

**THE STATE PRESIDENT****ORDER No. 13/2005/L-CTN OF JUNE 27, 2005,  
ON THE PROMULGATION OF CODE****THE PRESIDENT OF THE SOCIALIST  
REPUBLIC OF VIETNAM**

*Pursuant to Articles 103 and 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the X<sup>th</sup> National Assembly, the 10<sup>th</sup> session;*

*Pursuant to Article 91 of the Law on Organization of the National Assembly;*

*Pursuant to Article 50 of the Law on Promulgation of Legal Documents,*

**PROMULGATES:****The Vietnam Maritime Code,**

which was passed on June 14, 2005 by the XI<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 7<sup>th</sup> session.

***President of the Socialist Republic  
of Vietnam***

**TRAN DUC LUONG**

**THE VIETNAM MARITIME CODE**

(No. 40/2005/QH11)

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the X<sup>th</sup> National Assembly, the 10<sup>th</sup> session;*

*This Code provides for maritime shipping activities,*

**Chapter I****GENERAL PROVISIONS****Article 1.- Scope of regulation**

1. This Code provides for maritime shipping activities, covering seagoing vessels, crew, seaports, marine navigable channels, ocean shipping, marine navigation safety, marine navigation security, prevention of environmental pollution and other activities related to the use of seagoing vessels for economic, cultural, social, sport, public service and scientific research purposes.

Military vessels, public-duty vessels, fishing vessels, inland waterway crafts, hydroplanes, military ports, fishing ports and inland waterway ports and wharves shall be governed by this Code only in cases where there are relevant specific provisions of this Code.

2. Where the provisions of the Vietnam Maritime Code are different from those of other laws on the same issue relating to maritime shipping activities, the provisions of this Code shall apply.

**Article 2.- Subjects of application**

1. This Code shall apply to Vietnamese organizations and individuals and foreign organizations and individuals involved in maritime shipping activities in Vietnam.

2. In cases where international agreements to which the Socialist Republic of Vietnam is a contracting party contain provisions different from those of this Code, the provisions of such international agreements shall apply.

**Article 3.- Principles of application of laws in case of conflict of laws**

1. Legal relations relating to ownership of property on board seagoing vessels, charterparties, crew employment contracts, contracts of carriage of passengers and luggage, the division of salvage remuneration between the owner and crew of the salving ship, the recovery of property sunk on the high seas or incidents occurring on board seagoing vessels on the high seas, shall be governed by the laws of the flag states.

2. Legal relations relating to general average shall be governed by the law in force in the country of the place where the seagoing vessel calls at immediately after such general average occurs.

3. Legal relations relating to collision, salvage remuneration, or the recovery of property sunk in the internal waters or territorial sea of a country shall be governed by the law of such country.

Legal relations relating to collisions or salvage operations performed on the high seas shall be governed by the law of the country whose arbitration or court is the first to deal with the dispute.

Collisions occurring on the high seas or the internal waters or territorial sea of another country between seagoing vessels of the same nationality shall be governed by the law of the flag state.

4. Legal relations relating to contracts of carriage of cargo shall be governed by the law of the country where the cargo is delivered as contracted.

**Article 4.- Right to reach agreement in contracts**

1. Parties to contracts relating to maritime shipping may reach separate agreements, which are not restricted by this Code.

2. Parties to contracts relating to maritime shipping at least one of which is a foreign organization or individual may agree to apply foreign laws or international maritime customs to their contractual relations and the choice of an arbitration or a court in either of their countries or in a third country for settlement of their disputes.

3. If it is provided for in this Code or agreed upon by the parties in their contracts, foreign laws may be applied in Vietnam to contractual relations relating to maritime shipping, provided that such laws do not contravene the fundamental principles of Vietnamese law.

**Article 5.- Principles of maritime shipping**

1. Maritime shipping must comply with the provisions of this Code, other provisions of Vietnamese law, and treaties to which the Socialist

Republic of Vietnam is a contracting party.

2. Maritime shipping must ensure marine navigation safety, defense and security; protect the interests, sovereignty, sovereign rights and jurisdiction of the Socialist Republic of Vietnam.

3. Maritime shipping must comply with the national socio-economic development strategy as well as strategies, plannings and plans for transport development.

4. Maritime shipping must ensure economic efficiency combined with protection, improvement and development of the environment and natural landscapes in a sustainable manner.

**Article 6.- Maritime development policies**

1. The State prioritizes investment in developing seaport infrastructure facilities in service of national or inter-regional socio-economic development; increasing the shipping capacity of Vietnamese fleets, transferring and applying maritime scientific and technological advances.

2. The State adopts policies to encourage all Vietnamese and foreign organizations and individuals to develop Vietnamese fleets, seaport infrastructure facilities and carry out other maritime shipping activities in Vietnam.

**Article 7.- The right to domestic carriage**

1. Vietnamese seagoing vessels shall enjoy priority to conduct domestic carriage of cargoes, passengers and luggage.

2. When Vietnamese seagoing vessels are incapable of domestic carriage, foreign seagoing vessels may participate in domestic carriage in the

following cases:

a/ Carrying extra-long and extra-heavy cargoes or other kinds of cargoes by seagoing vessels exclusively used for this purpose;

b/ Preventing, controlling, remedying the consequences of, natural disasters, epidemics or rendering emergency relief;

c/ Transporting passengers and luggage from tourist passenger vessels to the land and vice versa.

3. The Transport Minister shall decide on the cases specified at Points a and b, Clause 2 of this Article.

Directors of port authorities shall decide on the cases specified at Point c, Clause 2 of this Article.

**Article 8.- Responsibilities of state management of maritime shipping**

1. The Government performs uniform state management of maritime shipping.

2. The Transport Ministry is responsible to the Government for performing the state management of maritime shipping.

3. Ministries and ministerial-level agencies shall, within the scope of their respective tasks and powers, have to coordinate with the Transport Ministry in performing the state management of maritime shipping.

4. People's Committees at all levels shall, within the scope of their tasks and powers, have to perform the state management of maritime shipping in localities.

**Article 9.- Maritime inspectorate**

1. The maritime inspectorate is attached to the Transport Ministry's Inspectorate and performs the specialized maritime inspection functions.

2. The organization, functions, tasks and powers of the Maritime Inspectorate shall comply with the provisions of this Code and the provisions of law on inspection.

**Article 10.-** Prohibited acts in maritime shipping

1. Causing harms or threatening to cause harms to the sovereignty and security of the Socialist Republic of Vietnam.

2. Carrying persons, cargoes, luggage, weapons, radioactive matters, hazardous wastes and narcotic drugs in contravention of the provisions of law.

3. Intentionally creating obstructions, causing danger to or obstructing navigation.

4. Using, operating seagoing vessels without registration, registry or with expired registration, registry or with forged registration, registry.

5. Refusing to participate in search and rescue at sea even though practical conditions permit.

6. Causing environmental pollution.

7. Infringing upon the life, health, honor and dignity of persons on board seagoing vessels; appropriating, intentionally damaging or destroying property on board seagoing vessels; fleeing after causing maritime accidents.

9. Disturbing public order, obstructing or resisting persons on public duty on board seagoing vessels and at seaports.

9. Abusing one's position and powers to act

against regulations on maritime shipping management; tolerating, covering persons committing violations of maritime law.

10. Other prohibited acts in maritime shipping as provided for by law.

**Chapter II**

**SEAGOING VESSELS**

**Section 1. GENERAL PROVISIONS**

**Article 11.-** Seagoing vessels

Seagoing vessels are vessels or other moving floating structures exclusively used for navigation on the sea.

Seagoing vessels provided for in this Code do not include military vessels, public-duty vessels and fishing vessels.

**Article 12.-** Vietnamese seagoing vessels

1. Vietnamese seagoing vessels are vessels which have been entered into the Vietnam National Register of Ships or have been granted provisional permits for flying the Vietnamese flag by foreign-based Vietnamese diplomatic missions or consulates.

2. Vietnamese seagoing vessels are entitled and obliged to fly the Vietnamese flag.

3. Only Vietnamese seagoing vessels may fly the Vietnamese flag.

**Article 13.-** Shipowners

1. Shipowners are owners of seagoing vessels.

2. State enterprises that are assigned by the State to manage and operate seagoing vessels shall also be entitled to the application of the provisions of this Code and other relevant provisions of law regarding shipowners.

## **Section 2. REGISTRATION OF SEAGOING VESSELS**

**Article 14.-** Principles for registration of seagoing vessels

1. The registration of Vietnamese seagoing vessels shall abide by the following principles:

a/ Seagoing vessels owned by Vietnamese organizations or individuals shall be entitled to registration in the Vietnam National Register of Ships, including registration of flying the Vietnamese flag and registration of ownership thereof.

Seagoing vessels owned by foreign organizations or individuals and satisfying all conditions stated in Article 16 of this Code may be entered into the Vietnam National Register of Ships. Registration of a Vietnamese seagoing vessel includes registration of flying the Vietnamese flag and registration of ownership thereof or only registration of flying the Vietnamese flag.

Foreign seagoing vessels chartered by Vietnamese organizations or individuals in the form of bareboat charter or hire-purchase charter may be registered to fly the Vietnamese flag.

b/ Seagoing vessels which have been registered abroad must not be registered to fly the Vietnamese flag, unless their old registration has been suspended or deleted.

c/ The registration of Vietnamese seagoing

vessels is effected by the Vietnam Registry of Shipping in a public manner and subject to the payment of a fee; organizations and individuals may request the grant of certified extracts from or copies of entries in the Vietnam National Register of Ships, for which they have to pay a fee.

2. Seagoing vessels owned by Vietnamese organizations or individuals may be registered to fly a foreign flag.

**Article 15.-** Kinds of seagoing vessels subject to registration

1. The following kinds of seagoing vessels must be registered in the Vietnam National Register of Ships:

a/ Self-propelled seagoing vessels with main engine capacity of 75 kW or more;

b/ Non-self-propelled seagoing vessels, with total capacity of 50 GT or more, or a tonnage of 100 tons or more, or a designed load waterline length of 20 meters or more;

c/ Seagoing vessels smaller than those specified at Points a and b of this Clause but operating on foreign routes.

2. The registration of seagoing vessels other than those specified in Clause 1 of this Article shall be stipulated by the Government.

**Article 16.-** Conditions for registration of Vietnamese seagoing vessels

1. To be entered into the Vietnam National Register of Ships, seagoing vessels must satisfy the following conditions:

a/ Having lawful papers evidencing ownership of seagoing vessels;

b/ Having certificates of tonnage, certificates of class of seagoing vessels;

c/ Having proper names approved by the Vietnam Registry of Shipping;

d/ Having certificates of suspension or deletion of registration, for seagoing vessels registered abroad;

e/ Shipowners having head offices, branches or representative offices in Vietnam;

f/ Used foreign seagoing vessels applying for first-time registration or re-registration in Vietnam must have their age suitable to each type of seagoing vessels as stipulated by the Government;

g/ Having paid a charge or fee as provided for by law.

2. Foreign seagoing vessels chartered by Vietnamese organizations or individuals in the form of bareboat charter or hire purchase, when applying for registration to fly the Vietnamese flag, must, apart from meeting the conditions specified at Points a, b, c, d, f and g, Clause 1 of this Article, have bareboat charters or hire-purchase contracts.

**Article 17.-** Responsibilities of shipowners for registering seagoing vessels in Vietnam

1. Shipowners shall have to fully supply papers and fully and accurately declare the contents relating to seagoing vessel registration specified in Articles 16 and 19 of this Code to the Vietnam Registry of Shipping.

2. In case of seagoing vessels newly built, purchased by, presented to or inherited by Vietnamese organizations or individuals, shipowners shall have to register them within sixty days after receiving the vessels in Vietnam or, for

seagoing vessels received abroad, after taking them to the first Vietnamese seaport.

3. Shipowners shall have to pay a seagoing vessel registration fee according to the provisions of law.

4. After completing the registration, shipowners shall be granted certificates of registration of Vietnamese seagoing vessels, which shall constitute proof of the seagoing vessels' flying the Vietnamese flag and ownership status.

5. Any changes of ships relating to the contents entered into the Vietnam National Register of Ships must be informed by their owners in an accurate, full and timely manner to the Vietnam Registry of Shipping.

6. The provisions of this Article shall apply to Vietnamese organizations and individuals that bareboat charter or hire-purchase a vessel.

**Article 18.-** Registration of seagoing vessels in course of building

1. Owners of seagoing vessels in course of building may have such vessels entered into the Vietnam National Register of Ships and receive certificates of registration of seagoing vessels in course of building. These certificates shall not be valid for substituting certificates of registration of Vietnamese seagoing vessels.

2. To be entered into the Vietnam National Register of Ships, seagoing vessels in course of building must fully satisfy the following conditions:

a/ Having shipbuilding contracts or contracts of purchase and sale of seagoing vessels in course of building;

b/ Having proper names approved by the Vietnam Registry of Shipping;

c/ Having keel-setting.

**Article 19.-** Basic data of the Vietnam National Register of Ships

1. The Vietnam National Register of Ships contains the following basic data:

a/ The old name and new name of the vessel; the name and address of the head office of the shipowner; the name and address of the foreign shipowner's branch or representative office in Vietnam; the name and address of the head office of the bareboat charterer or hire-purchaser applying for registration; the name of the ship operator, if any; the kind and use purpose of the vessel;

b/ The port of registration;

c/ The registration serial number;

d/ The time of registration;

e/ The year and place of building;

f/ The principal technical parameters of the vessel;

g/ The ownership status of the vessel and any related changes;

h/ The time of and the ground for the vessel's registration suspension or deletion.

2. Every change in the registration data stipulated in Clause 1 of this Article must be entered into the Vietnam National Register of Ships.

**Article 20.-** Deletion of registration of Vietnamese seagoing vessels

1. Vietnamese seagoing vessels shall have their registration deleted from the Vietnam National

Register of Ships in the following cases:

a/ Having been destroyed or sunk irrecoverably;

b/ Having been missing;

c/ Having no longer met all conditions for flying the Vietnamese flag;

d/ Having lost the characteristics of a seagoing vessel;

e/ At the request of their owners or registrants.

2. In cases specified at Points d and e, Clause 1 of this Article, when a seagoing vessel has been mortgaged, the deletion of registration of the Vietnamese seagoing vessel may be effected only with the consent of the mortgagee of such vessel.

3. Upon deletion of registration of a seagoing vessel or a seagoing vessel in course of building from the Vietnam National Register of Ships, the Vietnam Registry of Shipping shall withdraw the certificates of registration of Vietnamese seagoing vessels or seagoing vessels in course of building and grant certificates of deletion of registration.

**Article 21.-** Detailed provisions on registration of seagoing vessels

The Government shall provide in detail for the organization and operation of the Vietnam Registry of Shipping; order and procedures for registration of seagoing vessels in Vietnam; cases of seagoing vessels owned by Vietnamese organizations or individuals entitled to registration to fly foreign flags; and cases of seagoing vessels owned by foreign organizations or individuals entitled to registration to fly the Vietnamese flag.

**Article 22.-** Registration of public-duty vessels

Public-duty vessels are seagoing vessels

exclusively used for the performance of public duties for non-commercial purposes.

The provisions of this Section shall apply to the registration of public-duty vessels.

### **Section 3. REGISTRY OF VIETNAMESE SEAGOING VESSELS**

**Article 23.-** Registry of Vietnamese seagoing vessels

1. Vietnamese seagoing vessels must be inspected, classified and granted technical certificates of marine navigation safety, marine navigation security and prevention of environmental pollution by Vietnam Register or foreign registries authorized by the Transport Minister according to the provisions of Vietnamese law and treaties which the Socialist Republic of Vietnam is a contracting party.

2. The Transport Minister shall promulgate marine navigation safety, marine navigation security and environmental pollution prevention standards applicable to seagoing vessels and provide for and organize the registry of seagoing vessels in Vietnam.

**Article 24.-** Technical inspection and supervision of Vietnamese seagoing vessels

1. Seagoing vessels which are newly built, transformed, reconstructed or repaired must be subject to inspection and supervision by registry organizations with respect to their quality, technical safety, compliance with the approved design dossiers before they are granted relevant certificates.

2. Seagoing vessels in the course of operation

shall be subject to periodical inspection by registry organizations with respect to their quality and technical safety.

**Article 25.-** Registry of public-duty vessels

The provisions of this Section shall apply to the registry of public-duty vessels.

### **Section 4. CERTIFICATES AND DOCUMENTS OF SEAGOING VESSELS**

**Article 26.-** Certificates and documents of seagoing vessels

1. Seagoing vessels must have seagoing-vessel registration certificates, certificates of marine navigation safety, marine navigation security and prevention of environmental pollution according to the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.

The Transport Minister shall provide in detail for certificates and documents of Vietnamese seagoing vessels.

2. Certificates of marine navigation safety, marine navigation security and prevention of environmental pollution must show the period of their validity. This period may be extended for ninety days at most if the seagoing vessels are actually unable to call for inspection at the designated place and their practical technical conditions still ensure marine navigation safety, marine navigation security and prevention of environmental pollution. This extended duration shall expire immediately upon the seagoing vessel's arrival at the designated port for inspection.

3. Certificates of marine navigation safety,



marine navigation security and prevention of environmental pollution shall become invalid if the seagoing vessels see alterations that seriously affect their capability of ensuring marine navigation safety, marine navigation security and prevention of environmental pollution.

4. Where they have grounds to believe that seagoing vessels fail to ensure marine navigation safety, marine navigation security and prevention of environmental pollution, the maritime inspectorate and port authorities shall be entitled to suspend the operation of such seagoing vessels, conduct by themselves or request Vietnamese registry organizations to conduct technical inspection of such seagoing vessels, despite that the seagoing vessels have all certificates of marine navigation safety, marine navigation security and prevention of environmental pollution.

**Article 27.-** Seagoing-vessel tonnage certificates

1. Vietnamese seagoing vessels and foreign seagoing vessels, when operating in Vietnamese seaport waters or seas, must have seagoing-vessel tonnage certificates granted by Vietnamese registry organizations or competent foreign seagoing-vessel tonnage measurement organizations. Seagoing-vessel tonnage certificates must comply with the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.

2. In case of doubting the authenticity of seagoing-vessel tonnage certificates specified in Clause 1 of this Article, competent Vietnamese state agencies may decide on their own initiative or at the request of concerned organizations or

individuals to re-inspect the capacity of seagoing vessels. In case the inspection results are incompatible with the seagoing vessels' capacity certificates, the shipowners must incur expenses related to the re-inspection. In case the inspection results are compatible with the seagoing vessels' capacity certificates, the competent state agencies which have decided on their own initiative on the inspection or the organizations or individuals that have requested the inspection must incur expenses related to the re-inspection.

**Section 5. MARINE NAVIGATION SAFETY,  
MARINE NAVIGATION SECURITY AND  
PREVENTION OF ENVIRONMENTAL  
POLLUTION**

**Article 28.-** Assurance of marine navigation safety, marine navigation security and prevention of environmental pollution

1. Vietnamese seagoing vessels shall only be employed for the purposes declared in the Vietnam National Register of Ships when their construction, standing appliances and equipment, certificates and documents, complement and professional competence of crew comply with the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party regarding marine navigation safety, marine navigation security and prevention of environmental pollution.

2. Seagoing vessels, when operating in Vietnamese seaport waters and seas, must observe the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party regarding marine navigation safety, marine navigation security and prevention

of environmental pollution.

3. Seagoing vessels, military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes, when operating in Vietnamese seaport waters and seas, must follow the instructions of marine signals and observe the rules for the prevention of collisions and regulations of the Transport Minister.

Marine signals include signals noticeable in the form of image, light, sound and radio signals established to guide the navigation of seagoing vessels.

4. In marine navigational channels, at necessary positions near the coast, on islands, in water areas where exist obstructions and other structures at sea and in seaport waters where seagoing vessels are permitted to operate, marine signals must be installed according to regulations of the Transport Minister.

Marine navigational channels are water areas delimited by the system of marine signals and other aids to ensure safety for the operation of seagoing vessels and other waterway crafts. Marine navigational channels include seaport channels and other marine navigational channels.

5. When operating in Vietnamese seaport waters and seas, seagoing vessels exclusively employed for carrying oil, oil products and other dangerous cargoes must be covered by insurance policies for civil liability of their owners for environmental pollution.

6. Foreign seagoing vessels operated by nuclear power and vessels carrying radioactive substances shall not be permitted to enter into Vietnamese seaport waters, internal waters or

territorial sea unless approval is granted by the Prime Minister.

**Article 29.-** Inspection and supervision of marine navigation safety, marine navigation security and prevention of environmental pollution

1. Seagoing vessels, when operating in Vietnamese seaport waters, internal waters and territorial sea, shall be subject to inspection and supervision by the maritime inspectorate and port authorities of marine navigation safety, marine navigation security and prevention of environmental pollution according to the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.

2. The inspection and supervision stated in Clause 1 of this Article must be conducted in accordance with law and not affect seagoing vessels' marine navigation safety, marine navigation security and environmental pollution prevention capability.

3. Shipowners and masters shall have to create conditions for competent state agencies specified in Clause 1 of this Article to conduct inspection and supervision of their seagoing vessels.

4. Shipowners and masters shall have to repair and remedy their seagoing vessels' defects related to marine navigation safety, marine navigation security and prevention of environmental pollution at the request of the maritime inspectorate and port authorities.

**Article 30.-** Marine search and rescue

1. When being in danger and in need of help, seagoing vessels, military vessels, public-duty

vessels, fishing vessels, inland waterway crafts and hydroplanes must emit SOS signals according to regulations.

2. When detecting or receiving SOS signals from persons or other vessels in distress at sea, in seaport waters, seagoing vessels, military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes must, if practical conditions permit and no serious dangers will be caused to the vessels and persons on board, help the persons in distress by all means, even if they have to deviate from the set course and promptly notify relevant organizations and individuals thereof.

3. The marine search and rescue-coordinating agency must be ready to organize and coordinate activities of searching and rescuing in time the persons in distress in search and rescue areas under their management and have the right to mobilize persons and means for the search and rescue.

4. The Transport Minister shall specify the organization and operation of the marine search and rescue-coordinating agency.

**Article 31.-** Investigation of marine accidents

1. Marine accidents mean accidents caused by collisions or other incidents involving seagoing vessels, resulting in loss of life, missing persons, personal injuries, damage to cargoes, luggage and property on board the seagoing vessels, to seaports and other structures and equipment, damage to the vessels; in sinking, destruction, fire, running aground of the vessels; or in environmental pollution.

2. Directors of port authorities shall organize investigations of marine accidents; if detecting any criminal signs in the course of investigation, they shall transfer the dossiers to competent investigation agencies.

3. The Transport Minister shall provide in detail for the reporting and investigation of marine accidents.

**Section 6. TRANSFER OF OWNERSHIP AND MORTGAGE OF SEAGOING VESSELS**

**Article 32.-** Transfer of ownership of seagoing vessels

1. The transfer of ownership of seagoing vessels must be established in writing according to the provisions of Vietnamese law or the law of the country where the transfer is effected.

2. The transfer of ownership of Vietnamese seagoing vessels shall be effective after it is entered into the Vietnam National Register of Ships.

3. After the completion of procedures for transfer of ownership, the whole seagoing vessel and its appurtenances shall come under the ownership of the transferee, unless otherwise agreed upon by the involved parties.

Appurtenances of a seagoing vessel include objects, facilities and equipment on board the vessel which do not constitute component parts of the vessel.

4. Regulations on transfer of ownership of seagoing vessels shall apply to the transfer of ownership of shares of seagoing vessels.

5. The Government shall provide for the

conditions, order and procedures for transfer of ownership of seagoing vessels in the form of purchase and sale.

**Article 33.- Mortgage of Vietnamese seagoing vessels**

1. The mortgage of a seagoing vessel means an act whereby the shipowner secures with his/her seagoing vessel the performance of his/her obligation to the obligee but is not required to hand over the vessel to the mortgagee for custody.

2. Shipowners have the right to mortgage Vietnamese seagoing vessels under their ownership to mortgagees according to the provisions of this Code and other relevant provisions of law.

3. *Contracts for mortgage of Vietnamese seagoing vessels must be made in writing. The mortgage of Vietnamese seagoing vessels shall comply with the provisions of Vietnamese law.*

4. The provisions on mortgage of seagoing vessels shall also apply to the mortgage of seagoing vessels in course of building.

**Article 34.- Principles of mortgage of Vietnamese seagoing vessels**

1. Mortgaged seagoing vessels must not change hands, *unless it is consented by the mortgagees.*

2. Mortgaged seagoing vessels must be covered with insurance by their owners, unless otherwise agreed upon in mortgage contracts.

3. Where the mortgagee has transferred the whole or part of his/her right to the debt secured with the mortgaged seagoing vessel to another

person, the mortgage of such seagoing vessel shall be also transferred in the same way.

4. A seagoing vessel may be used to secure several obligations, provided that its value is bigger than the aggregate value of the secured obligations, unless otherwise agreed upon.

The priority order of mortgages is determined on the basis of the corresponding order of registered mortgages in the Vietnam National Register of Ships.

5. The mortgage of a seagoing vessel owned by two or more owners must be consented by all the owners, unless otherwise agreed upon.

6. Where a seagoing vessel suffers from total loss, the mortgage shall terminate; the mortgagee shall be prioritized to receive the indemnity paid by the insurer for the total loss of the seagoing vessel.

7. Mortgagees shall only keep copies of seagoing-vessel registration certificates of mortgaged seagoing vessels.

**Article 35.- Registration of mortgages of Vietnamese seagoing vessels**

1. Registration of mortgage of a Vietnamese seagoing vessel has the following details:

- a/ The names and addresses of the head offices of the mortgagee and the shipowner;
- b/ The name and nationality of the mortgaged seagoing vessel;
- c/ The amount secured by the mortgage, interest rate and maturity.

2. The mortgage of a seagoing vessel shall become effective from the time it is entered into

the Vietnam National Register of Ships.

3. Information on the registration of mortgages of Vietnamese seagoing vessels shall be supplied upon request.

4. Registrants of mortgages of seagoing vessels and users of information on mortgages of seagoing vessels shall have to pay fees.

### **Section 7. MARITIME LIENS**

#### **Article 36.- Maritime liens**

1. Maritime lien is the right of a person who lodges a maritime claim specified in Article 37 of this Law to priority in claiming compensation from the owner, charterer or operator of a seagoing vessel which has given rise to the maritime claim.

Maritime claim is an act whereby a party requests the other party to perform the obligation arising in relation to maritime shipping.

2. Maritime claims that give rise to maritime liens specified in Article 37 of this Code take priority over maritime claims secured by the mortgage of seagoing vessels and other security transactions.

3. Maritime liens shall be exercised through competent courts in the form of decisions to arrest seagoing vessels which are related to maritime claims that have given rise to maritime liens.

4. Persons who lodge maritime claims shall have maritime liens over seagoing vessels to secure the maritime claims specified in Article 37 of this Code, even though the seagoing vessels concerned have been mortgaged or their owners have conducted other security transactions to secure other obligations under contracts.

5. Maritime liens on seagoing vessels shall not be affected by a change of owners, charterers or operators, whether or not the purchasers of the seagoing vessels know that the vessels have been related to maritime claims that give rise to maritime liens.

#### **Article 37.- Maritime claims giving rise to maritime liens**

1. Maritime claims for wages, repatriation costs, social insurance contributions, and other amounts due to shipmasters, officers and other members of shipcrews.

2. Maritime claims for indemnity for loss of life, personal injuries, other health damage directly related to seagoing vessels' operation;

3. Maritime claims for tonnage dues, maritime safety assurance dues, pilotage, wharfage, and other seaport dues and charges;

4. Maritime claims for salvage remuneration;

5. Maritime claims based on tort arising out of property loss and damage directly caused by the operation of seagoing vessels.

#### **Article 38.- Priority order of settlement of maritime claims giving rise to maritime liens**

1. Maritime claims giving rise to maritime liens shall be prioritized for settlement in the order of claims listed in Article 37 of this Code; where a maritime claim for remuneration for the salvage of a seagoing vessel arises after maritime claims giving rise to other maritime liens, such claim shall take priority over other maritime claims.

2. Maritime claims that give rise to maritime liens

in the same clause of Article 37 of this Code shall rank *pari passu* as between themselves; where the sum of money is insufficient to cover the value of each maritime claim, it shall be divided in proportion to the value of each maritime claim.

3. Maritime claims arising from one event shall be deemed to have arisen at the same time.

4. Maritime claims that give rise to maritime liens on a seagoing vessel on the last voyage shall take priority over those on previous voyages.

5. Maritime claims arising from one labor contract relating to many voyages shall be settled at the same time with those relating to the last voyage.

6. In case of maritime claims for salvage remuneration specified in Clause 4, Article 37 of this Code, the maritime claim arising later shall be settled before other maritime claims.

**Article 39.-** Statute of limitations of maritime liens

1. The statute of limitations of a maritime lien is one year, counting from the date of arising of the maritime lien.

2. The statute of limitations of a maritime lien defined in Clause 1 of this Article is counted as follows:

a/ From the date of termination of the salvage operation, in case of settlement of salvage remuneration;

b/ From the date of arising of loss, in case of settlement of loss and damage caused by the operation of the seagoing vessel;

c/ From the date payment is due, in case of

settlement of other maritime claims.

3. A maritime lien shall terminate as from the time the owner, charterer or operator of the vessel has fully paid debts arising from the related maritime claims; the maritime lien remains effective if the payment money is still kept by the master or the person who is authorized to pay on behalf of the owner, charterer or operator of the vessel the debts related to the maritime claim concerned.

4. In cases where a court cannot exercise the right to arrest the seagoing vessel within the Vietnamese internal waters or territorial sea in order to protect the interests of the maritime claimant who permanently resides or has his/her head office in Vietnam, the statute of limitations specified in Clause 1 of this Article shall terminate thirty days after the vessel arrives at the first Vietnamese port but shall not exceed two years, counting from the date of arising of the maritime lien.

## **Section 8. ARREST OF SEAGOING VESSELS**

**Article 40.-** Arrest of seagoing vessels

1. The arrest of a seagoing vessel is an act of banning or restricting the movement of a seagoing vessel by decision of a court to secure the settlement of maritime claims specified in Article 41 of this Code, but excluding the seizure of the seagoing vessel in execution of a court judgment or decision or an enforcement decision of a competent state agency.

2. The procedures for arrest of seagoing vessels shall comply with regulations of the National Assembly Standing Committee.

**Article 41.-** Maritime claims giving rise to the

right to arrest seagoing vessels

Maritime claims giving rise to the right to arrest seagoing vessels are claims in the following cases:

1. Cases specified in Article 37 of this Code;
2. Damage caused by or threatened to be caused by a seagoing vessel to the environment, coast or related interests; measures taken to avert, limit or remedy such damage; money indemnity for such damage; expenses for reasonable measures actually taken or to be taken to rehabilitate the environment; loss already inflicted or to be inflicted on a third party affected by such damage; damage, expenses or loss similar to those specified in this Clause;
3. Expenses incurred in the raising, movement, recovery, destruction or rendering harmless of a seagoing vessel which is sunk, wrecked, stranded or abandoned, including any appurtenance that is or has been on board the vessel, expenses or costs related to the abandoned seagoing vessel and expenses for its crew.
4. Agreement relating to the use or charter of a seagoing vessel, whether by charterparty or otherwise;
5. Agreement relating to the carriage of cargo or passengers on board a seagoing vessel, whether by charterparty or otherwise;
6. Loss of or damage to cargo, including luggage carried on board a seagoing vessel;
7. General average;
8. Towage;
9. Pilotage;
10. Goods, materials, food, fuel, equipment

(including containers) supplied or services provided to a seagoing vessel for its operation, management, preservation and maintenance;

11. Building, transformation, reconstruction, repair or equipment of a seagoing vessel;
12. Payments made on behalf of the shipowner;
13. Insurance premiums paid by the shipowner or a person on behalf of the shipowner or bareboat charterer;
14. Commission, brokerage or agent's expenses relating to a seagoing vessel which must be paid by its owner, bareboat charterer or an authorized person;
15. Disputes over ownership of a seagoing vessel;
16. Disputes between co-owners of a seagoing vessel over the use of the seagoing vessel or earnings of the vessel;
17. Mortgages of a seagoing vessel;
18. Disputes arising from contracts for purchase and sale of seagoing vessels.

**Article 42.- Exercise of the right to arrest seagoing vessels**

1. After receiving the request for arrest of a seagoing vessel made by a person who files a maritime claim specified in Article 41 of this Code, a competent court shall consider and decide on the arrest of the seagoing vessel in the following cases:

a/ The shipowner is the person responsible for the maritime claim at the time of arising of the maritime claim and still owns the vessel at the time

of its arrest;

b/ The bareboat charterer is the person responsible for the maritime claim at the time of arising of the maritime claim and still the bareboat charterer or the owner of the vessel at the time of its arrest;

c/ This maritime claim is based on the mortgage of the seagoing vessel concerned;

d/ This maritime claim is related to the right to ownership or possession of the seagoing vessel concerned;

e/ This maritime claim is secured by a maritime lien relating to the seagoing vessel concerned.

2. The arrest shall be also effected of another or many other seagoing vessels owned by the person who is held responsible for the maritime claim and, at the time of arising of the maritime claim, is also:

a/ The owner of the seagoing vessel related to the arising maritime claim;

b/ The bareboat charterer, time charterer or voyage charterer of the seagoing vessel related to the arising maritime claim.

3. The provisions of Clause 2 of this Article shall not apply to maritime claims relating to the right to ownership of seagoing vessels.

**Article 43.-** Financial assurances for requests for arrest of seagoing vessels

1. In order to effect the arrest of a seagoing vessel, the requester for such arrest must provide financial assurances in the form and value set by the court corresponding to the damage that might occur from the request.

2. The requester for arrest of a seagoing vessel shall be responsible for any loss or damage caused by the wrong request.

**Article 44.-** Release of arrested seagoing vessels

1. Immediately after the shipowner, charterer or operator of a seagoing vessel has taken substitute security measures or fully paid the debt, the arrested seagoing vessel must be released.

2. Failing an agreement between the involved parties on the level and form of substitute security, the court shall decide on the level and form of substitute security which, however, must not exceed the value of the arrested seagoing vessel. The requester for the arrest of a seagoing vessel must not perform any action that infringes upon the property or other interests of the shipowner, charterer or operator.

3. The arrested seagoing vessel may be released at the request of the requester for the arrest; in this case, all related expenses shall be incurred by the requester.

### **Chapter III**

#### **SHIPCREW**

**Article 45.-** Shipcrew

Shipcrew consists of crewmen within the complement of a seagoing vessel, including the master, officers and those who hold other job titles arranged to work on board the vessel.

**Article 46.-** Crewmen working on board seagoing vessels



1. Crewmen are those who meet all conditions and criteria for holding job titles on board a Vietnamese seagoing vessel.

2. Crewmen working on board a Vietnamese seagoing vessel must fully meet the following conditions:

a/ Being Vietnamese citizens or foreign citizens permitted to work on board a Vietnamese seagoing vessel;

b/ Meeting all criteria of health, working age, professional competence and having all professional certificates as provided for;

c/ Being arranged to hold job titles on board a seagoing vessel;

d/ Having crewman's books;

e/ Having crewman's passports for exit or entry, if such crewmen are arranged to work on board a seagoing vessel operating on an international route.

3. Vietnamese citizens who meet all conditions as required may work on a foreign seagoing vessel.

4. The Transport Minister shall specify job titles of crewmen and tasks of each job title; the minimum safe complement; professional criteria and professional certificates of crewmen; registration of crewmen; crewman's passports and books; conditions for crewmen who are Vietnamese citizens to work on board foreign seagoing vessels and conditions for crewmen who are foreign citizens to work on board Vietnamese seagoing vessels.

5. The Health Minister shall coordinate with the Transport Minister in specifying health criteria for crewmen working on board Vietnamese seagoing vessels.

**Article 47.-** Obligations of crewmen

1. Crewmen working on board a Vietnamese seagoing vessel shall have the following obligations:

a/ To strictly abide by Vietnamese laws, treaties to which the Socialist Republic of Vietnam is a contracting party, and the law of the country where the Vietnamese seagoing vessel operates;

b/ To perform with due diligence the tasks according to their assigned job titles and take responsibility to the master for these tasks;

c/ To promptly, strictly and accurately execute the orders of the master;

d/ To prevent accidents and incidents occurring to the seagoing vessel, cargo, persons and luggage on board. When detecting dangerous circumstances, to immediately report them to the master or the officer on watch, and, at the same time, take necessary measures to prevent accidents or incidents that may arise from such dangerous circumstances;

e/ To manage and use certificates, documents, equipment, tools and other property of the seagoing vessel which they are assigned to manage;

f/ To perform other tasks as provided for by law.

2. Vietnamese crewmen working on board a foreign seagoing vessel shall be obliged to perform labor contracts signed with the foreign shipowner or employer.

**Article 48.-** Working regime and interests of crewmen

1. The working regime and interests of crewmen working on board a Vietnamese seagoing vessel shall comply with the provisions of Vietnamese law.

2. Where the shipowner or master requests

crewmen to leave the seagoing vessel, the shipowner shall be responsible for covering all living and traveling costs necessary for crewmen to come to the place indicated in the crew employment contract or to the port where crewmen are employed, unless otherwise agreed in the crew employment contract; where the master requests crewmen to leave the seagoing vessel, the master must report it to the shipowner.

3. When the loss of or damage to lawful own property of crewmen is caused by an accident occurring to the seagoing vessel, the shipowner must pay compensation for such property at the market price at the time when and at the place where the accident is dealt with. If the accident is caused by the fault of a crewman, he/she shall not be entitled to claim for such loss or damage.

4. The working regime and interests of Vietnamese crewmen working on board a foreign seagoing vessel and of foreign crewmen working on board a Vietnamese seagoing vessel shall comply with their labor contracts.

**Article 49.- Legal status of masters**

1. The master shall exercise the highest command on board a seagoing vessel and commands the vessel on the single-leader regime. All persons on board the seagoing vessel must obey the orders of the master.

2. The master shall submit to the direction by the shipowner or charterer or operator of the vessel.

**Article 50.- Obligations of masters**

1. To organize management and operation of the seagoing vessel according to the provisions of

law.

2. To take due care that the seagoing vessel be seaworthy in every respect, comply with professional standards of seamanship and regulations on equipment, ship hull, adequate provisions, proper manning and other matters relating to marine navigation safety for the vessel and persons on board before the commencement of and during a voyage.

3. To pay due attention that the cargo is loaded, arranged and preserved on board and unloaded from the vessel in a reasonable way, despite that these jobs are assigned to responsible persons for performance.

4. To take due care that the cargo on board the seagoing vessel be neither damaged nor lost; take necessary measures to protect the interests of persons with interests in the cargo; make use of all means possible to notify such persons of special events relating to the cargo.

5. To take all necessary measures to protect the seagoing vessel, persons and other property on board.

6. Where the port of delivery of cargo or disembarkment of passengers is blockaded, in danger of war or in another state of emergency, to direct the seagoing vessel to the nearest safe port and take all necessary measures to protect the vessel, persons and property on board and documents of the vessel.

7. Where the seagoing vessel is threatened with sinking or destruction, to make use of all available possibilities to save first passengers and then crewmen.

The master must be the last to leave the seagoing vessel after he/she has made use of all means possible to save the logbooks, charts and other important documents of the vessel.

8. Not to leave the seagoing vessel when it is in peril, except for cases where it is extremely necessary to leave the vessel.

9. To personally operate the seagoing vessel to leave, enter a port, a canal, a marine navigable channel and when it is in seaport waters or upon the occurrence of difficult and dangerous circumstances.

10. To use pilots, tugboats in cases provided for by law or to ensure safety for his/her seagoing vessel.

The employment of a pilot shall not relieve the master of the obligation set out in Clause 9 of this Article.

11. To perform with due diligence the duties of a conscientious master.

12. To organize search and rescue of persons in peril at sea if the performance of this obligation does not cause any serious danger to his/her seagoing vessel and persons on board. The shipowner shall not be held responsible for the master's failure to perform the obligation set out in this Clause.

13. To perform other obligations as provided for by law.

#### **Article 51.- Rights of masters**

1. To represent the shipowner and persons with interests in the cargo in handling matters relating to the navigation of the seagoing vessel and the

management of the vessel and cargo on board.

2. To perform in the name of the shipowner and persons with interests in the cargo legal acts within the scope of work set out in Clause 1 of this Article, while away from the port of registration, possibly initiate lawsuits and participate in legal proceedings before court or arbitration, unless the shipowner or persons with interests in the cargo declare limitation of part of the whole of this power.

3. To refuse to let the vessel commence the voyage if he/she deems that the vessel fails to meet all conditions for marine navigation safety, marine navigation security and prevention of environmental pollution.

4. To apply various commendatory forms or disciplinary measures to crewmen under his/her command; to refuse to recruit or force to leave his/her ship crewmen who are not qualified in their job titles or commit law-breaking acts.

5. To borrow on behalf of the shipowner in necessary cases credits or money in cash within the limit sufficient for repair of the seagoing vessel, supplementation of crew, provisions for the vessel or for satisfying other needs so that the voyage can be continued.

6. To sell superfluous appurtenances or surplus reserves of the seagoing vessel within the limit set out in Clause 5 of this Article when it is unexpedient or impossible to wait for funds or instructions from the shipowner.

7. During a voyage, if means necessary for its completion cannot be obtained in any other way, after having by all means sought instructions from the charterer and the shipowner but in vain, to pledge or sell part of the cargo. In this case, the

master must minimize the damage to the shipowner, the charterer and persons with interests in the cargo.

8. Where on a seagoing vessel, during a voyage, the reserved food and provisions have run out, to requisite part of the cargo being food and provisions carried on board, and in the case of utmost necessity, to requisite food and provisions of persons on board. This requisition must be recorded in a minute. The shipowner shall have to compensate for the food and provisions requisited.

9. Where the seagoing vessel is in a peril at sea, to request rescue, and after consultation with the vessels which come for assistance, to designate which vessel to render salvage.

**Article 52.-** Responsibilities of masters for civil status on board seagoing vessels

1. For each case of birth or death and other related occurrences on board the seagoing vessel, to make entries in the vessel's logbook and make a minute thereon in the presence of the vessel's medical person and two witnesses; to keep in good conditions the body of the deceased, make an inventory list of, and preserve his/her property.

2. To report births or deaths occurring on board the seagoing vessel and send testaments and inventory lists of property of the deceased to the competent civil status agency in the first Vietnamese seaport at which the vessel calls or to the Vietnamese diplomatic mission or consulate in the nearest place if the vessel calls at a foreign seaport.

3. After having tried all means possible to ask for instructions of the shipowner and for opinions

of the relatives of the deceased, the master shall, in the name of the shipowner, carry out necessary procedures and bury the deceased. All costs incurred from the burial shall be paid in accordance with the provisions of law.

**Article 53.-** Responsibilities of masters when criminal acts are committed on board seagoing vessels

1. Upon detecting criminal acts committed on board the seagoing vessel, the master shall have the following responsibilities:

a/ To take all necessary measures to stop such acts and draw up files as provided for by law;

b/ To protect evidence and, depending on the practical conditions, hand over the offenders together with relevant files to a competent state agency in the first Vietnamese port at which the seagoing vessel calls or to a public-duty vessel of the Vietnamese people's armed forces encountered on the sea, or to inform such acts to the nearest Vietnamese diplomatic mission or consulate and to follow the instructions given by such agency, if the seagoing vessel calls at a foreign port.

2. In case of necessity to protect the safety and order of the seagoing vessel, persons and cargo on board, the master may confine to a separate compartment any person who has committed a criminal act.

**Article 54.-** Responsibilities of masters to notify Vietnamese diplomatic missions or consulates

1. Upon arrival of the seagoing vessel at a foreign port, if necessary, the master must notify the nearest Vietnamese diplomatic mission or

consulate of the vessel's arrival.

2. The master shall have to produce the seagoing vessel's certificates and documents if it is so requested by such Vietnamese diplomatic mission or consulate.

**Article 55.-** Responsibilities of masters to report on the occurrence of marine accidents

Immediately after the occurrence or detection of a marine accident or another occurrence relating to marine navigation safety in the area where the seagoing vessel is operating, the master shall have to report it to the nearest competent state agency and make a report thereon according to regulations.

**Article 56.-** Sea protests

1. Sea protest is a document made by the master, describing the circumstance encountered by the seagoing vessel and measures already taken by the master to overcome such circumstance, limit loss and damage and protect the legitimate rights and interests of the shipowner and related persons.

2. When the seagoing vessel, persons or cargo on board are damaged or lost or suspected to be damaged or lost on account of an accident or incident, the master must make a sea protest and within twenty four hours after the accident occurs or after the vessel's arrival at the first port after the accident occurs submit the sea protest to a competent state agency specified in Clause 3 of this Article for certification of this submission.

3. State agencies competent to certify the submission of sea protests in Vietnam include port authorities, public notaries or People's Committees of the nearest place.

The order and procedures for certification of sea protests in Vietnam shall be stipulated by the Transport Minister.

State agencies competent to certify the submission of sea protests in foreign countries include Vietnamese diplomatic missions and consulates in the nearest place or competent authorities of the countries where the seagoing vessels operate.

**Article 57.-** Crew employment contracts

1. Crew employment contract is a labor contract concluded in writing between the shipowner or crew employer and a crewman for working on board a seagoing vessel.

2. A crew employment contract contains the following principal details:

- a/ The name and address of the crew employer;
- b/ The names or list of employed crewmen;
- c/ Working conditions on board the seagoing vessel;
- d/ The period of employment of the crew;
- e/ Salaries, bonuses, meal allowances and other payments;
- f/ Insurance;
- g/ Other entitlements of the crewmen;
- h/ Responsibilities of the crew employer and the crewmen.

**Article 58.-** Responsibilities of shipowners for shipcrew

1. To arrange sufficient crewmen according to the seagoing vessel's complement and ensure adequate working conditions on board the

seagoing vessel for crewmen as provided for in Clause 2, Article 46 of this Code.

2. To define job titles of crewmen and their responsibilities, except for job titles stipulated by the Transport Minister.

3. To ensure working and living conditions for crewmen on board the seagoing vessel according to the provisions of law.

4. To purchase accident and other compulsory insurance for crewmen working on board the seagoing vessel according to the provisions of law.

#### **Chapter IV**

#### **SEAPORTS**

##### **Article 59.- Seaports**

1. Seaport is an area covering port land and port waters where facilities are built and equipment is installed for seagoing vessels' navigation and operation for loading and unloading cargoes, embarking and disembarking passengers and providing other services.

Port land is a delimited land area for the construction of wharves, warehouses, storage yards, workshops, office buildings, service facilities, road, information and communication, electricity and water systems and other aids and for the installation of equipment.

Port waters is a delimited water area for the establishment of waters in front of wharves, area for vessels' maneuvers, area for anchorage, area for lighterage, storm-shelter area, area for embarkment and disembarkment of pilots, quarantine area, area for fairways, and other aids.

A seaport may have one or more harbors. A harbor may have one or more wharves. A harbor consists of wharves, warehouses, storage yards, workshops, office buildings, service facilities, road, information and communication, electricity and water systems, entrance channels, and other aids. A wharf is a fixed structure in a harbor, used for seagoing vessels' anchorage, loading and unloading of cargoes, embarkment and disembarkment of passengers, and provision of other services.

2. Seaport facilities consist of harbor facilities and public seaport facilities.

Harbor facilities consist of wharves, waters in front of wharves, warehouses, storage yards, workshops, office buildings, service facilities, road, information and communication, electricity and water systems, sub-channels of the seaport and other aids constructed or installed on the port land and in the waters in front of wharves.

Public seaport facilities consist of seaport channels, the system of navigation aids and other aids.

3. Seaport channel is a delimited water area from the sea to a port marked by a system of navigation aids and other aids to ensure safe navigation of seagoing vessels and other crafts into and out of the seaport.

Sub-channel is a delimited water area from the seaport channel to a harbor marked by a system of navigation aids and other aids to ensure safe navigation of seagoing vessels and other crafts into and out of the harbor.

4. Military ports, fishing ports and inland waterway ports and landing stages situated in the seaport waters shall be subject to the state

management of marine navigation safety, marine navigation security and prevention of environmental pollution under the provisions of this Code.

**Article 60.- Classification of seaports**

Seaports are classified into the following classes:

1. Seaports of class I are extremely important, big seaports in service of national or inter-regional socio-economic development;
2. Seaports of class II are important, medium seaports in service of regional or local socio-economic development;
3. Seaports of class III are small seaports in service of enterprises' operation.

**Article 61.- Functions of seaports**

1. To ensure safety for seagoing vessels entering, operating in and leaving the seaports.
2. To provide facilities and equipment necessary for seagoing vessels to anchor, load and unload cargoes, embark and disembark passengers.
3. To provide cargo transportation, loading and unloading, warehousing and preservation services in the seaports.
4. To provide shelter, repair, maintenance or necessary services to seagoing vessels and other crafts in emergency cases.
5. To provide other services for seagoing vessels, people and cargoes.

**Article 62.- Announcement of closure, opening of seaports and seaport waters**

1. The Government shall provide for conditions and procedures for closure or opening of seaports

and seaport waters, management of marine navigable channels and maritime shipping activities in seaports.

2. The Transport Minister shall announce the closure or opening of seaports, seaport waters and management areas of seaport authorities after consulting the People's Committees of the provinces or centrally-run cities where seaports exist.

3. Directors of seaport authorities shall make decisions to temporarily ban vessels and boats from entering or leaving their seaports.

**Article 63.- Seaport development plans**

1. Seaport development plans must be based on socio-economic strategies; defense and security tasks; plans for development of the transport sector, other sectors and localities, as well as the maritime shipping development trends in the world.

When drawing up plans relating to seaports, sectors and localities must obtain written opinions from the Transport Ministry.

2. The Prime Minister shall approve master plans for development of the system of seaports.
3. The Transport Minister shall approve detailed plans for development of the system of seaports.

**Article 64.- Investment in building, management and operation of, seaports and seaport channels**

1. Investment in building seaports and seaport fairways must comply with the plans on development of the system of seaports and seaport channels, the provisions of law on investment, on construction, and other relevant provisions of law.
2. Domestic and foreign organizations and individuals may invest in building seaports and

seaport channels in accordance with the provisions of law.

Organizations and individuals investing in building seaports and seaport channels shall decide on the forms of management and operation of seaports and seaport channels.

3. The Government shall provide in detail for investment in building, management and operation of, seaports and seaport channels.

**Article 65.-** Marine navigation safety, marine navigation security and prevention of environmental pollution

Organizations and individuals operating in seaports must observe the provisions of Vietnamese laws and treaties to which the Socialist Republic of Vietnam is a contracting party, concerning marine navigation safety, marine navigation security and prevention of environmental pollution.

**Article 66.-** Port authorities

1. Port authorities are agencies performing the state management of maritime shipping in seaports and seaport waters.

2. Directors of port authorities are the highest commanders of port authorities.

3. The Transport Ministry shall provide for the organization and operation of port authorities.

**Article 67.-** Tasks and powers of directors of port authorities

1. To participate in formulating plans for development of seaports under their management and organize and supervise the implementation

thereof after they are approved by competent state agencies.

2. To organize the implementation of regulations on management of maritime shipping activities in seaports and areas under their management; inspect and supervise seaport channels, the system of navigation aids; supervise maritime shipping activities carried out by organizations and individuals in seaports and areas under their management.

3. To grant permits, supervise seagoing vessels leaving, entering and operating in seaports; prohibit seagoing vessels which fail to meet all necessary conditions on marine navigation safety, marine navigation security and prevention of environmental pollution from entering seaports.

4. To execute seagoing vessel arrest decisions issued by competent state agencies.

5. To temporarily detain seagoing vessels under the provisions of Article 68 of this Code.

6. To organize search and rescue of persons in distress in seaport waters; mobilize persons and necessary means for conducting search and rescue or handling environmental pollution incidents.

7. To organize the registration of seagoing vessels, registration of crewmen; collect, manage and use assorted seaport dues according to the provisions of law.

8. To organize maritime inspection, investigate and handle according to their competence maritime accidents occurring in seaports and areas under their management.

9. To assume the prime responsibility for and administer the coordination of activities of state



management agencies in seaports.

10. To sanction administrative violations in the maritime domain according to their competence.

11. To perform other tasks and exercise other powers as provided for by law.

**Article 68.-** Temporary detention of seagoing vessels

1. The temporary detention of seagoing vessels shall be effected in the following cases:

a/ Failure to meet all conditions on marine navigation safety, marine navigation security and prevention of environmental pollution;

b/ In the process of investigation of maritime accidents;

c/ Failure to fully pay maritime charges and fees;

d/ Failure to fully pay fines for administrative violations according to the provisions of law;

e/ Other cases as provided for by law.

2. The temporary detention of seagoing vessels shall terminate when the reasons therefor set out in Clause 1 of this Article no longer exist.

**Article 69.-** Coordination of state management activities in seaports

1. State management agencies in charge of maritime shipping, security, quarantine, customs, taxation, culture and information, fire and explosion prevention and fight, environmental protection and other state management agencies shall perform their tasks and exercise their powers in seaports according to the provisions of law. Within the scope of their respective tasks and powers, these agencies shall have to coordinate with, and submit

to the administration of the coordination of activities by, the directors of port authorities.

2. State management agencies that carry out regular activities in seaports may establish their working office within seaports. Port enterprises shall have to create favorable conditions for these agencies to perform their tasks and exercise their powers.

## **Chapter V**

### **CONTRACTS OF CARRIAGE OF CARGO BY SEA**

#### **Section 1. GENERAL PROVISIONS**

**Article 70.-** Contracts of carriage of cargo by sea

1. A contract of carriage of cargo by sea is a contract concluded between a carrier and a charterer, whereby the carrier agrees to carry a definite cargo by seagoing vessel from port of loading to port of delivery, in return for a definite freight paid by the charterer.

2. Cargo includes machinery, equipment, materials and raw materials, fuels, consumer goods and other moveable assets, including live animals, containers or similar tools supplied by the consignor for cargo packing, which are carried under contracts of carriage of cargo by sea.

3. Freight means remuneration paid to a carrier under a contract of carriage of cargo by sea.

**Article 71.-** Types of contracts of carriage of cargo by sea

Contracts of carriage of cargo by sea include:

1. Contracts of carriage according to carriage documents, which are contracts of carriage of cargo by sea concluded on the condition that instead of allowing for the cargo the whole cargo space of a vessel or a definite part thereof, the carrier will perform the carriage on the basis of the cargo's kind, quantity, measure or weight.

Contracts of carriage according to carriage documents are concluded in a form agreed upon by the involved parties.

2. Contracts of carriage according to voyage, which are contracts of carriage of cargo by sea concluded on the condition that the carrier will allow for the cargo the whole cargo space of the vessel or a definite part thereof, for a voyage.

Contracts of carriage according to voyage must be concluded in writing.

**Article 72.-** Involved parties to contracts of carriage of cargo by sea

1. Charterer is the party that directly concludes or authorizes another party to conclude a contract of carriage of cargo by sea with a carrier. In case of contracts of carriage according to carriage documents, the charterer is called consignor.

2. Carrier is the party that directly concludes or authorizes another party to conclude a contract of carriage of cargo by sea with a charterer.

3. Actual carrier is the party that is entrusted by a carrier to perform the carriage of cargo by sea in whole or in part.

4. Shipper is the party that directly consigns or is entrusted by another party to consign cargo to a

carrier under a contract of carriage of cargo by sea.

5. Consignee is the party that is entitled to receive cargo under the provisions of Article 89 and Article 110 of this Code.

### **Article 73.-** Carriage documents

1. Carriage documents include bills of lading, ocean through bills of lading, sea waybills and other carriage documents.

2. Bill of lading is a carriage document serving as evidence of the receipt by the carrier of the cargo in the quantity, kind and conditions as indicated in the bill of lading for carriage to the place of discharge; as evidence of the ownership of the cargo for the disposal or receipt of the cargo and as evidence of the contract of carriage of cargo by sea.

3. Ocean through bill of lading is a bill of lading expressly indicating that the carriage of the cargo is performed by at least two ocean carriers.

4. Sea waybill is an evidence of the receipt of the cargo as indicated in the sea waybill; an evidence of the contract of carriage of cargo by sea. Sea waybills are non-negotiable.

5. Other carriage documents are documents with their contents and validity agreed upon by the carrier and the charterer.

## **Section 2. CONTRACTS OF CARRIAGE OF CARGO ACCORDING TO CARRIAGE DOCUMENTS**

**Article 74.-** Time of arising and termination of liability of carriers

1. The liability of a carrier shall arise from the time the carrier receives the cargo at the port of receipt, continue throughout the process of carriage and terminate upon the completion of delivery of the cargo at the port of delivery.

2. The receipt of the cargo shall be the time the carrier has received the cargo from the shipper, a competent state agency or a third party according to the provisions of law or regulations of the port of receipt.

3. The delivery of the cargo shall terminate in the following cases:

a/ The carrier completes the delivery of the cargo to the consignee; where the consignee does not receive the cargo directly from the carrier, the delivery of the cargo shall be effected by the mode requested by the consignee in accordance with the contract, the law of the place of or the custom applied at the port of delivery;

b/ The carrier completes the delivery of the cargo to a competent state agency or a third party according to the provisions of law or regulations of the port of delivery.

4. The parties to a contract of carriage may agree to lessen the liability of the carrier in the following cases:

a/ In the period of time from the receipt of cargo to before the loading of cargo on board a seagoing vessel and in the period of time from the completion of the unloading of cargo to the completion of delivery of cargo;

b/ Carriage of live animals;

c/ Carriage of cargo on deck.

**Article 75.- Obligations of carriers**

1. The carrier must exercise due diligence that before and at the commencement of a voyage the seagoing vessel be seaworthy; properly manned, equipped and supplied and that its holds, cool and refrigerating chambers and all other compartments in which the cargo is loaded, be prepared and brought to a proper condition for the receipt, carriage and preservation of the cargo suitable to its nature.

2. The carrier shall be responsible for careful and proper loading and unloading of cargo, and take due care of the cargo in the process of carriage.

3. The carrier must notify, within a reasonable time in advance, the shipper of the place of loading and the time the vessel is in readiness to load and the deadline for supplying the cargo. This notification shall not apply to liners unless the schedule is altered.

**Article 76.- Cargo carried on deck**

Cargo may be carried on deck only if it is so agreed upon between the carrier and the shipper or it is a custom and such carriage must be stated in the carriage documents.

**Article 77.- Liabilities of carriers, actual carriers, their servants and agents**

1. The carrier must be responsible for the whole process of carriage as provided for in this Section even though the carriage has been assigned in whole or in part to the actual carrier for performance. For the part of carriage performed by the actual carrier, the carrier shall be responsible for acts taken by the actual carrier as well as its servants and agents within the scope of their

assigned work.

2. The actual carrier, its servants and agents shall enjoy the rights relating to the responsibilities of the carrier provided for in this Chapter when the cargo is under their control and when they take part in carrying out any activity stipulated in the contract of carriage of cargo.

3. Special agreements whereby the carrier undertakes obligations not provided for in this Chapter or denounces the rights they are entitled to under the provisions of this Code shall be effective for the actual carrier if the actual carrier so consents in writing. Regardless of whether or not the actual carrier so consents, the carrier shall still be bound to the obligations arising from these special agreements.

4. Where the carrier and the actual carrier bear joint liability, the extent of liability of each party shall be taken into account.

5. The total sum of indemnities payable by the carrier, the actual carrier and their servants and agents shall not exceed the whole limit of liability provided for in this Section.

**Article 78.- Exemption of liability of carriers**

1. The carrier shall not be liable for the loss of or damage to the cargo resulting from the unseaworthiness of the vessel if he/she has fully performed the obligations specified in Clause 1, Article 75 of this Code. In the case, the carrier shall be obliged to prove that he/she has performed his/her tasks with due diligence.

2. The carrier shall be completely exempt from liability for loss of or damage to the cargo in the following cases:

a/ Fault of the master, crewmen, pilot or servants of the carrier in the operation or management of the vessel;

b/ Fire not caused by the carrier;

c/ Perils or maritime accidents at sea or in the port waters where the seagoing vessel is permitted to operate;

d/ Natural calamities;

e/ War;

f/ Acts of infringing upon public order and safety not caused by the carrier;

g/ Acts of seizure by the people or forced seizure by courts or other competent state agencies;

h/ Quarantine restriction;

i/ Acts or omissions of the shipper or owner of the cargo, his/her agent or representative;

j/ Strikes or other similar actions of laborers due to whatever cause which hold up work in general or in part;

k/ Riots or civil commotion;

l/ Acts of saving life or property at sea;

m/ Wastage in bulk or weight or any other loss of or damage to the cargo resulting from its quality, latent defects or other defects;

n/ Insufficiency of packing;

o/ Insufficiency or inadequacy of marking of the cargo;

p/ Latent defects of the vessel which are not discoverable by responsible persons even though they have exercised due diligence;

q/ Any other cause arising without the fault or the intention of the carrier or without the fault of his/her servants or agents.

Where it is provided for by law or agreed upon

in the contract that a person is fully exempt from the liability of a carrier, such person must prove that the carrier has no fault or intention to cause the loss of or damage to the cargo nor his/her agents or servants.

3. Late delivery of cargo means failure to deliver cargo within the time limit agreed upon in the contract or, in the absence of such agreement, within a reasonable time limit necessary for a diligent carrier to deliver the cargo. The carrier shall not be liable for delayed delivery of cargo in the following cases:

- a/ Deviation from the designated route, which has been consented by the consignor;
- b/ Force majeure events;
- c/ Saving human life or aiding a vessel in distress where human life may be threatened;
- d/ Time is needed for rendering emergency aid to crewmen or persons on board.

**Article 79.-** Limitation of liability of carriers

1. Unless the kind and value of the cargo have been declared by the consignor or shipper before its loading or clearly stated in the bill of lading, the sea waybill or other carriage documents, the carrier shall not be obliged to compensate for the loss of or damage to or in connection with the cargo in an amount not exceeding the equivalent of 666.67 units of account per package or unit of cargo or to 2 units of accounts per kilo of gross weight of the cargo lost or damaged, depending on the value of the cargo.

The unit of account provided for in this Code is the currency determined by the International Monetary Fund and established as the Special Drawing Rights.

The compensation amount shall be converted into Vietnamese currency at the exchange rate at the time of payment of compensation.

2. When the cargo is packed into a container or similar tool, each package or unit of cargo indicated in the carriage document and packed in such tool shall be regarded as a package or unit of cargo set out in Clause 1 of this Article. Where the number of packages or units of cargo is not indicated in the carriage document, such container or tool shall be only regarded as a package or unit of cargo.

3. Where the kind and value of the cargo have been declared by the shipper before its loading and have been stated in the carriage document, the carrier shall be liable for any loss of or damage to the cargo on the basis of the so declared value and on the following principles:

- a/ For cargo lost, by the value declared;
- b/ For cargo damaged, by the difference between the value declared and the residual value of the cargo.

The residual value of the cargo shall be determined at the market price at the time when and place where the cargo is discharged or should have been discharged; where such value cannot be ascertained, it shall be based on the market price at the time when and place where the cargo has been loaded plus the costs of carriage of the cargo up to the port of delivery.

4. The liability of the carrier for the late delivery of cargo shall be limited to a sum 2.5 times the freight of the quantity of cargo that is lately delivered but shall not exceed the total freight payable under the contract of carriage of cargo by sea.

**Article 80.-** Loss of the right to limitation of

*liability of carriers*

1. The carrier shall lose the right to limitation of liability of carriers provided for in Article 79 of this Code if the claimant can prove that the loss of or damage to the cargo is the consequence of the carrier's intentional acts of causing such loss or damage, late delivery of the cargo or neglect and knowledge that such loss of, damage to or late delivery of the cargo may occur.

2. Servants or agents of the carrier who perform their work with the intention to cause the loss of or damage to the cargo, delay the delivery of the cargo or with neglect and knowledge that such loss of, damage to or late delivery of the cargo may occur shall also not enjoy limitation of liability provided for in this Section.

**Article 81.-** Obligations of consignors and shippers

1. The consignor must ensure that the cargo be packed and marked according to regulations. The carrier may refuse to load on board the seagoing vessel cargo which fails to ensure necessary packing standards.

2. For explosive, inflammable or otherwise dangerous cargo or cargo which must be handled by special measures during loading, carriage, preservation and unloading, the consignor must furnish within a reasonable time limit to the carrier necessary documents and guidelines pertaining to the cargo.

The consignor must compensate for the loss or damage arising from the late supply of such necessary documents and guidelines or from irregularities or inaccuracies thereof.

3. The consignor or shipper shall be responsible to the carrier as well as passengers, crewmen and owners of other cargoes for the loss or damage arising from the inaccurate or untruthful declaration of the cargo, regardless of such declaration is intentional or unintentional, if the carrier proves that such loss or damage is caused by the fault of the consignor or shipper.

**Article 82.-** Carriage of dangerous cargo

1. The carrier, while retaining his/her right to the full freight, at his/her discretion, may discharge the cargo from the seagoing vessel, destroy or render it harmless without having to make compensation where the cargo being inflammable, explosive or otherwise dangerous has been falsely declared or where during the loading the carrier has not been warned about and could not ascertain the cargo's dangerous nature on the basis of a common operational knowledge.

The consignor must be liable for losses resulting therefrom.

2. Although the dangerous nature of the cargo has been warned or known to the carrier on the basis of a common operational knowledge and the proper preservation measures have been applied according to regulations and the cargo has been loaded onto the seagoing vessel, but subsequently such cargo has imperiled the safety of the vessel, persons and cargo on board, the carrier may, at his discretion, handle it as provided for in Clause 1 of this Article. In this case, the carrier shall be liable for arisen losses on the general average principles while retaining his/her right to the distance freight.

Distance freight is the freight computed in the proportion of the whole agreed voyage distance to

the part of the voyage actually covered by the cargo, as well as in the proportion of the costs and time, perils or troubles on the average related to the part of the voyage covered to what falls to the remaining part of the voyage to be completed.

**Article 83.- Exemption of liability of consignors**

The consignor shall be exempt from liability to compensate for any loss and damage caused to the carrier or the seagoing vessel if he/she proves that such loss or damage is not caused by the fault of his/her servants or agents.

**Article 84.- Payment of freight**

1. Upon taking delivery of the cargo, the consignee shall have to pay to the carrier the freight and all other charges stated in the carriage document if such amounts of money have not yet been paid to the carrier.

2. The carrier may refuse to deliver the cargo and retain it if the consignor and the consignee have not yet fully paid or properly secured the amounts being owed to the carrier.

These debts include the freight, other charges as provided for in Clause 1 of this Article and contribution of the cargo in general average and salvage remuneration falling on the cargo.

Interests, calculated according to the interest rate applied by the relevant transaction bank, shall be charged in addition to the debts which are not paid when falling due.

**Article 85.- Freight in case of loss of cargoes**

1. Freight shall be exempted for cargo lost during the carriage through any accident whatsoever, and the freight paid in advance shall

be refunded. Where the cargo lost has subsequently been saved or recovered, the carrier shall have the right only to the distance freight if the party with interests in the cargo has gained no benefit from the cargo having been carried by the seagoing vessel over such distance.

2. Where, in the course of carriage the cargo has been damaged or wasted on account of its special nature or the carried live animals have died, the carrier shall have the right to the full freight.

**Article 86.- Issuance of bills of lading**

1. The carrier shall be obliged to issue the shipper, at the latter's request, a set of bills of lading.

2. A bill of lading may be issued in the following forms:

a/ To a named consignee, referred to as a straight bill of lading;

b/ To the order of the shipper or of the person designated by the shipper, referred to as an order bill of lading;

c/ To an unnamed consignee or unnamed person issuing the order, referred to as a bearer bill of lading.

3. Where in an order bill of lading the person, to whose order the bill of lading is made out, is not specified, such bill of lading shall be automatically deemed to be made out to the shipper.

**Article 87.- Contents of a bill of lading**

1. A bill of lading shall contain the following details:

a/ The name of the carrier and his/her head office;

b/ The name of the consignor;

c/ The name of the consignee, or a statement to the effect that the bill of lading has been made out to order or bearer;

d/ The name of the seagoing vessel;

e/ A description of the cargo, specifying its kind, measure, volume, quantity, number of pieces, weight or value where necessary;

f/ A description of the apparent conditions of the cargo or its packing;

g/ Marks, signs and particulars to identify the cargo, as furnished in writing by the shipper before commencement of loading and having been marked on individual pieces of the cargo or its packing;

h/ Freight and other charges due to the carrier; method of the payment;

i/ Place of loading and port of loading;

j/ Port of delivery or a statement as to when and where the port of delivery will be indicated;

k/ The number of copies of the original bill of lading issued to the shipper;

l/ The date and the place of issue of the bill of lading;

m/ The signature of the carrier or of the master or of the other competent representative of the carrier.

A bill of lading, though lacking one or more details specified in this Clause, shall still be legally valid if it complies with the provisions of Article 73 of this Code.

2. Where the carrier has not been specified in the bill of lading, the shipowner shall be assumed to be the carrier. Where in the bill of lading made

out in accordance with Clause 1 of this Article, the carrier has been designated inaccurately or falsely, the shipowner shall be liable to losses resulting therefrom and then have the right to claim indemnity from the carrier.

#### **Article 88.-** Remarks in bills of lading

1. The carrier shall be entitled to insert in the bill of lading his/her remarks on the apparent conditions or the packing of the cargo where he/she has suspicion.

2. The carrier may refuse to enter in the bill of lading the cargo description when he/she has sufficient grounds to suspect the accuracy of the declaration made by the consignor or shipper at the moment of loading or he/she has no conditions to verify it.

3. The carrier may refuse to insert in the bill of lading the cargo signs and marks when they have not been clearly marked on individual pieces of cargo or of its packing in such a manner that they should remain legible until the end of the voyage.

4. Where the cargo has been packed before being supplied to the carrier, the carrier may insert in the bill of lading a remark to the effect that the contents are unknown to him/her.

5. In any case, the carrier shall not be liable for any loss of or damage to the cargo or losses in relation to the cargo where the kind and value of the cargo have been deliberately misstated by the shipper during loading and such misstated declaration has been inserted in the bill of lading.

#### **Article 89.-** Transfer of bills of lading

1. An order bill of lading may be transferred by



endorsement. The last endorser who is entitled to issue a delivery order shall be the legitimate consignee.

2. A bearer bill of lading may be transferred by delivery of the bill of lading by the carrier to the transferee. The person who produces the bearer bill of lading shall be the legitimate consignee.

3. A straight bill of lading is non-transferable. The person whose name is specified in the straight bill of lading shall be the legitimate consignee.

**Article 90.-** Substitution of bills of lading by other carriage documents

The shipper may reach agreement with the carrier on the substitution of the bill of lading by a sea waybill or another carriage document and on the contents and validity of these documents according to international maritime shipping custom.

**Article 91.-** Application to ocean through bills of lading

The provisions of this Code concerning bills of lading shall apply to ocean through bills of lading issued by the carrier, unless otherwise provided for by law.

**Article 92.-** Consignors' right to dispose of cargoes

1. The consignor shall have the right to dispose of the cargo until its delivery to the legitimate consignee if this right has not been vested to another person; and before the commencement of the voyage he/she may request unloading of the cargo, and after the commencement of the voyage alter his/her original indications as to the consignee

and the port of delivery, provided that he/she shall compensate for all losses and related expenses. The carrier shall be obliged to follow the consignor's instructions only after withdrawing all copies of the issued original bill of lading.

2. The rights specified in Clause 1 of this Article shall not be applied if the exercise thereof would cause a considerable delay in commencing the voyage, unless it has been so consented by the carrier.

**Article 93.-** The obligation to deliver cargoes

The carrier shall be obliged to deliver the cargo at the port of delivery to the legitimate consignee holding the bill of lading or the sea waybill or another carriage document valid for receipt of the cargo as provided for in Article 89 of this Code. After the delivery of the cargo, all the other copies of the carriage document shall no longer valid for receipt of cargo.

**Article 94.-** Handling of retained cargoes

1. Where the consignee does not claim delivery, or refuses to take delivery of the cargo, or delays the delivery, the carrier may discharge the cargo and place it in custody at a safe and suitable place and notify the consignee thereof. All costs and charges related thereto and losses resulting therefrom shall be paid by the consignee.

2. Where at the same time several holders of the bill of lading or ocean through bill of lading, sea waybill or another carriage document that is valid for receipt of cargo claim delivery of the cargo, the carrier may act as provided for in Clause 1 of this Article.

3. The indemnification for losses resulting from

the detention of the vessel for discharging and placing the cargo in custody, as provided for Clause 1 of this Article, shall be settled as in the case of detention of the vessel during loading.

4. Where, within sixty days after the day of the vessel's arrival at the port of delivery, the cargo placed in custody has not been collected or the consignee has failed to pay in full or provide a proper security for the outstanding debts, the carrier may sell the cargo by auction for clearing the debts. Such cargo may be sold even before the expiration of this time limit if the cargo incurs a risk of deterioration or its putting in custody costs more than the actual value of the cargo.

The carrier shall be obliged to notify the consignor of the cases specified in Clauses 1, 2 and 4 of this Article and also of his/her intention to sell the cargo for clearing debts.

5. The handling of cargoes retained by carriers at Vietnamese seaports provided for in this Article shall comply with regulations of the Government.

**Article 95.-** Proceeds from auctions of cargoes

1. After the debts of the consignee, costs of placing the cargo in custody and holding a auction as provided for in Article 94 of this Code are deducted, the remaining amount of the proceeds from the auction of the cargo must be deposited in a bank to be paid to the person(s) entitled thereto.

2. Where the proceeds from the auction of the cargo are not sufficient to cover in full the amounts specified in Clause 1 of this Article, the carrier shall be entitled to claim full payment thereof from the involved parties.

3. Where within the time limit of one hundred

and eighty days counting from the date of auction of the cargo, nobody claims for the remaining amount, this amount shall be remitted into the state coffers.

**Article 96.-** Survey of cargoes and notification of losses of or damage to cargoes or late delivery of cargoes

1. The consignee, before taking delivery of the cargo, or the carrier, before delivering the cargo at the port of delivery, may request a surveying agency to conduct a survey thereof. The party that has ordered the survey shall be obliged to pay survey costs and also have the right to recourse against the damage-causing party for such costs.

2. The cargo shall be deemed to have been fully and completely delivered as indicated in the bill of lading, the sea waybill or another carriage document, unless the consignee has notified in writing the carrier of any loss of or damage to such cargo within three days at most after the time of taking delivery, in case of damage externally imperceptible; for cargoes already surveyed under the provisions of Clause 1 of this Article, written notification is unnecessary.

Any agreement contrary to this provision shall be invalid.

3. The consignee may issue notices on loss of cargo if he/she receives no cargo within sixty days after the date on which the cargo should have been delivered as agreed upon in the contract.

4. The carrier shall not have to compensate for losses resulting from the late delivery of the cargo, except for the case where a written notice on the late delivery of cargo is sent to the carrier within

sixty days as from the date on which the cargo should have been delivered as agreed upon in the contract.

**Article 97.-** Statute of limitations for initiation of lawsuits about damage to or loss of cargoes

The statute of limitations for initiation of lawsuits about damage to or loss of cargo carried under carriage documents is one year from the date on which the cargo is delivered or should have been delivered to the consignee.

### **Section 3. VOYAGE CHARTERPARTY**

**Article 98.-** Use of seagoing vessels under voyage charterparties

The carrier shall be obliged to use the seagoing vessel designated in the contract to carry the cargo, unless the charter has given his/her consent for the carrier to substitute the designated vessel by another.

**Article 99.-** Transfer of rights under voyage charterparties

The charterer may, without the carrier's consent, transfer to a third party his/her rights under the contract of carriage but remains responsible for the performance of the contract already concluded.

**Article 100.-** Issuance of bills of lading under voyage charterparties

Where the bill of lading is issued under a voyage charterparty and the holder of such bill of lading is other than the charterer, the rights and obligations of the carrier and the holder of the bill of lading shall be governed under the terms of the bill of

lading; the terms of the voyage charterparty which have been inserted into the bill of lading shall be applied.

**Article 101.-** Ports of loading and places of loading

1. The carrier shall be obliged to direct his/her seagoing vessel to the port of loading, being ready for the loading, at the designated time and place; to place the seagoing vessel at the loading place under the terms agreed in the contract of carriage of cargo.

2. The carrier shall direct the seagoing vessel to the place designated by the charterer, which is safe and accessible without difficulty for the vessel to reach, to lie there and to leave unhindered with the cargo. Where there are several charterers who fail to reach agreement among them on the place of loading, or where the place of loading is not clearly designated by the charterer, the carrier will direct the vessel to a local customary place of loading.

3. Where the contract has no specific agreement on the loading place at the port of loading, the carrier shall direct the seagoing vessel to a local customary place of loading.

4. The charterer may request the carrier to change the place of loading even though this place has been clearly indicated in the contract. The charterer must pay in full all costs related to the satisfaction of this request.

**Article 102.-** Loading time

1. The loading time shall be agreed between the involved parties in the contract, and, in the

absence of such agreement, it shall comply with local custom.

2. The time of interruptions caused by the charterer and the time for changing the loading place at his/her request shall be counted in the loading time.

3. The time of interruption caused by the carrier, interruption caused by force majeure or by weather conditions which affect the technical correctness of the loading or endanger the loading shall not be counted in the loading time.

4. The charterer may reach agreement with the carrier on the dispatch for loading to be completed before the loading time expires or the demurrage for delaying the loading beyond the agreed period of time.

**Article 103.- Demurrage time**

1. The parties may reach agreement in the voyage charterparty on an additional period of loading beyond the loading time provided for in Article 102 of this Code (which hereinafter is referred to as demurrage time). Where the number of days or hours of the demurrage time is not specified in the voyage charterparty, the demurrage time shall be determined by the parties by local custom.

2. The demurrage money shall be agreed upon by the involved parties in the voyage charter party; in the absence of such agreement in the voyage charter party, it shall be determined by local custom. In the absence of such local custom, the amount of demurrage money shall be determined on the basis of the actual total sum of expenses for the maintenance of the seagoing vessel and its crew

throughout the demurrage time.

3. After expiration of the loading time and demurrage time, the period of time during which the seagoing vessel is detained at the port of loading due to the charterer's acts is referred to as the detention time. The carrier shall be entitled to claim for compensation for losses caused by the detention of the vessel.

**Article 104.- Notice of readiness**

1. The carrier shall be obliged to notify in writing the charterer of the vessel's arrival at the port of loading and readiness for the loading (hereinafter referred to as notice of readiness).

2. The day and hour in which a notice of readiness becomes effective shall be agreed upon by the parties in the voyage charterparty; in the absence of such agreement, such day and hour shall be determined by local custom.

3. The carrier shall have to compensate for the loss resulting from the notice of readiness which at the time of its receipt by the charterer is not true to the facts.

**Article 105.- Replacement of cargoes**

1. The charterer shall have the right to supply, instead of the cargo specified in the contract of carriage of cargo, another cargo with similar characteristics, provided that the carriage of which will not affect the interests of the carrier and of other charterers.

2. The freight for the carriage of such cargo must not be lower than the agreed freight for the replaced cargo.

**Article 106.-** Loading and stowage of cargoes on board seagoing vessels

1. The cargo must be stowed on board the seagoing vessel in accordance with the cargo plan decided by the master. Stowage of cargo on deck shall be subject to written consent of the charterer.

2. The carrier shall be obliged to take due care of the loading, stowage, lashing and separation of the cargo on board the seagoing vessel. The related expenses shall be agreed upon by the two parties in the contract.

**Article 107.-** Vessels leaving ports of loading

1. After the expiration of the loading time and demurrage time as provided for in the voyage charterparty, or after the expiration of the date for supplying the cargo, the carrier may let his/her seagoing vessel leave the port of loading even though the whole agreed cargo or part thereof has not been loaded onto the vessel for reasons on the part of the charterer. In this case, the carrier shall still be entitled to the full freight including the freight falling on the cargo not loaded, which hereinafter is referred to as dead freight.

2. In case of lease of the whole space of the seagoing vessel, the carrier, while maintaining his/her right to the full freight, must comply with the following requests of the charterer:

a/ To commence the voyage before the agreed date;

b/ To load onto the seagoing vessel the cargo already supplied at the place of loading even though the demurrage time has expired, if the loading of such a cargo might cause detention of the vessel for no longer than fourteen days, while

the carrier still enjoys the benefits specified in Clause 3, Article 103 of this Code.

3. In case of lease of part of the space of the seagoing vessel, the carrier shall be entitled to the full freight and to refuse the loading of the cargo which is supplied after the expiration of the agreed loading time or demurrage time due to the delay caused by the charterer.

**Article 108.-** Routes and time of carriage

1. The carrier must perform the carriage within a reasonable period of time by the route provided for in the contract or by the usual route, unless otherwise agreed in the contract.

2. A deviation from the route for the purpose of saving life or property at sea or for other plausible reasons does not constitute an infringement of the contract of carriage. The carrier shall not be liable for any damage to cargo resulting therefrom.

**Article 109.-** Substitute ports

1. Where the seagoing vessel cannot enter the port of delivery on account of insurmountable hindrances, the cessation of which cannot be anticipated within a reasonable time, the carrier may direct the seagoing vessel to the nearest safe substitute port and must notify the charterer thereof for further instructions.

2. In case of lease of the whole space of the seagoing vessel, the master must, depending on the specific circumstance, ask for and follow the instructions of the charterer; where it is impossible to follow the charterer's instructions or where the charterer's instructions have not been received within a reasonable time, the master may discharge the cargo or carry it back to the port of loading,

which may, in his judgment, properly protect the interests of the charterer. The charterer must pay the carrier the distance freight and related costs.

3. In case of lease of part of the space of the seagoing vessel, the master may also act as stipulated in Clause 1 of this Article if the charterer's instructions have not been received within five days from the time the notification for instructions is sent or if it is impossible to follow the charterer's instructions. The charterer must pay the carrier the full freight and related costs.

**Article 110.- Discharge and delivery of cargoes**

1. The discharge of cargo shall be decided by the master. The carrier shall be obliged to take due care of the discharge of cargo.

2. The charterer shall be entitled to dispose of the cargo until its delivery to the legitimate consignee if this right has not been vested to another person; and before the commencement of the voyage he/she may request discharge of the cargo, and, after the commencement of the voyage, alter his/her original indications as to the consignee and the port of delivery, provided that he/she shall compensate for all losses resulting therefrom and related costs.

3. The rights stated in Clause 2 of this Article shall not be applied if the exercise thereof would cause a considerable delay in commencing the voyage, unless it has been so consented by the carrier.

**Article 111.- Freight**

1. Where a larger quantity of cargo has been loaded on board the vessel than agreed upon in

the contract, the carrier shall be entitled to the freight also on the surplus at the freight rate agreed upon in the contract.

2. For cargo placed on board without permission of the carrier, the carrier shall be entitled to the double amount of freight due for the carriage from the port of loading to the port of delivery, as well as to compensation for losses resulting from the loading of such cargo on board without his/her permission. The carrier may discharge such cargo at any port, if deeming it necessary.

3. Upon receiving the cargo, the consignee must pay the carrier the freight, the compensation for retention of the vessel or other costs related to the carriage of the cargo, if such amounts have not yet been paid.

**Article 112.- Payment of freights, storage costs and handling of the proceeds from auctions of cargoes**

The provisions on the payment of freight, handling of detained cargoes and proceeds from auctions of cargoes under Articles 84, 85, 94 and 95 of this Code shall apply in the same manner to the carriage of cargoes under voyage charterparties.

**Article 113.- Charterers' right to terminate contracts**

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

a/ The carrier has failed to direct the vessel to the place of loading at the agreed date, or has delayed the loading of the cargo onto the vessel or the commencement of the voyage; in this case, the charterer shall be entitled to the compensation

for losses resulting therefrom;

b/ After the completion of the loading but still before the commencement of the voyage or during the voyage, the charterer may request discharge of the cargo but must pay the full freight and related costs to the carrier.

2. The carrier may refuse the charterer's request to discharge the cargo as mentioned at Point b, Clause 1 of this Article where he/she deems that such would cause a delay of the voyage or affect the interests of the concerned parties on account of the alteration of the fixed schedule.

3. In case of lease of the whole space of the seagoing vessel, the charterer may terminate the contract before the commencement of the voyage but must compensate for costs arising therefrom and, depending on the moment of the termination of the contract, also pay the freight on the following principles:

a/ Half of the freight, where he/she terminates the contract before the agreed loading time is counted;

b/ The full freight, where he/she terminates the contract after the agreed loading time is counted or after the agreed demurrage time is counted if the contract has been concluded for a single voyage;

c/ The full freight for the voyage, before the commencement of which he terminates the contract, and plus half of the freight for all subsequent voyages if the contract has been concluded for a number of voyages.

4. Where the charterer terminates the contract under the provisions of Clause 3 of this Article, the carrier shall be obliged to detain the vessel at

the place of loading until the cargo discharge is completed even though this may detain the vessel beyond the loading and demurrage time.

5. In case of lease of part of the space of the vessel, the charterer may terminate the contract and must compensate for the costs arising therefrom, and, depending on the moment of the termination of the contract, also pay the freight on the following principles:

a/ Half of the freight where he/she terminates the contract after the agreed time for supply of the cargo;

b/ Full freight where he/she terminates the contract during the voyage.

#### **Article 114.- Carriers' right to terminate contracts**

Where the quantity of cargo loaded on board the seagoing vessel is smaller than the contracted quantity and the total value of the quantity of such loaded cargo does not secure the freight and other amounts expended by the carrier on the cargo, the carrier may terminate the contract before the commencement of the voyage, unless the charterer has paid the full freight or provided an adequate security. The charterer must pay the expenses for the cargo discharge and half of the agreed freight.

#### **Article 115.- Termination of contracts without compensation**

1. Either party to the contract may terminate the contract without having to pay compensation if, before the departure of the vessel from the place of loading, the following events have occurred:

a/ War has broken out, threatening the safety of the seagoing vessel or cargo; the port of loading

or port of delivery has been declared blockaded;

b/ The seagoing vessel has been detained by order of a competent state agency not due to the faults of the contractual parties;

c/ The seagoing vessel has been requisitioned by the State;

d/ A ban has been imposed on carriage of the cargo from the port of loading or into the port of delivery.

2. The party that terminates the contract in the cases specified in Clause 1 of this Article must bear the costs of discharge.

3. Upon the occurrence of the events specified in Clause 1 of this Article, either party may terminate the contract also during the voyage; in this case, the charterer shall be obliged to pay the distance freight and costs of discharge.

**Article 116.- Automatic termination of contracts**

1. The contract shall automatically terminate and neither party shall have to pay compensation after the conclusion of the contract and before the departure of the seagoing vessel from the place of loading for the following reasons for which neither party is at fault:

a/ The seagoing vessel designated in the contract has been sunk, missing or captured;

b/ The cargo designated in the contract has been lost;

c/ The seagoing vessel designated in the contract is deemed to be so damaged that its repair is impossible or uneconomical.

2. Where the events specified in Clause 1 of this Article have occurred during the voyage, the

carrier shall only be entitled to the distance freight; where only the vessel has been damaged while the cargo has been saved or returned, the carrier shall be entitled to the distance freight for the saved or returned cargo.

**Article 117.- Preservation of cargoes upon termination of contracts**

Where the contract is terminated under the provisions of this Section, the carrier shall still be obliged to take care of the cargo until it is delivered to the entitled consignee, except for the cases specified at Points a and b, Clause 1, Article 116 of this Code.

**Article 118.- Statute of limitations for initiation of lawsuits regarding the performance of voyage charterparties**

The statute of limitations for initiation of lawsuits regarding the performance of voyage charterparties is two years from the date the claimants know or must have known that their interests have been infringed upon.

**Section 4. MULTIMODAL TRANSPORT CONTRACTS**

**Article 119.- Multimodal transport contracts**

1. A multimodal transport contract is a contract concluded between a consignor and a multimodal transport dealer, whereby the multimodal transport dealer shall perform the carriage of cargo in return for a freight for the whole carriage process from the place of loading to the place of delivery of the cargo to a consignee by at least two modes of transport, one of which must be by sea.



2. A multimodal transport dealer is a person who personally concludes or authorizes another person to conclude a multimodal transport contract with a consignor.

3. A consignor is a person who personally concludes or authorizes another person to conclude a multimodal transport contract with a multimodal transport dealer.

4. A multimodal transport bill of lading constitutes evidence of a multimodal transport contract, certifying the multimodal transport dealer's receipt of the cargo for carriage and commitment to deliver the cargo as agreed upon in the contract.

**Article 120.-** Liability of multimodal transport dealers

1. The multimodal transport dealer must be liable for the cargo carried under the multimodal transport contract from the time of its receipt to the time of its delivery.

2. The multimodal transport dealer may sign separate contracts with carriers of each mode of transport, clearly defining the responsibility of each involved party for each mode of transport. These separate contracts shall not affect the liability of the multimodal transport dealer for the whole carriage process.

**Article 121.-** Limitation of liability of multimodal transport dealers

1. Where the cargo is lost or damaged when it is carried by a certain mode of transport employed in the carriage process, the provisions of law relevant to such mode of multimodal transport shall be applied to the liability as well as limitation of

liability of the multimodal transport dealer concerned.

2. Where the cargo is lost or damaged but it is impossible to determine by which mode of transport such loss or damage occurs, the multimodal transport dealer concerned shall have to pay compensation under the provisions of Articles 78 and 79 of this Code on exemption and limitation of liability of carriers.

**Article 122.-** Detailed provisions on multimodal transport

The Government shall provide in detail for multimodal transport.

## **Chapter VI**

### **CONTRACTS OF CARRIAGE OF PASSENGERS AND LUGGAGE BY SEA**

**Article 123.-** Carriage of passengers and luggage

1. A contract of carriage of passenger and luggage by sea is a contract concluded between a carrier and a passenger, whereby the carrier agrees to carry a passenger and his/her luggage by seagoing vessel, in return for passage money and a luggage freight to be paid by the passenger, from port of embarkment to port of disembarkment.

2. A carrier is the person who personally concludes or authorizes another person to conclude a contract of carriage of passenger and luggage with a passenger.

3. An actual carrier is a person entrusted by a carrier to perform the carriage of passengers and

luggage in whole or in part.

4. A passenger is a person carried by seagoing vessel under a contract of carriage of passengers or a person who is permitted by a carrier to accompany a means of transport or live animals *carried under a contract of carriage of cargo*.

5. Luggage is objects or means of transport *carried under a contract of carriage of passengers* by sea, excluding the following cases:

a/ Objects and means of transport carried under a contract of carriage of cargo;

b/ Live animals;

6. Hand luggage is luggage kept by a passenger in his/her compartment or under his/her supervision, care and control.

**Article 124.-** Documents of carriage of passengers and luggage

1. Documents of carriage of passengers and luggage include:

a/ Tickets constituting evidence of the conclusion of a contract of carriage of passengers;

b/ Luggage receipt coupons constituting evidence of the dispatch of passengers' luggage.

2. The carrier may substitute tickets with equivalent vouchers, if passengers are carried on board a seagoing vessel other than a passenger vessel.

3. The carrier shall stipulate the exemption and reduction of fares, prioritized purchase and refund of passenger fares and luggage freight.

**Article 125.-** Rights and obligations of passengers

1. The passenger shall be entitled to all interests in compliance with the class of his/her ticket and not have to pay money for the carriage of his hand luggage within the limit of weight and kind designated by the carrier.

2. The passenger shall be entitled to terminate the contract of carriage before the commencement of the voyage or after the commencement of the voyage at any port at which the vessel calls for passengers to embark or disembark and to refund of his/her fare or an amount of money equivalent to the unused part of his/her fare, less expenses or fine, if any.

3. The passenger shall be obliged to observe the command of the master and follow all rules and guidelines on board, and follow the instructions of responsible officers and crewmen.

4. Any agreement limiting the rights of the passenger or lessening or relieving the liability of the carrier provided for in this Code shall be null and void.

**Article 126.-** Obligations and rights of carriers

1. The carrier shall be obliged to exercise due diligence that the seagoing vessel is seaworthy, properly manned, furnished and supplied from the commencement of carriage, throughout the process of carriage to the port of disembarkment.

2. The carrier shall be obliged to take due care of and properly protect the passengers together their luggage from the time they have embarked on board the seagoing vessel up to the time they have safely together with their luggage left vessel at the port of disembarkment; where during the voyage an extraordinary and unexpected event has

occurred, the carrier shall be liable to pay the fares necessary to cover the transportation of the passengers from and to the vessel as well as costs of meal, and necessary daily-life services for staying on board.

3. The carrier shall be obliged to buy carrier's civil liability insurance for passengers.

4. The carrier may refuse to perform the contract without having to pay compensation if the following circumstances have occurred:

a/ War has broken out or another event has occurred, posing a threat of possible arrest of the seagoing vessel;

b/ The port of embarkment or port of disembarkment has been declared blockaded;

c/ The seagoing vessel has been arrested or detained by decision of a competent state agency not due to the faults of the contractual parties;

d/ The seagoing vessel has been requisitioned by the State;

e/ A ban has been imposed on carriage of passengers from the port of embarkment or into the port of disembarkment.

5. Where the carrier refuses to perform the contract of carriage under the provisions of Clause 4 of this Article before the commencement of the voyage, he/she must refund the passengers the passage money and luggage freight.

Where the voyage has commenced, the carrier must refund the passengers part of the passage money corresponding to the remaining distance of the voyage; at the same time, he/she shall be obliged to return the passengers to the port of embarkment on his/her own money or compensate them an equivalent amount of money.

6. The carrier may not refund the collected passage money if the passenger is not present on board at the fixed time including the period of time the vessel calls at an en-route port during the voyage.

7. The carrier may postpone the time of commencement of the voyage, alter the route of transportation or alter the place of embarkment or disembarkment if the sanitary and epidemiological conditions in the place of commencement of the voyage, the place of destination or along the route of transportation are unfavorable or other circumstances have occurred beyond their control. The carrier must, at the request of the passengers, pay the expenses for returning the passengers to the port of embarkment or compensate them for reasonable actual losses.

8. The provisions of Clause 7 of this Article shall not restrict the passengers' right to refuse to perform the contract of carriage.

**Article 127.-** Liability of carriers and actual carriers in the carriage of passengers

The liability of the carrier and the actual carrier in the carriage of passengers by sea shall comply with the provisions of Article 77 of this Code.

**Article 128.-** Exemption of carriers' liability for arrest of passengers

The carrier shall be exempt from liability for the arrest of the passenger by a competent state agency during the voyage due to the fault of the passenger at the port at which the vessel has called.

**Article 129.-** Handling of passengers on board without a ticket

1. A passenger on board without a ticket is a person who has embarked the vessel without the carrier's, master's or responsible person's permission when the vessel is in the port or at a place within the port area and remains on board the vessel after it leaves the port or the place within the port area.

2. A passenger on board without a ticket shall be obliged to pay in full the passage money for the covered distance plus a fine equal to such amount.

3. The master may disembark a passenger on board without a ticket or transfer him/her onto another vessel going to the port at which such person embarked the vessel and must inform a competent state agency of the name, age and citizenship of that person, the port at which he/she embarked and hid on the vessel.

4. Where a passenger on board without a ticket is accepted to be carried over the remaining distance, he/she must buy a ticket and shall have the rights and obligations like other passengers.

**Article 130.-** Carriers' liability to compensate for damage

1. The carrier shall be liable for loss of life or personal injury and damage to health of the passengers as well as loss of or damage to their luggage if the causal incidents have occurred in the course of carriage due to the fault of the carrier or his/her servant or agent within the scope of his/her assigned jobs.

The fault of the carrier, his/her servant or agent shall be deemed natural unless he/she proves that the occurrence of loss of life or personal injury and damage to health of the passengers as well as loss

of or damage to their hand luggage has been caused by collision, shipwreck, destruction, running aground, explosion, fire or any defect of the seagoing vessel.

The fault of the carrier, his/her servant or agent shall be deemed natural unless he/she proves that the occurrence of loss of or damage to other types of luggage does not depend on such causes of loss or damage.

In other cases, the burden of proof of a fault shall be borne by the claimants.

2. The burden of proof of damage and the extent of the loss or damage caused during the voyage by collision, shipwreck, destruction, running aground, explosion, fire or any defect of the seagoing vessel shall be borne by the claimants.

**Article 131.-** Process of carriage of passengers and luggage

1. The process of carriage of passengers by sea starts from the time the passenger embarks the seagoing vessel and ends when the passenger leaves the vessel, including the transportation of the passenger by water from land to vessel and vice versa, if the fare for such transportation is included in the price of the ticket.

2. The process of carriage of hand luggage of passengers is similar to that provided in Clause 1 of this Article. The process of carriage of luggage other than hand luggage starts from the time the carrier, his/her servant or agent receives such luggage at the port of embarkment and ends when such luggage is returned to the passenger at the port of disembarkment.

**Article 132.-** Limitation of liability of carriers of

passengers and luggage

1. The liability of the carrier for the death, personal injury or other damage to the health of a passenger shall not exceed 46,666 units of account per contract of carriage of passenger and luggage with the total compensation amount not exceeding 25,000,000 units of account; for cases where, the payment of compensation, by decision of courts, is made in installments, the total amount of such compensation money shall not also exceed the limit specified in this Clause.

2. The liability of the carrier for loss of or damage to hand luggage shall not exceed 833 units of account per passenger per contract of carriage of passenger and luggage.

3. The liability of the carrier for loss of or damage to means of transport, including all luggage carried on board such means of transport, shall not exceed 3,333 units of account per means of transport per contract of carriage of passenger and luggage.

4. The liability of the carrier for loss of or damage to luggage other than luggage specified in Clauses 2 and 3 of this Article shall not exceed 1,200 units of account per passenger per contract of carriage of passenger and luggage.

5. The carrier and the passenger may agree to lessen the liability of the carrier by deducting no more than 117 units of account in case of damage to a means of transport and no more than 13 units of account per passenger in case of loss of or damage to other kinds of luggage.

**Article 133.-** Loss of the right to liability of limitation

1. The carrier shall lose the right to limitation of

liability provided for in Article 132 of this Code if the occurrence of the loss or damage is proved to be the consequence of the carrier's intentional acts of causing such loss or damage or neglect and knowledge that such loss or damage may occur.

2. The provisions of Clause 1 of this Article shall be applied similarly to the carrier's servants and agents.

**Article 134.-** Loss of and damage to valuables and other valuable property

For valuables, money, valuable documents, works of arts or other valuable property, the carrier shall be liable to compensate when on delivering such property for safe keeping the passenger has declared their characteristics and value to the master or the officer responsible for luggage.

**Article 135.-** Liens on luggage

1. The carrier, for securing his/her legitimate interests, may have a lien on the luggage of the passenger who has not yet paid in full his/her debts until when the passenger pay such debts or provide a proper security.

2. For the luggage which has not been collected, the carrier may take it ashore and deposit it in a safe and appropriate place and inform the passenger or his/her authorized person thereof. All costs and charges arising therefrom shall be paid by the passenger.

**Article 136.-** Notification of loss of or damage to luggage

1. The passenger must inform in writing the carrier or his/her agent of the loss of or damage to luggage in the following cases:

a/ Apparent damage to hand luggage must be informed before or when the passenger disembarks the vessel;

b/ Apparent damage to luggage other than hand luggage must be notified before and at the time of delivery of the luggage;

c/ Externally imperceptible loss of or damage to luggage must be notified within fifteen days after the date the passenger disembarks the vessel or the luggage should have been delivered.

2. Where the passenger fails to comply with the provisions of Clause 1 of this Article, his/her luggage shall be deemed to be delivered and received without any loss or damage, unless the contrary is proved.

3. The passenger shall not be required to make such notification in writing if upon delivery, the luggage has been jointly inspected or surveyed by the carrier and passenger.

**Article 137.- Statute of limitations for initiation of lawsuits regarding the carriage of passengers and luggage**

1. The statute of limitations for initiation of lawsuits for compensation for loss of life, personal injury or damage to the health of passengers and for loss of or damage to luggage is two years.

2. The statute of limitations specified in Clause 1 of this Article shall be determined as follows:

a/ In case of personal injury of the passenger, counting from the date the passenger disembarks the vessel;

b/ In case of loss of life of the passenger during the voyage, counting from the date the passenger should have disembarked the vessel.

In case of personal injury of the passenger during the voyage resulting in his/her loss of life after disembarking the vessel, the statute of limitations shall start from the date such person was dead but must not exceed three years as from the date of his/her disembarkment.

c/ In case of loss of or damage to luggage, counting from the date the passenger disembarks the vessel or should have disembarked the vessel, depending on which date is later.

3. Notwithstanding the suspension or interruption of the statute of limitations for initiation of lawsuits for compensation specified in Clause 1 of this Article, the statute of limitations for initiation of lawsuits shall not exceed three years as from the date the passenger disembarks or should have disembarked the vessel, depending on which date is later.

## Chapter VII

### CHARTERPARTIES

#### Section 1. GENERAL PROVISIONS

##### **Article 138.- Charterparties**

A charterparty is a contract concluded between a shipowner and a charterer, whereby the shipowner transfers the right to use his/her seagoing vessel to the charterer for a specified period of time and for a specified purpose agreed upon in the contract for remuneration paid by the charterer.

##### **Article 139.- Forms of charterparties**

1. A charterparty is concluded in the form of

time charterparty or bareboat charterparty.

2. A charterparty must be made in writing.

**Article 140.-** Subletting of vessels

1. The charterer may sublet the vessel to a third party if there is such agreement in the contract but shall still be obliged to perform the contract concluded with the shipowner.

2. The rights and obligations of the shipowner provided for in this Chapter shall also apply to the charterer who sublets the vessel to a third party.

**Article 141.-** Principles for application of laws to charterparties

The provisions pertaining to the rights and obligations of the shipowner and the charter in this Chapter shall apply only when the shipowner and the charterer do not otherwise agree.

**Article 142.-** Statute of limitations for initiation of lawsuits regarding charterparties

The statute of limitations for initiation of lawsuits regarding the charterparty is two years from the date of termination of the charterparty.

**Section 2. TIME CHARTER**

**Article 143.-** Time charterparties

1. A time charterparty is a charterparty whereby a shipowner supplies a specific vessel together with its crew to a charterer.

2. A time charterparty contains the following details:

a/ The name of the shipowner, the name of the charterer;

b/ The name, nationality, class, tonnage, engine capacity, capacity, speed and fuel consumption level of the vessel;

c/ The operation area of the vessel, use purpose and term of the charterparty;

d/ The time, place of and conditions on the delivery and return of the vessel;

e/ The charter hire, mode of payment;

f/ Other related contents.

**Article 144.-** Obligations of shipowners under time charter

1. The shipowner shall be obliged to deliver to the charterer at the right agreed place and on the right agreed time the seagoing vessel in technically safe conditions, properly supplied and adapted for the purpose of employment agreed upon in the contract and maintain such throughout the currency of the charterparty.

2. The shipowner shall be obliged to supply a complement of crew qualified for the purpose of employment of the vessel agreed upon in the contract and to pay the wages and secure the other legitimate interests of crewmen throughout the currency of the charterparty.

**Article 145.-** Rights of charterers under time charter

1. The charterer shall be entitled to dispose of the entire space in the vessel appropriated for the carriage of cargo, passengers and luggage.

2. The charterer must not dispose of the other space on board the vessel for the carriage of cargo, passengers and luggage, unless it is consented by the shipowner.

**Article 146.-** Obligations of charterers under time charter

1. The charterer shall be obliged to employ the vessel for the purposes as agreed upon in the contract and to take due care of the shipowner's interests.

2. The charterer shall be obliged to ensure that the vessel be employed only for the lawful carriage of cargo, passengers and luggage.

3. When the period for time charter terminates, the charterer shall be obliged to redeliver the vessel to the shipowner at the place and time and in technical conditions as agreed upon, except for the vessel's natural wear.

**Article 147.-** Relations between shipowners, charterers and crew of vessels in time charter

1. During the term of a time charterparty, the master and other crewmen shall remain under the shipowner's labor management. The shipowner shall be completely liable for all matters pertaining to crew.

2. In the operation of the vessel, the master shall be the representative of the charterer and must comply with the instructions given by the charterer in accordance with the time charterparty.

3. For the acts of the master performed within his/her powers stated in Clause 2 of this Article, the shipowner shall be liable jointly with the charterer, unless the master has clearly stated his/her commitment that he/she exercises such powers in the name of the charterer.

**Article 148.-** Division of salvage remuneration under time charter

If during the term of a time charterparty the vessel involves in salvage operations, the remuneration shall be divided equally between the shipowner and the charterer after deducting the sum covering expenses arising from salvage operations and the share of salvage remuneration due to the crew.

**Article 149.-** Beyond the term of time charter

If, according to reasonable calculations, the vessel shall complete the last voyage beyond the time for redelivery determined in the charterparty, the charterer may continue to employ the vessel till completion of such voyage; the charterer shall have to pay a hire for such excessive time at the rate determined in the charterparty; if the hire rate on the market is higher than that determined in the charterparty, the charterer shall have to pay the hire at the market price at the time of payment.

**Article 150.-** Payment of hires under time charter

1. The charterer shall have to pay the hire for the period from the date of receipt of the vessel to the date of its redelivery to the shipowner.

2. The charterer shall not have to pay to the shipowner the hire for any period during which the vessel is unfit for operation on account of technical breakdown, lack of supplies, or incompetent crew. In this case, the charterer shall be relieved of the obligation to pay the costs of the vessel's maintenance

3. Where the vessel's unfitness for operation is due to the fault of the charterer, the shipowner shall still be entitled to the hire and to the compensation for the damage arising therefrom.



4. Where the chartered vessel is missing, the hire shall be calculated until the date when the last information on the vessel is received.

5. Where the charterer fails to pay the hire as agreed upon in the charterparty, the shipowner shall have the right to retain the cargo and property on board the vessel, provided that such cargo and property are under the ownership of the charterer.

**Article 151.- Termination of time charterparties**

1. Where the failure to perform the obligations specified in Article 144 of this Code is due to the fault of the shipowner, the charterer shall be entitled to terminate the contract and claim for compensation for the damage arising therefrom.

2. Either party may terminate the time charterparty without having to pay compensation to the other if the performance of the contract has been hindered by an outbreak of war, a riot or coercive measures taken by a competent state agency and such event is unable to come to an end within a reasonable time.

3. A charterparty shall automatically terminate when the vessel has been lost, sunk, destroyed or has been so damaged that its repair is impossible or uneconomical.

**Section 3. BAREBOAT CHARTER**

**Article 152.- Bareboat charterparties**

1. A bareboat charterparty is a charterparty whereby a shipowner supplies a specific vessel together without crew to a charterer.

2. A time charterparty contains the following details:

a/ The name of the shipowner, the name of the charterer;

b/ The name, nationality, class, tonnage and engine capacity of the vessel;

c/ The operation area of the vessel, employment purpose and term of the charterparty;

d/ The time, place of and conditions on the delivery and redelivery of the vessel;

e/ Inspection, maintenance and repair of the vessel;

f/ The charter hire, mode of payment;

g/ Insurance of the vessel;

h/ Time and conditions for termination of the charterparty;

i/ Other related contents.

**Article 153.- Obligations of shipowners under bareboat charter**

1. The shipowner must perform with due diligence his/her obligations to deliver a seaworthy vessel together with its documents to the bareboat charterer at the place and time agreed upon in the charterparty.

2. During the term of a charterparty, without the charterer's written consent, the shipowner shall not be allowed to mortgage the vessel; where the shipowner acts against this provision, he/she must compensate for the damage caused to the charterer.

3. Where the vessel is arrested on account of disputes over the ownership of the vessel or the shipowner's debts, the shipowner must secure that the interests of the charterer not be affected and must compensate for the damage caused to the charterer.

**Article 154.-** Obligations of charterers under bareboat charter

1. The charterer shall be obliged to carry out the maintenance of the vessel and equipment on board during the currency of the bareboat charter.

2. The charterer shall be obliged to repair breakdowns of the vessel and to keep the shipowner informed thereof. The shipowner shall have to refund the repair costs occurred beyond the scope of the charterer's liability.

3. During the currency of the bareboat charter, the charterer shall bear the costs of insurance for the vessel with the value and mode as agreed upon in the charterparty.

4. During the currency of the bareboat charter, if the employment and operation of the vessel by the charterer causes damage to the shipowner, he/she shall be obliged to remedy or compensate for such damage.

**Article 155.-** Obligation to redeliver vessels, employment of vessels beyond the term of the charter, and termination of bareboat charterparties

The obligation to redeliver vessels, employment of vessels beyond the term of the charter, and termination of bareboat charterparties shall comply with the provisions of Clause 3 of Article 146, Article 149 and Article 151 of this Code.

**Article 156.-** Payment of hires under bareboat charter

The bareboat charterer shall have to pay the hire as agreed upon in the charterparty. Where the vessel suffers from total loss or is missing, the payment of the hire shall terminate from the time

the vessel suffers from total loss or the date of receipt of the last information on the vessel. Part of the hire paid in advance must be refunded corresponding to the time the vessel is not employed.

**Article 157.-** Hire-purchase of vessels

Where there is a term on the hire-purchase of the vessel in the bareboat charterparty, the ownership of the vessel under the bareboat charterparty shall be transferred to the charterer as agreed upon in the contract.

## Chapter VIII

### SHIPPING AGENCY AND SHIP BROKERAGE

#### Section 1. SHIPPING AGENCY

**Article 158.-** Shipping agency

Shipping agency is a service whereby the shipping agent provides, in the name of the shipowner or operator of the vessel, services in connection with vessel's operation at the port, including the arrangement of formalities for the seagoing vessel to enter and depart the port; conclusion of contracts of carriage, marine insurance contracts, contracts for cargo handling, charterparties, and crew employment contracts; issuance of bills of lading or similar carriage documents, furnishment of supplies, fuel and food for the seagoing vessel, submission of sea protests, communication with the shipowner or operator of the vessel; provision of services related to crew; receipt and payment of all amounts related to the vessel's operation; and settlement of disputes over contracts of carriage or maritime accidents, and

other services related to seagoing vessels.

**Article 159.- Shipping agents**

1. A shipping agent is a person authorized to act as a representative to perform within the scope of authority designated by the authorizer shipping agency services at the seaport.

2. The shipping agent may, after obtaining the consent of the shipowner or operator of the vessel, perform shipping agency services for the shipper, the charterer and other persons having contractual relations with the shipowner or the operator of the vessel.

**Article 160.- Shipping agency contracts**

A shipping agency contract is a contract concluded in writing between the principal and a shipping agent, whereby the principal authorizes the shipping agent to perform shipping agency services for a certain call or for a specified period of time.

**Article 161.- Responsibilities of shipping agents**

1. The shipping agent shall have to carry out necessary activities for taking due care of and protecting the legitimate rights and interests of the principal; comply with his/her orders and instructions; promptly provide him/her the necessary information about developments relating to the authorized work; and accurately calculate the amounts received and spent relating to the authorized work.

2. The shipping agent shall be obliged to indemnify the shipowner for losses and or damage resulting from his/her fault.

**Article 162.- Responsibilities of principals**

1. The principal shall have to instruct his/her shipping agent to perform the authorized service when necessary and to give the latter, on demand, adequate advances for covering expenses for the authorized service.

2. Where the shipping agent has performed an act beyond the scope of his/her authority, the said act is nevertheless binding upon the principal unless the latter has, immediately upon receipt of information on the act, notified the other related parties that he/she does not recognize this act of the shipping agent.

**Article 163.- Shipping agency service charges**

The shipping agency service charge shall be agreed upon by the involved parties, unless otherwise provided for by law.

**Article 164.- Statute of limitations for initiation of lawsuits regarding performance of shipping agency contracts**

The statute of limitations for initiation of lawsuits regarding performance of shipping agency contracts is two years as from the date of arising of disputes.

**Article 165.- Shipping agency for foreign public-duty vessels, fishing vessels, hydroplanes and military vessels visiting Vietnam**

The provisions of this Section shall apply to foreign public-duty vessels, fishing vessels, hydroplanes and military vessels visiting Vietnam.

**Section 2. SHIP BROKERAGE**

**Article 166.- Ship brokerage and shipbrokers**

1. Ship brokerage is a service whereby a shipbroker acts as an intermediary under a ship brokerage contract for the involved parties in the transaction, negotiation and conclusion of contracts of carriage, of marine insurance, of charter, of sale and purchase of seagoing vessels, seagoing vessel towage contracts, crew employment contracts and other contracts pertaining to maritime shipping activities.

2. The shipbroker is the person performing the ship brokerage service.

**Article 167.-** Rights and obligations of shipbrokers

1. To serve the contracting parties provided that he/she must inform each party thereof, to pay due attention to the legitimate rights and interests of the involved parties.

2. To enjoy brokerage commission when the contract has been concluded as a result of his/her efforts. The shipbroker's commission shall be mutually agreed between the shipbroker and his principal; in the absence of such agreement, the shipbroker's commission shall be determined by local custom.

3. To be obliged to perform brokerage in an honest manner.

4. To be responsible for the legal status of the principals during the time of brokerage.

5. The ship broker's liability shall terminate when the contract between the involved parties has been concluded, unless otherwise agreed.

**Article 168.-** Statute of limitations for initiation of lawsuits regarding performance of ship

brokerage contracts

The statute of limitations for initiation of lawsuits regarding performance of ship brokerage contracts is two years as from the date of arising of disputes.

## **Chapter IX**

### **MARITIME PILOTAGE**

**Article 169.-** Regime of maritime pilotage in Vietnam

1. The employment of pilots in Vietnam aims to ensure marine navigation safety, marine navigation security and prevention of environmental pollution, and contribute to protecting the national sovereignty as well as exercising national sovereign rights and jurisdiction.

2. For Vietnamese seagoing vessels and foreign seagoing vessels, when operating in the Vietnamese navigable areas where maritime pilotage is compulsory, pilots must be employed for their navigation and pilotage dues must be paid. In navigable areas where maritime pilotage is not compulsory, the master may, if deeming it necessary to ensure safety, request a Vietnamese pilot to steer the vessel.

The Government shall specify cases of exemption from employment of Vietnamese pilots for steering for vessels operating in Vietnamese navigable areas where maritime pilotage is compulsory.

**Article 170.-** Maritime pilotage organization

1. The maritime pilotage organization is an organization providing services of navigating seagoing vessels to enter or leave seaports and to

operate in Vietnamese navigable areas where maritime pilotage is compulsory.

2. The Government shall provide for the organization and operation of maritime pilotage.

**Article 171.-** Legal status of maritime pilots

1. The maritime pilot shall advise the master on navigating the vessel in navigational conditions in the areas where the maritime pilot steers the vessel. The employment of maritime pilots shall not relieve the master of the responsibility to command the vessel.

2. The maritime pilot, while steering the vessel, shall be under the command of the master of the steered vessel.

3. The master shall have the right to choose a maritime pilot or to suspend the maritime pilot's service and request his/her substitution.

**Article 172.-** Conditions for practicing pilotage

1. Being Vietnamese citizens.
2. Being physically fit.
3. Having a certificate of maritime pilotage competence.
4. Piloting vessels only in the maritime pilotage area in conformity with the granted maritime pilotage area certificate.
5. Being under the management of a maritime pilotage organization.

**Article 173.-** Rights and obligations of maritime pilots when steering vessels

1. The maritime pilot shall have the right to

refuse to steer the vessel and inform the responsible port authority and maritime pilotage organization when the master deliberately disobeys his/her instructions or reasonable recommendations in the presence of a third party,

2. The maritime pilot shall be obliged to furnish the master with all instructions concerning the navigational conditions in the area of pilotage and to recommend the master on activities incompliant with regulations on marine navigation safety and other relevant provisions of law.

3. The maritime pilot shall be obliged to notify the port authority of the steering of the vessel and dangerous navigational changes which he/she has detected while steering the vessel.

4. The maritime pilot must exercise his/her obligations with due diligence. The maritime pilot's steering duties shall terminate when securing the vessel at anchor, mooring it or safely taking it to the agreed place or being substituted by another pilot. The maritime pilot shall not be allowed to leave the vessel without the consent of the master.

**Article 174.-** Obligations of masters and shipowners when employing maritime pilots

1. The shipmaster shall be obliged to furnish the maritime pilot with accurate information on the navigational properties and characteristics of the vessel; to ensure the pilot's safety when boarding and leaving the vessel; to provide the pilot with working and accommodation facilities throughout his/her stay on board the vessel.

2. The shipowner shall have to compensate for losses resulting from the maritime pilot's mistakes while steering the vessel as for those resulting from mistakes of the vessel's crewmen.

3. For the safety reason, if the maritime pilot cannot depart from the vessel after he/she has fulfilled his/her duties, the master must arrange the vessel to call at the nearest port for the maritime pilot's departure. The shipowner or the operator of the vessel shall have to arrange for the maritime pilot's return to the place where he/she was received and pay all the expenses arising therefrom.

**Article 175.-** Liability of maritime pilots upon occurrence of losses resulting from steering mistakes

The maritime pilot shall only bear administrative or criminal liability for losses resulting from his/her steering mistakes in accordance with the provisions of law but not bear civil liability therefor.

**Article 176.-** Detailed regulations on maritime pilots

1. The Transport Minister shall provide for navigable areas where pilotage is compulsory, criteria for training, grant and withdrawal of maritime pilotage competence certificates and maritime pilotage area certificates.

2. The Finance Ministry shall provide for the maritime pilotage tariff in Vietnam after consulting the Transport Ministry.

**Article 177.-** Pilotage for foreign public-duty vessels, fishing vessels, inland waterway crafts, hydroplanes and military vessels

The provisions of this Section shall apply to foreign public-duty vessels, fishing vessels, inland waterway crafts, hydroplanes and military vessels visiting Vietnam.

## **Chapter X**

### **TOWAGE OF SEAGOING VESSELS**

**Article 178.-** Towage of seagoing vessels

1. Towage of seagoing vessels means towing, pulling away, pushing or standing by seagoing vessels or other floating objects on the sea and in seaport waters by towing vessels.

2. Towage of seagoing vessels includes towage on the sea and assisting towage in seaport waters.

**Article 179.-** Contracts for towage of seagoing vessels

1. A contract for towage of a seagoing vessel is a contract concluded in writing between the owner of a towing vessel and the towage hirer, except for assisting towage in seaport waters.

2. The seagoing-vessel towage service charges shall be agreed upon by the involved parties, unless otherwise provided for by law.

**Article 180.-** The right to command towage of seagoing vessels

1. The towing vessel and the seagoing vessel or other towed objects constitute a towage team. A towage team shall be set up as soon as the towing vessel and other vessels forming the towage team are ready to carry out necessary maneuvers on the order of the commander of the towage team, and it shall break up as soon as the last maneuver is completed and the vessels forming the towage team have sailed away one from another to a safe distance.

2. The commander of the towage team shall be

determined by agreement between the parties to the contract for towage of the seagoing-vessel; in the absence of such agreement, he/she shall be determined by local custom.

3. The right to command assistance towage in seaport waters shall be vested in the master of the towed vessel.

**Article 181.-** Obligations of the parties to contracts for towage of seagoing vessels

1. The owner of the towing vessel shall be obliged to provide at the agreed time and place a towing vessel with technical conditions as agreed upon in the contract for towage of the seagoing vessel.

2. The towage hirer shall be obliged to prepare all safety conditions for vessels as agreed upon in the contract for towage of the seagoing vessel.

**Article 182.-** Liability to compensate for damage arising from towage of seagoing vessels

1. The owner of the vessel whose master is in navigational command of the towage team shall be liable for damage to another vessel in the team as well as to persons and properties on board such vessel, unless he/she proves that such damage has occurred beyond the scope of his/her liability.

2. A vessel which is under the navigational command of the master of another vessel shall not be relieved of the liability to take care of the safety of the towage team; the shipowner shall be liable for damage caused by his/her vessel's fault to another vessel in the team as well as to persons and properties on board such vessel.

3. In the course of performance of the contract

for towage of the seagoing vessel, if damage has been caused to a third party, the contractual parties shall have to compensate for such damage corresponding to the extent of each party's fault.

**Article 183.-** Statute of limitations for initiation of lawsuits regarding performance of contracts for towage of seagoing vessels

The statute of limitations for initiation of lawsuits regarding performance of contracts for towage of seagoing vessels is two years as from the date of arising of disputes.

**Article 184.-** Towage of military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes

The provisions of this Section shall apply to military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes.

## **Chapter XI**

### **MARITIME SALVAGE**

**Article 185.-** Maritime salvage

1. Maritime salvage is an operation for saving a seagoing vessel or properties on board from danger or an action of rendering assistance to a seagoing vessel in peril at sea or in the seaport waters, which is undertaken under a maritime salvage contract.

2. A maritime salvage contract is a contract concluded between a salvor and the owner of the salvaged property on the salvage. The master of the seagoing vessel in distress may conclude on behalf of the shipowner a salvage contract. The master or shipowner of the seagoing vessel in distress may conclude on behalf of the owner of

the cargo carried on board the vessel a contract for salvage of such cargo.

3. A maritime salvage contract shall be concluded in the form as agreed upon by the involved parties.

4. The parties to a maritime salvage contract may request the cancellation or modification of the unreasonable conditions in the contract if they were agreed upon in an urgent and dangerous circumstance and under the influence of such circumstance or where the parties can prove that they were deceived or misled to have concluded the contract or where the salvage remuneration agreed upon is too lower or too higher than what is actually deserved.

**Article 186.-** Obligations of salvors, shipowners and masters

1. In the course of salvage, the salvor shall have the following obligations:

- a/ To conduct salvage with due diligence;
- b/ To apply appropriate measures to avert or reduce damage to the environment;
- c/ To request assistance from other salvors when necessary;
- d/ To accept salvage acts of other salvors at reasonable requests of the shipowner, the master of the seagoing vessel or the owner of the property in danger. In this case, the salvage remuneration of such salvor shall not be affected if the salvage by other salvors is unreasonable.

2. The shipowner, the master of the seagoing vessel or the owner of the property in danger shall have the following obligation:

a/ To cooperate with the salvor throughout the process of salvage;

b/ To act with due diligence to avert or reduce damage to the environment when being salvaged;

c/ When the seagoing vessel or other property is taken to a safe place, to deliver such seagoing vessel or property to the salvor if the salvor has a reasonable request therefor.

**Article 187.-** The right to salvage remuneration

1. All operations of maritime salvage that have brought about useful results shall be entitled to reasonable salvage remuneration.

2. The salvage remuneration comprises the salvage remuneration, salvage expenses, expenses incurred in the transportation and preservation of the salvaged vessel or property, and the remuneration reward.

3. The salvage remuneration is also paid in cases where the salvor has conducted direct or indirect salvage operations to assist the owner of the salvaged property in protecting his/her interests related to freight and passage money due for the carriage of passengers; and where the salvaged and the salvaging vessels belong to the same shipowner.

4. Salvage operations contrary to an express and reasonable decision of the master of the salvaged seagoing vessel shall not be entitled to salvage remuneration.

**Article 188.-** Principles for determination of salvage remuneration

1. The salvage remuneration shall be agreed upon in the salvage contract but must be reasonable and not exceed the value of the



seagoing vessel or property salvaged.

2. Where the salvage remuneration is not agreed upon in the contract or is unreasonable, it shall be determined on the following basis:

a/ The value of the salvaged seagoing vessel and property;

b/ Skills and efforts of the salvor in averting or minimizing the environmental pollution damage;

c/ The effect of the salvage by the salvor;

d/ The nature and degree of danger of the accident;

e/ Skills and efforts of the salvor in salvaging the seagoing vessel, people and property on board;

f/ The time spent, expenses incurred and related losses suffered by the salvor;

g/ The risk of liability and other risks faced by the salvor or the equipment employed for the salvage;

h/ The timeliness of the salvage operations performed by the salvor;

i/ The readiness and capability of the vessel(s) and other equipment employed for the salvage;

j/ The readiness, effectiveness and value of the equipment employed for the salvage.

3. The salvage remuneration may be reduced or disallowed if the salvor has by his/her fault caused the necessity of the salvage or has committed theft, deceitful or fraudulent act when performing the salvage contract.

**Article 189.-** Special remuneration in maritime salvage

1. Where the salvor who has performed salvage

operations related to the seagoing vessel or cargo on board threatening to cause damage to the environment is not entitled to the remuneration determined under Clauses 1 and 2, Article 188 of this Code, he/she shall have the right to a special remuneration paid by the shipowner.

2. The special remuneration stated in Clause 1 of this Article to be paid by the shipowner to the salvor shall not exceed 30% of the expenses incurred by the salvor. In cases where a lawsuit is initiated, if deeming it reasonable and on the basis of the provisions of Clause 2, Article 188 of this Code, the court or arbitration may decide to increase the special remuneration, which, however, must not exceed 100% of the expenses incurred by the salvor.

3. Expenses incurred by the salvor stated in Clause 1 and Clause 2 of this Article include reasonable expenses directly incurred by the salvor and other reasonable expenses arising from the actual employment of equipment and employees for the salvage operations. The determination of expenses incurred by the salvor shall comply with the provisions of Points h, i and j, Clause 2, Article 188 of this Code.

4. In all cases, the whole special remuneration provided for in this Article shall be paid only when it is bigger than the salvage remuneration the salvor may enjoy under the provisions of Article 188 of this Code and constitute the difference between the special remuneration and the salvage remuneration.

5. The salvor may not be entitled to part or the whole of such special remuneration if, due to his/her neglect, the environmental pollution damage

cannot be averted or minimized.

6. The provisions of this Article shall not affect the shipowner's right to recourse against the parties that have their seagoing vessels and/or property salvaged.

**Article 190.-** Principles for determining the value of seagoing vessels or property salvaged

The value of a salvaged vessel or property is the actual value of the vessel or property at the place where it is kept after being salvaged or is the proceeds from the sale, the assessment of the property after deducting the costs of deposit, preservation and organization of the auction and other related expenses.

**Article 191.-** Life-saving reward in salvage remuneration

1. Persons whose lives have been saved shall not be obliged to pay any money to their rescuers.

2. A rescuer of human life shall be entitled to a fair reward in the remuneration or special remuneration due for the salvage of a property, if his/her life-saving acts have been related to the accident giving rise to the salvage of such property.

**Article 192.-** Salvage reward in other cases

Those who are performing the duties of maritime pilotage or towage of a seagoing vessel shall be entitled to a salvage reward if they have rendered exceptional assistance beyond the scope of their contract for salvage of such seagoing vessel.

**Article 193.-** Division of maritime salvage remuneration

1. The salvage remuneration shall be divided

equally between the shipowner and the crew of the salvaging vessel after deducting expenses incurred and damage suffered by the vessel as well as expenses and losses on the part of the shipowner or the crew related to the salvage operations.

This principle shall not be applicable to vessels exclusively employed for professional salvage.

2. Where more than one vessel take part in the salvage, the division of the salvage remuneration shall comply with the provisions of Clause 2, Article 188 of this Code.

3. The Transport Minister shall provide for the division of the salvage remuneration among the crew of Vietnamese seagoing vessels.

**Article 194.-** The right to detain salvaged seagoing vessels or property

1. The salvaged seagoing vessel or property may be detained to secure the payment of the salvage remuneration and other costs related to the valuation and organization of an auction.

2. The salvor shall not be permitted to exercise the right to detain the salvaged seagoing vessel or property if the shipowner or the owner of such property has provided an adequate security for his/her claim for payment of the salvage remuneration, including profits and related expenses.

**Article 195.-** Statute of limitations for initiation of lawsuits regarding performance of contracts for maritime salvage

The statute of limitations for initiation of lawsuits regarding performance of contracts for maritime salvage is two years as from the date of completion of salvage operations.

**Article 196.-** Maritime salvage of military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes

The provisions of this Section shall apply to military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes.

## **Chapter XII**

### **RECOVERY OF SUNKEN PROPERTY**

#### **Article 197.-** Sunken property

1. Sunken property means seagoing vessels, military vessels, public-duty vessels, fishing vessels, inland water crafts, hydroplanes, cargo or other objects sunken in the internal waters or territorial sea of Vietnam or floating on the sea or washed ashore the Vietnamese coast.

2. Dangerous sunken property means property that obstructs or imperils maritime shipping activities or marine resources; threatens people's life and health; pollutes the environment.

#### **Article 198.-** Obligations of owners of sunken property

1. The owner of sunken property shall be obliged to recover his/her sunken property and bear all expenses arising therefrom, except for the case specified in Clause 2 of this Article. Where the owner of sunken property fails to recover the sunken property or cannot recover it within the time limit as requested, competent state agencies defined in Article 205 of this Code shall decide on the recovery of such property.

2. Where the sunken property is a seagoing

vessel, cargo or other objects from a seagoing vessel, the shipowner shall be obliged to recover the sunken property and bear all expenses arising therefrom. The manager, the operator of the seagoing vessel shall bear joint responsibility for such recovery and payment of expenses arising therefrom.

3. Where the sunken property causes environmental pollution, its owner shall have to take all measures to avert and limit the damage resulting therefrom and compensate for the environmental pollution damage according to the provisions of law.

#### **Article 199.-** Time limit for notification and recovery of sunken property

Except for the case specified in Article 200 of this Code, the time limit for notification and recovery of sunken property is specified as follows:

1. Within thirty days as from the date the property is sunk, its owner must notify the competent state agency specified in Article 205 of this Code of the recovery and the expected date for completion of the recovery.

2. Within thirty days as from the date of receipt of the above-said notification, the competent state agency specified in Article 205 of this Code shall decide on the expected time for completion of recovery operations or fix the time limit within which the owner of the sunken property must complete recovery operations, provided that this time limit shall not exceed one year.

#### **Article 200.-** Recovery of dangerous sunken property

1. Immediately after an incident occurs, the

owner of dangerous sunken property shall be obliged to notify it to the director of the port authority in the nearest place and must recover or destroy such property within the time limit as decided by the Transport Minister. Where the owner fails to perform the recovery or the person designated by the owner is unable to recover the property within the specified time limit, the Transport Minister shall organize the recovery and fix for the owner a time limit for reimbursement of the costs incurred therefrom.

The owner must compensate for related losses and shall be penalized according to the provisions of law even when he/she has lost the ownership over his/her sunken property under the provisions of Clause 1, Article 202 of this Code.

2. After thirty days of receipt of the notification of the recovery of his/her property, if the owner fails to claim delivery of the property or to pay the related costs within the fixed time limit, the Transport Minister shall decide to sell the property by auction. Where the dangerous sunken property is of an easy-to-deteriorate kind, the Transport Minister shall decide to sell it by auction immediately after its recovery. Such auction shall be conducted in accordance with the provisions of law.

3. Out of the proceeds from the auction, the balance must be deposited at a bank after deducting the costs of the recovery, expenses for the preservation and auction of the property as well as other reasonable expenses specified in Clause 2 of this Article, and notified to the owner of the property; after one hundred eighty days counting from the date of such notification, if the owner of the property fails to receive the balance, it and its interest shall be remitted into state coffers.

4. Where the proceeds obtained from the auction of the sunken property as provided for in Clause 3 of this Article is not enough to cover the costs and expenses incurred, the owner of the sunken property must fully pay the deficit within the time limit fixed by the agency that has decided on the recovery of such sunken property; if the owner of the sunken property is unable to pay or is unknown, the deficit shall be covered with the state budget.

**Article 201.-** Pre-emptive right to recovery of sunken property

Vietnamese organizations and individuals shall be prioritized to conclude contracts for recovery of property sunken in the Vietnamese internal waters or territorial sea.

**Article 202.-** Loss of ownership over sunken property

1. The owner of the sunken property shall lose his/her ownership over such property if he/she fails to notify or recover the property within the time limit specified in Articles 199 and 200 of this Code and, in the case, such sunken property shall automatically belong to the Vietnamese state.

2. In the case stated in Clause 1 of this Article, competent state agencies specified in Article 205 of this Code shall decide on the disposal of the sunken property.

3. The owner of the dangerous sunken property who has lost his/her ownership under the provisions of Clause 1 of this Article shall still have to compensate for any damage and be penalized under the provisions of law.

**Article 203.-** Disposal of sunken property which is incidentally recovered

1. Immediately after incidentally recovering property sunken in the Vietnamese internal waters or territorial sea or transporting incidentally recovered property into the Vietnamese internal waters or territorial sea, the recoverer must notify competent state agencies specified in Article 205 of this Code the time, place and relevant circumstances of the recovery of the property; protect such property till the delivery thereof to its owner or competent state agencies and, if conditions permit, notify the owner of the property thereof.

2. Where the recovered property mentioned in Clause 1 of this Article is of an easy-to-deteriorate kind, or where its preservation requires excessive costs, the recoverer may dispose of the property according to the provisions of Clauses 2 and 3, Article 200 of this Code.

3. Within fifteen days from the date of notification of the recovery, if the owner of the property fails to claim delivery of the property or to pay the amounts due, the recoverer shall be obliged to deliver the recovered property to competent state agencies specified in Article 205 of this Code.

4. Within sixty days from the date of notification of the recovery, if the owner of the property mentioned in Clause 3 of this Article fails to have any actions to protect his/her interests, competent state agencies specified in Article 205 of this Code may dispose of the property according to the provisions of Clauses 2 and 3, Article 200 of this Code.

5. In the case specified in Clause 1 of this Article,

the recoverer shall be entitled to a recovery remuneration and the reimbursement of related costs and expenses, the amount of which shall be determined on the principles applied to maritime salvage remuneration.

6. Where the owner of the sunken property is unknown, the recovered property shall be disposed of according to the provisions of law.

**Article 204.-** Disposal of property floating on the sea or washed ashore

1. The disposal of property floating on the sea or washed ashore shall comply with the provisions of Clauses 1, 2, 3, 4 and 6, Article 203 of this Code.

2. Those who have found, salvaged or participated in salvaging another person's property floating on the sea shall be entitled to a remuneration on the principles applied to maritime salvage remuneration, provided that he/she has notified the owner of the property of his/her claim not later than the time of delivery of the property.

3. Those who have found and preserved property washed ashore shall be entitled to a reward and the reimbursement of preservation expenses not exceeding 30% of the market value of such property, provided that he/she has notified the owner of the property of his/her claim not later than the time of delivery of the property.

**Article 205.-** Competence to dispose of sunken property

1. The Transport Ministry shall assume the prime responsibility for organizing the disposal of dangerous sunken property.

2. The Culture and Information Ministry shall

assume the prime responsibility for organizing the disposal of sunken property being cultural heritage.

3. The Defense Ministry shall assume the prime responsibility for organizing the disposal of sunken property related to defense and security and of property sunken in military zones.

4. The People's Committees of provinces or centrally-run cities shall assume the prime responsibility for organizing the disposal of sunken property other than those mentioned in Clauses 1, 2 and 3 of this Article.

5. The Government shall provide in detail for the disposal of sunken property.

### **Chapter XIII**

## **COLLISIONS**

### **Article 206.- Collisions**

Collision means a collision which has occurred between seagoing vessels, between a seagoing vessel and an inland water craft or a hydroplane, or between other floating structures on the sea or in the seaport waters.

**Article 207.-** Obligations of masters when collisions occur

1. After a collision occurs, the master of each of the vessels in collision shall be obliged to render assistance to the other vessel, persons and property on board so far as he/she can do so without serious danger to his/her vessel as well as the persons and property on board his/her vessel.

2. Immediately after a collision occurs, the master of each of the vessels shall be obliged to

inform the master of the other vessel the name of his/her own vessel, its call-sign, the port of registration and the names of the ports from which his/her vessel has come and to which it is bound.

3. The shipowner shall not be responsible for his/her master's failure to perform the obligations specified in Clauses 1 and 2 of this Article.

**Article 208.-** Principles for identification of faults and compensation for losses resulting from collisions

1. A vessel at fault in a collision is a vessel causing a collision as a result of its operation or omission in equipping, navigation and management of the vessel, in observing regulations on the prevention of collisions at sea and regulations on assurance of marine navigation safety or as a result of non-compliance with necessary professional customs.

2. The vessel at fault in a collision shall be liable for damage caused to another vessel or to persons and property involved in such collision. Where both or many vessels are at fault in a collision, each of them shall be liable in proportion to the degree of its fault; where the degree of the fault is equal or it is impossible to establish the specific degree of the fault of each vessel, the liability for compensation shall be equally divided to the involved vessels.

3. Where the fault is not clearly determined, no vessel shall be held liable for the collision.

4. In case of compensation for loss of life, personal injuries or other health damage, the vessels at fault in the collision shall bear joint liability. A vessel which has paid compensation in

excess of its liability shall be entitled to recover from the other vessels the sum paid in excess.

5. A military vessel shall be relieved of the compensation liability only if it, due to its fault, has caused a collision when performing its duties in the military exercise areas or no-maritime shipping areas already declared, but its master must, if practical conditions permits, perform his/her obligations specified in Clauses 1 and 2, Article 207 of this Code.

6. Pursuant to the provisions of Clauses 1, 2, 3, 4 and 5 of this Article, the parties involved in a collision may reach agreement on their own to determine the degrees of their faults and liabilities for compensation for losses resulting from the collision; if they cannot reach such agreement, they may initiate a lawsuit at an arbitration or a competent court.

**Article 209.-** Collisions due to force majeure, accidental events or unidentified fault

Where a collision has occurred by force majeure by an accidental event or where it is impossible to determine which vessel is at fault, the damage shall be borne by the vessel that has suffered it, even when the vessel is at anchor, moored to or alongside another vessel at the time of the collision.

**Article 210.-** Indirect collisions

The provisions of this Chapter shall be also applied when a vessel has caused damage to another vessel or persons or property on board such vessel even though no direct collision has occurred.

**Article 211.-** Statute of limitations for initiation

of lawsuits regarding collisions

1. The statute of limitations for initiation of lawsuits regarding collisions is two years as from the date of occurrence of collisions.

2. The statute of limitations for initiation of lawsuits regarding claims for reimbursement of excessive amounts stipulated in Clause 4, Article 208 of this Code is one year as from the date of payment of compensation money.

**Article 212.-** Collisions of military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes

The provisions of this Section shall apply to military vessels, public-duty vessels, fishing vessels, inland waterway crafts and hydroplanes.

#### **Chapter XIV**

#### **GENERAL AVERAGE**

**Article 213.-** General average

1. General average means extraordinary sacrifices or expenditure intentionally and reasonably made or incurred for the common safety for the purpose of preserving from a common peril the vessel, cargo, luggage, freight or passage money for the carriage of passengers.

2. Only losses, damage and expenses which are the direct consequence of the general average act may be accounted as general average.

3. All losses, damage and expenses which are related to damage to the environment or the consequence of the leakage or discharge of pollutants from the property on board the vessel

during its voyage shall not be accounted as general average in any circumstance.

4. Demurrage money and any loss or damage incurred or expenses paid for delay during or after the voyage and any indirect damage shall not be accounted as general average.

5. Extra expenses in excess of the necessary expenses which would have been accounted as general average may be accounted as general average, but only within a reasonable limit on a case-by-case basis.

**Article 214.-** Apportion of general average

1. General average shall be apportioned in proportions between the value of the loss resulting from the action causing general average and the value saved at the place where and time when the vessel calls immediately after the general average occurs.

2. The provisions of Clause 1 of this Article shall be also applied to the case where the peril has been due to the fault of any party with interests in the general average or a third party.

3. The apportionment of general average shall not preclude the right of any involved party to claim compensation from the party at fault.

4. The principles applicable to a detailed adjustment of the loss value and contribution value shall be agreed by the parties in the contract. In the absence of such agreement, adjusters shall settle in accordance with the provisions of this Chapter and international custom.

**Article 215.-** Apportion of general average to cargoes loaded on board without permission

Any loss of the cargo loaded on board without permission or wrongly declared in terms of its kind and value shall not be accounted as general average; however, such cargo, if saved from a common peril, shall be subject to a corresponding contribution value.

**Article 216.-** Particular average

Any loss of or damage to the vessel, cargo, luggage, freight and passage money for the carriage of passengers which is not allowed to be accounted as general average under the provisions of Article 213 of this Code shall be referred to as particular average. Those who suffer from such loss or damage shall not be entitled to compensation unless he/she proves that such loss or damage has been caused by another party's fault.

**Article 217.-** Declaration of general average and appointment of general average adjusters

1. The identification of a general average, the assessment of the amount of general average and its apportionment shall be carried out by general average adjusters appointed by the shipowner.

2. The shipowner is the only persons entitled to declare a general average and shall appoint his/her general average adjuster within thirty days after the date of declaration of the general average occurrence.

**Article 218.-** Statute of limitations for initiation of lawsuits regarding general average

The statute of limitations for initiation of lawsuits regarding general average is two years as from the date of occurrence of general average. The period for apportion of general average shall not



be counted in this statute of limitations.

### **Chapter XV**

#### **LIMITATION OF CIVIL LIABILITY FOR MARITIME CLAIMS**

##### **Article 219.- Persons entitled to limit civil liability**

1. The shipowner shall be entitled to limit civil liability for maritime claims specified in Article 220 of this Code.

2. The shipowner's right to limit civil liability shall be also applied on similar principles to the salvor, the operator, the charterer and the manager of the vessel where the shipowner or any of such persons must be liable for his/her act, neglect or fault.

3. Where the assured is entitled to limit his/her liability for maritime claims, the insurer liable for these maritime claims shall be also entitled to limit his/her liability like the assured.

4. The exercise of the right to limit liability does not mean that the person entitled to such right has acknowledged all liabilities.

5. The person entitled to limit liability under the provisions of this Chapter shall lose his/her right to limit civil liability if the loss is proved to be the consequence of his/her fault.

##### **Article 220.- Maritime claims subject to limitation of civil liability**

1. Claims in respect of loss of life, personal injury or another health damage; loss of or damage to property, including damage to harbor facilities, areas for anchorage and navigable channels and aids to navigation, occurring on board or in direct

connection with the operation of the seagoing vessel or with salvage operations, and consequential loss resulting therefrom.

2. Claims in respect of loss resulting from delay in the carriage of cargo, passengers or their luggage by sea.

3. Claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the seagoing vessel or salvage operations.

4. Claims in respect of the recovery, removal, destruction or the rendering harmless of a seagoing vessel which is sunk, wrecked, destroyed or abandoned, including property that is or has been on board such vessel.

5. Claims in respect of the removal, destruction or the rendering harmless of the cargo on board the seagoing vessel.

6. Claims of a person other than the person who has civil liability in respect of measures taken by himself/herself in order to avert or minimize loss for which such person may limit his/her liability, and further loss caused by the application of such measures.

##### **Article 221.- Maritime claims not subject to limitation of civil liability**

1. Claims for salvage remuneration or contribution in general average.

2. Claims for oil pollution damage.

3. Claims for nuclear damage;

4. Claims by servants of the shipowner or salvor whose duties are related to the seagoing vessel or

the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the labor contract between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his/her civil liability for such claims, or if he/she is only permitted to limit his/her civil liability to an amount greater than that specified in Article 222 of this Code.

**Article 222.- Limits of civil liability**

1. The limits of civil liability for maritime claims in respect of loss of life, personal injury or health damage to passengers carried by sea and loss of or damage to their luggage shall comply with the provisions of Article 132 of this Code.

2. The limits of civil liability for maritime claims in respect of loss of life, personal injury or health damage to non-passengers are specified as follows:

a/ 167,000 units of account for a seagoing vessel with a tonnage not exceeding 300 GT;

b/ 333,000 units of account for a seagoing vessel with a tonnage of between 300 GT and 500 GT;

c/ For a seagoing vessel with a tonnage over 500 GT, the following amount in addition to that mentioned at Point b of this Clause: for each GT from 501 to 3,000 GT, 500 units of account; for each GT from 3,001 to 30,000 GT, 333 units of account; for each GT from 30,001 to 70,000 GT, 250 units of account; and for each GT in excess of 70,000 GT, 167 units of account.

3. The limits of civil liability for other maritime claims are specified as follows:

a/ 83,000 units of account for a seagoing vessel

with a tonnage not exceeding 300 GT;

b/ 167,000 units of account for a seagoing vessel with a tonnage of between 300 GT and 500 GT;

c/ For a ship with a tonnage in excess of 500 GT, the following amount in addition to that mentioned at Point b of this Clause: for each GT from 501 to 30,000 GT, 167 units of account; for each GT from 30,001 to 70,000 GT, 125 units of account; and for each GT in excess of 70,000 GT, 83 units of account.

4. Where the total amount calculated under Clause 2 of this Article is insufficient to pay such maritime claims, the total amount calculated under Clause 3 of this Article shall be used to pay the unpaid balance of maritime claims under Clause 2 of this Article and such unpaid balance shall rank rateable with other maritime claims under Clause 2 of this Article.

5. Maritime claims specified in Clause 3 of this Article and related to damage to harbor facilities, areas for anchorage, navigable channels and aids to navigation shall be the first to be settled.

6. The limits of liability of the salvor not operating from any seagoing vessel or operating solely on the vessel to, or in respect of which he/she is rendering salvage services, shall be calculated according to a tonnage of 1,500 GT.

7. The limits of liability provided for in this Article shall apply to the total value of all claims which arise from a distinct case.

8. The limits of civil liability provided for in this Article shall be converted into Vietnam dong at the exchange rate applied at the time of payment.

9. Total tonnage is the seagoing vessel's gross

tonnage (GT) calculated in accordance with the 1969 International Convention on Tonnage Measurement of Ships.

**Article 223.-** The compensation assurance fund

1. Those who are entitled to limit their civil liability under the provisions of this Code may constitute a compensation assurance fund for settlement of maritime claims for which they are entitled to limit their liability. The compensation assurance fund shall be constituted in the sum of such of the amounts specified in Article 222 of this Code together with interest thereon from the date of the occurrence giving rise to the maritime claims until the date of the constitution of the fund.

2. The compensation assurance fund shall be distributed among the claimants in proportion to their established claims against the total value of the fund.

3. A compensation assurance fund may be constituted by the shipowner's depositing the sum or producing another financial guarantee acceptable by the court which has accepted the case.

4. After the compensation assurance fund has been constituted, nobody may infringe upon the interests or property of the liable person. The court shall have the right to release the seized property of the liable person or terminate similar guarantees already provided by the liable person.

5. If, before the compensation assurance fund is distributed, the person liable, or any of those who are entitled to limit their civil liability under the provisions of this Code, has settled a maritime claim falling within the scope of compensation by the

fund, such person shall, up to the amount he/she has paid, enjoy by subrogation all interests from the fund with respect to the settled maritime claim.

6. The constitution of a compensation assurance fund does not mean that the shipowner has acknowledged all liabilities.

## **Chapter XVI**

### **CONTRACTS OF MARINE INSURANCE**

#### **Section 1. GENERAL PROVISIONS**

**Article 224.-** Contracts of marine insurance

1. A contract of marine insurance is a contract of insurance for maritime perils whereby the insurer undertakes to indemnify the assured, in the manner and under the conditions agreed in it, against marine losses covered by insurance.

Maritime perils mean the perils incidental to the navigation of the sea, including perils of the seas, fires, explosions, war perils, pirates, thieves, attachments, captures, seizures, detentions, jettisons, acquisitions, requisitions, compulsory purchases, illegal acts and similar perils or any other perils as agreed upon in the insurance contract.

2. A contract of marine insurance may be extended in accordance with specific conditions or custom so as to protect the interests of the assured against losses occurring on inland waters or land or railway that may be incidental to a voyage.

3. The contract of marine insurance must be concluded in writing.

**Article 225.-** Subjects of marine insurance

A subject of marine insurance may be any material interest related to maritime shipping activities and appraisable in terms of money, including seagoing vessel, seagoing vessel in course of building, cargo, freight, passage money for the carriage of passengers, charter-hire, hire and purchase money, expected profit on cargo, commission, general average costs, obligations arising under civil liability and sums of money secured by vessel, cargo or freight.

**Article 226.-** Identification of insurable interests

1. A person with an insurable interest is a person who is interested in a subject of insurance in a sea voyage.

2. A person is interested in a sea voyage when he/she has grounds to prove that he/she has any relation to the voyage or to any subject of insurance at risk in it, in consequence of which such person may benefit by the safe and due arrival of the subject of insurance, or may not benefit by its loss or by damage to it or by the detention of it, or may incur liability in respect of it.

3. The assured must have interest in the subject of insurance at the time of occurrence of the loss though the assured need not be interested in the subject of insurance when the insurance is effected. When the subject of insurance is insured under the "lost or not lost" condition, the assured may recover although the assured may not have acquired that interest until after the loss occurred, unless the assured was aware of the loss and the insurer was not.

Where the assured has no interest in the subject of insurance at the time of occurrence of the loss, the assured cannot acquire interest by any act or

selection after the assured is aware of the loss.

4. Where the buyer of goods has insured them, the buyer shall have an insurable interest, even though the buyer might have rejected the goods or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

**Article 227.-** Reinsurance

1. The insurer may reinsure to another insurer the subject of insurance which the insurer has accepted to insure.

2. The contract of reinsurance is independent from the original contract of insurance while the original insurer shall be still responsible to the assured.

**Article 228.-** Marine policy, insurance certificate

1. At the request of the assured, the insurer shall be obliged to issue to him/her a marine policy or insurance certificate. The marine policy or certificate shall constitute an evidence of the conclusion of the contract of marine insurance.

2. A marine policy may be issued in the following forms:

a/ Voyage policy, which is a policy issued to a subject of insurance from one place to another or others;

b/ Time policy, which is a policy issued to a subject of insurance for a definite period of time;

c/ Valued policy, which is a policy in which the insurer has agreed in advance to the value of the subject of insurance as specified in the policy, which is compatible with the insurable value and shall be used for indemnification for total or partial loss.

Unless the policy otherwise provides, the value specified in the policy and the provisions of Clause 1, Article 254 of this Code shall serve as a basis for determining whether there has been a constructive total loss.

d/ Unvalued policy, which is a policy that does not specify the value of the subject of insurance, but, specifies the sum insured.

3. A marine policy should contain the following basic details:

a/ The name of the assured, or of the assured's representative;

b/ The subject of insurance;

c/ The insurance conditions;

d/ The period of time covered by the insurance;

e/ The sum insured;

f/ The place, date and hour of issue of the policy;

g/ The insurer's signature for certification.

4. The forms and basic details of a marine policy shall apply to insurance certificates.

**Article 229.-** Obligations of the assured

1. The assured shall be obliged to inform the insurer of all information which the assured has known or should have known in relation to the conclusion of the contract of insurance, and may affect the assessment by the insurer of the possible risk or the decision by the insurer as to whether or not the insurance proposal and the terms of the contract should be accepted, except information which is common knowledge or has been known or should have been known to the insurer.

2. The obligation of the assured specified in Clause 1 of this Article shall be also applied to the

assured's representative.

**Article 230.-** Automatic invalidation of contracts of marine insurance

A contract of marine insurance shall automatically become invalid if at the time of its conclusion the peril covered by insurance has already occurred or where the possibility of its occurrence does not exist in reality; in this case, the insurer shall not have to indemnify but shall retain the right to the insurance premium as contracted, unless before concluding the contract, the insurer knew about such event.

**Article 231.-** The right to terminate contracts of marine insurance

1. Where the assured intentionally commits a breach of his/her obligation set out in Article 229 of this Code, the insurer shall have the right to terminate the contract. Where the assured fails to provide information or provides inaccurate information according to the provisions of Article 229 of this Code not due to his/her fault, the insurer shall have no right to terminate the contract, but may request a reasonable increase of the insurance premium.

2. Before the commencement of the insurance liability, the assured may request the termination of the contract of marine insurance, provided that he/she pays the insurer all administrative costs, and the insurer must refund the insurance premium to the assured.

3. The insurer and the assured must not terminate their contract once the insurance liability has commenced, unless otherwise agreed upon in the contract.

Where it is agreed in the contract that the contract may terminate after the insurance liability commences and the assured requests termination of the contract, the insurer shall have the right to the insurance premium from the date of commencement of the insurance liability to the date of termination of the contract, and the refunded premium shall correspond to the remaining time. Where the insurer requests termination of the contract, the insurance premium amount of the remaining time shall be refunded to the assured for the period of time from the date of request for termination to the date of expiration of the contract.

4. The provisions of Clause 2 of this Article shall not apply to the case where the assured requests termination of the cargo or voyage policy for the seagoing vessel after the commencement of the insurance liability.

## **Section 2. INSURABLE VALUE AND SUM INSURED**

### **Article 232.- Insurable value**

Insurable value is the real value of the subject of insurance and determined as follows:

1. The insurable value of the seagoing vessel is its total value at the commencement of the insurance. This value also includes the value of its machinery, equipment, spare parts and stores plus the whole insurance premium amount. The insurable value of the seagoing vessel may also include money advanced for crew's wages and other disbursements incurred to make the ship fit for the voyage as agreed upon in the policy;

2. The insurable value of the cargo is its value invoiced at the place of loading or its market value

at the place and time of loading plus the insurance premium, the freight and may include the expected profit;

3. The insurable value of the freight is the gross amount of freight plus the insurance premium. Where the charterer has the freight insured, this amount of freight is included in the insurable value of the cargo for insurance;

4. The insurable value of any other subject of insurance, except obligations arising under civil liability, is the value of the subject of insurance at the place and time of the commencement of the insurance, plus the insurance premium.

### **Article 233.- The insured sum**

1. Upon concluding a contract of marine insurance, the assured must declare the sum for which the subject of insurance is insured (hereinafter referred to as the insured sum).

2. Where the insured sum as specified in the contract is lower than the insurable value, the insurer shall be liable for losses in such proportions as the insured amount bears to the insurable value, including other expenses under the insurance.

3. Where the insured sum as specified in the contract exceeds the insurable value, the amount in excess of the insured sum shall not be accepted.

### **Article 234.- Double insurance**

1. Where two or more policies have been concluded by the assured or his/her representative for the same subject of insurance against the same maritime peril for the insured sums which in aggregate exceed the insurable value, the assured shall be deemed to have been overinsured by double insurance.

2. In case of double insurance mentioned in Clause 1 of this Article, all such insurers shall be liable only up to the amount of the insurable value, and within limit of that value each of them shall be liable in proportion to the insured sum accepted by such insurer.

### **Section 3. TRANSFER OF RIGHTS UNDER CONTRACTS OF MARINE INSURANCE**

#### **Article 235.- Transfer of marine policies**

1. A marine policy is transferable unless it contains terms expressly prohibiting transfer. It may be transferred either before or after loss of the subject of insurance.

2. A person who has no interest in the subject of insurance shall not be allowed to transfer the policy.

#### **Article 236.- Mode of transfer of marine policies**

A marine policy may be transferred by the assured's endorsement on it according to a commercial practice.

### **Section 4. FLOATING INSURANCE**

#### **Article 237.- Floating insurance**

1. Floating insurance is a package insurance covering the subject of insurance of a kind or some kinds of cargo which the assured will dispatch or receive within a specified period of time.

2. In a contract of floating insurance, the insurer shall be obliged to issue, at the request of the assured, a policy or a certificate of insurance for each shipment or each unit of cargo.

#### **Article 238.- Performance of contracts of**

floating insurance

1. The assured, who has concluded a contract of floating insurance, shall be obliged to notify to the insurer immediately upon receipt of information concerning the dispatch or receipt of the cargo and to specify each case the name of the seagoing vessel, the route, the cargo and the insured sum, even when the notice reaches the insurer, the cargo may have been dispatched or have arrived at the port of delivery.

2. Where the assured has intentionally or through his negligence failed to fulfil the obligation specified in Clause 1 of this Article, the insurer may terminate the contract while retaining the right to the insurance premium to which he would have been entitled had the contract been properly performed.

#### **Article 239.- Termination of contracts of floating insurance**

A contract of floating insurance may be terminated by either party subject to a ninety days' notice.

### **Section 5. PERFORMANCE OF CONTRACTS OF MARINE INSURANCE**

#### **Article 240.- Payment of insurance premiums**

The assured shall be obliged to pay the insurance premium to the insurer immediately after the conclusion of the contract or the issue of the policy or certificate of insurance, unless otherwise agreed by the involved parties.

#### **Article 241.- Notification of increased risks**

1. If, after the conclusion of the contract of

insurance, there is any change in the insured perils, increasing their degree of risk, the assured shall have to notify the insurer of such change immediately after it is known to him/her.

2. Where the assured violates the provisions of Clause 1 of this Article, the insurer may refuse to indemnify part or the whole of the insured sum.

**Article 242.-** Obligations of the assured upon the occurrence of loss

1. Where a loss related to the maritime perils insured has occurred, the assured shall be obliged to take all necessary measures to avert the loss or lessen its extent as well as to secure the insurer's exercise of the right to claim against the parties responsible for the loss. When performing this obligation, the assured must follow the reasonable instructions of the insurer.

2. When the assured intentionally or through gross negligence has failed to perform the obligation mentioned in Clause 1 of this Article, the insurer shall not be liable for losses caused thereby.

**Article 243.-** The insurer's liability to refund

The insurer shall have to refund to the assured all reasonable and necessary expenses incurred for the purpose of averting the loss or lessening its extent; expenses incurred in the implementation of the instructions of the insurer as provided for in Article 242 of this Code, or expenses incurred for identifying the cause and extent of the loss within the scope of liability of the insurer, and expenses contributed to the general average. These expenses shall be refunded in such proportion as the insured sum bears to the insurable value.

**Article 244.-** The insurer's liability for losses

1. Within the limit of the insured sum, the insurer shall be liable for losses resulting directly from the peril insured and have to refund the expenses as specified in Article 243 of this Code even though the aggregate amount to be paid to the assured may exceed the insured sum.

2. The insurer shall not be liable for losses arising from an intentional fault or a gross negligence of the assured, but still be liable for losses caused by the negligence or fault of the master who is also insured in navigation and management of the vessel as well as losses caused by the fault of another crewman or the maritime pilot.

3. The contract of insurance of ship hull may be extended to compensation for losses occurred in relation to liabilities in a collision, apart from his/her liability to compensate the assured for loss of or damage to the subject of insurance, the insurer shall be responsible for loss of or damage to a third party in the collision for which the assured is liable even though the aggregate amount of indemnity exceeds the insured sum.

4. Where the maritime perils insured under the contract of insurance occur, the insurer may indemnify the assured the total amount insured against the exemption of all other liabilities under the terms agreed in the contract. In this case, the insurer must notify the assured of his/her intention to do so within seven days from the date on which he/she receives the information from the assured about the occurrence of the maritime perils and their consequences; the insurer shall not be entitled to claim the ownership of the subject of insurance if the total insured sum is less than the insurable value.

In addition to the indemnification of the total insured sum, the insurer must also refund expenses incurred for the purpose of averting the



loss or lessening its extent, as well as repairing and recovering the subject of insurance, which the assured had paid before he/she received the notice from the insurer.

**Article 245.-** Indemnification for successive losses

1. The insurer shall be liable for successive losses, even though the aggregate amount of losses may exceed the insured sum, unless otherwise agreed upon in the contract.

2. Where, a partial loss of the subject of insurance that has not been repaired or otherwise made good is followed by a total loss, the assured shall only recover in respect of the total loss.

3. The provisions of Clauses 1 and 2 of this Article shall not relieve the insurer of the liability for refunding the expenses related to the performance of the obligations provided for in Article 244 of this Code.

**Article 246.-** Exemption of the insurer's liability

1. Unless otherwise agreed in the contract of insurance, in the insurance of a seagoing vessel and freight, the insurer shall not be liable for losses arising from:

a/ The seagoing vessel being not seaworthy at the beginning of the voyage, unless this is due to latent defects of the vessel or caused by circumstances which could not have been prevented in spite of due diligence exercised by the assured;

b/ Loading on board the seagoing vessel of explosive or inflammable materials or other dangerous cargoes without compliance with regulations on the carriage of cargoes of that kind, of which the assured was aware but the insurer was not.

2. Unless otherwise agreed in the contract of insurance, in the insurance of the cargo, the insurer shall not be liable for losses arising from:

a/ The nature of the cargo;

b/ Ordinary leakage, ordinary wear and tear of the cargo;

c/ Improper packing of the cargo;

d/ Delay in its supply.

3. Unless otherwise agreed in the contract of insurance, the insurer shall not be liable for losses of the subject of insurance arising from war or military activities of any nature and their consequences; from being appropriated; from civil commotion; strikes; or from acquisition, requisition, compulsory purchase, detention or destruction of the seagoing vessel or cargo under military orders or decisions of competent state agencies.

**Section 6. TRANSFER OF THE RIGHT TO RECOURSE**

**Article 247.-** Transfer of the right to recourse

After having indemnified the assured, the insurer shall have the right to recourse against the person who is responsible for such loss (hereinafter referred to as the third party) within the amount paid. The insurer shall exercise this right in accordance with the provisions applicable to the assured.

**Article 248.-** The assured's obligations in the recourse against the third party

1. The assured shall be obliged to provide the insurer with all information, documents as well as proofs and to take necessary measures to enable the insurer to exercise the right to recourse against

the third party.

2. Where the assured fails to perform the obligations specified in Clause 1 of this Article or he/she is at fault that makes the insurer's right to recourse unexercisable, the insurer shall be exempt from the payment of the whole indemnity or enjoy a reasonable reduction of the payable indemnity.

3. If the assured has received the indemnity for losses from the third party, the insurer shall be obliged to pay only the difference between the indemnity amount according to the contract of insurance and the amount of money the assured received from the third party.

**Article 249.-** Guarantee for general average contributions

1. The insurer must guarantee for general average contributions within the limit of the insured sum on the basis of the assured's commitment to general average contributions.

2. When adjusting general average, the assured shall be obliged to pay due attention to the insurer's interests.

**Section 7. ABANDONMENT OF SUBJECTS OF INSURANCE**

**Article 250.-** The right to abandon the subjects of insurance

1. The assured shall have the right to abandon the subject of insurance and surrender to the insurer of his/her rights and obligations related to the subject of insurance in return for the payment of the indemnity for total loss where the total loss of the subject of insurance is inevitable, or the aversion of such loss would entail expenditure so high in comparison with the value of the subject of

insurance.

2. The right to abandon the subject of insurance may be applicable where the seagoing vessel has been sunk, appropriated or damaged in an accident in consequence of which it has become irreparable, or its cost of repair, recovery or redemption is economically inefficient.

3. The right to abandon the subject of insurance provided for in Clause 2 of this Article shall be also applied to cargo, even where the costs of its repair and delivery to the port of delivery would be so high in comparison with its market value at the port of delivery.

**Article 251.-** The mode and time limit for exercising the right to abandon the subjects of insurance

1. The exercise of the right to abandon the subject of insurance must be declared in writing, stating the grounds for the application of this right.

2. The declaration of the abandonment of the subject of insurance must be sent to the insurer within a reasonable time limit but not exceeding one hundred and eighty days, counting from the date on which the assured has learned of the circumstances used as grounds for the application of this right or within sixty days, counting from the date on which the insurance has expired in cases where the seagoing vessel or cargo has been appropriated or where the right to possession of the vessel or cargo has been lost for other reasons; after the time limit specified in this Clause, the assured shall lose the right to abandon the subject of insurance but shall still have the right to claim the indemnity for the loss.

3. The abandonment of the subject of insurance must be unconditional; if the abandonment has

been accepted, neither the insurer nor the assured can change his/her decision.

**Article 252.-** The assured's obligations when declaring the abandonment of the subject of insurance

When declaring the abandonment of the subject of insurance, the assured shall be obliged to provide the insurer with information on any proprietary rights related to the subject of insurance and on other insurance amounts and limitations known to the assured.

**Article 253.-** The time limit for the insurer to accept or refuse to accept the abandonment of the subject of insurance

1. Within thirty days, counting from the date of receipt of the declaration of abandonment of the subject of insurance, the insurer shall be obliged to notify in writing the assured of his/her acceptance or refusal of the abandonment. The insurer shall lose the right to refuse to accept the abandonment after the expiration of this time limit.

2. The rights and obligations related to the subject of insurance shall be transferred to the insurer immediately after he/she notifies that he/she accepts the abandonment; the insurer may not demand these rights.

3. Where the declaration of abandonment of the subject of insurance has been effected as provided for but the insurer refuses to accept the abandonment, the assured shall still retain the right to an indemnity.

**Article 254.-** Indemnity for total loss

1. A constructive total loss means loss resulting from the damage to the seagoing vessel or cargo

whose actual total loss is deemed to be unavoidable or the cost of repairing or recovering the seagoing vessel would exceed the value of the vessel when repaired or exceed the market value of the cargo at the port of delivery; in this case, the assured must send the declaration of abandonment of the subject of insurance to the insurer before demanding the payment of the insured sum.

2. Actual total loss means loss resulting from the total destruction or damage of the seagoing vessel or cargo which renders the vessel or cargo unrecoverable or from the missing of the vessel together with the cargo on board thereof; in this case, the assured may demand from the insurer the indemnity for the total insured sum without having to declare abandonment of the subject of insurance.

3. Where the vessel found missing has been insured for a definite period of time, the insurer shall only be liable for the indemnity if he/she has last received the information of the vessel before the expiration of the insurance period. The insurer shall not be liable for the indemnity if he/she proves that the vessel has been found missing after the expiration of the insurance period.

**Article 255.-** Refund of indemnified amounts

Where the insurer has paid the indemnity, the seagoing vessel then escapes from the maritime peril, he/she shall be entitled to request the assured to continue his/her ownership of the seagoing vessel and refund the indemnity paid after deducting the indemnified amount for partial loss of the seagoing vessel provided that such partial loss is the direct consequence of the maritime peril insured.

## **Section 8. SETTLEMENT OF INDEMNITY**

**Article 256.-** Responsibility for settlement of indemnity

In payment of indemnified amounts for the loss of the subject of insurance, the insurer may request the assured to provide him/her with information on relevant circumstances, submit documents and other proofs necessary for assessing the circumstances and the extent of the loss.

**Article 257.-** Statute of limitations for initiation of lawsuits regarding contracts of marine insurance

The statute of limitations for initiation of lawsuits regarding contracts of marine insurance is two years as from the date of arising of disputes.

## **Chapter XVII**

### **SETTLEMENT OF MARITIME DISPUTES**

**Article 258.-** Maritime disputes

Maritime disputes are disputes arising from maritime shipping activities.

**Article 259.-** Principles for settlement of maritime disputes

1. The disputing parties may settle their maritime disputes through negotiation, agreement or initiation of lawsuits before an arbitration or a court.

2. Maritime disputes will be settled by arbitration or court in accordance with the jurisdiction and procedures provided for by law.

**Article 260-** Settlement of maritime disputes involving at least one party being a foreign

organization or individual

1. Where a contract has at least one party being a foreign organization or individual, the contracting parties may agree to refer their dispute to a foreign arbitration or court.

2. Where the parties to a maritime dispute are all foreign organizations and/or individuals and they have agreed in writing to refer their dispute to a Vietnamese arbitration, the Vietnamese arbitration shall be entitled to settle such dispute, even though the dispute occurred outside the Vietnamese territory.

3. A maritime dispute specified in Clause 2 of this Article may be also settled by a Vietnamese court if the grounds for establishment, modification or termination of the relations among the parties to such dispute comply with the Vietnamese law or the property connected with such relations is located in Vietnam.

## **Chapter XVIII**

### **IMPLEMENTATION PROVISIONS**

**Article 261.-** Implementation effect

1. This Code takes effect as from January 1, 2006.

2. This Code supersedes the Vietnam Maritime Code of 1990.

*This Code was passed the XI<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 7<sup>th</sup> session on June 14, 2005.*

**Chairman of the National Assembly**  
**NGUYEN VAN AN**