

**1<sup>st</sup> International Cargo Recovery Conference**  
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**“Practical aspects of Chinese recovery law : overview and  
new case update”**

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**Legal Framework**

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■ **Civil law system**

■ **General legislations**

- *General Principles of Civil Law of China (1 January 1987)*
- *Contract Law of China (1 October 1999)*

■ **Special legislations**

- *Chinese Maritime Code (1 July 1993)*
- *Railway Law of China (1 May 1991)*

## Ocean / coastal / inland waterway carriage

### ■ Relevant legislations / regulations

- *Chinese Maritime Code*
  - *International / coastal carriage*
- *Regulations on Domestic Cargo Transportation by Inland Waterways (1 January 2001)*
  - *Domestic inland waterway carriage*

### ■ Time limit

- *International / coastal / inland waterway carriage*
  - *1 year from date cargo delivered or should have been delivered*

3

## Ocean / coastal / inland waterway carriage – cont'd

### ■ Time extension by mutual agreement

- *Null and void under Chinese law*

### ■ Time limit can only be protected by:

- (a) *starting legal action;*
- (b) *starting arbitration;*
- (c) *admission by carrier (on liability, quantum or both?)*

4

## Ocean / coastal / inland waterway carriage – cont'd

### ■ Limitation of liability

- **Ocean carriage**
  - *either 666.67 Special Drawing Rights (“SDR”) per package / shipping unit or 2 SDRs per kilogramme of weight of cargo lost or damaged, whichever is higher.*
- **Coastal / inland waterway carriage**
  - *no prescribed limitation*

6

## Air carriage

### ■ International

- *Montreal Convention (31 July 2005)*
  - *Time limit : 2 years*
  - *Limitation : 17 SDRs per kilogramme*

### ■ Domestic

- *Regulation for the Limitation of Liability for Domestic Air Carriers (28 March 2006)*
  - *Time limit : 2 years*
  - *Limitation : RMB100 per kilogramme*

6

## Transportation by land – railway carriage

### ■ Relevant legislations / regulations

- *Railway Law of China*
- *Railway Cargo Transportation Rules (18 March 1991)*

### ■ Time limit

- *180 days*

### ■ Limitation of liability

- *RMB 100 per kilogramme*

7

## Transportation by land – road / truck carriage

### ■ Relevant legislations

- *General Principles of Civil Law of China*
- *Contract Law of China*

### ■ Time limit

- *2 years from the date party knows or ought to have known its rights have been infringed.*

### ■ Limitation of liability

- *No prescribed limitation*

8

## Multi-modal transportation

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### ■ Time limit / limitation of liability

- *Refer to the applicable regime governing the particular segment of multi-modal transportation during which the cargo was lost / damaged*

### ■ What if time of loss / damage unknown?

9

## Litigation in China

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### ■ 4 levels of People's Court:

- *Basic People's Court*
- *Intermediate People's Court*
- *High / Provincial People's Court*
- *Supreme People's Court*

### ■ Specialised Courts

- *10 Chinese Maritime Courts  
(Dalian, Tianjin, Qingdao, Shanghai, Wuhan, Ningbo, Xiamen, Beihai, Guangzhou and Haikou)*
- *Railway Courts*

10

## Litigation in China: procedure

### ■ Commencement of litigation – Statement of Complaint

- (a) *Statement of Complaint*
- (b) *Power of Attorney / Certificate of Identity of Legal Representative*
- (c) *Certificate of Incorporation / Business Licence*
- (d) *Basic supporting documents*
  - *Notarisation / legalisation*
  - *Chinese translation*

11

## Litigation in China : procedure – cont'd

### ■ Statement of Defense

- *15 / 30 days to file*
- *No penalty for default*

### ■ Submission of supporting documents / evidence

- *30 days to submit*
- *Discovery Chinese style?*

### ■ Trial

- *How is it conducted?*
- *Chinese judges*

12

## Litigation in China : fees / expenses

### ■ Court fees – calculated based on claim amount

Claim Amount	Court Fee
≤ RMB10,000 (US\$1,429)	RMB50 (US\$7)
RMB100,000 (US\$14,289)	RMB2,300 (US\$329)
RMB500,000 (US\$71,429)	RMB8,800 (US\$1,257)
RMB 1 mil (US\$142,857)	RMB13,800 (US\$1,971)
RMB10 mil (US\$1.43 mil)	RMB82,000 (US\$11,714)

13

## Litigation in China : fees / expenses – cont'd

### ■ Attorney's / legal fees

- *Each party bears its own legal fees*
- *No incentive to settle cases early*
- *Consequence*

14

## Ship arrest

- Application for ship arrest
- Counter - security
  - *1 month's time charter hire of ship*
  - *Cash deposit / letter of guarantee*
  - *Counter – security wording*
- Plan in advance

15

## Practical tips for cargo recovery claims in China

- Full set of supporting documents / evidence
  - (a) *Bill of Lading*
  - (b) *Sales Contract*
  - (c) *Commercial Invoice / Packing List*
  - (d) *Equipment Interchange Receipt / Cargo Exception List*
  - (e) *Notice of Loss / Damage*
  - (f) *Final Survey Report*
  - (g) *Salvage sale documents*
  - (h) *Invoices / receipts of various costs / expenses*

16

■ **Carrier's status / financial strength /  
assets**

- *Credit / asset investigations*
- *On site inspection*

■ **Perseverance and being proactive**

17

**THANK YOU**

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18