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ARBITRATION RULES OF CHINA MARITIME ARBITRATION COMMISSION

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China Council for the Promotion of International
Trade (China Chamber of International Commerce)

CHINALAW No. 0482

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TEXT:

CHAPTER I GENERAL PROVISIONS

Section 1 Jurisdiction

[Article 1] The China Maritime Arbitration Commission (hereinafter referred to as the Arbitration Commission) independently and impartially settles maritime disputes by means of arbitration so as to protect the justified rights and interests of the parties and promote shipping industry and the development of foreign economic and trade.

[Article 2] Upon written application of one of the disputing parties and in accordance with written agreement concluded between the parties, prior or subsequent to the occurrence of dispute, to refer their dispute to the Arbitration Commission for arbitration, the Arbitration Commission takes cognizance of:

(1) Disputes regarding remuneration for salvage services rendered by sea-going vessels to each other or by a sea-going vessel to a river craft and vice versa;

(2) Disputes arising from collisions between sea-going vessels or between sea-going vessels and river craft or from damages caused by sea-going vessels to harbour structures or installations;

(3) Disputes arising from chartering, agency, towage, raising, sale, repairing and building of or in respect of sea-going vessel, carriage by sea in virtue of contracts of affreightment, bills of lading or other shipping documents, and marine insurance;

(4) Disputes regarding pollution damages to marine environment;

(5) Other maritime disputes submitted for arbitration by agreement between the parties.

An arbitration agreement means the arbitration clause stipulated by the parties in their contract, or agreement in writing concluded in other forms to submit disputes for arbitration.

The Arbitration Commission has power to decide on the validity of arbitration agreement and the jurisdiction over arbitration cases.

Section 2 Organization

[Article 3] The Arbitration Commission is composed of one Chairman, several Vice-Chairmen and a number of Commission members.

The Chairman performs functions and duties given by these Rules and any Vice-Chairman, if authorized by the Chairman, may perform the functions and duties of the Chairman.

Under the Arbitration Commission, a Secretariat is established to handle the day-to-day work of the Arbitration Commission.

[Article 4] The Arbitration Commission maintains a panel of arbitrators. The arbitrators are selected and appointed by the China Council for the Promotion of International Trade (China Chamber of International Commerce) from among Chinese and foreign persons with relevant expertise and practical experience.

[Article 5] The Arbitration Commission is located in Beijing. The Arbitration Commission may, according to the requirement of development of arbitration business, establish sub-commissions in other places within the territory of China.

CHAPTER II ARBITRATION PROCEEDINGS

Section 1 Application for Arbitration, Defence and Counterclaims

[Article 6] The Claimant must submit his Application for Arbitration to the Arbitration Commission in accordance with the following requirements:

(1) An Application for Arbitration in writing must be submitted to the Arbitration Commission. The following must be specified in the Application for Arbitration:

- (a) The name(s) and address(es) of the Claimant and those of the Respondent;
- (b) The arbitration agreement relied upon by the Claimant;
- (c) The Claimant's claim and the facts and evidence on which his claim is based.

The Application for Arbitration shall be signed by the Claimant and/or the attorney authorized by the Claimant.

(2) When submitting an Application for Arbitration to the Arbitration Commission, relevant documentary evidence on which the Claimant's claim is based shall accompany the Application for Arbitration.

(3) The Claimant shall appoint an arbitrator from among the Panel of Arbitrators of the Arbitration Commission or authorize the Chairman of the Arbitration Commission to make an appointment on his behalf.

(4) The Claimant shall pay an arbitration fee in advance to the Arbitration Commission according to the Arbitration Fee Schedule attached to these Rules.

[Article 7] After receipt of the Application for Arbitration and its attachments and when the Arbitration Commission, after examination, deems that the Claimant has completed the formalities required for arbitration, the Arbitration Commission shall immediately mail to the Respondent one copy each of the

Claimant's Application for Arbitration and its attachments as well as the Arbitration Rules and the Panel of Arbitrators of the Arbitration Commission.

[Article 8] The Respondent shall, within 20 days after receipt of the Application for Arbitration, appoint an arbitrator from among the Panel of Arbitrators of the Arbitration Commission, or authorize the Chairman of the Arbitration Commission to make an appointment on his behalf, and shall, within 45 days after receipt of the Application for Arbitration, submit his defence and relevant documentary evidence to the Arbitration Commission.

[Article 9] The Respondent shall file with the Arbitration Commission his counter-claim, if any, in connection with the case taken cognizance of by the Arbitration Commission, within the time-limit as specified in Article 8 for the submission of his defence. The Respondent must state, in his counter-claim, his claim and the facts and evidence on which his claim is based and attach relevant documentary evidence to his counter-claim.

When filing a counter-claim, the Respondent must pay an arbitration fee in advance according to the Arbitration Fee Schedule attached to these Arbitration Rules.

[Article 10] The Arbitration Commission has discretion to ask the Respondent to pay in advance a part of arbitration fees when it deems it necessary.

[Article 11] When submitting an Application for Arbitration, defence, counter-claim, relevant documentary evidence and other documents to the Arbitration Commission, the parties shall provide duplicate copies as many as the number of the other party/parties and the arbitrators, of whom the arbitration tribunal is composed.

[Article 12] The parties may authorize attorneys to confer with the Arbitration Commission on matters relating to arbitration. Such attorneys may be citizens of China or foreign citizens. The authorized attorney must produce a Power of Attorney to the Arbitration Commission.

[Article 13] The Arbitration Commission may, pursuant to the request of the parties and in accordance with the Chinese law, apply to the Chinese court in the place where the property of the Respondents is or in the place where the arbitration institution is located for a decision in respect of taking preservative measures.

Section 2 Composition of Arbitration Tribunal

[Article 14] After each of the two parties has chosen one arbitrator from among the Panel of Arbitrators of the Arbitration Commission or the Chairman of the Arbitration Commission has made such an appointment under the authorization by the party/parties, the Chairman of the Arbitration Commission shall appoint a third arbitrator from among the Panel of Arbitrators of the Arbitration Commission as the presiding arbitrator to form an arbitration tribunal to hear the case.

[Article 15] Both parties may jointly appoint or authorize the Chairman of the Arbitration Commission to appoint one arbitrator from among the Panel of Arbitrators of the Arbitration Commission as a sole arbitrator to form an arbitration tribunal to hear the case alone.

If both parties have agreed on the appointment of a sole arbitrator to hear their case alone but failed to agree on the choice of such a sole arbitrator within 20 days as from the date on which the Respondent receives the the Application for Arbitration or as from the date on which both parties reach an agreement to have their case heard by a sole arbitrator, the Chairman of the Arbitration Commission shall appoint the sole arbitrator.

[Article 16] If the Respondent fails to appoint and fails to authorize the Chairman of the Arbitration Commission to appoint an arbitrator according to Article 8 of these Rules, the Chairman of the Arbitration Commission has the power to appoint an arbitrator for the Respondent.

[Article 17] When there are two or more Claimants and/or Respondents in an arbitration case, the Claimants' side and/or the Respondents' side shall each, through consultation, appoint one arbitrator from among the Panel of Arbitrators of the Arbitration Commission. If the Claimants' side fails to make such appointment at the time when the Claimants submit their Application for Arbitration and/or Respondents' side is unable to appoint one arbitrator within 20 days as from the date on which the last Respondent receives the Application for Arbitration, the appointment shall be made by the Chairman of the Arbitration Commission.

[Article 18] Any appointed arbitrator having personal interest in the case shall himself request the Arbitration Commission for withdrawal from his office and the parties have the right to make a request in writing to the Arbitration Commission for a withdrawal of the arbitrator from his office.

[Article 19] A party who intends to challenge an arbitrator must put forward his challenge before the first oral hearing of the case. If the grounds for challenge come out or become aware of after the first oral hearing, the challenge may be raised before the conclusion of the last hearing.

[Article 20] The Chairman of the Arbitration Commission shall decide on the challenge.

[Article 21] If an arbitrator cannot perform his duty due to withdrawal or other reasons, a substituted arbitrator shall be appointed in accordance with the procedure pursuant to which the original arbitrator was appointed.

Section 3 Hearing

[Article 22] The arbitration tribunal shall hold oral hearings to hear the case. However, at the request of the parties or with their consent, oral hearings may be omitted and the arbitration tribunal may examine the case and make an award on the basis of documents only.

[Article 23] The date of oral hearing shall be decided by the arbitration tribunal in consultation with the Secretariat of the Arbitration Commission and the notice of hearing shall be communicated to the parties 30 days before the date of hearing. A party having justified reasons may request for postponement of the date of hearing. But his request must be communicated to the Secretariat of the Arbitration Commission 12 days before the date of hearing unless unforeseeable special circumstances occur. The Secretariat shall inform the arbitration tribunal of his request and the arbitration tribunal shall decide thereon, in consultation with the Secretariat.

[Article 24] The cases taken cognizance of by the Arbitration Commission shall be heard in the place where the Arbitration Commission is located and may, with the approval of the Chairman of the Commission, be heard in other places.

[Article 25] The arbitration tribunal shall not hear cases in open sessions. If both parties request hearings in open sessions, the arbitration tribunal shall decide thereon.

[Article 26] The parties shall give evidence for the facts on which their claim or defence is based. The arbitration tribunal may, if it deems it necessary, make investigation and collect evidence on its own initiative.

[Article 27] The evidence shall be examined and approved by the arbitration tribunal.

[Article 28] The arbitration tribunal may consult experts or appoint appraisers for the clarification of special questions relating to the cases. Such experts and appraisers may be Chinese or foreign organizations or citizens.

[Article 29] Should one of the parties or his attorney fail to appear at the hearing, the arbitration tribunal may proceed with the hearing and make an award by default.

[Article 30] During hearings, the Secretariat of the Arbitration Commission shall take records in writing and/or tape-recordings and the arbitration tribunal may, if it deems it necessary, order the parties and/or their attorneys, witnesses and/or other persons involved to sign the records taken.

[Article 31] If both parties reach a settlement by themselves of a case under the cognizance of the Arbitration Commission, the Claimant shall timely request for withdrawal of the case. Dismissal of the case shall be decided by the Chairman of the Arbitration Commission before an arbitration tribunal is formed and by the arbitration tribunal after the arbitration tribunal is set up.

If the party or the parties refer the dismissed case again to the Arbitration Commission for arbitration, the Chairman of the Arbitration Commission shall decide whether to accept the reference or not.

Section 4 Award

[Article 32] The arbitration tribunal shall render an arbitral award within 45 days after the closing of examination and hearing.

[Article 33] Where a case is heard by an arbitration tribunal composed of three arbitrators, the arbitral award shall be decided by the majority of the arbitrators and the minority opinion can be written down in the record and docketed into the file.

[Article 34] The arbitration tribunal shall state the reasons upon which the arbitral award is based unless the award is made in accordance with Article 37. The arbitral award shall be signed by all or majority of the arbitrators sitting in the arbitration tribunal and shall contain the date and place on and in which the arbitral award is made.

[Article 35] The arbitration tribunal may, if it deems it necessary or the parties so request and it agrees, make an interim, interlocutory or partial award on any issue of the case at any time in the process of arbitration.

[Article 36] The arbitral award is final and neither party may bring a suit before a law-court or make a request to any other organization for revising the arbitral award.

[Article 37] The Arbitration Commission and the arbitration tribunal may conciliate cases under their cognizance. In case a settlement agreement is reached through conciliation, the arbitration tribunal shall make an award in accordance with the contents of the settlement agreement reached by and between both parties.

[Article 38] The parties must automatically execute the arbitral award within the time-limit specified in the award. If no time-limit is specified in the award, the parties shall carry out the award immediately.

In case either party fails to execute the award, the other party may, pursuant to the Chinese law, apply to the Chinese court for enforcement of the award or, according to the 1958 "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" or other international treaties that China has concluded or participated in, apply to the foreign court which has jurisdiction for enforcement of the award.

CHAPTER III SUPPLEMENTARY PROVISIONS

[Article 39] The Chinese language is the official language of the Arbitration Commission. At the hearing, if the parties or their attorneys or witnesses are not familiar with the Chinese language, the Secretariat of the Arbitration Commission may provide an interpreter for them or the parties may bring with their own interpreters.

The Secretariat of the Arbitration Commission may, if it deems it necessary, ask the parties to hand in corresponding translation copies in Chinese or other languages of the various documents and evidential materials submitted by the parties.

[Article 40] Any written communication from the Arbitration Commission to the parties is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; or if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

[Article 41] Apart from charging arbitration fees from the parties according to the Arbitration Fee Schedule attached to these Rules, the Arbitration Commission may collect from the parties other actual expenses including arbitrations' remuneration and their travel and boarding expenses for dealing with the case and the fees and expenses for expert, appraisers and interpreters appointed by the arbitration tribunal, etc.

Certain fees and actual expenses incurred may be collected by the Arbitration Commission if a case is withdrawn after the parties have reached of themselves a settlement agreement.

[Article 42] These Rules shall also apply to the cases of dispute taken cognizance of by the Sub-Commissions of the Arbitration Commission. In the arbitration proceedings conducted by the Sub-Commissions of the Arbitration Commission, the functions and duties of the Chairman and the Secretariat of the Arbitration Commission under these Rules shall be performed by the Chairman and the Secretariat of the Sub-Commissions.

[Article 43] These Rules shall come into force as from the date of January 1, 1989.

ARBITRATION FEE SCHEDULE

Amount of Claim (RMB)	Amount of Fee (RMB)
100,000 Yuan or less	6% of the amount of claim, minimum 2,000 Yuan
100,000 Yuan to 500,000 Yuan	6,000 Yuan plus 4% of the excess over 100,000 Yuan
500,000 Yuan to 1,000,000 Yuan	22,000 Yuan plus 3% of the excess over 500,000 Yuan
1,000,000 Yuan to 5,000,000 Yuan	37,000 Yuan plus 1.5% of the excess over 1,000,000 Yuan
5,000,000 Yuan or more	97,000 Yuan plus 0.7% of the excess over 5,000,000 Yuan

If no amount of claim is stated when applying for arbitration, the amount of arbitration fees shall be determined by the Secretariat of the Arbitration Commission.

If the arbitration fee is charged in foreign currency, an amount of foreign currency equivalent to the corresponding RMB value specified in this Schedule shall be paid.