

The Validation of the Chinese International Shipping Regulations

The Chinese International Shipping Regulations (hereinafter referred to as the Regulations) was passed by the State Council of P. R. C. in December 2001, and has been implemented from 1st January, 2002.
The Chinese Administration of Maritime International Container Transport, which was promulgated on 5th December, 1990 and later amended on 18th April, 1998, was simultaneously abolished.

The Regulations was published after the China's entry into the WTO, and many of its contents embody the changes of the Chinese administrative methods and systems of the international shipping. Following is a brief introduction to the Regulations.

Scope of application

The Regulations applies to the international maritime transport operation and its related auxiliary activities incoming and outgoing the Chinese ports. The related auxiliary activities include the business of international vessel agent, international ship management, maritime cargo handling, maritime cargo storage, maritime container freight station and container yard, and so on.

The conditions and procedures in respect of the operation of international maritime transport

Followings are the conditions given in the Regulations in respect of the operation of international maritime transport: 1) with vessels qualified for the international maritime transport, Chinese vessel shall be included; 2) with vessels in compliance with the national maritime transport safety technological criterion; 3) with B/L, passenger ticket, or multi-modal transport bill of lading; 4) with senior executives that have the qualification of practice required by the competent Transportation Department of the State Council.

To operate an international maritime transport, one should apply to the P.R.C. competent Transportation Department of the State Council (currently called P.R.C. Ministry of Communication). The Department should make a decision within 30 days of the application. International Maritime Transport License should be issued if the application is admitted, if not, a written notice explaining the reasons should be sent to the applicant.

Only manager with International Maritime Transport License could apply for the right of running international liner transport that incomes and outgoes the Chinese port. They should submit to the competent Transportation Department of the State Council the tariff, the B/L, the passenger ticket, or the multi-modal transport bill of lading, the planned line, the liner schedule, the names of calling ports, and the particulars of the vessel. The Administration should finish the examination within 30 days of the application, and make a registration if the application material is complete and authentic. Normally, the applicant should start service within 180 days of the permission.

The business of non-vessel-operating-carrier

It is the first time to deal with in details the business of "non-vessel-operating-carrier" in the Chinese shipping administrative policy and regulations.

According to the Regulations, the operator should register its B/L with the competent Transportation Department of State Council if it runs non-vessel-operating-carrier business. The operator should only sign his registered B/L. At the same time, the operator should submit guarantee funds to the specific bank account

within the Chinese territory, normally RMB800,000. Besides, he should pay RMB200,000 for each additional branch.

Meanwhile, it is provided that a judicial person should be set up in P.R. China to run non-vessel-operating-carrier business in China.

Tariff filing system

To protect a fair market competition, and to assert the market discipline of international maritime transport, the Regulations establishes the tariff filling system by law. The Regulations provides that the published and the contract tariff of the international liner carrier and non-vessel-operating-carrier should be filed at the competent Transportation Department of the State Council.

The published tariff refers to the tariff printed on the tariff book of the international liner carrier and non-vessel-operating-carrier, while the contract tariff refers to the tariff agreed by the liner carrier and the owner of the cargo or the non-vessel-operating-carrier. The published tariff becomes valid after 30 days of the registration, and the contract tariff becomes valid after 24 hours of the registration. Both the liner carrier and non-vessel-operating-carrier should comply with the valid registered tariff.

The examination and registration system

In addition to obtaining International Maritime Transport License, which should be permitted by the competent Department of the State Council, other permission of the qualification of related auxiliary business, such as non-vessel-operating-carrier business and international ship management, vessel agent, should be operated under the registration system. So long as the application material is authentic, complete and in compliance with the Regulations, the competent Department would make the registration, and the applicant would then be permitted to run the related business. It is a revolution to the previous P.R.C. examination and approval system of international shipping market access.

The provisions of the foreign investment of international maritime transport and its related auxiliary operations

The Regulations provides that, if permitted by the competent Transportation Department of the State Council, foreign investors could, according to the Chinese law, set up Chinese-foreign joint venture or cooperation enterprise to operate business in international shipping, international vessel agent and other international maritime auxiliary business. Within the joint ventures or cooperation enterprises operating international shipping and agent business, the percentage of the foreigner's investment should not exceed the limitation of 49%.

If permitted, foreign investors could also establish Chinese-foreign joint venture, cooperation or sole-investor enterprise to provide services, such as procuring cargo, issuing B/L, advancing the tariff and signing the service contracts on behalf of carriers, to its owned or operated vessels.

Other contents of the Regulations should likewise be applicable to the foreign-investor company.

Besides, the Regulations has specific provisions of the condition of running related auxiliary business, of the department examination and solution of the market activity, and of the penalization and other legal liability.

It is stipulated that in the event of operating international shipping business without going through the necessary procedures required by the Regulations and obtaining the International Maritime Transport License therefrom, the competent Transportation Department of the State Council or its authorized local transportation administration will order such activities to cease. Any illegally earnings made therefrom shall be confiscated and if those earnings are above RMB500,000, a penalty of somewhere between two times and five times shall be imposed and if below RMB500,000, the penalty lies somewhere between RMB 200,000 and RMB1,000,000.(YY & LZ)