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目录

新法速递 NEW LAWS AND REGULATIONS WATCH

交通运输部关于印发《沿海码头靠泊能力管理规定》的通知

2014年1月26日,交通运输部印发了《沿海码头靠泊能力管理规定》（以下简称《规定》），自2014年7月1日施行。该规定的主要适用对象为沿海货运码头，允许减载靠泊的码头为25万吨级及以下的非散装液货码头。其总体原则就是规定货运船舶必须按靠泊等级靠泊，以保障安全。《规定》的出台，将起到以下作用：

一是取消“一船一议”，确保港口安全，避免随意靠泊船舶。

二是发挥码头潜力，帮助企业解决困难。当前航运市场低迷，港口码头结构不合理，为帮助企业解决生产困难，《规定》允许通过科学核定，在保障安全的条件下，码头可上浮一、二个靠泊等级进行减载靠泊，以发挥现有码头潜力，充分利用码头资源，满足港口生产的需要。

三是巩固码头核定、加固改造的成果，加强事后监管。

Circular of the Ministry of Transport on the Issuance of the Rules on the Berthing Capacity of Coastal Ports

On Jan 26th, 2014, Ministry of Transport issued the Rules on the Berthing Capacity of Coastal Ports, which will

come into force as of from 1st July 2014. The main object applicable in this rule is coastal ports, and stipulate that the lighterage berth only be available for the vessels not more than 250 thousand mt non-bulk liquid cargo. Its overall principal is that to ensure safety, cargo ship must berth as per its berth classification. The rule will mainly play part in following:

One is to abolish “one ship, one case”, to ensure safety, avoiding randomly berthing.

Another is to exert berth’s potential, help to solve difficulties of enterprise. At current, shipping markets stay in low level, ports berths structures not reasonable, the RULES permit to hike one or two lighterage berth classification provided safety guaranteed to meet port production requests.

The 3rd is to secure the assessment and reinforcement jobs to berths, strengthen post supervisions.

(source: www.moc.gov.cn)

交通运输部关于中国（上海）自由贸易试验区试行扩大国际船舶运输和国际船舶管理业务外商投资比例实施办法的公告

2014年1月27日，交通运输部公告《关于中国（上海）自由贸易试验区试行扩大国际船舶运输和国际船舶管理业务外商投资比例实施办法》。办法规定：经国务院交通运输主管部门批准，在自贸区设立的外商投资比例超过49%的中外合资、合作企业，及其拥有或实际经营的船舶，可经营进出中国港口的国际船舶运输业务；经上海市交通运输主管部门批准，在自贸区设立的外商独资企业可以经营国际船舶管理业务；在自贸区设立的中外合资、合作国际船舶运输企业，其董事会主席和总经理可由中外合资、合作的双方协商确定；在自贸区设立的中外合资、合作国际船舶运输企业，其拥有或光船租赁的船舶可以按照中国（上海）自贸区国际船舶登记制度进行船舶登记。

Announcement of the Ministry of Transport on the Trial Implementing Measures for Increasing the Proportion of Foreign Investment in International Shipping and International Ship Management in the China (Shanghai) Pilot Free Trade Zone

On Jan. 27th, 2014 the Ministry of Transport issued announcement on the Trial Implementing Measures for

Increasing the Proportion of Foreign Investment in International Shipping and International Ship Management in the China (Shanghai) Pilot Free Trade Zone, which stipulate, permitted by the competent authorities of the Ministry of Transport, the Chinese - foreign contractual joint venture and Chinese - foreign joint venture where foreign investment capital more than 49%, and those enterprise own or actual own ships, they may engage in in & out Chinese ports - international shipping transport business; after permission by the competent authorities of Shanghai Ministry of Transport, wholly foreign - owned enterprise in the free trade zone may run service of international ship management. The international shipping transport enterprises of Chinese - foreign contractual joint venture and joint venture established in free trade zone, their chairman and general manager will be decided by negotiation of Chinese and foreign parties, and, their own or bareboat chartered ships may be registered according to China (Shanghai) Free Trade Zone International Ship Registration System.

(Source: www.tianjin-port.com)

交通运输部发布《国内水路运输管理规定》

《国内水路运输管理规定》已于 2013 年 12 月 30 日通过发布，自 2014 年 3 月 1 日起施行。

该规定明确，水路运输经营者应当配备专职海务、机务管理人员，违反者将处以 1 万元以上 3 万元以下罚款。

规定明确，个人只能申请经营内河普通货物运输业务，并应符合个体工商户条件且经工商部门登记，且自有船舶运力不超过600总吨，有安全管理、安全监督检查、事故应急处置、岗位安全操作规程等安全管理的条件。

规定明确，水路运输经营者不得出租、出借水路运输经营许可证件，或者以其他形式非法转让水路运输经营资格。《船舶营业运输证》不得转让、出租、出借或者涂改。

规定明确，水路旅客运输业务经营者应当以公布的票价销售客票，不得对相同条件的旅客实施不同的票价，不得以搭售、现金返还、加价等不正当方式变相变更公布的票价并获取不正当利益。

the Ministry of Transport issued Regulation on the Administration of Domestic Water Transport

Regulation on the Administration of Domestic Water Transport issued on Dec. 30th, 2013, and come into force as

of 1st March 2014. Which clearly stipulate following:

Water transport operator to be equipped with professional shipping and engine managers, offenders will be fined 10 to 30 thousand yuan.

The personal applicant only be available for common inland river transport operating, and registered in ministry of industry and commerce, their self-owned shipping capacity not more than 600MTs in gross, and capable of safety management including safety supervision, emergency handling, post safety operation procedures, etc.

The water transport operator prohibited to let or lend their operating license, or illegally transfer their qualifications.

And, the waterway passenger transportation business operator to sell passenger ticket as per published, prohibit to reach undue benefits by unreasonable ways, such as conditional sale, cash back, and others in disguised forms.

(Source: www.eworldship.com)

两部门规范船舶进口有关税收政策

1 月 28 日，财政部、国税总局发布《关于规范船舶进口有关税收政策问题的通知》。

《通知》规定：保税港区等海关特殊监管区域的进口保税政策不适用于并不能实际入区的进境船舶，该类船舶应按进口货物的有关规定办理报关手续，统一执行现行船舶进口的税收政策，照章缴纳进口关税和进口环节增值税。

Chinese Authorities Clarify Taxation Policy for Imports of Vessels

The Ministry of Finance ("MOF") and State Administration of Taxation ("SAT") on January 28, 2014 jointly released the Circular on Clarifying Issues concerning the Taxation Policy for Imports of Vessels (the "Circular").

The Circular clarifies that the import bonded policy designed for customs special supervision areas such as bonded port areas does not apply to inbound vessels that cannot enter the said areas, and, for imports of such vessels, customs clearance procedures shall be handled according to the

rules governing imported goods, existing taxation policy on imports of vessels shall be implemented, and import duty and import value added tax shall be paid as required.

(Source: gss.mof.gov.cn)

中远集团与中海集团签署战略合作框架协议

为共同应对世界经济缓慢复苏和全球航运竞争格局调整带来的挑战和机遇，2014 年 2 月 13 日，中远集团与中海集团在北京远洋大厦签署了战略合作框架协议。双方将在巩固多年来良好合作关系的基础上，本着”着眼长远、互惠互利、合作共赢、共同发展”的原则，在业务发展和项目投资方面优先考虑将对方作为合作伙伴。通过建立战略联盟、开展合资合作、协调资源配置、互为供应服务商、共同开发客户、开拓新兴市场等方式，在航运、码头、物流、船舶修造等领域建立全面战略合作伙伴关系，建立资源共享的发展机制。

合作协议的签署有利于双方实现优势互补，应对行业变革，促进共同发展，有效提升中国航运企业在国际航运业的影响力。

中远集团董事长、党组书记马泽华、董事总经理李云鹏和中海集团董事长、党组书记许立荣、董事总经理张国发，以及双方部分集团领导和相关部室、下属公司负责人出席签字仪式。

The group COSCO and China Shipping signed strategic co-operation framework agreement

In order to jointly face and cope with the challenge and

prospect of slow world economic recovery and global shipping structure adjustment, on 13th Feb. 2014, the group COSCO and China Shipping signed strategic co-operation framework agreement in Beijing Ocean Plaza. Based on strengthening relation of many years good cooperations and principle of long term mutually benefit win-win cooperation for common development, the other party will be preferred in business development and project investment. The two parties will establish strategic league, jointly invest and co-work, assist in allocation of resources, develop new clients and new markets in shipping, wharf, logistics, shipping building to establish development system of resource sharing.

The agreement will benefit both parties to face industrial reform, promote jointly development, ascending influence of Chinese shipping enterprise in world.

The COSCO group chairman MR Ma Zehua, GM MR Li Yunpeng and China Shipping group chairman MR Xu Lirong, GM Zhang Guofa and some other concerned persons attended the signing ceremony.

(Source: www.ccmt.org.cn)

国税总局公开行政审批事项目录

2 月 13 日，国税总局发布《关于公开行政审批事项等相关工作的公告》，自发布之日起实施。

《公告》公布 87 项税务行政审批事项，其中行政许可 7 项，非行政许可审批 80 项，主要涉及税务日常管理、涉外税收管理、减免退税管理和税务师事务所管理等行政审批领域。

The State Administration of Taxation ("SAT") released on February 13 the Announcement on the Release of Administrative Examination and Approval Items (the "Announcement"), with effect from the date of issuance.

The Announcement covers 87 tax-related administrative examination and approval items, including seven administrative licensing approval items and 80 non-administrative licensing approval ones and such fields as day-to-day taxation management, foreign-related taxation management, tax reduction and exemption management, and management of tax accounting firms.

(Source: www.chinatax.gov.cn)

关于规范船舶进口有关税收政策问题的通知

2014年1月28日

海关总署：

近期，一些地方、部门在未经国务院批准同意的情况下通过保税港区对进口船舶实施保税登记。为维护税收政策的权威性和严肃性，增强航运业政策与船舶工业政策之间的协调性，现就规范船舶进口的有关税收政策问题通知如下：

保税港区等海关特殊监管区域的进口保税政策不适用于并不能实际入区的进境船舶。为规范政策，避免对国内船舶工业的发展造成冲击，除符合条件可享受中资“方便旗”船回国登记进口税收政策的船舶外，其他在保税港区等海关特殊监管区域登记的进境船舶，应按进口货物的有关规定办理报关手续，统一执行现行船舶进口的税收政策，照章缴纳进口关税和进口环节增值税。

Circular on Clarifying Issues concerning the Taxation Policy for Imports of Vessels

Issued on 28th Jan. 2014

General Administration of Customs of the People’s Republic of China:

To maintain the authority and seriousness of tax policy, enhance policy coordinations between shipping and ship industries, some relevant ship import tax policy stipulated as below.

Tax policy for special supervised area by customs (such as bonded port area) not applied for those entering border ships who cannot actually enter the area. Unless qualified for Chinese-funded convenient flag vessel who back to china for registration, all the other entering vessels in customs special supervised area must go through custom declaration formality as per relevant ship entering tax rules, pay tariffs and import VAT.

(Source: www.moc.gov.cn)

案例分析 CASE STUDY

船舶油污污染损害案件中的责任承担及海事赔偿责任限制基金受偿的有关问题分析

中华人民共和国烟台海事局诉延成海运公司等船舶油污污染损害赔偿确权诉讼案

【案件基本信息】

1.判决书字号

青岛海事法院（2008）青海法海事初字第15号民事判决书

2.案由 ：船舶油污污染损害赔偿

3.当事人

原告：中华人民共和国烟台海事局

被告：延成海运公司（Yun Sung Marine Corp.）

被告：日本船主责任相互保险协会（The Japan Ship Owners' Mutual Protection & Indemnity Association）

【基本案情】

2007年5月12日0308时许，金盛船务所有的“金盛”轮与被告延成海运所有的“金玫瑰”轮在大约38º14'.405N/121º42'.05E位置发生碰撞。0311时许，“金玫瑰”轮在附近海域沉没。因“金玫瑰”轮发生溢油，事发附近海域遭受污染。

事故发生后，原告对该船舶溢油事故采取强制清污措施。并于事故当天向烟台碧海海上发展有限公司发出委托书，委托该公司组织实施海上溢油围控、清除与监视监测工作；向交通部北海救助局发出委托书，委托该局立即组织力量参与应急清污行动，配合烟台碧海行动，费用按照烟台碧海标准收取。经过 2007 年 5 月 12 日至 6 月 21 日清污后，污染基本得到解决，共发生应急反应费用人民币 16810605 元。

清污结束后，原告与二被告及案外人扶光航运有限公司签订了《先期付款协议》，由二被告预先支付清污应急反应费用人民币 200 万元。二被告已履行了该付款行为。二被告在庭审时递交申请，依照《最高人民法院关于审理船舶油污损害赔偿纠纷案件若干问题的规定》，申请二被告从其设立的基金中代位受偿该人民币 200 万元。

青岛海事法院（2007）青海法海事初字第 405 号民事判决认定“金盛”轮承担 55%的碰撞责任，“金玫瑰”轮承担 45%的碰撞责任，并且被告没有丧失责任限制的情形，可以享受责任限制。该判决已经发生法律效力。

【案件焦点】

1、船舶油污污染损害赔偿案件中油污责任保险人是否应当同船舶所有人承担连带赔偿责任？2、我国海事局在清污作业中的应急反应费用是否应当在基金中优先受偿？3、在海事赔偿责任限制基金的分配前船舶所有人、保险人能否行使代位受偿权？

【法院裁判要旨】

青岛海事法院经审理认为：本案为原告在被告设立海事赔偿责任

限制基金后，经过债权登记，因船舶污染损害赔偿纠纷提起的确权诉讼案件。被告延成海运所属的“金玫瑰”轮与“金盛”轮发生碰撞后，“金玫瑰”轮沉没，并因此发生燃油泄漏，污染了事故海域。被告延成海运作为事故责任人，应当依法承担因清除油污而产生的应急反应费用。原告要求被告延成海运和被告互保协会对所诉损失承担连带责任，于法无据，不予支持。被告延成海运作为“金玫瑰”轮的船舶所有人应当按照 45%的责任比例承担溢油应急反应费用人民币 7564772.25 元的赔偿责任。利息损失应自原告起诉之日的次日即 2008 年 2 月 29 日起按照银行同期贷款利率计算。

关于原告的债权是否应当在基金中优先受偿。原告该项主张的法律依据是《防治船舶污染海洋环境管理条例》第五十五条“发生船舶油污事故，国家组织有关单位进行应急处置、清除污染所发生的必要费用，应当在船舶油污损害赔偿中优先受偿。” 依据《海事诉讼特别程序法》第一百一十八条第三款的规定，海事法院据以裁定海事赔偿责任限制基金分配方案的法律依据为《中华人民共和国海商法》以及其他有关法律规定的受偿顺序。《海商法》中并没有提及海事局进行应急处置、清除污染所发生的必要费用优先受偿的规定；并且《防治船舶污染海洋环境管理条例》仅为国务院的行政法规，不属于《海事诉讼特别程序法》规定的“其他有关法律规定”；因此，原告要求其债权在基金中优先受偿没有充分的法律依据，不予支持。

原告的上述债权属《海商法》第二百零七条规定的限制性债权，没有法律规定的转为非限制性债权的情形。被告延成海运作为“金玫

瑰”轮的船舶所有人，已向青岛海事法院申请享受海事赔偿责任限制，并依法设立了海事赔偿责任限制基金。青岛海事法院（2007）青海法海事初字第 405 号民事判决书认定延成海运没有丧失海事赔偿责任限制权利的情形，可以享受责任限制。上述金额为人民币 7564772.25 元及相应利息的赔偿款项应自二被告设立的海事赔偿责任限制基金中受偿。被告在本判决之前先期支付给原告的 200 万元预付款在基金分配时一并处理。

青岛海事法院依照《中华人民共和国海洋环境保护法》第九十条、《中华人民共和国海商法》第一百六十九条及第二百零四条、《中华人民共和国海事诉讼特别程序法》第一百一十六条的规定，判决如下：

一、确认原告的债权为人民币 7564772.25 元，加自 2008 年 2 月 29 日起按照银行同期贷款利率计算的利息；

二、上述债权为限制性债权，依法自被告设立的“金玫瑰”轮海事赔偿责任限制基金中分配；

三、驳回原告中华人民共和国烟台海事局的其他诉讼请求。

本判决为终审判决。

【法官后语】

本案作为船舶油污损害赔偿确权诉讼案件，是海事法院受理的典型的海事案件，其中涉及到此类案件审理过程中较难裁判的三个问题，而该三个问题在本案中得到了较好的解决：

一、船舶油污污染损害赔偿案件中油污责任保险人是否应当同船舶所有人承担连带责任？主张承担连带责任的，主要是依据我国《海

事诉讼特别程序法》第九十七条以及我国加入的《1992 年国际油污损害民事责任公约》（92CLC）第 7 条第 8 款的类似规定，认为二者可以作为共同被告，则应可以承担连带责任。但从上述规定看，只是规定了“被告”的三种情形，并没有规定二者的责任承担形式。因此，按照“连带责任法定原则”，没有明文规定的，即不能裁判二者承担连带责任。故而本案只认定船舶所有人为承担油污损害赔偿责任的责任人。

二、海事局在清污作业中的应急反应费用是否应当优先受偿？主张优先受偿的依据是《防治船舶污染海洋环境管理条例》第五十五条的规定。但正如裁判中所述， 依照现行法律，该主张法律依据不足。并且该条规定适用的条件是“国家组织有关单位……”，而本案清污作业中，海事局系作为普通民事主体参与行动，所产生的债权应当为普通的民事债权，而非国家组织实施的国家行为产生的国家利益。因此，应当同其他民事债权共同按比例受偿。

三、船舶所有人、保险人行使基金中代位受偿权的条件。《最高人民法院关于审理船舶油污损害赔偿纠纷案件若干问题的规定》于 2011 年 7 月 1 日施行，正好介于本案两次开庭审理之间。被告依据该《规定》第二十九条，在第一次庭审后向青岛海事法院提出“代位受偿”申请。但该规定中对“代位受偿权”的行使限定了三个适用条件：“在油污损害赔偿责任限制基金分配以前”、“船舶所有人、船舶油污损害责任保险人或者财务保证人”、“已先行赔付油污损害的”。本案被告作为船舶所有人和油污责任保险人先行赔付了部分油污损

害赔款，符合上述规定中第二和第三个条件，但却没有满足第一个条件。根据该《规定》第二十一条的规定，“油污损害赔偿责任限制基金”是对油轮装载持久性油类造成的油污损害所设的基金，故而本案中通知被告在基金分配中一并解决。而该《规定》涵盖了“油污损害赔偿基金”和“海事赔偿责任限制基金”，在适用时应当注意区分和把握。

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(Source: www.ccmt.gov.cn)

Forwarder's liability as a consignee under bill of lading - a Ukrainian Perspective

by Alexander Chebotarenko (Interlegal)

What is the legal status of a consignee as the person in whose favour a contract of carriage is made? Should it be substantially different if this role is played by a forwarder?

Legal Status of Consignee

It is generally known that contract of carriage of goods is commonly made in favour of a third party - the consignee. Parties in this contract are the shipper, on the one hand, and the carrier - on the other, or the charterer and the shipowner if the contract of carriage includes elements inherent to a lease contract, which is a charterparty. It is this latter type of contract governs the relationship between the parties of the contract of carriage. Whereas bill of lading, as a one-sided document issued by the carrier, whether or not supplementing the charter, defines the status of the consignee, and governs the relationship between the carrier

and the consignee of goods.

Thus, bill of lading is a primary transport document, which confirms the existence and content of the contract of carriage of goods and the actual receipt of goods for transportation. By virtue of the real nature of this contract a master's signature on the document confirms that cargo is received by the carrier, and that between the acceptance of the goods and the signing of the bill of lading no legal facts that would prevent the signing of the bill of lading have taken place. And if the shipper and the consignee is the same person, this does not much change the matter. Still the contract of carriage of goods involves three parties: the carrier (shipowner), the shipper (charterer) and the consignee. This latter is essentially a major creditor in the obligation of the contract of carriage, as the subject of this contract and its main content is the duty of the carrier to deliver the cargo to the port (place) of destination and hand the cargo over to the proper recipient (the consignee).

The modern concept of the contract of carriage of goods contains the idea that the right of the consignee to receive the goods is also accompanied by the consignee's relevant duties. Thus, to use a classic, there are no rights without

responsibilities.

In Ukrainian legislation duties of the consignee are defined in Art. 163 (1), Art. 167, Art. 170 (3) of the Merchant Shipping Code of Ukraine. Thus, the consignee shall receive and take the goods from the port once he has paid all payments due to the carrier, if it had not been done earlier by the shipper or the consignee, including freight and demurrage, and reimburse the costs incurred by the carrier in connection with the goods, and in case of general average - make a general average deposit or to provide appropriate security.

So it turns out that under contract of carriage a consignee not only becomes a creditor, but may well be the debtor. That's the theory. In practice, the collection of debts from the consignee, especially if it is a freight forwarder is a rare event in court practice in Ukraine.

Practice makes Positive (Court Case from our Practice)

The carrier delivered cargo to the Ukrainian port in two containers under two bills of lading. Both bills of lading indicated a forwarding company as the consignee in the relevant boxes. The forwarder – consignee failed to receive the cargo in due time. So the carrier was forced to place the

goods in containers for storage in the port. This entailed considerable amounts accrued for storage of the containers at the warehouse, as well as demurrage and detention. Relevant invoices were issued to the forwarder. Finally, the forwarder, using credit terms under his contract with the carrier, had taken the goods out of the port.

Afterwards the forwarder refused to pay against the carriers' invoices pretending to be the formal consignee, not an actual cargo owner - buyer under the contract of sale. Further argument was that the containers were released on the basis of the handling order, which served only as an internal port document. The carrier's claim was not responded by the forwarder and the carrier had to go to court. By the decision of the Economic Court of First Instance, upheld by the Economic court of appeal, the carrier's claim had been completely satisfied. Besides the mentioned costs, the forwarder had to pay court costs plus 3% per annum.

Thus, the Court held that the status of a freight forwarder does not contradict his role of a receiver under the contract of carriage of goods. As the consignee has the obligations arising from the contract of carriage, he must be held liable

for violations of these duties. A freight forwarder, acting on his own behalf as a contractual receiver of the goods is liable for failure to perform his duties as a consignee under related Bill of Lading.

So in this case the court confirmed our long-held assumption that the right of a consignee to receive goods corresponding to a carrier's obligation to deliver the goods is also accompanied by the consignee's relevant duties, irrespective of any other characteristics of the consignee's legal status. Once the consignee claimed the goods he acquires all the rights and obligations of the merchant under corresponding Bill of Lading.

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Source: http://www.forwarderlaw.com联系我们

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