in clauses 1 and 2 of this article.

Article 186

1. The articles in this chapter shall also apply to those cases where ships are at fault in causing damage to other ships and the people and property on board notwithstanding that there has been no direct collision.

2. The articles of this chapter shall also apply to the ships of the Armed Forces of Vietnam. These ships shall be exempted from liability

to pay compensation where they are at fault in causing collisions while performing military manoeuvres within zones which have been declared maritime activity prohibited zones. Their captains shall however remain obliged to fulfil the obligations stipulated in article 185 of this Code.

CHAPTER XIV

GENERAL AVERAGE

Article 187

1. *General average* means the sacrifices or extraordinary expenses which are made or incurred sensibly and reasonably for the purpose of common safety in order that ships and cargo may be rescued, and to earn revenue from freight or other charges levied in respect of the transport of passengers away from areas of general catastrophe.

2. Only averages which arise directly from the acts which result in general average shall be included in the general average. Averages which arise indirectly from the acts which result in general average such as averages caused by the ship's detention or pricing differences shall not be included in general average.

3. Particular expenses in excess of the necessary level shall, within a reasonable limit, be included in general average depending on the circumstances of each specific case.

Article 188

1. General average shall be allocated in proportion to the value of the ship, cargo, and freight and passenger charges due at the time that the ship arrives at a port of refuge following the occurrence of general average.

2. The clauses of this article shall also apply to cases where general average is due to the fault of another party having interest in the general average or a third party.

3. General average shall also be allocated even where it has become necessary to sacrifice the entire ship or cargo without it having achieved any of its objectives.

4. The allocation of general average shall not exclude the rights of those people claiming compensation from the persons at fault.

Article 189

The average of cargo illegally loaded on board a ship or of cargo in respect of which a type and value was falsely declared shall not be included in general average. Where that cargo is salvaged from general catastrophe, it shall be subject to the allocation of an equivalent value of general average.

Article 190

Any average of ships, cargo, and freight which is not included in general average in accordance with the above principles shall be referred to as a *particular average*. Any party who has suffered damage shall not be compensated if he fails to prove that his loss is caused due to the fault of other persons.

Article 191

1. General average, and its allocation, shall upon the request and instruction of ship owners, be determined by experts in general average allocation.

2. Ship owners are obliged to appoint experts in general average allocation no later than thirty (30) days from the date on which their ships call at a port of refuge following the occurrence of a general average. Where the ship owner is unable to appoint experts in general average allocation within that period of time, any person among those persons concerned may appoint such experts.

3. Principles to be applied in specifically determining the lost value and the allocated value of general average shall be agreed upon in the contract by the parties. In the event that no such agreement is contained in the contract, experts in *general average* allocation shall perform their tasks in accordance with international practice.

Article 192

Claims for general average must be made *within two years* from the date on which the general average occurred. For the purposes of calculating this period of limitation time shall not run between the date on which the experts in *general average* allocation begin their determination of general average and the date on which that determination is concluded.

Article 193

The Council of Ministers shall issue regulations in relation to experts in *general average* allocation.

CHAPTER XV

CIVIL LIABILITY OF SHIP OWNERS

Article 194

1. Ship owners shall be liable to make civil compensation in respect of losses which arise from the use of sea-going ships in the event that *they fail to prove the cause of those losses, which liability shall* hereinafter be referred to as the *civil liability of a ship owner*.

2. Civil liability to pay compensation shall not include administrative or criminal liability

Article 195

1. The liability of a ship owner to pay compensation shall be limited to the extent stipulated in article 196 of this Code where that compensation is to be paid for losses which arise out of or in relation to the following.

- (a) The death, injury or health-related damage suffered by any person on board the ship; the loss of or damage to any property on board the ship.
- (b) The death, injury or health-related damage suffered by any person who is not on board the ship or the loss of or damage to any property or interests in property which is not on board the ship where the loss or damage is caused by the actions, neglect or default of any person on board the ship or outside the ship for whom the ship owner is responsible. In the event that damage is caused by persons outside the ship for whose acts, neglects or defaults the ship owner is responsible, his liability to pay compensation for losses arising from the command and management of the ship, the loading, transporting and discharge of the cargo, and the boarding, transporting and returning of passengers, shall be reduced.
- (c) The duties and responsibilities provided by the law on clearing ship wreckage and other related objects which apply when recovering, moving or destroying ships which are sunk, stranded or abandoned, the duties or liability to pay compensation in respect of damage to port facilities, quays, lanes, anchoring areas, docks; the duties or liability to pay compensation in respect of environmental pollution (excluding nuclear radioactivity).

2. The liability of a ship owner to pay compensation in the cases referred to in point (b) of part 1 of this article shall be reduced where that liability results from the ownership, detention, management and control of the ship, and the ship owner or persons for whom the ship owner is responsible have not been proven to be at fault.

3. The liability of a ship owner shall not be reduced in respect of compensation to be paid as the result of the following:

- (a) Salvage action or contributing expenses to general average.
- (b) Environmental pollution caused by nuclear activities.
- (c) Claims made by the captain, crew members and the servants or agents of the ship owner working on or outside the ship but performing duties in relation to the ship, including claims lodged by the heirs, shipping agents or dependents, provided that the provisions contained in labour contracts signed by the ship owners and those persons do not reduce the liability of the ship owner to pay compensation in respect of their claims or permit the ship owner to limit his liability to a level lower than that which is contained in article 196 of this Code.

4. In the event that laws of Vietnam on environmental protection or the international agreements which Vietnam has signed or recognized contain certain provisions inconsistent with those contained in this Code the limits to liability to pay compensation stipulated in those laws or agreements shall prevail over the provisions of this Code.

Article 196

1. A ship owner shall only be liable to pay compensation on the basis of its civil liability within the following limits:

- (a) The total value of the ship concerned assessed on the basis of a unit price equivalent to three thousand one hundred (3,100) francs in gold per gross registered tonnage (GRT), where the compensation is made in respect of loss of life, injury or other health-related damage.
- (b) The total value of the ship concerned assessed on the basis of a unit price equivalent to one thousand (1,000) francs in gold per gross registered tonnage (GRT) where the compensation is made in respect of loss of and damage to property.
- (c) The total value of the ship concerned assessed on the basis of a unit price equivalent to three thousand one hundred (3,100)

francs in gold per gross registered tonnage where the compensation is paid in respect of loss of life, injury or other health-related damage or the loss of or damage to property as the result of a collision. Of this value, the total amount assessed by the same unit price equivalent to two thousand one hundred (2,100) francs per gross registered tonnage shall be used to calculate compensation payable in respect of loss of life, injury and other health-related damage. In the event that the remaining amount to be used in compensating for loss of life, injury and other health related damage is insufficient, any shortfall shall be met by the money to be used as compensation in respect of loss and damage to property in a corresponding proportion.

2. Any agreement aimed at reducing the liability of the ship owner to pay compensation to a level less than the limit fixed in clause 1 of this article shall be null and void.

3. The gross registered tonnage referred to in clause 1 of this article is as follows:

- (a) Total bulk tonnage in addition to the tonnage of any machine compartment where a ship uses engines.
- (b) Total bulk tonnage, where a ship does not use engines.

4. When defining the limits to civil liability of a ship owner, any gross registered tonnage of a ship which is less than three hundred (300) shall be increased to a straight three hundred (300) gross registered tonnage.

Article 197

1. The limits fixed pursuant to article 196 of this Code shall apply to compensation paid in respect of loss and damage which results from the same casualty and not from any other casualty.

2. In cases where the ship owner is entitled to request that the person making a claim against him make contribution in respect of the same incident, the clauses of this chapter shall apply only in determining any imbalance of payment which arises from the individual liability of each party.

3. The limits fixed pursuant to article 196 of this Code shall be converted into Vietnamese currency in accordance with the official rate published by the State Bank of Vietnam at the time of payment.

Article 198

1. In the event that the amount of compensation paid exceeds the limit fixed pursuant to article 196 of this Code, the ship owner may establish a *compensation fund* to satisfy all claims.

2. A compensation fund shall be used to settle claims for compensation where the civil liability of a ship owner is fixed.

3. A compensation fund may be established in the form of collateral security or other guarantee provided to the court at which the claim has been lodged or to a State authority. The collateral security or other guarantee must be recognized as legally enforceable and protected by that court or authority.

4. Where a compensation fund has been established by a ship owner no person may, in the meantime, interfere with the interests or property of that ship owner. A court or a State authority as referred to in clause 3 of this article has the right to issue a warrant to release property being detained or withheld or to terminate existing guarantees.

5. A compensation fund shall be distributed to claimants in proportion to the amounts of money claimed.

6. The establishment of a compensation fund shall not be deemed to imply the acceptance by a ship owner of any liability.

Article 199

The fixed limits to the civil liability of a ship owner shall apply equally to that of an operator, manager, professional rescuer or persons for whose act, neglect or default they themselves or the ship owners are liable.

MARINE INSURANCE CONTRACTS

Section A

GENERAL PROVISIONS

Article 200

1. A *marine insurance contract* is a contract signed by the insurer and the insured whereby the insurer receives an insurance premium paid by the insured and the insured receives compensation paid by the insurer in respect of the loss of, or damage to, the subject matter insured which is caused by maritime perils, in the amounts and subject to the conditions which have been agreed upon with the insurer.

2. Marine insurance contracts shall apply in respect of risks of loss and damage to the maritime subject matter insured during its carriage by combined carriers by air, inland water or road.

3. A marine insurance contract shall be in writing.

Article 201

The maritime subject matter which may be insured may include a material interest in maritime activity which is capable of being measured in money such as an interest in sea-going ships, cargo, freight, passengers carriage cost, ship chartering and purchasing cost, presumed cargo benefit, commissions, general average, civil responsibility, and other money guaranteed in relation to ships, cargo or freight.

The maritime subject matter which may be insured may also include ships under construction.

Article 202

1. An insurer may permit other persons to reinsure the subject matter he has insured.

2. A reinsurance contract shall be independent of the original insurance contract.

Article 203

1. Upon completion of a proposal by the insured, the insurer may issue an insurance policy. The insurance policy shall constitute evidence of the signing of the contract.

2. Before issuing an insurance policy, the insurer shall, upon the request of the insured, provide him with a cover note.

3. An insurance policy may be granted in the form of a straight insurance policy, a *to order* insurance policy or a *to bearer* insurance policy.

4. An insurance policy shall contain the following principal information:

- (a) Name of the insured or of the person who has the risk being insured.
- (b) Subject matter insured.
- (c) Perils to be insured against.
- (d) Number of voyages or period of time for which the insurance contract shall be valid and specification as to whether that contract is a voyage policy or time policy.
- (e) Sum insured.
- (f) Date of issue of insurance policy.
- (g) Signature and endorsement of insurer.

Article 204

1. The insured shall provide the insurer with all information in its possession or of which it is aware at the time of signing the insurance contract which is material to defining the risk to be insured against; deciding whether to issue a policy; or determining its terms and

conditions provided that information which is common knowledge, known to the insurer, and immaterial need not be provided.

2. The obligation of an insured as stipulated in clause 1 of this article shall also apply to third persons where the insurance contract protects the interest of that third person, and they are aware of its signing.

Article 205

1. A marine insurance contract may insure the interests of a third party who shall hereinafter be referred to as an *interest insured person*.

2. The interest insured person may request that the insurer issue an insurance policy and where that insurance policy is issued, he shall enjoy all rights provided by the insurance contract.

The obligations of an insured in relation to the performance of the contract, apart from the obligation to pay the insurance premium, shall transfer to the interest insured person as from the date on which that person receives the insurance policy.

Article 206

1. An insurance contract shall be invalid in cases where prior to the contract being signed, an accident has occurred making the performance of the carriage impossible. The insurer shall be entitled to collect a contract cancellation fee except in cases where the insurer is aware of the accident at the time of signing.

2. The two sides agree upon the terms of the contract and the amount of the contract cancellation fee.

Article 207

In the event that the insured breaches any of the obligations contained in article 204 of this Code, the insurer may terminate the contract and collect the insurance premium in full. Where an inaccurate declaration as referred to in article 204 of this Code has been made but not due to the fault of the insured, the insurer shall

not be entitled to terminate the contract but may collect a further insurance premium at a reasonable rate.

Article 208

The insured may terminate the contract at any time before an accident which has been insured against takes place but he shall be obliged to pay a contract cancellation fee. Parties to the contract shall agree in the contract on the amount of the contract cancellation fee and conditions for the refund of the insurance premium.

Article 209

Claims which relate to marine insurance contracts shall be made within two years from the date on which the accident occurs.

Section B

INSURED VALUE AND INSURANCE PAYMENT

Article 210

The *insured value* is the real value of the subject matter of the insurance which is defined as follows:

- (a) The insured value of a ship is the total value of the ship at the time the insurance commenced. This value shall include the value of the machines, equipment, and spare parts of the ship together with the total insurance premium paid. If provided for in the contract, the value of a ship may also include any salaries advanced to crewmen and expenses incurred in preparation for a voyage.
- (b) The insured value of cargo is the value of the cargo specified in the bill of lading or its market value at the time and place of loading plus the insurance premium paid and any expected profit.
- (c) The insured value of freight is the total freight paid and the insurance premium paid. In cases where a shipper takes out

insurance in respect of freight, this freight shall be included in the insured value of the cargo insured.

- (d) The insured value of other subject matter insured apart from civil liability, is the value of that subject matter at the time and place the insurance commenced plus the insurance premium paid.

Article 211.

1. When signing an insurance contract, the insured shall specify the value up to which the subject matter is to be insured, which amount shall hereinafter be referred to as the *sum insured*.

2. In the event that the sum insured specified in the insurance contract is less than the insured value, the insurer shall be liable to compensate losses in proportion to the insured value and the insurance payment, including other expenses which are within the scope of the insurance.

3. In the event that the subject matter insured is insured in respect of the same accident by more than one insurer and the total of the sums insured is more than the insured value, the insurers shall be liable only to pay compensation within the scope of the insurance provided and each of them shall pay in proportion to the amount of insurance premium received from the insured. This insurance is called *co-insurance*.

Article 212

In the event that the subject matter insured is insured by many insurers in respect of the same peril and the total of the sums insured is more than the insured value, all of the insurers shall together be liable to pay total compensation only up to insured value, and the liability of each insurer shall be apportioned according to the amount which he has agreed to insure. This insurance is called *double insurance*.

Section C
TRANSFER OF RIGHTS UNDER A
MARINE INSURANCE CONTRACT

Article 213

All rights conferred by a marine insurance contract may only be transferred to the person to whom the subject matter insured has also been transferred. Where those rights are not transferred to the transferee of the subject matter insured, the contract shall automatically terminate and the insurer shall remain liable to pay compensation only in respect of losses which occurred prior to the transfer of the subject matter insured.

The obligations of the transferor of the subject matter insured shall also be transferred to the transferee of the subject matter insured, including any liability of the insured in relation to claims submitted previously by the insurer in relation to the subject matter insured.

Article 214

1. The transfer of rights conferred by a marine insurance contract and a marine insurance policy shall take place at the time of transfer of the insurance policy.

2. The transfer of the rights conferred by an insurance policy shall take place in accordance with the principles which govern the transfer of a bill of lading.

Article 215

1. Where the subject matter insured is a ship, the transfer of the rights conferred by an insurance contract shall be agreed upon in advance by the insurer.

2. Where a ship is on a voyage at the time of its ownership being transferred, the rights conferred by the ship insurance contract shall not transfer immediately to the transferee of the ship and shall remain in force as they are until such time as the ship anchors at its first port of call thereafter.

Section D
CARGO INSURANCE

Article 216

1. *Cargo insurance* is insurance which provides complete cover in relation to the particular subject matter insured, being one or more types of cargo, which the insured dispatches or receives during a specified period of time.

2. The insurer to a cargo insurance contract is obliged to issue, upon the request of the insured, an insurance policy or insurance certificate in respect of each voyage or each type of cargo insured.

Article 217

1. The insured to a cargo insurance contract shall be obliged to inform the insurer immediately of every dispatch or delivery of cargo, of any information relating to the consignment or delivery of cargo including the names of ships, voyage route, the volume of cargo and insurance payment, notwithstanding that the insurer may have received information to the effect that the cargo has already been dispatched or reached its port of destination.

2. Where the insured either deliberately or recklessly fails to perform his duties as mentioned in clause 1 of this article, the insurer may terminate the contract while still remaining entitled to the insurance premium as if the contract had been properly performed.

Article 218

Parties to a cargo insurance contract may request that it be terminated provided that they inform one another of the request three months in advance.

Section E
PERFORMANCE OF A MARINE
INSURANCE CONTRACT

Article 219

The insured shall, unless the parties agree otherwise, be obliged to pay to the insurer an insurance premium immediately after the signing of a contract or issuing of an insurance policy.

Article 220

1. The insured shall be obliged immediately to inform the insurer of any information he receives in relation to any changes in risk or accidents which may endanger the subject matter insured or of any hazards which threaten that subject matter and shall be obliged to follow all instructions given by the insurer.

2. The insurer may terminate an insurance contract where the insured breaches clause 1 of this article.

Article 221

1. In the event of loss arising from insured collisions the insured shall take all measures necessary to prevent or mitigate his loss and to facilitate the rights of the insurer to claim against the person who caused the loss. The insured shall perform this duty in accordance with the instructions of the insurer.

2. The insurer shall not be liable for any losses which arise due to the recklessness of the insured or to a deliberate refusal by him to perform the duties contained in this article.

Article 222

The insurer shall reimburse the insured in respect of all necessary and reasonable expenses incurred by him in the prevention or mitigation of loss for which the insurer is liable, as well as for expenses incurred in following the instructions of the insurer as

stipulated in article 221 of this Code, in determining the cause and degree of loss to be covered by the insurer and expenses contributed to gross average. These expenses shall be reimbursed in proportion to the sum insured and insured value.

Article 223

Within the limits of the insurance cover, the insurer is liable to pay compensation in respect of losses which arise as the direct result of the insured perils and shall also reimburse the insured in respect of the expenses referred to in article 222 of this Code, notwithstanding that the total amount to be paid to the insured may be in excess of the sum insured.

Article 224

The insurer shall not be liable in respect of losses caused by the deliberate or reckless acts of the insured but shall be responsible for losses which result from the neglect or default of the captain, who is simultaneously insured, in his navigation and management of the ship and for losses caused by the crew and the pilot.

Article 225

In insuring a ship and cargo, the insurer shall not be liable for losses which arise from the following:

- (a) The ship failing to be seaworthy at the time of its departure, unless this failure is due to a latent defect in the ship or unavoidable circumstances not discoverable by due diligence.
- (b) The age or period of use of the ship.
- (c) The shipping of easily explosive or inflammable materials or other dangerous cargo, contrary to the regulations on the carriage of such cargo provided that the insured is aware of the shipment while the insurer remains unaware of it.

Article 226

In insuring cargo, the insurer shall not be liable in respect of any losses which arise from the following:

- (a) Inherent defect, quality or vice of the cargo.
- (b) Wastage in bulk or weight or any other loss arising from inherent defect quality, or vice of the cargo.
- (c) Inadequacy of packaging.
- (d) A delay in the supply of cargo.

Article 227

Unless otherwise agreed upon in an insurance contract, the insurer shall not be liable for any loss of the subject matter insured which is caused by war or military action of any nature or the consequences thereof; by coercion, riots, strikes or from confiscation, requisition, detention or destruction ordered by the military or civil authorities.

Article 228

In cases involving compensation for loss resulting from collisions, apart from liability to pay compensation in respect of loss to the subject matter insured, the insurer shall be liable to pay compensation for damages to a third party where the insured is responsible for loss caused by the collision notwithstanding that the compensation payment may exceed the sum insured.

Article 229

Where accidents take place which are covered by the insurance contract the insurer may pay the whole sum insured in order to be discharged from any further liability under the terms of the contract. In such cases, the insurer shall inform the insured of its intention within seven days from the date on which the notice of the accidents and of its consequences was received. In the event that this occurs, the insurer shall not be entitled to claim ownership of the subject matter insured if the sum paid is less than the insured value.

In addition to paying the whole sum insured, the insurer shall also reimburse the insured in respect of expenses incurred prior to the insured receiving the notice from the insurer, which expenses were

aimed at the prevention and mitigation of damages or losses or incurred in repairing and restoring the subject matter insured.

Article 230

1. Unless otherwise agreed in the contract, the insurer shall be liable in respect of further loss which may occur notwithstanding that the total value of loss may exceed the total sum insured.

2. Where a total loss of the subject matter insured occurs when it is already suffering from partial loss or damage or is in need of repair or compensation, the insured shall be compensated in respect of the total loss.

3. Clauses 1 and 2 of this article shall not exclude the liability of the insurer to reimburse the insured his expenses in accordance with article 221 of this Code.

Section F

PAYMENT OF COMPENSATION WHERE A THIRD PERSON IS RESPONSIBLE FOR LOSS

Article 231

Where compensation is paid to the insured, the insurer has the right to sue any third person responsible for the loss, for compensation in the amount already paid to the insured. The insurer shall exercise this right in the same manner as that which would be used by the insured if he were making the claim.

Article 232

1. The insured is obliged to provide the insurer with all information, documents and evidence and to take all measures necessary for the effective exercise by the insurer of its right to sue the third person.

2. In the event that insured fails to discharge the obligations stipulated in clause 1 of this article, or causes the insurer's right to sue the third person to become impossible, the insurer shall be exempted from its obligation to pay full compensation or the amount of compensation to be paid shall be reduced.

3. In the event that the insured has received in respect of its loss compensation paid by the third person, the insurer shall be obliged only to pay an amount equal to the difference between the amount of compensation otherwise payable pursuant to the contract and the amount that the insured has received from the third person.

Article 233

1. Upon the request of the insured, the insurer shall undertake to meet the expenses required to compensate for general average up to the amount of the insurance payment.

2. In establishing the general average allocation sheet, the insured is obliged to give due consideration to the interests of the insurer.

Section G

ABANDONMENT OF SUBJECT MATTER INSURED

Article 234

1. The insured may, where he faces certain total loss of the subject matter, or where the prevention of such loss would result in expenses being incurred in excess of the value of the subject matter insured, declare abandonment of the subject matter insured and assign to the insurer his rights and duties relating to the subject matter insured in order to receive compensation for total loss.

2. The right to abandon the subject matter insured may apply in cases where sea-going ships are missing, forcibly occupied, damaged by unavoidable accidents, or in need of repair, recovery or redemption, the cost of which would not be financially viable.

3. The right mentioned in clause 2 of this article to abandon the subject matter insured shall also apply to the abandonment of cargo, including cases where the cost of the repair and carriage of cargo to its port of destination would be substantially in excess of the market value of that cargo at that port.

Article 235

1. A notice of abandonment of the subject matter insured shall be made in writing and shall clearly specify the basis on which the right to abandon the subject matter insured has been exercised.

2. The notice of abandonment must be sent to the insurer within a reasonable period of time no more than one hundred and eighty (180) days from the date on which the insured first became aware of the events which served as the basis upon which the right to abandon was exercised, or, in cases where the ship or cargo is forcibly occupied or lost due to other reasons, within sixty (60) days from the date of termination of insurance. After expiry of the above deadlines the insured shall be divested of the right to abandon the subject matter insured but shall remain entitled to claim compensation in respect of any loss.

No conditions shall be attached to the abandonment of the subject matter insured. Where the abandonment has been accepted, the insurer and the insured shall not be entitled to change their minds.

Article 236

In giving notice of abandonment of the subject matter insured, the insured shall provide the insurer with all information regarding the rights to possession of the subject matter insured, other insurance and any restrictions of which the insured is aware.

Article 237

1. Within thirty (30) days from the date of receipt of the notice of abandonment, the insurer shall inform the insured of his acceptance or rejection of the abandonment. Upon expiry of this deadline, the insurer shall lose the right of rejection.

2. The rights and duties in relation to the subject matter insured shall be transferred to the insurer immediately after the insurer announces his acceptance of the notice of abandonment. The insurer may not demand any of these rights and duties.

3. Where the declaration of abandonment has been properly exercised but the insurer rejects it, the insured shall remain entitled to claim compensation.

Article 238

1. In the event that actual total loss is caused due to the fact that the ship and its cargo are missing, the insured may claim compensation from the insurer for the sum insured without being required to make a declaration of abandonment of the subject matter insured as provided in article 235 of this Code.

2. In the event that the missing ship is a time insured ship, the insurer shall be liable to make compensation only if he has received the last information on the ship before termination of the insurance period. The insurer shall not be liable to pay compensation if he is able to prove that the ship became missing after termination of the insurance period.

Article 239

Where the insurer has paid the compensation and the ship then manages to escape from the peril, the insurer may demand that the insured continued in his ownership of the ship and reimburse the insurer in respect of the amount of compensation paid, after making deductions for compensation in respect of any partial loss of the ship, provided that such loss is the direct result of the insured casualty.

Section H

ASSESSMENT OF COMPENSATION PAYMENT

Article 240

In assessing the amount of compensation to be paid in respect of the loss of the subject matter insured, the insured may demand that the insured submit a report on the event, and produce all documents and evidence necessary in order to assess the event and the degree of loss which has been sustained.

CHAPTER XVII

RESOLUTION OF MARITIME DISPUTES

Article 241

1. The parties concerned may resolve maritime disputes by negotiation or agree to bring them before an arbitrator for resolution or may bring them before a court for judgment.

2. The resolution of maritime disputes by arbitration or a court shall take place in accordance with the level of authority required and the procedures provided by the law.

Article 242

Where at least one party to a maritime contract is a foreign organization or individual, the contracting parties may agree to bring their dispute before an arbitrator or a court in a foreign country for resolution.

CHAPTER XVIII

FINAL PROVISIONS

Article 243

The maritime Code of Vietnam shall be in full force and effect as of January 1, 1991

Article 244

All previous provisions on maritime activities which are contrary to this Code are hereby repealed.