

# **Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation**

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## **Chapter I General Provisions**

**Article 1** These Rules are formulated in accordance with the provisions of the Regulations of the People's Republic of China on International Maritime Transportation (hereinafter referred to as the Maritime Transportation Regulations).

**Article 2** The Ministry of Transport and the relevant competent communications department of the people's government in the province, autonomous region or municipality directly under the Central Government shall, in accordance with the provisions of the Maritime Transportation Regulations and these Rules administer the international maritime transportation business operations as well as the auxiliary business operations relating to international maritime transportation under the principles of fairness, high efficiency and facilitation with the purpose of encouraging fair competition and preventing illegitimate competition.

**Article 3** For the purpose of the Maritime Transportation Regulations and these Rules, the definitions of the terms are as follows:

(1) "International shipping services" shall mean the services provided by the operators of international shipping services relating to international maritime cargo and/or passenger transportation, and/or the activities conducted relating to such operators' vessels, passengers or cargo for the purpose of completing such international maritime cargo and/or passenger transportation by using their owned or operated vessels or space on board the vessels. Such services shall include the signing of the relevant agreements, accepting of space-booking, discussing and collecting freights, issuing of bill of lading and other related transportation documents, arranging cargo-handling and the care of the

cargo, taking delivery of cargo or delivering cargo, arranging the transshipment of cargo and the entry into and departure from ports by vessels etc.

(2) "Operators of international shipping services" shall include the Chinese enterprise legal persons who have acquired the Permits for Operation of International Shipping Services for operating the international shipping services according to the Maritime Transportation Regulations, or foreign enterprises established in accordance with foreign laws who operate the international shipping services to and from Chinese ports.

(3) "International liner services" shall mean the regular international maritime cargo/or passenger transportation services provided between the fixed ports by means of using the owned or operated vessels or by means of the cases specified in paragraph 3, Article 16 of the Maritime Transportation Regulations.

(4) "Non-vessel-operating services" shall mean the services provided in paragraph 2, Article 7 of the Maritime Transportation Regulations, including the following activities conducted relating to the cargo transported for the purpose of completing such services :

- a. concluding international cargo transportation contracts with the shippers in the name of carriers;
- b. taking delivery of cargo and delivering cargo in the name of carriers;
- c. issuing bills of lading or other transportation documents;
- d. collecting freight and other service charges;
- e. booking space from operators of international shipping services or contracting with operators of other means of transportation for cargo transportation;
- f. paying the freight of port to port transportation or other transportation charges;
- g. unstuffing and/or cargo container consolidation;
- h. other related activities.

(5) "A non-vessel-operating common carrier" shall include a Chinese enterprise legal person who has acquired the license for the non-vessel-operating services in accordance with the Maritime Transportation Regulations and these Rules, and a foreign enterprise established in accordance with foreign laws or regulations who has acquired the qualification in accordance with the Maritime Transportation Regulations and these Rules for non-vessel-operating services for cargo to and from Chinese ports.

(6) "An international shipping agent" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the services as specified in Article 29 of the Maritime Transportation Regulations.

(7) "An international ship management operator" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the services as specified in Article 30 of the Maritime Transportation Regulations.

(8) "An operator of the business relating to storage and warehousing of international shipments" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the services of cargo storage and custody in warehouses, cargo inventory management, as well as sorting and packing, repacking and distributing of cargo etc.

(9) "An operator of international maritime container freight station and container yard services" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the storage, custody, cleaning, repairing of containers as well as the storage, consolidation, distribution of container cargo.

(10) "A foreign-invested enterprise shall mean a Chinese-foreign equity joint venture, a Chinese-foreign contractual joint venture or a wholly foreign capital enterprise established in accordance with Chinese laws.

(11) "A foreign-invested representative office" shall mean a non-commercial organization established according to laws within Chinese territory by a foreign enterprise or another economic organization which conducts introduction of business, sales promotion, business consultation and the liaison services for such a foreign enterprise or economic organization.

(12) "Business registration documents of an enterprise" shall mean the business license or the documents certifying the registration of an enterprise issued by the enterprises registration authority or the relevant authority of the country where the enterprise was registered. Where the photocopies of such business registration documents are submitted, a confirmation on such photo-copies about the truthfulness of such photocopies by the registration authority or notary documents certifying the identity between the photocopies and the originals shall be provided at the same time.

(13) "A special-purpose invoice" shall mean the bills approved and uniformly printed by

the State Administration of Taxation. It is a receipt which certifies the payment of the freights or other related charges by the payer to the operator of international shipping services or its agents, or to the non-vessel-operating carrier or its agents. Such an invoice shall include the Special Invoice for International Shipping and the Special Invoice for International Shipping Agency.

(14) "An agreement of liner conference" shall mean the kind of agreement concluded between members of a liner conference or between liner conferences, which is defined in the UN Convention on A Code of Conduct for Liner Conferences, 1974.

(15) "An operational agreement" shall mean an agreement relating to the increase or decrease of shipping capacity in one or more shipping routes concluded between two or more than two international operators of international liner services for the purpose of stabilizing or controlling the freight rates, or other agreement coordination the joint efforts of operators of international liner services. Such an agreement includes the agreed minutes with the natures of the above-mentioned agreement. Such an agreement shall also mean the agreement relating to the joint operation of the vessels, joint usage of the port facilities and other cooperative operation agreement and various kinds of alliance or consortia agreements concluded between two or more than two operators of international liner services for the purpose of improving the operational efficiency.

(16) "A freight rate agreement" shall mean an agreement relating to the kinds of charges to be collected, the rates thereof, the freight rates or surcharges etc. which is concluded between two or more than two operators of international liner services. Such an agreement shall also include the agreed minutes with the natures of the above-mentioned agreement.

(17) "Tariff rates" refer to the freight rates provided in the tariff book of international liner services operators and non-vessel-operating common carriers. Such rates include the freight rates, the rules related to the freight rates and the rules which shall be complied with both by carriers and shippers.

(18) "Negotiated rates" refer to the freight rates agreed upon between international liner services operators and shippers or non-vessel-operating common carriers. Such rates shall include the freight rates and the related elements. Negotiated rates shall be concluded in

the form of written contracts or agreements.

(19) "Documents certifying the business experience" refer to the curriculum vitae certifying that the person to be certified has more than three years' experience in the international shipping services and the auxiliary businesses thereof. The curriculum vitae shall be notarized by a notary office.

## **Chapter II Operators of International Shipping Services**

### **And Auxiliary Businesses thereof**

**Article 4** The criteria specified in Article 5 in the Maritime Transportation Regulations shall be satisfied and the policies of the State for the development of international shipping industry and the actual competition situations in international shipping market issued by the Ministry of Transport shall be considered before an enterprise can be set up within the Chinese territory to operate the international shipping services or before a Chinese enterprise legal person can apply to operate the international shipping services.

The Ministry of Transport shall publish the policies of the State for the development of international shipping industry and the actual competition situations in international shipping market at its official website and the other appropriate media. Where the above-mentioned policies or situations fail to be published, they shall not be used as the reasons for the refusal of applications.

**Article 5** The applicant shall make an application and submit the relevant documents to the Ministry of Transport for applying to set up an enterprise within the Chinese territory to operate international shipping services, or, for applying to operate international shipping services when such an applicant is a Chinese enterprise legal person. A duplicate of the same documents shall be sent to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is or is to be registered, as the case may be. The following application documents shall be included:

- (1) the letter of application;
- (2) the feasibility study report and the agreement of investment;
- (3) the business registration document of the applicant (if applying to set up an enterprise,

the main investor's business registration document or, as the case may be, the identity document) ;

(4) the duplicate or photocopy of the vessel's ownership document, nationality document or inspection document;

(5) the sample of bill of lading, passage ticket or multi-modal transport documents; and

(6) the documents certifying the business experience of the senior executives who satisfy the requirements of the Ministry of Transport.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall give its comments thereon upon the acceptance of the documents and submit its comments to the Ministry of Transport within 10 working days from the date of acceptance of the application.

The Ministry of Transport shall, within 30 working days from the date when the application documents are complete and authentic, complete the examination and verification and make a decision of granting or not granting permission in accordance with Article 5 and 6 of the Maritime Transportation Regulations. If the permission is granted, a Permit for Operation of International Shipping Services shall be issued to the applicant, or, if no permission is granted, the applicant shall be notified in writing and given the reasons therefor.

**Article 6** If a Chinese operator of international shipping services applies to set up a branch within Chinese territory, the provisions relating to the procedures as specified in Article 5 of these Rules shall apply. The following application documents shall be included:

(1) the letter of application;

(2) the feasibility study report;

(3) the business registration document of the parent company;

(4) the photocopy of the Permit for Operation of International Shipping Services of the parent company;

(5) the letter of confirmation by the parent company of the business scope of the branch;

and

(6) the documents certifying the business experience of the senior executives who satisfy

the requirement of the Ministry of Transport.

The branches of the Chinese operators of international shipping services may provide the services to the vessels of the parent company with regard to port entry and departure, arranging for the port handling, accepting of space booking, issuing of bill of lading and collecting of freight etc.

**Article 7** The applicator that intends to set up an entity within Chinese territory for international shipping agency services or the Chinese legal entity that provides international shipping agency services shall have immobile business premise and all necessary facilities, whose senior management shall include at least two persons with experience of international maritime transportation and operation for not less than three years.

Within thirty days after opening business, the enterprise engaged in international shipping agency services shall submit and file the certifications of business premise and personal qualification and experience to Ministry of Transport.

The enterprise engaged in international shipping agency services shall, in case of any change to its general information or cease of its operation, report and file such change of information or cease of operation within fifteen days since the occurrence.

**Article 8** If a Chinese enterprise legal person applies to operate international ship management services or to set up an enterprise within Chinese territory to operate international ship management services, an application shall be submitted to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government. The following application documents shall be included:

- (1) the letter of application;
- (2) the feasibility study report and the agreement of investment;
- (3) the business registration document of the applicant (in case of applying to set up an enterprise, the main investor's business registration document or, as the case may be, the identity document) ;
- (4) the document certifying that there is a fixed place of business;
- (5) the documents certifying the business experience of the senior executives as specified in subparagraph 1 of Article 11 of the Maritime Transportation Regulations; and

(6) the photocopies of the master, the chief engineer's documents of competence as specified in subparagraph 2 of Article 11 of the Maritime Transportation Regulations.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 15 working days from the date when the application documents are complete and authentic, complete the examination and verification. If the application documents are examined as authentic and satisfy the provisions in Article 11 of the Maritime Transportation Regulations, the registration shall be granted and a Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation shall be issued to the applicant. If the application documents are examined and verified as inauthentic or if the application fails to satisfy the conditions specified in Article 11 of the Maritime Transportation Regulations, no registration shall be granted and the applicant shall be notified in writing and given the reasons therefor. The applicant shall, go through the enterprise registration procedure at the enterprise registration authority, the relevant procedures at the taxation authority and the banks designated by the foreign exchange administration authority with the Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation.

**Article 9** If the branches set up by the operators of international ship management services within Chinese territory to operate the relevant services, the criteria specified in Article 9 of the Maritime Transportation Regulations shall be satisfied and registration shall be conducted in accordance with the provisions in Article 10 of the Maritime Transportation Regulations, Article 8 of these Rules. The following documents for registration shall be included :

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the business registration document of the parent company;
- (4) the photocopies of Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation of the parent company;
- (5) the letter of confirmation by the parent company of the business scope of the branch;
- (6) the document certifying that there is a fixed place of business;
- (7) the documents certifying the business experience of staff as specified Article 9 of the Maritime Transportation Regulations.

**Article 10** An application and the documents specified in Article 15 of the Maritime Transportation



Regulations shall be submitted to the Ministry of Communications when an operator of international shipping services applies to engage in the international liner services to and from Chinese ports. The Ministry of Transport shall carry out the examination and verification as specified in Article 15 of the Maritime Transportation Regulations. If a registration is granted, a Registration of International liner Services Qualification shall be issued. If no registration is granted when the application documents are inauthentic and incomplete, the applicant shall be notified in writing and given the reasons therefor.

The Ministry of Communications will list the name of the operator of the international liner services and the bill of lading thereof at its official website after the operator of international shipping services has acquired the qualification for engagement of the international liner services to and from Chinese ports.

**Article 11** An application and the relevant documents shall be submitted to the Ministry of Transport in case of applying for the registration of a non-vessel-operating common carrier's bill of lading. A duplicate of the above-mentioned documents shall be submitted at the same time to the competent communications department of the people's government of the province, autonomous region, municipality directly under the Central Government where the non-vessel-operating common carrier is registered, or, in case of application for registration of a bill of lading by a foreign non-vessel-operating common carrier, to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the liaison office appointed by such non-vessel-operating common carrier is registered. The following application documents shall be included:

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the business registration document;
- (4) the sample of bill of lading;
- (5) the photocopy of the receipt certifying that the surety bond has been deposited at the bank.

If the applicant is a foreign non-vessel-operating common carrier, the relevant documents specified in Article 25 of these Rules which relate to its appointed liaison office shall be submitted as well.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall complete the examination, verification and give its comments on the application documents after the acceptance of the above-mentioned duplicate. Such communications department shall report its comments to the

Ministry of Transport within 7 working days after the acceptance of the application documents.

The Ministry of Transport shall complete the examination and verification specified in Article 7 and 8 in the Maritime Transportation Regulations within 15 working days after the acceptance of the complete application documents. If the application documents are authentic and complete, the registration of the bill of lading shall be granted and a Registration of Non-Vessel-Operating Services Qualification shall be issued. If the application documents are inauthentic and incomplete, the applicant shall be notified in writing that no registration is granted and the reasons therefor shall be given.

After acquiring a Registration of Non-Vessel-Operating Services Qualification, a Chinese applicant shall go through the registration procedure at the enterprise registration authority where it is registered before starting the non-vessel-operating services.

**Article 12** If a foreign non-vessel-operating common carrier has acquired the qualification for the non-vessel-operating services in accordance with foreign laws and has obtained a legal financial liability guaranty, it does not need to deposit the surety bond at the bank within Chinese territory when it applies to engage in the non-vessel-operating services to and from Chinese ports in accordance with the Maritime Transportation Regulations and these Rules. However, in order to ensure that the debt to be paid which is incurred from the foreign non-vessel-operating common carrier's non-performance or improper performance of the carrier's responsibility, or, in order to ensure that the fine to be paid which is incurred from such non-vessel-operating common carrier's non-performance or improper performance satisfy the provisions in paragraph 3, Article 8 of the Maritime Transportation Regulations, the competent authority of such a foreign non-vessel-operating common carrier shall sign an agreement relating to the ways or means of realizing the financial liability guaranty with the Chinese governmental transport authority.

**Article 13** When the cargo is solicited, the bill of lading or other transport document is issued, or the freight is collected within Chinese territory, although there is no direct international liner services to and from Chinese ports, the qualification of the non-vessel-operating services shall be obtained in accordance with the relevant provisions of these Rules if the international cargo transportation services to and from Chinese ports is provided by way of chartering space from vessels of operators of international liner services, or, if cargo is shipped at Chinese ports for transshipment at foreign ports by using the feeder service provided by operators of international liner services, with the exception of the cases specified in paragraph 3 of Article 14 of the Maritime Transportation Regulations.

**Article 14** If a Chinese non-vessel-operating common carrier applies to set up a branch within Chinese territory, the surety bond shall be deposited in accordance with paragraph 2, Article 8 of the Maritime Transportation Regulations and the registration shall be obtained in accordance with Article 11 of these Rules by acquiring the Registration of Non-Vessel-Operating Services Qualification. The following documents shall be submitted for applying for the registration:

- (1) the letter of application;
- (2) the business registration document of the parent company;
- (3) the photocopy of the Registration of Non-Vessel-Operating Services Qualification of the parent company;
- (4) the document confirming the business scope of the branch by the parent company;
- (5) the photocopy of the receipt certifying that the surety bond has been deposited at the bank.

**Article 15** When the non-vessel-operating common carrier applies for the registration of the bill of lading, the name listed at the title of the bill of lading shall be the same as that of the applicant.

If the name listed in the title of the bill of lading is different from that of the applicant, the applicant shall provide the documents certifying that such a bill of lading is printed and used by itself as well as a declaration in writing that it will bear the carrier's responsibility of issuing such a bill of lading.

**Article 16** If a non-vessel-operating common carrier has two or more bills of lading, each of the bills of lading shall be registered.

If the bill of lading registered by an operator of international liner services or non-vessel-operating common carrier is changed, the sample of the new bill of lading shall be filed with the Ministry of Transport 15 days before the date of usage of such a new bill of lading.

**Article 17** After the non-vessel-operating common carrier acquires according to law the qualification for the non-vessel-operating services by depositing the surety bond and registering the bill of lading, the Ministry of Transport shall list the name of the non-vessel-operating common carrier and the sample of its bill of lading at its official website.

**Article 18** A non-vessel-operating common carrier shall deposit according to law the surety bond at the non-vessel-operating common carrier's bank account at the commercial bank designated by the Ministry of Transport. The interest of the surety bond shall be calculated on the basis of the interest rate of the current deposit published by the People's Bank of China.

**Article 19** The surety bond deposited by the non-vessel-operating common carrier is protected by the

State laws. The surety bond shall not be used unless for the following cases:

(1) bearing the liability for compensation due to the non-vessel-operating common carrier's non-performance or improper performance of carrier's responsibility according to a judgment in force by a judicial organ or an arbitration institution's arbitration award ruled by a judicial organ to be enforced;

(2) being fined by the communications authorities.

If the surety bond shall be transferred due to the cases referred to in subparagraph 1 and 2 of the previous paragraph, it shall be carried out according to laws.

If the amount of surety bond of the non-vessel-operating common carrier falls short of the amount specified in the Maritime Transportation Regulations, the Ministry of Transport shall inform the non-vessel-operating common carrier to make up the amount in short. If the non-vessel-operating common carrier fails to make up the amount in short within 30 days from the date of service of the notice in writing from the Ministry of Transport, the Ministry of Transport shall revoke its qualification of the non-vessel-operating services in accordance with Article 15 of the Maritime Transportation Regulations.

**Article 20** The non-vessel-operating common carrier may apply for the refund of the surety bond from the Ministry of Transport if its qualification for the non-vessel-operating services is revoked, applies for the termination of the services or terminates the services for other reasons. The Ministry of Transport shall publish such a matter of application in a notice at its official website for 30 days.

Within the notice period, if the interested party considers it as necessary to take a measure for legal custody of the surety bond under the circumstances specified in subparagraph 1 of Article 19 of these Rules which are related to the non-vessel-operating common carrier, the judgment of exercising the legal custody shall be obtained within the above-mentioned period. From the date of legal custody, the supervision over the account of surety bond of such a non-vessel-operating common carrier by the Ministry of Transport in accordance with the Maritime Transportation Regulations shall be terminated. The relevant dispute shall be settled by the interested parties through judiciary procedures.

If there are cases specified in the previous paragraph within the notice period, the Ministry of Transport shall inform the bank where the account of surety bond is opened to return the surety bond as well as the interest thereof of the non-vessel-operating common carrier and withdraw the Registration of Non-Vessel-Operating Services Qualification of such carrier.

**Article 21** If the Chinese operators of international shipping services, the Chinese non-vessel-operating common carrier, the Chinese operators of international ship management services have the following case(s), they shall have them filed with the authority who issued the permission or registration:

- (1) the change of the enterprise's name;
- (2) the change of the place of registration;
- (3) the change of the investors;
- (4) the suspension or termination of operation.

If there is a change of the enterprise's name, a new permission or registration shall be issued by the authority who issued the permission or registration. If the operation is terminated, the relevant permission or registration shall be returned to the original authority for permission or registration.

**Article 22** Except the foreign-invested enterprises specified in the Maritime Transportation Regulations and Chapter IV of these Rules, the operators of the business relating to storage and warehousing of international shipments international, the operators of international maritime container freight station and container yard services shall, within 30 days of from the time of starting the above-mentioned services file the case with the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprises are registered.

### **Chapter III Business Operations of International Maritime Transportation**

#### **And Auxiliary Business Thereof**

**Article 23** If operators of international liner services start new liner services, suspend liner services, change the carrying vessels or schedule for international liner services, such issues shall be made known to public at the mass media designated by the Ministry of Transport in accordance with the provisions of Article 19 of the Maritime Transportation Regulations and such issues shall be filed as provided.

**Article 24** If a Chinese international shipping service operator increases shipping capacity including increasing shipping capacity through bare boat chartering, such issue shall be filed with the Ministry of Transport 15 days prior to the operation of such vessel(s)

and the document certifying the filing shall be acquired. The filing documents shall include the name of the company, the place of registration, the name(s) of the vessel(s), the nationality(ies) of the vessel(s), type(s) of vessel(s), vessel(s)'s tonnage and the shipping route(s) planned.

The Ministry of Transport shall, within 3 working days after acceptance of the filing documents, issue the document certifying the filing.

**Article 25** A foreign international shipping service operator who operates international liner services to and from Chinese ports and a foreign non-vessel-operating common carrier who provides international cargo transportation services to and from Chinese ports by entrusting their agents to provide the services on behalf of them in China shall appoint their points of contact within Chinese territory. Such points of contact are responsible for the contact between such foreign enterprises and the relevant competent authorities of the Chinese government on administration and legal issues as specified in the Maritime Transportation Regulations and these Rules. The points of contact can be the foreign-invested enterprises or the foreign-invested representative offices set up within Chinese territory as well as other Chinese enterprise legal persons or other economic organizations who have fixed places of business. The appointment of the points of contact shall be filed with the Ministry of Transport and the following documents shall be submitted for filing:

- (1) the introduction of such points of contact with the information of the names, the places of business, the means of contact and the persons of contact of such points of contact;
- (2) the duplicate or photocopy of the letter of entrustment;
- (3) the duplicate of the agreements concluded between the entrusting parties and the points of contact;
- (4) the photocopies of the business registration documents of the points of contact.

If the points of contact are foreign-invested enterprises or foreign-invested representative offices of within Chinese territory, the documents referred to in subparagraph 2 and 3 can be exempted.

If the points of contact or the information listed in the introduction of the points of contact,

such changes shall be filed with the Ministry of Transport within 15 days from the date of such changes.

**Article 26** No enterprise or individual may, without authorization, uses the bill of lading which has been registered by an operator of international liner services or a non-vessel-operating common carrier.

**Article 27** If a non-vessel-operating common carrier needs to entrust an agent with issuance of the bill of lading or the related document on its behalf, it shall entrust a qualified operator of international shipping services, a qualified non-vessel-operating common carrier or a qualified operator of auxiliary business operations relating to international maritime transportation to provide the above-mentioned services on its behalf.

The qualified operator referred to in the previous paragraph shall not accept the entrustment to issue the bill of lading of a non-vessel-operating common carrier who fails to register its bill (s) of lading and deposit the surety bond.

**Article 28** If an operator of international liner services has an agreement of negotiated rates with a shipper or a non-vessel-operating common carrier, such an agreement shall be in writing. The series number of such an agreement shall be listed in the bill of lading or the related document.

**Article 29** An operator of international shipping services shall not accept cargo or containers from a non-vessel-operating common carrier who fails to register its bill(s) of lading and deposit the surety bond.

**Article 30** If an operator of international liner services entrusts an agent with the businesses including accepting space-booking, issuing bill of lading and collecting freight on its behalf, the agent entrusted shall be established by international shipping agency services.

**Article 31** The operators of international liner services and the non-vessel-operating common carriers shall publish the information relating to their shipping agencies, agents for issuing bill of lading on their behalf within Chinese territory at the mass media designated by the Ministry of Transport. The information to be published includes the name, the place of registration, the place of business and the means of contact of such

agents. If there is a change of agents, the new information shall be published 7 days prior to the coming into effect of the agency agreement.

The operator of international liner services and the non-vessel-operating common carriers shall file timely the name lists of the media where they publish the information relating to their agents with the Ministry of Transport.

**Article 32** The liner conference agreements, service operation agreements and freight rate agreements which involve the services to and from Chinese ports and are concluded between operators of international shipping services shall be filed with the Ministry of Transport within 15 days after the date of concluding the agreements in accordance with the following provisions :

(1) the liner conference agreements shall be filed by the liner conference representing all its members who operate the maritime transportation to and from Chinese ports. When the liner conference files the agreement, the name list of the members of the conference shall be attached thereto.

(2) the service operation agreements and freight rate agreements shall be filed by the operators of international shipping services who are contracting parties to such agreements.

**Article 33** The following operators shall issue special-purpose invoices to the payers when they collect freight and other related charges for themselves or on behalf of others:

- (1) the Chinese operators of international shipping services and their branches;
- (2) the Chinese non-vessel-operating common carriers;
- (3) the operators of international shipping agency and their branches;
- (4) the enterprises specified in Article 33 of the Maritime Transportation Regulations.

After the operators referred to in the preceding paragraph obtain the document certifying the usage of special-purpose invoices which are issued from the competent communications department of the people's government of the people's government of the province, the autonomous region and the municipality directly under the Central Government, they shall apply for the special-purpose invoices from the taxation authority where the company are registered, unless it is provided by the State Administration of Taxation otherwise.



**Article 34** The operators of international ship management services shall fulfill the obligations of safety of vessels and anti-pollution in accordance with the provisions of the contracts and the relevant provisions of the State.

**Article 35** The international liner services operators who operate the international liner services to and from Chinese ports shall fill out the Form on International Maritime Transportation Information of the People's Republic of China ( Basic Information of Shipping Companies), the Form on International Maritime Transportation Information of the People's Republic of China (Export Full-loaded Container Volume of Shipping Companies), the Form on International Maritime Transportation Information of the People's Republic of China (Import Full-loaded Container Volume of Shipping Companies) and send the forms to the Ministry of Transport before March 31 every year. Foreign operators of international shipping services shall have the above-mentioned forms sent by their entrusted liaison office.

**Article 36** Chinese operators of international shipping services, Chinese operators of international shipping agency service and operators of international container ports shall fill out respectively the Form on International Maritime Transportation Information of the People's Republic of China ( Basic Information of Shipping Companies), the Form on International Maritime Transportation of the People's Republic of China (International Shipping Agencies), the Form on International Maritime Transportation of the People's Republic of China (Container Throughput of Ports) before March 15 every year to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the companies are registered.

The relevant competent communications department of the people's government of the province, the autonomous region and the municipality directly under the Central Government shall file the above-mentioned forms and the summary of the forms before March 31 every year with the Ministry of Transport.

**Article 37** The operators of international shipping agency services, operators of international ship management services, operators of the business relating to storage and warehousing of international shipments and operators of international maritime container

freight station and container yard services shall not have following acts:

- (1) providing services at an abnormal and unreasonable charge level, thereby prejudicing fair competition;
- (2) offering secret rebates to customers, not being reflected in the account books, for the purpose of soliciting cargoes;
- (3) arbitrarily taking advantage of its dominant position to restrict the other transacting party to choose freely operators of auxiliary business operations relating to international maritime transportation, or to attract the other transaction party by using the monopoly position in the industry for the purpose of repelling other competitors in the same industry;
- (4) other unfair competition acts.

**Article 38** The representative offices of foreign operators of international shipping services and foreign operators of auxiliary business operations relating to international maritime transportation shall not engage in commercial operations, including but not limited to the following:

- (1) accepting space-booking on behalf of their parent companies overseas, issuing bills of lading or the related documents of the parent companies;
- (2) settling the payment, collecting freight and other related charges for their parent companies;
- (3) issuing bills of their parent companies overseas or the enterprises set up by their parent companies within Chinese territory as specified in Article 33 of the Maritime Transportation Regulations ;
- (4) shipping cargoes to international liner services operators in the name of shippers; or
- (5) concluding service contracts with customers in the name of foreign-invested representative offices.

#### **Chapter IV Investment in and Operation of International Maritime Transportation and Auxiliary Businesses Relating Thereto by foreign Investors**

**Article 39** To set up a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture to engage in international shipping services, an application shall be submitted to the Ministry of Transport via the competent communications department

of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is registered, and the following documents shall be attaches thereto:

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the agreement of setting up a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture;
- (4) the business registration documents of the investors, in case of investment by natural persons, the identity documents; and
- (5) documents certifying the business experience of senior executives which satisfy the requirements of the Ministry of Transport.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days after its acceptance of the complete application documents, submit the documents to the Ministry of Transport together with its comments.

The Ministry of Transport shall complete the examination, verification on the above-mentioned documents and comments and give a decision of granting an approval or not granting an approval within 30 working days after the acceptance of the documents and comments in accordance with the provisions of paragraph 2, 3 and 4 of Article 32 of the Maritime Transportation Regulations and the actual competition situations in international shipping market and the policies of the State for the development of international shipping industry. If an approval is granted, a document of approval shall be issued to the applicant. If no approval is granted, the applicant shall be notified in writing and given the reasons therefore.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Transport. After the acquiring the relevant approvals from the authorities, the applicant shall, in accordance with the procedures in Article 5 of these Rules, apply for the Permit for Operation of International Shipping

Services to the Ministry of Transport with the approval documents from the relevant authorities and the documents specified in subparagraphs 4 to 6 of paragraph 1, Article 5 of these Rules.

**Article 40** If one sets up a foreign-invested enterprise referred to in Article 33 of the Maritime Transportation Regulations, the regulations issued jointly by the Ministry of Transport and the Ministry of Foreign Trade and Economic Cooperation shall be complied with.

**Article 41** If one sets up a foreign-invested enterprise to engage in international shipping agency services, the application documents provided in the paragraph 1, Article 7 of these Rules shall be submitted to the Ministry of Transport via the competent communications and Transport department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is to be registered. The competent communications and Transport department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days after the acceptance of the above-mentioned complete documents, submit the documents together with its comments to the Ministry of Transport.

The Ministry of Transport shall, within 30 working days after the acceptance of the above-mentioned documents and comments, complete the examination, verification in accordance with the provisions in the first paragraph of Article 7 of Implementing Rules and give a decision of granting or not granting an approval. If an approval is granted, an approval document shall be issued. If no approval is granted, the applicant shall be notified in writing and given the reason therefor.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Transport. The applicant shall, after the acquiring the relevant approvals from the authorities, apply for the Registration for Operation of International Shipping Agency Services from Ministry of Transport.

**Article 42** If one sets up a foreign-invested enterprise to engage in international ship management services, the application documents provided in Article 8 of these Rules shall be submitted to the Ministry of Transport via the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is registered. The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days after the acceptance of the above-mentioned complete documents, submit the documents together with the comments to the Ministry of Transport.

The Ministry of Transport shall, within 30 working days after the acceptance of the above-mentioned documents and comments, complete the examination, verification in accordance with the provisions in Article 11 of the Maritime Transportation Regulations and give a decision of granting or not granting an approval. If an approval is granted, an approval document shall be issued. If no approval is granted, the applicant shall be notified in writing and given the reason therefor.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Transport. The applicant shall, after the acquiring the relevant approvals from the authorities, apply for the registration of the services with the Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government with the approval documents from the relevant authorities in accordance with the procedures provided in Article 8 of these Rules.

**Article 43** If one engages in the business relating to storage and warehousing of international shipments, the following conditions shall be met:

- (1) having a fixed place of business;
- (2) having the warehouse facilities compatible to the scope of business;
- (3) having at least two senior executives with no less than three years' experience in the

relevant business; and

(4) other conditions provided for in the laws and regulations.

**Article 44** If one engages in international maritime container freight station and container yard services, the following conditions shall be met:

(1) having a fixed place of business;

(2) having the vehicles, handling facilities, container yards and container checking equipment or facilities compatible to the scope of business;

(3) having at least two senior executives with no less than three years' experience in the relevant business; and

(4) other conditions provided in the laws and regulations.

**Article 45** If one sets up a foreign-invested enterprise to engage in the business relating to storage and warehousing of international shipments, or sets up a Chinese-foreign equity joint venture or a Chinese foreign contractual joint venture to engage in international maritime container freight station and container yard services, an application shall be submitted to the Ministry of Transport via the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government, and the following documents shall be attached thereto:

(1) the letter of application;

(2) the feasibility study report;

(3) the agreement of setting up a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture; and

(4) the business registration documents of the investors, in case of investment by natural persons, the identity documents.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days after the acceptance of the above-mentioned complete documents, submit the documents together with the comments to the Ministry of Transport.

The Ministry of Transport shall, within 30 working days after the acceptance of the above-mentioned documents and comments, complete the examination, verification in accordance with the provisions in Article 44 and 45 of the these Rules and give a decision

of granting or not granting an approval. If an approval is granted, an approval document shall be issued. If no approval is granted, the applicant shall be notified in writing and given the reason therefor.

The applicant who is granted the approval shall go through the approval procedures for setting up a foreign-invested enterprise at relevant authorities in accordance with the laws and regulations on the setting up of a foreign-invested enterprise of the State with the approval document issued by the Ministry of Transport. The applicant shall, after the acquiring the relevant approvals, apply for the registration of the services with the Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation to Ministry of Transport.

**Article 46** The relevant registration procedures shall be gone through with the registration document issued by the Ministry of Transport at the customs authority at the place where the cargoes or containers stored are to be supervised before the cargoes or containers to be supervised by the customs can be stored.

## **Chapter V Investigations and Settlement**

**Article 47** If any interested party considers that an operator of international maritime transportation or auxiliary businesses thereof is involved in the circumstances specified in Article 35 of the Maritime Transportation Regulations or Article 38 of these Rules, it can request the Ministry of Transport to conduct investigations in accordance with the provisions of Article 35 of the Maritime Transportation Regulations. When a request for investigations is lodged, an application in writing with the reason for the investigations and necessary evidence shall be submitted.

The Ministry of Transport shall, within 60 working days after the date of acceptance of the application, conduct an appraisal of the application for investigations and give a decision of conducting or not conducting the investigations.

(1) if the Ministry of Transport considers the reason for the investigations is not enough or the evidence in the application is not sufficient, it shall decide not to conduct investigations and notify the applicant thereof. The applicant can make a request for investigations again

after adding new reasons or new evidence;

(2) if the Ministry of Transport considers it necessary to conduct investigations after taking into consideration of the appraisal conclusion or at its own discretion in accordance with Article 35 of the Maritime Transportation Regulations, the administrative department of commerce and industry of the State Council and the pricing department of the State Council shall be informed of the relevant documents and appraisal conclusion.

**Article 48** The investigations shall be conducted by an investigation group jointly composed by the Ministry of Transport, the administrative department of commerce and industry of the State Council and the pricing department of the State Council (hereinafter referred to as the investigatory authority).

The investigatory authority shall notify the person under investigation of the composition of the investigation group, the reason for investigation and the time limit for the investigation etc. The person under investigation shall, within 30 days after the service of the notice of investigation, reply to the investigations.

If the person under investigation considers that the members of the investigation group have related interests with the investigation applicant, the person under investigation or the issues under investigations, he can request a refusal of such member(s). If the investigatory authority considers the application for refusal tenable, it shall adjust the composition of the investigation group.

**Article 49** When the person under investigation is investigated, he shall provide the relevant statistics, documents or papers at the request of the investigation group. If such statistics, documents or papers are commercial secrets, the investigation group shall be made known. The investigation group shall record in writing the confidentiality of such statistics, documents or papers.

The investigatory authority and the members of the investigation group shall keep the commercial secrets of the person under investigation confidential.

If the person under investigation finds the members of the investigation group disclose such commercial secrets and has sufficient evidence to support his assertion, he has the right to make a complaint to the investigatory authority.

**Article 50** The following elements shall be considered before the investigatory authority



decides that the person under investigation provides service at lower freight rates than normal and reasonable ones:

- (1) the freight rates level of most of the operators within the industry who have the same scale of business as the person under investigation;
- (2) the reason of the freight rate level fixed by the person under investigation, including the composition of costs, the level of management and the level of profit and loss etc. ; or
- (3) whether there is a focus on certain competitors for the purpose of repelling the competitors in the same industry.

**Article 51** The following elements shall be considered before the investigatory authority decides that there is any act detrimental to fair competition or any act detrimental to the other party of the transaction:

- (1) to constitute obstacles to the free choice of carriers by the shippers;
- (2) to affect the normal shipment of cargo; or
- (3) to solicit cargo by offering secret rebate not being reflected by the bookkeeping, which seriously distorts the market competition rules.

**Article 52** Before the investigatory authority makes a conclusion on the investigation, a meeting for consulting the experts shall be held to evaluate the degree of detriment to fair competition or detriment to the other party of the transaction.

The experts invited in the consultative meeting shall not have related interests with the investigation applicant or the person under investigation.

**Article 53** When the investigations are completed, the investigatory authority shall make a conclusion on the investigations and notify the investigation applicant and the person under investigation in writing:

- (1) if the basic facts are not tenable, the investigatory authority shall decide to terminate the investigations;
- (2) if the basic facts are tenable but not in substance detrimental to fair market competition, the investigatory authority shall decide not to take prohibitive or restrictive measures against the person under investigation;
- (3) if the basic facts are clear and in substance detrimental to fair market competition, the investigatory authority shall, in accordance with the provisions in the Maritime

Transportation Regulations, take prohibitive and restrictive measures against the person under investigation.

**Article 54** The party shall be informed of its right to have a hearing before the investigatory authority make a decision to take prohibitive and restrictive measures. If the party asks for the hearing, it shall apply in writing to the investigatory authority within 10 days after the service of the notice of the investigatory authority. If the party fails to make an application within the time limit, it is considered to have waived its right to have a hearing.

**Article 55** If an investigation is conducted on the cases specified in Article 38 of these Rules, the persons from the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the person under investigation registers his qualification of services shall be included in the investigation group.

If there are unlawful practices as specified in subparagraph 3 of Article 38 of these Rules which are in substance detrimental to the other party of the transaction or the competitors in the industry, the investigatory authority can take the restrictive measures of restricting the person under investigation to develop his business within a certain period of time.

## **Chapter VI Legal Liabilities**

**Article 56** If there is a violation of the provisions of the Maritime Transportation Regulations or these Rules which shall be penalized, the Ministry of Transport or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall impose the penalty in accordance with the provisions in Chapter VI of the Maritime Transportation Regulations and this Chapter.

**Article 57** If a foreign-invested representative office has one of the cases specified in Article 39 of these Rules, the Ministry of Transport or the competent communications department of the province, autonomous region or municipality directly under the Central Government shall inform the relevant administrative department of the commerce and

industry to impose the penalty in accordance with the provisions in paragraph 2, Article 52 of the Maritime Transportation Regulations.

**Article 58** If a liner conference agreement, a service operation agreement or international shipping agency fails to be filed with the Ministry of Transport and Transport as provided, the Ministry of Communications and Transport shall, in accordance with the provisions in Article 45 of the Maritime Transportation Regulations, impose penalty on the party who shall file in accordance with Article 7 and Article 32 of these Rules. If the liner conference fails to file as provided, a penalty can be imposed on its members.

**Article 59** If the members in the investigation group violate the provisions by disclosing the secret information of the person under investigation, an administrative penalty shall be imposed. If the consequences are so severe as to violate the criminal law, a criminal penalty shall be pursued.

## **Chapter VII Supplementary Provisions**

**Article 60** The applicant can entrust its agent with handling the issues relating to permission or registration as provided in the Maritime Transportation Regulations or these Rules. If the agent is entrusted to handle the issues, a letter of entrustment shall be produced. A notary letter provided by a foreign applicant or investor shall be issued by the notary office or the attorney at the country where the applicant or investor is registered. The documents in writing specified in these Rules shall be in Chinese. If they are in any of other languages, a Chinese translation shall be attached thereto.

**Article 61** The requirements of the filing, the means and ways of filing which are provided in the Maritime Transportation Regulations and these Rules shall be fulfilled in accordance with the rules provided by the Ministry of Transport.

**Article 62** The provisions in Chapter IV of the Maritime Transportation Regulations and Chapter IV of these Rules are mutatis mutandis applicable to the investment into and operation of international shipping business and auxiliary businesses relating to international maritime transport in Chinese mainland by investors from Hong Kong Special

Administrative Region, Macao Special Administrative Region or Taiwan region.

**Article 63** The detailed rules relating to the tariff rate and negotiated rate filing provided in Article 20 of the Maritime Transportation Regulations shall be formulated by the Ministry of Transport.

**Article 64** If one engages in loading and unloading, storage and warehousing of international shipments and international maritime container freight station and container yard services within port area, the relevant laws and regulations of the State on port management shall be complied with.

**Article 65** These Rules shall enter into force as of March 1, 2003. The Measures for Administration of International Shipping Service on April 11, 1985, the Provisions on International Shipping Agency Services on March 2, 1990, the Provisions on International Liner Services on June 20, 1990, the Provisions on Administration of International Container Transportation at Sea of the People's Republic of China on July 1, 1992, the Measures for Administration of Representative Offices Established by Foreign Waterborne Transportation Enterprises on October 16, 1997 by the Ministry of Transport shall be repealed simultaneously.