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# **An Overview of Hong Kong Maritime Law and Dispute Resolution**

香港海商法律及解决争议概述

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# **Part I: An Introduction to Hong Kong Maritime Law**

**第一部份：香港海商法律概述**

# 1.1 Substantive Law (实体法)

## 1.1.1 The Basic Law (中华人民共和国香港特别行政区基本法)

## 1.1.2 Common Law (普通法)

## 1.1.3 International Convention/ Treaties applying to Hong Kong SAR (适于香港特别行政区的国际公约及条例)

- International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels, Brussels, 23.9.1910
- Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, Brussels, 23.9.1910
- Convention and Statute on Freedom of Transit, Barcelona, 20.4.1921
- Convention and Statute on the Regime of Navigable Waterways of International Concern, Barcelona, 20.4.1921

- Declaration Recognising the Right to a Flag of States Having No Sea-coast, Barcelona, 20.4.1921
- Convention and Statute on the International Regime of Maritime Ports, Geneva, 9.12.1923
- International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, 25.8.1924, as amended in 1968 and 1979
- International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, Brussels, 10.5.1952
- International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation, Brussels, 10.5.1952
- International Convention Relating to the Arrest of Sea-going Ships, Brussels, 10.5.1952

- Convention on Facilitation of International Maritime Traffic, London, 9.4.1965, as amended in 1969, 1973, 1977, 1986, 1987, 1990, 1992, 1993, 1996, 1999 , 2002 , 2005 and 2009
- International Convention on Load Lines, London, 5.4.1966, as supplemented in 1988 (amended in 2003, 2004, 2006 and 2008), and as amended in 2005
- International Convention on Tonnage Measurement of Ships, London, 23.6.1969
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels, 29.11.1969, as supplemented in 1973 and as amended in 1991, 1996, 2002 and 2007
- Special Trade Passenger Ships Agreement, London, 6.10.1971, as supplemented in 1973

- Convention on the International Regulations for Preventing Collisions at Sea, London, 20.10.1972, with International Regulations as amended in 1981, 1987, 1989, 1993, 2001 and 2007
- International Convention for Safe Containers, 2.12.1972, as amended in 1981, 1983, 1991 and 2010
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, Mexico City, Moscow and Washington, 29.12.1972, as amended in 1978 (Incineration), 1980, 1989 and 1993
- International Convention for the Prevention of Pollution from Ships, London, 2.11.1973, as modified and supplemented in 1978, and as amended in 1984, 1985, 1987, 1989, 1990, 1991, 1992, 1994, 1995, 1996, 1997, 1999, 2000, 2001, 2003, 2004, 2006, 2007, 2009, 2010, 2011 and 2012, and the Protocol of 1997 as amended in 2005, 2008, 2010, 2011 and 2012

- Convention on a Code of Conduct for Liner Conferences, Geneva, 6.4.1974
- International Convention for the Safety of Life at Sea, London, 1.11.1974, as modified and supplemented by Protocols in 1978 (amended in 1981 and 1988) and 1988 (amended in 2000, 2002, 2004, 2006, 2007, 2008, 2009 and 2010), and as amended in 1981, 1983, 1988, 1989, 1990, 1991, 1992, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011
- Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, Athens, 13.12.1974, as amended in 1976
- Convention on Limitation of Liability for Maritime Claims, London, 19.11.1976



- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, London, 7.7.1978, as amended in 1991, 1994, 1995, 1997 , 2006 and 2010
- International Convention on Maritime Search and Rescue, Hamburg, 27.4.1979, as amended in 1998 and 2004
- International Convention on Salvage, London, 28.4.1989
- International Convention on Oil Pollution Preparedness, Response and Co-operation, London, 30.11.1990, as amended in 2000
- Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, London, 27.11.1992, as amended in 2000

- Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, London, 27.11.1992, as amended in 2000
- The Seafarers' Training, Certification and Watchkeeping Code, London, 7.7.1995, as amended in 1997, 1998, 2004, 2006 and 2010
- Protocol of 1996 to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, 7.11.1996
- International Convention on Civil Liability for Bunker Oil Pollution Damage, London, 23.3.2001

## 1.2 Admiralty Jurisdiction (海事管辖权)

- Admiralty jurisdiction in Hong Kong refers to the jurisdiction conferred by the High Court Ordinance (Cap. 4). In other words, the jurisdiction of the Admiralty jurisdiction of the Court of First Instance in Hong Kong is statutory. It is governed by Section 12A – 12E of the High Court Ordinance. Under Section 12A of the High Court Ordinance, the Admiralty jurisdiction of the Court of First Instance shall consist of jurisdiction to hear and determine any of the following questions and claims:
  - a) any claim to the possession or ownership of a ship or to the ownership of any share therein
  - b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship
  - c) any claim in respect of a mortgage of or charge on a ship or any share therein
  - d) any claim for damage received by a ship
  - e) any claim for damage done by a ship

- f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of
  - (i) the owners, charterers or persons in possession or control of a ship; or
  - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,  
being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship
- g) any claim for loss of or damage to goods carried in a ship
- h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship

i) any claim:-

(i) under the Salvage Convention 1989;

(ii) under any contract for or in relation to salvage services; or

(iii) in the nature of salvage not falling within subparagraph (i) or (ii);

or any corresponding claim in connection with an aircraft;

j) any claim in the nature of towage in respect of a ship or an aircraft

k) any claim in the nature of pilotage in respect of a ship or an aircraft

l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance

m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues

n) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages)

- o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship
- p) any claim arising out of an act which is or is claimed to be a general average act
- q) any claim arising out of bottomry
- r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty
- s) any claim arising under section 7 of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap 413)

- In addition, the Admiralty jurisdiction of the Court of First Instance also has jurisdiction in relation to any of the following proceedings:
- any action to enforce a claim for damage, loss of life or personal injury arising out of-
  - a collision between ships;
  - the carrying out of or omission to carry out a manoeuvre in the case of 1 or more of 2 or more ships; or
  - non-compliance, on the part of 1 or more of 2 or more ships, with the collision regulations;

- any application to the Court of First Instance under-
  - the Merchant Shipping Acts 1894 to 1979\* in their application to Hong Kong;
  - the Merchant Shipping Ordinance (Cap 281);
  - the Merchant Shipping (Safety) Ordinance (Cap 369);
  - the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414);
  - the Merchant Shipping (Registration) Ordinance (Cap 415);
  - the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434);
  - the Merchant Shipping (Local Vessels) Ordinance (Cap 548);
  - the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605);



## 1.3 Maritime procedures and in rem action (海事程序和对物诉讼)

1.3.1 Ship arrests in Hong Kong (在香港的扣船)

1.3.2 Maritime lien (海事留置权)

1.3.3 Issuing an In Rem writ and a warrant of arrest (发出对物诉讼的传讯令状及扣押令)

1.3.4 Affidavit to lead to warrant of arrest (支持发出扣押令的誓章)

1.3.5 Procedures of ship arrests (扣船的程序)

1.3.6 Caveat against arrest (针对扣押的知会备忘)

### 1.3.7 Wrongful arrest (错误扣船)

- Owners may be able to recover from the arresting party the loss they have suffered (which is often substantial) on the basis of wrongful arrest
- The test as to whether the court will order an inquiry into damages for wrongful arrest is whether the action was so unwarrantedly brought as to imply malice or gross negligence on the part of the plaintiff (*The Maule* [1995] 2 HKC 769).

### 1.3.8 Release of vessel under arrest (释放被扣押的船舶)

#### 1.3.8.1 Consent to release arrested vessels (同意释放被扣押的船舶)

#### 1.3.8.2 Court's orders to release arrested vessels (法院命令释放被扣押的船舶)

### 1.3.9 Caveat against release (反对释放船的知会备忘)

## **Part 2: An overview of Maritime Arbitration and Mediation in Hong Kong**

**第二部份：香港的海事仲裁和调解**

## 2.1 Ad hoc and institutional arbitration (临时和机构仲裁)

- An institutional arbitration is one in which a specialised institution intervenes and takes on the role of administering the arbitration process.
- In Hong Kong, there are three arbitration institutions, namely HKIAC, ICC and CIETAC Hong Kong (CMAC Hong Kong)
- Each institution has its own set of rules which provide a framework for the arbitration, and its own form of administration to assist in the process.
- An ad hoc arbitration is one which is not administered by an institution

## 2.1.1 Ad hoc arbitration and mediation (临时仲裁及调解)

### **Advantages of ad hoc maritime arbitration and mediation** **(临时海事仲裁及调解的优点)**

### **Disadvantages of ad hoc maritime arbitration and mediation** **(临时海事仲裁及调解的缺点)**

## 2.1.2 Institutional arbitration and mediation (机构仲裁及调解)

**Advantages of institutional arbitration and mediation(机构仲裁及调解的优点)**

**Disadvantages of institutional arbitration and mediation(机构仲裁及调解的缺点)**

## 2.2.1 The maritime arbitration agreement (海事仲裁协议)

- General requirements
- GA/ Arbitration in Hong Kong, English law to apply
- Institutional or ad hoc?
- Institutional rules
- Ad hoc
- Place of arbitration
- Clauses providing an election between arbitration or litigation
- Hearing other than at stipulated place of arbitration
- Qualification of arbitrators

- Number of arbitrators
- Impartiality and independence of the third arbitrator
- Should there be a nationality restriction on party-appointed arbitrators?
- Amiables compositeurs
- Umpires
- Assessors
- Tribunal experts



## 2.2.2 Maritime Arbitrators (海事仲裁员)

- Special knowledge of maritime law
- Technical skills in maritime matters
- Commercial/ shipping law qualifications
- Ethical Codes of Conduct
- Fees
  - Basic right to fees
  - Costs of arbitration proceedings
  - Court's residual role in assessing fees
  - Acceptable fee structures
  - Fee increases during the arbitration
  - Appointment fees

## 2.2.3 Legal Professionals (法律专业人员)

- Solicitors
- Barristers
- mediators

## 2.2.4 Arbitration costs and recoverability of arbitration costs (仲裁费用及仲裁费用的索赔)

- What costs are recoverable?
- When costs should be awarded?

## 2.3 Practical aspects of maritime arbitration proceedings and mediation (航运仲裁程序和调解的实务问题)

- International Shipping Disputes
  - Liner shipping
  - Bulk shipping of commodities
  - Container
  - Terminals
  - Charterparties

## 2.4 Enforcement of arbitration awards in Hong Kong (在香港强制执行仲裁裁决)

- Enforcement of New York Convention Awards
- Enforcement of arbitral awards made in jurisdiction which is not a party to the New York Convention under the Model Law
- Enforcement of arbitral awards made in Hong Kong
- Enforcement of arbitral awards made in Mainland

## **Part 3: Cross-border maritime claims and dispute resolution**

**第三部份：跨境海事索赔和争议解决**

## 3.1 Securing maritime claims in Mainland (在内地的海事索赔)

### 3.1.1 Arrest for ships (船舶扣押)

- The following maritime claims may applied for arresting ships:
  - 1) the destruction of or damage to the property occurred in the operation of the ship;
  - 2) the loss of life or personal injury directly relating to the operation of the ship;
  - 3) salvage payment;
  - 4) the damage or threat of damage caused by the ship to the environment, seashore or the relevant interested parties; the measures taken for prevention, reduction and elimination of such damage; payment for compensation of such damage; the reasonable cost for the measures taken actually or preparing to take for restoring the environment; loses the third party suffered or will probably suffer due to such damage; and the damage, fees or loses which are similar in nature specified in this Item;

- 5) fees relating to floating, elimination, recycling and destruction of sunken ships, shipwreck, stranded objects, abandoned ships or making them harmless, including fees relating to floating, elimination, recycling and destruction of the objects which still are or were abroad such ships or making them harmless, and fees relating to maintenance of abandoned ships and supporting the crew members;
- 6) the agreement or use or charter parties of the ship;
- 7) an agreement for carriage of goods or passengers;
- 8) goods (including luggage) on board or loss or damage related thereto;
- 9) general average;
- 10) towage service
- 11) pilotage service;
- 12) provision of materials or services for operation, management, maintenance and repair of ships;
- 13) ship building, rebuilding, repair, refitting or fitting;
- 14) prescribed fees or fees for ports, canals, wharves, harbors or other waterways;

- 15) wages of ship's crew or other payments, including the repatriation fee and social insurance premium payable for ship's crew;
- 16) expenses paid for a ship or shipowner;
- 17) ship's insurance premium (including mutual insurance membership fee) paid by a shipowner or bareboat charterer, or paid on his behalf;
- 18) the commission, brokerage or agency fee related to a ship paid by the shipowner or bareboat charterer, or paid on his behalf
- 19) a dispute over ownership or possession of a ship
- 20) a dispute over use of or profit from a ship between co-owners of the ship;
- 21) a mortgage of a ship or right of the same nature; or
- 22) a dispute arising from a contract for sale of a ship.



- If any of the following circumstances exists, a maritime court may arrest the involved ship:
  - 1) where the shipowner is held responsible for a maritime claim and is the owner of the ship when the arrest is executed;
  - 2) where the bareboat charterer of the ship is held responsible for a maritime claim and is the bareboat charterer or the owner of the ship when the arrest is executed;
  - 3) where a maritime claim is entitled to a mortgage of the ship or right of the same nature;
  - 4) where a maritime claim relates to ownership or possession of the ship; or
  - 5) where a maritime claim is entitled to a maritime lien.

- A maritime court may arrest other ships owned by the shipowner, bareboat charterer, time charterer or voyage charterer who is held responsible for a maritime claim, when the arrest is executed, with the exception of the claims related to ownership or possession of the ship.
- No ship engaging in military or government duties may be arrested.
- After a maritime court orders to impose preservation upon a ship, with consent of the maritime claimant, it may allow the ship to continue the operation by ways of restraining the disposition or mortgage of the ship.
- The period of arresting a ship for maritime claim preservation shall be 30 days.

3.2 Attach other properties (扣押其他财产保全)

3.3 Evidence preservation (证据保全)

3.4 Maritime injunction (海事强制令)

## 3.5 Enforcing the arbitration awards and judgments in Hong Kong SAR and Mainland (强制执行在香港和内地仲裁裁决和法院判决)

- On 20 June 1999 Hong Kong and the PRC signed a Memorandum of Understanding on the “Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Mutual Enforcement of Arbitration Awards”
  - The Arrangement came into effect in both Hong Kong and the Mainland on 1 February 2000
  - In 1995, the Supreme People’s Court issued a Notice Regarding the People’s Courts’ Handling of Foreign-related Arbitration and Foreign Arbitration Issues (No. 18 of 1995) (1995 Notice)
  - This Notice directs that before a People’s Court decides not to enforce a foreign arbitration award, or to reject an application for recognition and enforcement of a foreign arbitration award, it must report the matter to the Higher People’s Court

- If the Higher People's Court also does not want to enforce the award, or agrees to reject the application for recognition and enforcement, it must report the matter to the Supreme People's Court
- No order can be made until the Supreme People's Court has given its reply
- Section 4 of the Rules on Fees and the Limitation Period for the Court Review in Respect of the Recognition and Enforcement of Foreign Arbitration Awards (No. 28 of 1998) provides that the People's Court, if it decides to recognise and enforce an award pursuant to an application under art. 4 of the New York Convention, should issue its decision within two months of the date of the application
- On 30 December 2009 the Supreme People's Court also issued its Notice on Questions Concerning the Enforcement of Hong Kong Arbitral Awards in the Mainland (2009 Notice)
- The 2009 Notice has further clarified that arbitral awards made under Hong Kong arbitration institution and ad hoc arbitral awards are to be enforced in the Mainland in accordance with the Arrangement
- The Supreme People's Court's helpful clarifications of the status and treatment of arbitral awards rendered in Hong Kong have reinforced Hong Kong's status as a preferred arbitration jurisdiction for the resolution of PRC-related arbitrations

## 3.6 Enforcement of New York Conventions Arbitration Award

## 3.7 Comparison of the maritime procedure of the Mainland and Hong Kong SAR (内地与香港特别行政区海事诉讼程序的比较)

- Maritime court
- Arrest procedure
- Counter-security
- Arrest for security
- Stay proceedings
- Legal costs

### 3.8 Closer Cooperation between Mainland and Hong Kong SAR in respect of maritime dispute resolution (内地与香港特区之间关于海事争议更紧密合作的前景)

- Dispute on jurisdiction
- Injunctions based on the arbitration agreement

**Thank you!**

**多谢！**