THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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RECEIVED BY:

SENATE

S. No. 1312

Introduced by Senator Biazon

EXPLANATORY NOTE

The archipelagic configuration of the Philippines justifies our heavy reliance on water transport as a major, convenient and, oftentimes, affordable means of transporting passengers and goods to and from the major islands. Because of geographic location and strategic position, Philippine ports are also considered useful and vital in international commerce and trade.

Unfortunately, the laws governing the relations between and among parties and interests in maritime commerce and trade to and from the Philippines are dispersed in various codes, laws, decrees, executive orders and treaties. Moreover, not only are these laws scattered, all of these laws are more than two decades. There is therefore a compelling need to codify and upgrade Philippine Admiralty Law in order to keep in tune to current situations, circumstances and business practice of the maritime industry.

In other countries, Admiralty or Maritime Law has become one of the most dynamic, complex and rapidly changing areas of law as both the courts and the legislature have sought to fashion new laws to meet social, economic and human needs resulting from the ever expanding maritime industry. In the case of the Philippines, the development and growth of admiralty and maritime law is almost static if not eroded and its future at this moment is difficult to predict. There is now a need for all stakeholders, particularly admiralty lawyers, shipowners and those who are involved in the shipping industry to help reform and update the country's shipping laws.

Precisely, this bill seeks to update and reform the shipping laws of the Philippines and codify the same into one code – "***The Maritime Code of the Philippines.***" It upgrades the laws dealing with registration of ships, maritime liens and ship mortgages, maritime fraud, accidents at sea and shipowner's liability. The bill provides for a separate common carrier provision to apply specifically to ships or vessels transporting passengers and/or goods, domestically or internationally. Likewise, it updates the marine insurance provisions found in the Insurance Code of 1978 and conveniently juxtaposes such provisions alongside other provisions of admiralty and maritime laws.

Finally, the bill provides for an alternative dispute settlement in the form of arbitration. Because of advances in the means of communication and transportation, the greater interaction among people, especially in business, has made more complex business transactions, whether domestic or international. Inevitably, disputes or conflicts arise. Stakeholders in the maritime industry are inclined to a more expeditious, effective and less expensive way of resolving these disputes rather than going through the court of justice with the concomitant delays and expenses incident to judicial proceedings. With the reasons mentioned above, the passage of this bill is urgently requested.

RODOLFO G. BIAZON
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUL -2 A8:10

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SENATE

S. No. 1312

Introduced by Senator Biazon

AN ACT
TO ORDAIN AND INSTITUTE THE MARITIME CODE OF THE PHILIPPINES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Preliminary Title

ARTICLE 1. *Title.* – This Act shall be known as the "*Maritime Code of the Philippines.*"

ART. 2. *Coverage.* – This Code shall apply to all ships or vessels plying within the territorial waters of the Philippines, whether domestic or foreign-owned, and to all Philippine flag vessels, except those owned and/or operated by the Philippine government or by foreign governments for military or non-commercial purposes, and unmotorized bancas, sailboats, and other water-borne contrivances less than three (3) gross tons capacity.

ART. 3. *Definitions.* – Unless otherwise provided, the following terms when used in this Code shall have the following meaning:

(a) "***Citizen of the Philippines***" refers to an individual citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided,* That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange

Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each corporation must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national.

(b) "***Classification societies***" means an accredited organization established for the purpose of setting standards on construction, propulsion, equipment, seaworthiness and safety of ships or vessels and other marine ships or vessels and platforms, conducting surveys and inspections and maintaining standards as a requisite for legal purposes such as marine insurance and official documentation.

(c) "***MARINA***" refers to the Maritime Industry Authority or its successor.

(d) "***Maritime lien***" means an encumbrance on a vessel adhering to it wherever it may go, vesting in the person whose claim is thereby secured to cause its sale in a proceeding directly against it, to obtain satisfaction of his claim.

(e) "***Philippine flag vessel***" refers to a ship registered in the Philippines in accordance with this Code.

(f) "***Philippine shipping companies***" refer to shipping companies registered and licensed in the Philippines and authorized to engage in the business of overseas and/or domestic transportation.

TITLE I – *REGISTRATION OF SHIPS AND RIGHTS TO SHIPS*

ART. 4. *Vessels to be registered.* – Every vessel owned by citizens of the Philippines and more than three gross tons shall be registered with the appropriate maritime authority. Registration may be permanent, provisional or temporary in nature.

ART. 5. *Requirement for a Permanent Certificate.* – No vessel shall be issued a Permanent Certificate of Philippine Registry unless it has been classed by a classification society or by the MARINA as seaworthy, and that it be manned by Filipino crew except highly technical positions in the case of specialized vessels or where there are no available qualified Filipino officers or crew as determined by the appropriate government agency.

ART. 6. *Temporary Certificate of Philippine Registry.* – The following vessels may be issued Temporary Certificates of Philippine Registry:

(a) Vessels owned and/or operated by an enterprise duly registered with the Board of Investments (BOI) under pertinent incentive laws whether or not such enterprise is entirely owned by foreign nationals, if such vessels are to be used exclusively to transport its own raw materials and finished products within Philippine waters as an incident to its manufacturing, processing or business activity registered with the BOI and certified to by it as an essential element in the operation of the registered project.

(b) Foreign-owned vessels under charter or lease for not less than one year to citizens of the Philippines subject to the following conditions: (i) that said charter or lease has the prior written approval of the MARINA, and (ii) that the manning and operation of the vessel shall be entirely in the hands of citizens of the Philippines, except highly technical positions in the case of specialized vessels or where there are no available qualified Filipino officers or crew as determined by the appropriate government agency.

ART. 7. *Provisional Certificate of Philippine Registry.* – Vessels constructed and/or acquired abroad shall, before being brought to the Philippines, have a Provisional Certificate of Philippine Registry. Application therefor shall be filed with the MARINA together with supporting documents.

If the application is found to be in order, the MARINA shall endorse the same to the Department of Foreign Affairs for transmittal to the Philippine consulate in the country where the vessel is located and to advise said office to issue a Provisional Certificate of Philippine Registry upon submission of the required documents.

ART. 8. *Supporting Documents for Registration of Locally Constructed Vessels.* – To secure registration of a vessel constructed in the Philippines, the owner, master or agent shall file, together with the application, with the MARINA Regional or District Office at or nearest the home port or intended home port of such vessel, among others, the following documents:

(a) Approval of the construction plans of the vessel by MARINA;

(b) Builder's Certificate or any document signifying ownership;

(c) Affidavit of Citizenship, in case of individual owner;

(d) Affidavit of Corporate Ownership in case of a corporation; and

(e) Certificate of inspection;

ART. 9. *Supporting Documents for Registration of Imported/Chartered Vessel.* – (1) Within fifteen (15) days upon arrival or upon accepting delivery of the vessel in the Philippines, the owner, master or agent shall apply with the MARINA Regional or District Office of the intended home port for a permanent Certificate of Philippine Registry with the submission of the following documents:

(a) MARINA approval of the acquisition or charter;

(b) Provisional Certificate of Philippine Registry, if any;

(c) Deed of Sale/Charter Agreement, as the case may be;

(d) Builder's Certificate;

(e) Protocol of Delivery and Acceptance;

(f) Protocol of Inventory of the Vessel;

(g) Certificate of Admeasurement, including Calculation sheets for tonnage measurement, as performed by the official admeasurer of the country where the ship is built or acquired;

(h) Provisional Loadline Certificate issued by authorized classification society under whose rules the vessel is constructed or acquired;

(i) Certificate of Inspection or an equivalent Certificate pursuant to the SOLAS 1960 Convention issued by the government of the country where the vessel is built or acquired;

(j) Inclining experiment with calculations and trim and stability calculation for all service loading conditions in case of newly built ships;

(k) Ship Safety Radio-Telephony Certificate (if applicable);

(l) Ship Safety Radio-Telegraphy Certificate;

(m) Consular Invoice; and

(n) Permit to deliver imported goods (Customs formal entry)

(2) The Philippine Consulate shall duly authenticate all documents from sub-paragraphs (b) through (e), and sub-paragraph (i).

ART. 10. *Port of Registry.* – The registration of a vessel shall be effected at its home port, where a MARINA Regional or District Office is in said home port or at the nearest MARINA Regional or District Office when the home port does not have one.

ART. 11. *Register of Vessels.* – A Register of Vessels shall be kept at every MARINA Regional or District Office in which shall be entered the following facts concerning each vessel registered in such form and detail as may be prescribed:

(a) Name of Vessel;

(b) Rig of Vessel;

(c) Material or Hull;

(d) Principal dimensions;

(e) Gross tonnage;

(f) Net tonnage;

(g) Where constructed, including name of shipyard and its address;

(h) Year constructed;

(i) Name, citizenship, nationality and residence of owner;

(j) Date of issuance of Certificate of Philippine Registry;

(k) Mode by which the vessel was acquired and registered;

(l) Any material change of conditions with respect to any of the preceding items; and

(m) Other data as may be required by MARINA or such other agency as may be authorized by law.

It shall be the duty of the owner, master or agent of every registered vessel to inform the MARINA of any change in the information entered in the Register pertaining to the vessel.

ART. 12. *Issuance of Certificate.* – Upon registration of a vessel, a Certificate of Philippine Registry shall be issued therefor by the MARINA.

If the vessel to be registered is more than three (3) tons gross but not more than fifteen (15) tons gross, the taking of a Certificate of Philippine Registry shall be optional with the owner

and in lieu thereof a Certificate of Ownership shall be issued, except when the vessel will be engaged in towing, commercial fishing or carrying of articles and passengers for hire from port to port in the Philippines.

ART. 13. *Effects of Registration.* – Registration of a vessel in accordance with the provisions of this Code confers upon it the status of a Philippine flag vessel and entitles it to the protection of the Philippine flag. Correspondingly, it imposes on the vessel the duty to fly the Philippine flag and the obligation to abide by all applicable laws, orders, rules and regulations of the Philippines.

ART. 14. *Markings, Name and Homeport.* – All vessels duly registered in accordance with the provisions hereof shall have their respective names and homeports plainly marked upon each side of the bow.

ART. 15. *Correction of Errors in the Recording of Documents Affecting Title and in the Register of Vessels.* – Errors made in recording shall be corrected in the following manner:

(a) Slight or clerical errors not affecting the sense and intent of the documents such as misspelled words, shall be corrected by writing the correction above the errors and initialing the correction.

(b) Any mistake or error that might affect the meaning and substance of the documents may be corrected by order of MARINA, after notice and hearing of the interested parties.

ART. 16. *Change of Ownership of Vessels.* – An executed bill of sale or other certificate indicating the transfer of ownership of a Philippine flag vessel shall be presented by the transferee within fifteen (15) days after execution of the sale to the District Office at or nearest the homeport of the vessel for appropriate recording.

ART. 17. *Reconstitution of Lost Certificate.* – When the Certificate of Philippine Registry of a vessel is lost or damaged, the owner, master or agent thereof may file an appropriate application with the MARINA Regional or District Office of the homeport for issuance of a replacement certificate, which shall indicate that the original shall henceforth be considered cancelled and revoked. If after the issuance of the replacement certificate, the lost original certificates shall have been found, it shall be the duty of the owner, master, agent or any person

having possession of the same to surrender the same to the MARINA Regional and District Office of the homeport.

ART. 18. *Grounds for Cancellation of Registry.* – (1) In any of the following cases, the registration of a Philippine vessel shall be cancelled from the Register of Vessels and the Certificate of Philippine Registry or of Ownership revoked:

(a) When the Certificate was illegally or fraudulently obtained;

(b) When the vessel is sold, transferred and/or assigned to a foreign citizen, corporation or association not qualified to register a vessel under Philippine flag;

(c) When the vessel is sold, transferred or assigned to a Filipino citizen, corporation or association and appropriate application has been made for change of ownership;

(d) When the vessel is sold at public auction;

(e) When a vessel is sold for scrapping or has exceeded its economic life and determined to be unsafe and unserviceable;

(f) When the charter or lease of a vessel registered under Article 6 (b) has expired or has been cancelled or terminated for any reason, in which case the cancellation from the Register of Vessels and revocation of the Certificate of Philippine Registry shall automatically take place; and

(g) When a vessel has been declared lost or missing.

(2) It shall be the duty of the managing owner, master or agent of a vessel, having reasons to believe that it has been lost, to promptly send a written notice, under oath, to the MARINA Regional or District Office at her homeport giving advise of such loss and the probable occasion, therefor stating the name of the vessel and the name of all persons on board, as far as the same can be ascertained, and shall furnish upon request of the District Officer such additional information as shall be required. Such notice of loss shall be duly noted in the Register of Vessels and the Record of Transfers and Encumbrances and all persons having any claim or interest of record in said vessel shall be duly notified.

ART. 19. *Record of Documents Affecting Title.* – A Record of Transfers and Encumbrances of Vessels shall be kept at the MARINA Regional or District Office in which

shall be recorded at length all transfers, bills of sale, mortgages, liens or other documents directly or indirectly affecting the title of Philippine flag vessels, and likewise therein shall be recorded all receipts, certificates or acknowledgments canceling or satisfying, in whole or in part, any such obligations.

In order to be enforceable against the ship and third persons, all entries in the Record of Transfers and Encumbrances of Vessels shall be annotated at the back of the Certificate of Philippine Registry or of Ownership, stating the date of entry and the nature or subject matter of the document.

ART. 20. *Contents of Mortgage Application.* – Every application to register a mortgage shall be accompanied by an authenticated copy of the mortgage contract or other similar instrument and shall set forth the following:

(a) the name or description of the ship being mortgaged;

(b) the name, nationality, and place of residence of the owner of the ship;

(c) the name of each mortgagor and mortgagee;

(d) the interest of the mortgagor in the ship being mortgaged; and in the case of a ship under construction, the application shall state, among other things:

(d) the name and location of the construction yard;

(e) the intended port of registration;

(f) the yard number; and

(d) the dimensions and approximate deadweight of the ship on completion.

ART. 21. *Endorsement of Mortgages.* – (1) The appropriate maritime agency shall, at the request of the mortgagee or his authorized agent, cause the endorsement upon the Certificate of Philippine Registry of the ship subject to the mortgage those matters set forth in the preceding Article.

(2) If the ship in respect of which a mortgage has been made holds only a Provisional Certificate of Philippine Registry and is abroad at the time of the registration of the mortgage, the endorsement shall be made by such consular officer of the Philippines as the appropriate maritime agency shall direct.

(3) If a new Certificate of Philippine Registry is issued, any endorsement upon the old or provisional certificate of a mortgage, which remains undischarged at the time of the issuance of the new certificate shall be transferred to and re-endorsed upon such new certificate.

ART. 22. *Inspection of and Copies from the Register.* – (1) The register shall be open to public inspection during ordinary business hours and subject to such reasonable regulations as may be prescribed by the MARINA.

(2) At the request of any person and on the payment of reasonable fees, extracts from the Register of entries setting out the details mentioned in the preceding Articles and/or authenticated copies of any document or instrument, which is required to be filed under this Title, shall be furnished such person.

ART. 23. *De-Registration of the Ship Subject to a Mortgage.* - (1) Except in case of forced sales, a Philippine flag vessel shall not be de-registered without the written consent of all holders of registered mortgages.

(2) A ship, which is or has been registered in another state, shall not be eligible for permanent registration in the Philippines, unless:

(a) a certificate has been issued by the former state to the effect that the ship has been de-registered; or

(b) a certificate has been issued by the former state to the effect that the vessel will be de-registered on the day when such new registration is effected.

TITLE II - *MARITIME LIENS AND SHIP MORTGAGES*

Chapter 1 - *Maritime Liens*

ART. 24. *Claims secured by maritime liens.* – (1) The following claims in relation to a ship shall be secured by maritime liens on the ship, except those which arose out of or which resulted from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive produce or waste:

(a) Port, canal and other waterway dues, tonnage dues, light dues, pilotage dues and other public taxes, dues and charges of the same character;

(b) Wages and other sums due to the master, officer and other members of the ship's crew in respect of their employment on board the ship;

(c) Claims against the owner in respect of loss of life or personal injury occurring on land or on water, in direct connection with the operation of the ship;

(d) Claims against the owner based on tort and not capable of being based on contract, in respect of loss or damage to property occurring whether on land or on water, in direct connection with the operation of the ship; and

(e) Claims for salvage, wreck removal and contribution in general average.

(2) Subject to the provisions of the succeeding Article, the abovementioned maritime liens shall be paid in the order in which they are enumerated. The maritime liens set out in each of paragraphs (a), (b), (c), and (d) shall rank equally as between themselves.

ART. 25. *Claims for Salvage, Wreck, Removal, and General Average.* – (1) Maritime liens, which secure claims for salvage, wreck removal and contribution in general average, shall be preferred over all maritime liens which have attached to the ship prior to the time when operations giving rise to the said liens were performed, other than those maritime liens referred to in paragraph (a) of the preceding Article, and they shall rank in the inverse order of the time when the claims secured thereby accrued;

(2) Claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed. Claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated.

ART. 26. *Nature of Maritime Liens.* – (1) Maritime liens shall arise whether the claims secured by such liens are against the owner, or against the demise or other charterer, manager or operator of the ship.

(2) Except in case of forced sale of the ship, the maritime liens shall follow the ship notwithstanding any change of ownership or of registration.

ART. 27. *Assignment or subrogation.* – The assignment of or subrogation to a claim secured by a maritime lien shall entail the simultaneous assignment of or subrogation to such maritime lien.

ART. 28. *Extinguishment of maritime liens.* – (1) Maritime liens shall be extinguished after a period of one year from the time when the claims secured thereby arose unless, prior to the expiration of such period, the ship has been arrested, such arrest leading to a forced sale.

(2) The period of one year shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the person exercising the lien is legally prevented from arresting the ship.

ART. 29. *Rights of retention.* – (1) The following persons, when in possession of ship or ship that is under construction, shall have the right to retain such ship or ship under construction:

(a) a shipbuilder, to secure claims arising out of the construction of, or other work carried out in relation to the ship; and

(b) a ship repairer, to secure claims arising out of the repair of, or other work carried out in relation to the ship affected during such possession.

(2) Said right of retention shall be extinguished when:

(a) the claim in respect of which the said right has been exercised is met or is otherwise discharged;

(b) the ship ceases to be in the possession of the shipbuilder or ship repairer as the case may be; or

(c) the court orders that the ship is to be released.

Chapter 2 - *Ship Mortgages*

ART. 30. *Application.* – The provisions of this Chapter shall apply to every mortgage wherever executed in respect of:

(a) a ship that is registered in the Philippines, or

(b) a ship that is under construction in the Philippines.

ART. 31. *Subject of the mortgage.* – Unless otherwise stipulated:

(a) a mortgage of a ship shall include all the property of the mortgagor which is appropriated to the ship and on board at the time when the mortgage contract is entered into, or which is later substituted for such property, and

(b) a mortgage of a ship under construction shall include all materials, machinery and equipment owned by the mortgagor which are within the premises of the builder's yard and distinctly identified as intended to be incorporated in the ship under construction.

ART. 32. *Formal validity.* – A mortgage shall not be valid unless it is:

(a) made by or with the consent of the owner of the ship or ship under construction; and

(b) made in writing signed by the mortgagor and mortgagee.

ART. 33. *Registration of mortgages.* – (1) Every mortgage of a ship, which is registered in the Philippines or which is under construction therein, shall be registered in the Register of Mortgages and Encumbrances kept by the MARINA. If such a mortgage is not registered, it shall be unenforceable against the ship and third persons.

(2) On the registration of a mortgage, an authenticated copy of the mortgage contract and agreements shall be furnished the Bangko Sentral ng Pilipinas (BSP).

(3) If the mortgage is transferred or materially amended or if one mortgage is substituted for another, the transfer, amendment or substitution shall be registered in the same Register. Any transfer, amendment or substitution that is not registered shall be unenforceable against the ship and third persons.

ART. 34. *Publication of mortgages.* – (1) The MARINA shall, upon the registration of a mortgage, issue two official copies of the relevant entry in the Registry to the mortgagor. Each official copy of the entry shall bear the official date of the registration of the mortgage.

(2) The mortgagor shall exhibit the following documents in a prominent place on board the ship subject to the mortgage:

(a) at least one of the official copies issued under subsection (1); and

(b) an authenticated copy of the ship's Certificate of Philippine Registry duly endorsed with particulars of the mortgage.

(3) The mortgagor upon request by the mortgagee before the execution of the mortgage to which they are parties, shall give details in writing to the mortgagee of:

(a) any prior mortgage on the ship which is to be the subject of the mortgage; and

(b) any maritime lien to which the said ship is subject, which are known to the mortgagor.

ART. 35. *Powers of the Maritime Industry Authority.* – The MARINA shall prescribe such rules and regulations concerning:

(a) the form of the transfer of a mortgage;

(b) the procedure for the registration of a mortgage or a transfer of a mortgage;

(c) the recording of a mortgage which relates to a ship under construction in a special register for such mortgages;

(d) the recording of the transfer, discharge or foreclosure of any mortgage in the appropriate register;

(e) the amendment of any entry in the register in relation to a mortgage;

(f) the recording of particulars of mortgages on certificates of registry;

(g) fees in relation to the registration of mortgages, inspection of the register and for authenticated copies of entries in the register;

(h) forms to be used in connection with the registration of a mortgage or the transfer, discharge or foreclosure of a mortgage or any application for an amendment of the register; and

(i) any matters incidental to the registration of mortgages and related subjects.

ART. 36. *Priority between mortgages.* – Mortgages shall rank in the order of their being recorded in the Register, the earlier before the latter.

Chapter 3 – *Procedure and Enforcement of Maritime Liens and Mortgages*

ART. 37. *Grounds to enforce the mortgage.* – A mortgagee shall be entitled to enforce the security represented by the ship under a mortgage if:

(a) the mortgagor defaults in the discharge of the indebtedness or other obligations secured by the mortgage; or

(b) the mortgagor or any person in possession of the mortgaged property substantially prejudices the security of the mortgagee by any act or omission; or

(c) the mortgagor commits any breach of the mortgage contract which, by the terms of the contract, entitles the mortgagee to enforce the security.

ART. 38. *Remedies of the mortgagees.* – The enforcement of security under the mortgage may be effected by:

(a) Arresting the ship subject to the mortgage and applying to the court for an order for its forced sale; or

(b) Foreclosing the mortgage; or

(c) Any manner permitted by the mortgage contract.

ART. 39. *Arrest leading to forced sale.* – (1) A mortgagee entitled to enforce his mortgage or a person exercising a maritime lien may bring proceedings *in rem* against the ship, which is the subject of the mortgage or to which the maritime lien attaches, as the case may be, before the court having jurisdiction over the ship. The petitioner shall be entitled to apply to the court *ex parte* for an order for the arrest of said ship.

(2) The petitioner shall file in support of his claim an affidavit deposing to the circumstances which entitle him to enforce the mortgage or lien. If the affidavit satisfactorily establishes his claim, the court shall order the arrest of the ship.

(3) The court shall require a bond or other security before issuing the order of arrest. The bond or security shall not exceed the amount of the mortgage debt or lien.

(4) The court, upon the arrest of the ship, shall order its forced sale unless the mortgagor, the owner of the ship or any person authorized to act on his behalf of any other person interested in the ship apply to the court for an order releasing the ship from arrest, by filing a counter-bond or security in an amount equal to the mortgage debt or lien, or on the ground that the order of arrest was improperly or irregularly made.

ART. 40. *Notice of the forced sale of a ship.* – Prior to the forced sale of a ship, the court shall give, or cause to be given, at least thirty (30) days, written notice of the time and place of such sale to:

(a) all holders of registered mortgages;

(b) such holders of maritime liens whose claim have been notified to the court;

(c) all other persons having an interest in the ship whose interest has been notified to the court; and to

(d) the registrar of the registry in which the vessel is registered.

ART. 41. *Effect of the forced sale of a ship.* – (1) In the event of the forced sale of the ship, all mortgages, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature shall cease to attach to the ship but shall attach to the proceeds of sale, provided however that:

(a) at the time of the sale the ship is in the jurisdiction of the Philippines; and

(b) the sale has been effected in accordance with the law of the Philippines.

(2) Any charter party or contract for the use of the ship in existence at the time of the forced sale shall be deemed to be terminated, without prejudice to any claim the charterer may have against the owner of the ship at the time of the sale.

ART. 42. *Distribution of the Proceeds.* – (1) The costs awarded by the court and expenses arising out of the arrest and sale of the vessel shall be paid first out of the proceeds of such sale.

(2) The following claims shall be satisfied out of the balance of the proceeds of the sale in the order herein enumerated:

(a) Maritime liens;

(b) Registered mortgages;

(c) Rights of retention, observing also the preference among each category of claims established in Articles 24, 25 & 36 of this Code.

ART. 43. *Certificate of Release.* – (1) When a ship registered in the Philippines has been the object of a forced sale in the Philippines, the court having jurisdiction shall, at the request of the purchaser, issue a certificate to the effect that the ship is sold free of all mortgages, maritime liens, and other encumbrances, except those assumed by the purchaser.

(2) Upon the production of the above-mentioned certificate, the registrar of the Register of Vessels shall delete all registered mortgages, except those assumed by the purchaser or issue a certificate of de-registration for the purpose of registration, as the case may be.

ART. 44. *Effect of the forced sale of a ship in foreign states.* – The forced sale in a foreign state of a ship which is registered in the Philippines shall be recognized and effective in

the Philippines, provided that the procedure for such forced sale in that foreign state substantially corresponds to the procedure set out in Articles 40, 41, and 42.

Chapter 4 – *Foreign Liens and Foreign Mortgages*

ART. 45. *Foreign Maritime Liens.* – (1) A claim against the owner or against the demise or other charterer, manager or operator of a ship being a claim which is governed by the law of a state other than the Philippines and which is recognized by that law as giving rise to a maritime lien, or right of a similar nature shall be recognized by and enforceable in the Philippines provided said claim constitutes or corresponds substantially to a claim set out in Article 24.

(2) The provisions of this Code relating to maritime liens including priority, ranking of liens between themselves, and enforcement, shall also apply to such claims.

ART. 46. *Foreign mortgages.* – (1) For the purposes of this Article, "***foreign mortgage***" shall mean any mortgage or any hypothic, which relates to a ship of foreign registry.

(2) A foreign mortgage shall be recognized and enforceable in the Philippines provided that:

(a) such mortgage has been effected and registered or otherwise recorded in accordance with the law of the state where the ship is registered;

(b) such register and any instruments or documents which are required to be deposited are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar, and

(c) either the register or the loan agreement specifies:

(i) the name and address of the person in whose favor the mortgage has been effected or that it has been issued to bearer;

(ii) the amount secured by the mortgage or the manner of calculating said amount;

(iii) date of the mortgage; and

(iv) such other particulars which, according to the law of the state where the ship is registered, determine the rank in regard to other registered mortgages.

ART. 47. *Law governing foreign mortgages.* – (1) The ranking of registered mortgages as between themselves and their effect as regard to third parties shall be governed by the state where the ship is registered.

(2) All matters relating to procedure for enforcement shall be governed by this Code. The Rules of Court shall have suppletory effect.

TITLE III – *TRANSPORT AND OTHER CONTRACTS*

Chapter 1 - *Domestic Shipping*

Section One - *Common Provisions*

ART. 48. *Definition.* – For purposes of this Chapter, the term "***common carriers***" are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, for compensation, offering their service to the public.

ART. 49. *Diligence Required.* - Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of passengers transported by them, according to all the circumstances of each case.

Extraordinary diligence is the degree of care required of the obligor to take all the necessary lawful steps and precautions to prevent any loss, damage or injury which could have been reasonably foreseen at the time the obligation was constituted or at any time prior to the happening of the event giving rise to the loss, damage or injury.

In case of loss or damage to goods or death of or injury to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.

ART. 50. *Contributory Negligence.* – The contributory negligence of the passenger or of the shipper of goods does not bar recovery of damages for death or injury of the passenger or for damage or loss of the goods, if the proximate cause thereof is the negligence of the carrier. The amount of damages recoverable shall, however, be equitably reduced.

ART. 51. *Liability of Successive Carriers.* – In case of transportation to be performed by various successive carriers, under a single contract, such common carrier shall be deemed to be one of the contracting parties to the agreement insofar as concerns that part of the transportation which is performed by each common carrier.

These common carriers shall be jointly and severally liable for loss, damage, destruction or delay, except where by express agreement, the first carrier has assumed liability for the whole journey.

ART. 52. *Unauthorized Carriers.* – Without prejudice to any criminal liability, persons engaging in the transportation business without being authorized to do so, shall incur the same responsibilities, obligations and liabilities of common carriers as provided for in this Chapter.

Section Two – *Carriage of Passengers*

ART. 53. *Obligation of Common Carrier.* – The common carrier shall be bound before and at the beginning of any trip or voyage to exercise extraordinary diligence to make the vessel seaworthy and to properly man, equip and supply the vessel.

ART. 54. *Obligation of Captain or Master.* – The master of any passenger vessel shall keep a list of all the passengers, which shall be open to inspection by the Philippine Coast Guard. A copy of the list shall be forwarded to the shipowner or ship agent.

ART. 55. *Overloading.* – No common carrier shall take on board a number of passengers greater than that stated in the certificate of inspection.

Every vessel shall carry in accessible places one life preserver for every passenger and for every member of the crew, in addition to lifeboats required by regulations.

ART. 56. *Carrying of Explosives.* – No passenger-carrying vessel shall transport, carry or stow on board the vessel any explosives except the vessel's signal and emergency equipment, and others as may be permitted by regulations of the MARINA.

ART. 57. *Discipline.* – In all matters pertaining to the preservation of order and discipline on board the vessel, passengers shall be subject to the orders of the master.

ART. 58. *Duration of Responsibility.* – The extraordinary diligence required of common carriers shall begin when a person boards the vessel with the intention of becoming a passenger and is accepted as such by the common carrier and continue until the trip, expressly or impliedly contracted for has been concluded, and the passenger has left the common carrier's vessel in safety, unless the passenger sooner terminates or relinquishes his rights as such.

ART. 59. *Right of Carrier to Refuse Transportation.* – A common carrier may refuse to carry as passengers, persons who refuse to comply with its reasonable regulations or who are likely to become obnoxious or dangerous to other passengers or interfere with the safe and convenient conduct of transportation, or who are unable to take care of themselves, unless accompanied by a competent person.

ART. 60. *Duties of Passenger.* – The passenger shall observe the reasonable regulations of the common carriers, and exercise ordinary diligence to avoid injury to himself and loss or damage to his property under his custody.

ART. 61. *Void Stipulation.* – A stipulation limiting the liability of the carrier to a fixed sum for the death or injury of a passenger is void, as contrary to public policy.

ART. 62. *Nature of Responsibility of Carrier.* – The responsibility of a common carrier for the safety of passenger cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements or tickets, or otherwise.

The reduction of fare does not justify any limitation of the common carrier's liability.

When a passenger is carried gratuitously, a stipulation limiting the common carrier's liability for negligence is valid, but not for willful acts or gross negligence.

ART. 63. *Liability of Negligence or Acts of Employees.* – Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carrier.

This liability of common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees nor can

such responsibility be eliminated or limited by stipulation, posting of notices, statements on the ticket or otherwise.

ART. 64. *Liability for Acts of Others.* – A common carrier is responsible for injuries suffered by a passenger on account of the willful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of the family could have prevented the injury.

ART. 65. *Liability for Discourteous Conduct.* – Common carriers shall protect their passengers from insults and indignities on the part of their employees and shall be liable for moral damages for indecent, abusive and insulting language or conduct of their employees toward the passengers.

ART. 66. *Liability to Personal Baggage.* – With respect to personal baggage in the possession and control of a passenger, the common carrier is liable for loss or damage resulting thereto only from its negligence or willful act of its employees. Liability of the common carrier for its negligence does not extend to large sums of money or other property of exceptional value retained by the passenger in his control, without the knowledge of the common carrier.

Section Three – *Carriage of Goods*

ART. 67. *Duty of Common Carrier.* – The common carrier shall be bound before and at the beginning of any trip or voyage to exercise extraordinary diligence to make the vessel seaworthy, and to properly man, equip and supply the vessel and make the holds, refrigerating and cooling chambers and all other parts of the vessel in which goods are carried, fit and safe for their reception, carriage and preservation.

ART. 68. *Duration of Responsibility.* – The extraordinary diligence required by common carriers shall be exercised from the time the goods are unconditionally placed in the possession of, and received by the common carrier for transportation and continues even when the goods are temporarily unloaded or stored, in transit and during the time the goods are stored in warehouse of the common carrier at the place of destination until the same are delivered, actually or constructively to the consignee, or to the person who has a right to receive them, or until the

consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.

ART. 69. *Liability for Loss or Damage.* – (1) Common carriers are responsible for the loss, destruction or deterioration of the goods unless they prove that they observed extraordinary diligence.

(2) Any of the following, if the sole and proximate cause of the loss or damage to the goods, shall exempt the carrier from liability:

(a) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(b) Act of the public enemy in war, whether international or civil;

(c) Act or omission of the consignor of the goods;

(d) The character of the goods or defects in the packing or in the containers; or

(e) Order or act of competent public authority.

In any of the foregoing cases, the common carrier must exercise due diligence to forestall or lessen the loss or damage.

ART. 70. *Effect of Delay and Deviation.* – If the common carrier negligently incurs in delay in transporting the goods, or deviates from the stipulated or usual routes without just cause, a natural disaster shall not free such carrier from responsibility.

ART. 71. *Valid Stipulations.* – (1) A stipulation imposing a duty on the common carrier to observe merely the diligence of a good father of a family in the care of the goods is valid provided that it has been freely agreed upon in writing, signed by the consignor for a consideration other than the usual and ordinary service rendered by the common carrier to the public.

Such stipulation, however, cannot be availed of by the carrier if it delays or changes the stipulated or usual route, without just cause.

(2) A stipulation exempting the common carrier from liability for delay caused by strikes or riots is valid.

(3) A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the consignor declares a greater value, is binding.

(4) A stipulation fixing the sum that may be recovered by the consignor for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon, and the loss, destruction or deterioration of the goods is not due to the willful act or conduct of the common carrier, or its employees.

The fact that the common carrier has no competitor along the line or route, or a part thereof, to which the contract refers shall be taken into consideration on the question of whether or not the stipulation is reasonable and just.

ART. 72. *Void Stipulations.* – Any of the following or similar stipulations shall be considered void or contrary to public policy:

(a) That the goods are transported at the risk of the consignor;

(b) That the common carrier will not be liable for any loss, destruction, or deterioration of the goods;

(c) That the common carrier shall exercise a degree of diligence less than that of a good father of a family, or of a man of ordinary prudence in the vigilance over the goods transported;

(d) That the common carrier shall not be responsible for the acts or omissions of his or its employees;

(e) That the common carrier is not responsible for the loss, destruction, or deterioration of goods on account of the defective condition of the ship, or other equipment used in connection with the contract of transportation.

ART. 73. *Right to Inspect.* – It shall be the duty of the person shipping dangerous articles to inform the common carrier of their character. The common carrier has a right to refuse to accept for transportation dangerous objects which might endanger its safety or that of its passengers and other goods carried, as well as those unfit for transportation. If the common carrier has reasonable grounds to suspect that a package contain contraband goods, explosives or highly inflammable substances, it may demand inspection to ascertain its contents.

ART. 74. *Duty of Carrier to Issue Receipt or Bill of Lading.* – It shall be the duty of the carrier to issue a receipt or a bill of lading for goods delivered to it for transportation. The bill may be negotiable or non-negotiable in form.

ART. 75. *Evidentiary Value of Bill of Lading.* – The bill of lading shall be *prima facie* evidence of the contract between the parties and shall bind the shipper to all its terms and conditions, if signed by the latter.

It shall also be evidence of the weight, dimensions, and packing of the goods delivered to the common carrier for transportation, but not of the description and condition thereof, unless they shall have been checked by the common carrier and so stated in the bill of lading.

ART. 76. *Period to Deliver.* – If no period has previously been fixed for the delivery of the goods, the carrier shall be under the obligation to forward them in the first scheduled trip to the place of destination.

ART. 77. *Notice of Stoppage.* – When a notice of stoppage *in transitu* is received by the common carrier, the latter must not deliver the goods to the consignee, but shall hold the goods as depositary and await instructions from the consignor, unless a third person to whom the bill of lading has been negotiated, in good faith and for value, demands delivery of the goods.

ART. 78. *To Whom Delivery Made.* – The common carrier shall deliver the goods to the consignee designated in the bill of lading or if it is negotiable in form, to the person to whom it appears to have been negotiated.

The common carrier shall in no case be compelled to deliver the goods until the negotiable bill of lading is surrendered to it or impounded by the court.

ART. 79. *Inability to Deliver.* – Where the consignee cannot be found or shall refuse to receive the goods, the carrier shall store the goods and notify the consignor of such fact.

If the goods are perishable in nature, the common carrier may sell the goods at a public or private sale and shall hold the proceeds in trust for the owner of the goods, after deducting the costs of storage and sale.

In case the consignor or consignee fails to claim the goods from the carrier within a period of thirty (30) days from notice, the common carrier shall have the right to sell such goods

through a notary public, at a public auction. The proceeds thereof, after deducting the costs of storage and sale, shall be deposited in a bank in the name of the consignor and/or consignee, who shall be notified thereof by the carrier.

ART. 80. *Lien over Goods.* – The common carrier shall have a right to withhold delivery of the goods until the freight and storage fees have been paid in full. For the satisfaction of such lien the common carrier may, after thirty (30) days from demand for payment, sell such goods through a notary public, at a public auction. The proceeds of the sale shall be applied to the amount of his lien and the expenses of the sale, and the surplus shall be turned over to the consignee.

ART. 81. *Cancellation of Negotiable Bill of Lading.* – Except as provided in Articles 79 and 80, where the common carrier has delivered the goods to the person entitled thereto and fails to cancel the bill of lading, it shall be liable to anyone who purchases for value and in good faith such document, whether the purchase is made before or after delivery of the goods by the common carrier.

ART. 82. *Claim for Damages.* – Where the goods are tendered for delivery to the consignee, the latter shall have the right to inspect the condition of the goods and shall immediately notify the common carrier of any loss or damage to the goods. Where the damage is not apparent, the consignee must notify the common carrier of such defect within seven (7) days after delivery. Otherwise, receipt of the goods by the person entitled thereto, without complaint, shall be *prima facie* evidence that the same had been delivered in good condition and in accordance with the contract.

ART. 83. *Damages Recoverable.* – Damages for breach of contract shall be awarded in accordance with Title XVIII of Book IV of the New Civil Code of the Philippines.

Chapter 2 – *International Carriage*

Section One – *Common Provisions*

ART. 84. *Definitions.* – As used in this Chapter, the following terms shall have their corresponding meanings:

(a) "***Cabin luggage***" means luggage that the passenger has in his cabin or in possession, custody or control.

(b) "***Carrier***" means a person by or on behalf of whom, a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing or actual carrier.

(c) "***Contract of carriage***" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage or for the carriage of goods by sea against payment of freight, as the case may be.

(d) "***Goods***" includes live animals and the container, pallet or similar article of transport or packaging in which goods are consolidated, if supplied by the shipper.

(e) "***International carriage***" applies to any carriage in which, according to the contract, either the place of departure of the passenger or of loading of goods or the place of destination of the passenger or of discharge of the goods, as the case may be, is located within the Philippines, but not to a contract of carriage which takes place solely within Philippine waters.

(f) "***Passenger***" means any person carried in a ship under a contract of carriage or who, with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract of carriage of goods.

(g) "***Performing or Actual Carrier***" means a person to whom the performance of the whole or a part of the carriage has been entrusted by the carrier, and includes the owner, charterer or operator of the ship.

(h) "***Unit of Account***" is the Special Drawing Right as defined by the International Monetary Fund (IMF), which shall be converted into Philippine currency on the basis of the official value of such currency at the date of judgment or the date agreed upon by the parties.

ART. 85. *Liability of the Carrier and the Performing or Actual Carrier.* – (1) Where the performance of the carriage or part thereof has been entrusted to a performing or actual carrier, the carrier shall nevertheless remain liable for the entire carriage, and the performing or actual carrier shall be liable for the acts and omissions of his servants and agents acting within the scope of their employment.

(2) Any special agreement under which the carrier assumes obligations not imposed by this Chapter or waives rights conferred by this Chapter shall not affect the performing or actual carrier unless expressly agreed by the latter in writing.

(3) Where and to the extent that both the carrier and the actual or performing carrier are liable, their liability shall be joint and several, without prejudice to any right of recourse as between the carrier and the performing or actual carrier.

(4) The aggregate of the amount recoverable from the carrier, the performing or actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Chapter.

ART. 86. *Loss of Right to Limit Liability.* – The carrier or the performing or actual carrier or their servant or agent, shall not be entitled to the benefits of the limitation of liability provided in Articles 92 and 101, if it is proved that the damage resulted from an act or omission of such person done with intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Section Two – *Carriage of Passengers and their Luggage*

ART. 87. *Period of Carriage.* – (1) With regard to the passenger and his cabin luggage, the period of carriage covers the time the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa if the cost of such transport is included in the fare or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier.

(2) With regard to cabin luggage or other luggage, the period also covers the period when the luggage has been taken over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent.

ART. 88. *Liability of the Carrier.* – (1) The carrier shall be liable for the damage suffered as a result of the death or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage occurred in the course of the carriage and was due to the

fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

(2) Loss or damage to luggage, other than cabin luggage, includes pecuniary loss resulting from delay in redelivery to the passenger within a reasonable time after arrival of the ship in which such luggage has been or should have been carried, but does not include delay due to labor disputes.

(3) The burden of proving that the incident, which caused the loss or damage, occurred in the course of the carriage and the extent of the loss or damage shall be on the claimant.

ART. 89. *Presumption of Fault or Negligence.* – (1) Unless the contrary is proved, fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with shipwreck, collision, stranding, explosion or fire, or defect in the ship.

(2) With respect to loss of or damage to luggage, other than cabin luggage such fault or neglect shall be presumed, irrespective of the nature of the incident that caused the loss or damage, unless the contrary is proved.

(3) In all other cases, the burden of proving fault or neglect shall be on the claimant.

ART. 90. *Contributory Negligence.* – The contributory negligence of the passenger shall not bar recovery of damages for death or personal injury or for the loss of or damage to his luggage, if the proximate cause thereof is the negligence of the carrier. The amount of damages shall, however, be equitably reduced.

ART. 91. *Valuables.* – The carrier shall not be liable for the loss or damage to monies, negotiable securities, gold, silverware, jewelry, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for safe-keeping, in which case the limit of the liability for fault or negligence of the carrier shall not exceed 1,200 Units of Account per passenger, per carriage.

ART. 92. *Limits of Liability.* – (1) Unless expressly agreed upon in writing between the carrier and the passenger, the liability of the carrier shall in no case exceed:

(a) For death of or personal injury to a passenger, 46,666 Units of Account per carriage, exclusive of interests and costs;

(b) For the loss of or damage to cabin luggage, 833 Units of Account per passenger, per carriage, exclusive of interests and costs;

(c) For loss of or damage to vehicles including all luggage carried in or on the vehicle, 3,333 Units of Account per vehicle, per carriage;

(d) For loss of or damage to other luggage, 1,200 Units of Account per passenger, per carriage.

(2) The above-mentioned amount may be reduced by agreement by an amount not exceeding 116 Units of Account in case of damage to a vehicle, and by an amount not exceeding 13 Units of Account per passenger in case of loss of or damage to other luggage.

ART. 93. *Notice of Loss or Damage.* – (1) The passenger shall give written notice to the carrier or his agent:

(a) In the case of apparent damage to luggage:

(i) For cabin luggage, before or at the time of disembarkation of the passenger;

(ii) For all other luggage, before or at the time of its redelivery;

(b) In case of damage to luggage, which is not apparent, or in case of loss of luggage, within fifteen (15) days from the date of disembarkation or redelivery or from the time when such redelivery should have taken place.

(2) If the passenger fails to comply with this requirement, he shall be presumed to have received the luggage undamaged. Notice of damage to luggage in writing need not be given if the condition of the luggage has at the time of receipt been the subject of joint survey or inspection.

ART. 94. *Statute of Limitation.* – (1) Unless extended by written declaration of the carrier or written agreement of the parties after the cause of action has arisen, any action for damages arising out of the death of or personal injury to a passenger or for the loss or damage to luggage shall be brought within two (2) years from the time the cause of action accrues.

(2) The cause of action accrues:

(a) In the case of personal injury, from the date of disembarkation of the passenger;

(b) In the case of death occurring during carriage, from the date when the passenger should have disembarked;

(c) In the case of personal injury occurring during the carriage and resulting in the death of the passenger after disembarkation, from the date of death, but not later than three (3) years from the date of disembarkation;

(d) In the case of loss or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

Section Three – *Carriage of Goods*

ART. 95. *Scope of Application.* – This Section shall apply to all contracts of carriage of goods by sea, whether or not covered by bills of lading, but not to charter parties, unless a bill of lading is issued pursuant to the charter party, in which case the provisions of this Section shall apply to such bill of lading if it governs the relation between the carrier and its holder, other than the charterer.

ART. 96. *Period of Carriage.* – (1) The responsibility of the carrier for the goods covers the period during which the carrier is in charge of the goods at the port of loading, during the transportation, and at the port of discharge.

(2) The carrier is deemed to be in charge of the goods –

(a) from the time he or his servant or agent has taken over the goods from:

(i) the shipper, or a person acting on his behalf; or

(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) until the time he has delivered the goods:

(i) by handing over the goods to the consignee, his servant or agent;

(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade applicable at the port of discharge; or

(iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

ART. 97. *Obligations of the Carrier.* – (1) The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(a) make the ship seaworthy;

(b) properly man, equip and supply the ship; and

(c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

(2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

ART. 98. *Liability of the Carrier.* – (1) The carrier shall be liable for loss of, damage to or delay in delivery of the goods while the goods were in his charge, when such loss, damage or delay is caused by failure of the carrier, his servants or agents to comply with its obligations under the preceding Article.

(2) Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage of goods by sea within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time, having regard to the circumstances of the case.

(3) The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered within sixty (60) consecutive days following the expiration of the time in which goods should have been delivered.

(4) Whenever loss, damage or delay has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under the next Article.

ART. 99. *Exemption from Liability.* – (1) The carrier shall not be responsible for loss, damage or delay arising or resulting from:

(a) act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(b) fire, unless caused by the actual fault or privity of the carrier;

(c) perils, dangers and accidents of the sea or other navigable waters;

(d) act of God;

(e) act of war;

(f) act of public enemies;

(g) arrest or restraint of princes, rulers or people, or seizure under legal process;

(h) quarantine restrictions;

(i) act or omission of the shipper or owner of the goods, his agent or representative;

(j) strikes or lock-outs or stoppage or restraint of labor from whatever cause, whether partial or general;

(k) riots and civil commotion;

(l) any deviation in saving or attempting to save life or property at sea;

(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

(n) insufficiency of packing;

(o) insufficiency or inadequacy of marks;

(p) latent defects not discoverable by due diligence; or

(q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier. The burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss, damage or delay.

(2) In relation to the carriage of live animals by sea, the carrier shall not be liable for loss, damage or delay in delivery resulting from any special risks inherent in carriage of that nature. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals, it is presumed that the loss, damage or delay in delivery was caused by

such inherent risk unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

(3) Neither shall the carrier be responsible for any loss, damage or delay to, or in connection with, goods if the nature or value of those goods has been knowingly mis-stated by the shipper in the bill of lading.

ART. 100. *Deck Cargo.* – (1) Notwithstanding the provisions of paragraph 1 of the preceding Article, the carrier shall be liable for loss of or damage to or delay in delivery to the goods carried on deck resulting solely from such carriage unless carriage of the goods on deck is in accordance with an agreement with the shipper or with the usage of the particular trade or allowed by statutory rules or regulations.

(2) If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier shall insert in the bill of lading or other document evidencing the contract of carriage of goods by sea a statement to that effect. In the absence of such a statement the carrier has the burden or proving that an agreement for carriage on deck has been entered into: *Provided, however,* that such an agreement cannot be invoked by the carrier against a third party, including a consignee, who has in good faith acquired the bill of lading or other document evidencing this contract.

ART. 101. *Limits of Liability.* – (1) Where the nature and value of the goods have been declared by the shipper before loading and inserted in the bill of lading or any contract of carriage of goods by sea, such declaration shall be *prima facie* evidence of the value of the goods, but not binding or conclusive on the carrier.

(2) In the absence of such declaration, the liability of the carrier for loss resulting from loss of or damage to goods shall be limited to an amount equivalent to 835 Units of Account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(a) Where a container, pallet or similar article of transport is used to consolidate goods, the goods in such article of transport are deemed one shipping unit unless each package or other shipping units racked in the article of transport are enumerated in the bill of lading or in any other

document evidencing the contract of carriage of goods by sea, in which case each shall be deemed packages or shipping units.

(b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

(3) The liability of the carrier for delay in delivery is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea; and

(4) In no case shall the aggregate liability of the carrier under the preceding paragraphs (2) and (3) exceed the limitation which would be established under the preceding paragraph (2) for total loss of the goods with respect to which such liability was incurred.

ART. 102. *Application to non-contractual claims.* – The defenses and limits of liability provided for in this Chapter shall apply in any action against the carrier in respect of loss of or damage to the goods covered by the contract of carriage of goods by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

ART. 103. *Through carriage.* – Notwithstanding the provisions of Article 85, where the contract provides explicitly that a specified part of the carriage is to be performed by a person other than the carrier, it may be validly stipulated that the carrier shall not be liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Such stipulation, however, is without effect if no judicial proceedings can be instituted against the actual carrier in a court of competent jurisdiction. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

ART. 104. *Liability of the Shipper.* – The shipper, his servant or agent is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents.

ART. 105. *Special rules for dangerous goods.* – (1) Goods of an inflammable, explosive or dangerous nature, the shipment of which the carrier, his master or agent has consented without

knowledge of their nature and character may, at any time, before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

(2) If such goods were shipped with knowledge and consent of their nature and character on the part of the carrier, the master or agent, and shall become a danger to the ship or cargo, they may, in like manner, be landed at any place, or destroyed or rendered innocuous by the carrier without liability on his part, except for general average, if any.

ART. 106. *Issuance of bill of lading.* – (1) When the carrier or the actual carrier takes the goods into his charge, the carrier shall, issue to the shipper a bill of lading.

(2) The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by or for the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

(3) The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means.

(4) After the goods have been loaded on board, the carrier shall, if the shipper so demands, issue a "shipped" bill of lading which, in addition to the particulars required in the next Article, shall state that the goods are on board a named ship or ships and the date or dates of loading.

ART. 107. *Contents of bill of lading.* – The bill of lading shall show, among other things, the following:

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(b) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper; and

(c) the apparent order and condition of the goods.

ART. 108. *Reservations in the Bills of Lading.* – (1) If the bill of lading contain particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or loaded on board, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies or observations.

(2) If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good order and condition.

ART. 109. *Evidentiary effect of Bills of Lading.* – Except for particulars for which a reservation permitted under the preceding Article has been noted in the bill of lading, the bill of lading is *prima facie* evidence of the taking over or, where a "shipped" bill of lading is issued, of the loading by the carrier of the goods as described therein.

Proof to the contrary by the carrier is not admissible if the bill of lading has been transferred for value to a person who in good faith has acted in reliance on the description of the goods therein.

ART. 110. *Guaranteed by the shipper.* – The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading, and must indemnify the carrier against loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him.

The right of the carrier to such indemnity in no way frees him from liability under the contract of carriage of goods by sea to any person other than the shipper.

ART. 111. *Notice of loss or damage.* – (1) Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier or to the actual carrier not later than the working day after the day when the goods were handed over to the

consignee, such handing over is *prima facie* evidence of the delivery of the goods in good condition.

(2) Where the loss or damage is not apparent, notice in writing must be given within fifteen (15) days after the day when the goods were handed over to the consignee.

(3) If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

(4) In the case of an actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

ART. 112. *Notice of Delay.* – No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier or to the actual carrier, within sixty (60) days after the date when the goods were handed over to the consignee.

ART. 113. *Notice to the Shipper.* – (1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than ninety (90) days after the occurrence of such loss or damage or after the delivery of the goods, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

(2) For the purposes of this Article and the preceding Article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

ART. 114. *Limitation of actions.* – (1) Any action relating to carriage of goods by sea under this Section shall be time-barred if judicial or arbitration proceedings have not been instituted within a period of one (1) year.

(2) The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

(3) The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

ART. 115. *Arbitration.* – (1) The parties may provide by agreement in writing that any dispute that may arise relating to carriage of goods by sea under this Section shall be referred to arbitration. The arbitrator or arbitrators shall apply the provisions of this Section.

(2) Where a charter party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

ART. 116. *Contractual stipulations.* – (1) Any clause, covenant, or agreement in a contract of carriage of goods by sea relieving the carrier or the ship from liability for loss of or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided for in this Section, or lessening such liability otherwise than as provided in this Section, shall be void. A carrier may, however, increase his responsibilities and obligations under this Section.

(2) For the purposes of this Article, a benefit of insurance in favor of the carrier, or a similar clause, shall be deemed to be a clause relieving the carrier from liability.

Chapter 3 – *Charter Parties*

Section One – *General Provisions*

ART. 117. *Definition of Terms.* – The following terms used in this Chapter shall have the following meaning, unless the context or usage of the term indicates otherwise:

(a) "***Charter Party***" may be defined as the hiring or letting of part or the whole of a vessel or vessels for a particular voyage or voyages and/or for a particular period, for the carriage of goods at an agreed freight or hire.

(b) "***Demurrage***" is a sum fixed in the charter party to be paid as liquidated damages for delay in the loading or unloading of cargo beyond the stipulated laytime.

(c) "***Dispatch***" is a rebate of freight allowed to the charterer for loading or discharging in less than the stipulated laytime.

(d) "***Laytime***" is the period of time granted in the charter party for the loading and discharging of the cargo.

(e) "***Shipowner or owner of the vessel***" shall include not only the owner but also the charterer.

ART. 118. *Warranty of Seaworthiness.* – The shipowner warrants that the vessel is seaworthy for a particular voyage and for the particular cargo.

The charter party shall contain an adequate and accurate description of the vessel, listing its specifications and capacities. The charterer, if he so desire, may be provided with copies of relevant plans of the vessel.

ART. 119. *Right of Substitution of Vessel.* – Should the vessel named or nominated not be available to undertake the carriage, the shipowner shall be permitted to substitute another vessel, provided that the main particulars and position of the substitute vessel shall be subject to the charterer's approval. Such approval shall not be unreasonably withheld.

ART. 120. *Trading limits.* – The charterer shall employ the vessel in lawful trade for the carriage of lawful cargo only between good and safe ports or places where the vessel can always lie safely afloat. The shipowner may expressly exclude areas where there are warlike hostilities.

ART. 121. *Cargo.* – It is the duty of the charterer to furnish a complete cargo in accordance with the terms of the charter, giving its description and quantity. He shall be entitled to receive bills of lading regarding such cargo.

ART. 122. *Hire Period.* – The parties shall agree on the duration of the charter, although the period of hire runs from delivery to redelivery of the vessel. In such case, the parties shall provide a margin within which delivery and redelivery of the vessel can be made without further claim against any of the parties.

In the absence of a stipulation, the margin shall be a reasonable period.

The vessel is considered delivered if it reaches the berth or deck at which the vessel is to load or unload if it is berth-charter party. If the charter party names a port for delivery or redelivery, and the vessel cannot proceed immediately to a berth, it is considered "arrived" if it is within the port where it is at the immediate and effective disposition of the charterer.

ART. 123. *Subchartering.* – Unless expressly prohibited in the charter-party, the charterer may sub-charter the vessel, in which case the duties of the owner shall apply also to a disponent owner and the duties of a charterer shall also apply to a sub-charterer.

ART. 124. *Lien.* – To secure payment of freight and other charges, the shipowner shall have a prior possessory lien upon all cargoes and sub-freights belonging to the charterer for all claims under the charter party, but not on cargo belonging to the sub-charterer where the latter had already paid the freight to the charterer.

ART. 125. *Clause Paramount.* – Except in cases of domestic charter parties, the contract may provide that the Carriage of Goods by Sea Act, whether the Hague or Hague-Visby rules, shall apply to bills of lading issued under the charter party.

Section Two – *Voyage Charter Party*

ART. 126. *Voyage Charter Defined.* – A "voyage charter party" is a charter party of a specific vessel for a particular voyage from one port or area to another, the commercial management and navigational control of the vessel remaining with the owner.

ART. 127. *Implied Undertaking.* – Unless otherwise agreed upon in a voyage charter, the shipowner impliedly undertakes: (a) that the vessel shall proceed with reasonable dispatch; and (b) that it shall proceed without unjustifiable deviation.

ART. 128. *Effect of Unseaworthiness.* – (1) If the charterer discovers that the ship is unseaworthy before the voyage begins, and the defect cannot be remedied within a reasonable time, he may rescind the contract.

(2) After the voyage has begun and the charterer is no longer in a position to rescind the contract, he can claim damages for any loss caused by initial unseaworthiness.

ART. 129. *Reasonable Dispatch.* – The implied undertaking of reasonable dispatch means that the vessel shall proceed and complete the voyage agreed upon, with all reasonable speed. In the case of a consecutive voyage charter party, the obligation to proceed with reasonable dispatch applies to every voyage made under it.

ART. 130. *Effect of Unreasonable Delay.* – (1) If the unreasonable delay is such as to frustrate the commercial object of the charterer in chartering the vessel, then the charterer may rescind the contract and claim damages.

(2) If the delay is not so serious as to have the above result, the charterer can merely claim damages for the delay, unless the delay is due to excepted perils.

ART. 131. *No Unjustifiable Deviation.* – The implied undertaking that the vessel shall proceed without unjustifiable deviation means that the vessel shall proceed on the voyage without departure from the prescribed route, and if there is none, from the usual and reasonable route.

ART. 132. *Usual and Reasonable Route.* – Unless the route is fixed in the contract, the usual and reasonable route is the direct geographical route between the places specified in the contract, or one established by mercantile usage, or the most natural, direct, and advantageous route.

ART. 133. *When Deviation is Justified.* – Deviation is considered justified in the following cases:

(a) Where it is for the purpose of saving human life;

(b) Where it is reasonably necessary for the safety of the vessel or its cargo; or

(c) Where it is due to circumstances beyond the control of the master.

ART. 134. *Effect of Unjustifiable Deviation.* – Where there has been unjustifiable deviation, the charterer can either cancel the contract or treat the contract as still subsisting, reserving his right to damages.

In case he elects to cancel the contract, the charterer can claim the delivery of his goods and shall be liable only up to the proportional amount of the freight. The shipowner shall be liable for any loss or damage to the cargo unless the loss or damages is due to *force majeure* or

the inherent vice of the cargo or that the loss or damage would have occurred even if there had been no deviation.

In case the charterer elects to treat the contract as still subsisting, the shipowner shall have the right to payment of the stipulated freight but he shall be liable for damages resulting from the deviation.

ART. 135. *Implied Undertaking by the charterer.* – Unless the shipowner knows or ought to know the dangerous character of the goods, there is an implied warranty by the charterer-shipper that the goods are fit for carriage in the ordinary way and are not dangerous.

For this purpose, dangerous cargo means not only cargo, which by its very nature may endanger the safety of the vessel, but also those, which owing to legal impediments as to their carriage or discharge may involve detention of the vessel.

ART. 136. *Effect of Shipping Dangerous Goods.* – Subject to the provisions of Article 105 of this Code:

(1) If the charterer ships goods, without notice to the shipowner of its dangerous character, the charterer is liable for any loss or damages it may cause;

(2) If notice is given to the shipowner or his agent of the dangerous character of the goods or when the shipowner or his agent has full opportunities of observing the dangerous character of such goods, the charterer is not liable.

ART. 137. *Undertaking to Proceed to Port of Loading.* – (1) If there is no agreement that the vessel shall arrive at the port of loading at a fixed date, the shipowner undertakes to use reasonable diligence to proceed thereto and will be liable for damages if he fails to do so, unless the delay in or failure to arrive is due to an excepted peril or *force majeure*.

(2) If a definite date is final for such arrival at the port of loading or if a canceling date is fixed and the vessel does not arrive by that date, the charterer may refuse to load and may cancel the contract. He shall also have the right to claim damages therefor, unless the delay in arrival or failure to arrive is due to an excepted peril or *force majeure*.

ART. 138. *Duties of Shipowner.* – The shipowner shall:

(a) send the vessel to the agreed or usual place of loading or unloading and give notice of its readiness to load or unload to the charterer, in which case laytime starts to run from the receipt of such notice by the charterer;

(b) load the cargo provided by the charterer in accordance with the charter party or, in the absence of stipulation, in accordance with existing practices of the port; and

(c) unload the cargo in accordance with the customary practices of the port and deliver it to the person entitled to receive it.

ART. 139. *Duties of the Charterer.* – The charterer shall:

(a) designate a safe port or berth for loading and unloading;

(b) provide complete cargo which the vessel can safely carry and which would not subject the vessel to unnecessary restraint by public authorities;

(c) pay freight and dead freight in accordance with the stipulation of the charter parties.

ART. 140. *Safe Port or Berth.* – A safe port is a port where the vessel can enter, remain, and depart without damaging itself or its equipment.

The berth designated by the charterer must be safe and reachable on arrival of the vessel.

Section Three – *Time Charter Party*

ART. 141. *Time Charter Defined.* – A "time charter" is a charter party for the hiring of a specific vessel for a particular period under the commercial management of charterer, but the navigational control of the vessel remains with the owner.

ART. 142. *Allocation of Expenses.* – Unless otherwise stipulated in the charter party, the owner shall provide and pay for all provisions and wages, insurance of the vessel, all deck and engine room stores, and shall maintain the vessel in a thoroughly efficient state in hull and machinery during the charter period. All other expenses incidental to the operation and commercial management of vessel shall be borne by the charterer.

ART. 143. *Warranty of Performance.* – The owner warrants that the vessel is capable of steaming in good weather and smooth water at a stated speed at a stipulated rate of consumption of bunker oil or fuel.

ART. 144. *Control Over the Master.* – The master shall prosecute all voyages with the utmost dispatch and render customary assistance with the vessel's crew. He shall be under the orders of the charterer as regards the employment of the vessel, the appointment of ship agents and other similar arrangements.

The owner shall be responsible for any loss or damage of the cargo caused by negligence or willful misconduct of the master and/or the crew. If the charterer has reasons to complain about the conduct of the master, officers, or engineers, the owner, on receiving the complaint, shall investigate the matter and make a change in the appointments, if necessary and practicable.

ART. 145. *Allocation of Risks.* – The shipowner and charterer may agree on how to apportion their liabilities under the time charter. In the absence of stipulations to the contrary, the charterer shall indemnify the owner against all consequences or liabilities arising from the master, officers or agents signing bills of lading or other documents or otherwise complying with his orders or for overloading, as well as from any irregularity in the documents of the vessel caused by the charterer or his agent.

ART. 146. *Nonpayment of Hire.* – Unless otherwise stipulated, the shipowner shall have the right to withdraw the vessel from the services of the charterer, for default in payment of the hire, provided that he gives notice to that effect to the charterer, and that the latter fails to pay the same within forty-eight hours after said notice.

ART. 147. *Off-Hire.* – (1) Hire shall be suspended for delays arising from specific events or conditions not attributable to the charterer which deny the latter the full use of the vessel to the extent that time is actually lost. Unless otherwise stipulated, off-hire period begins on the happening of any of the following incidents:

(a) Dry-docking or other necessary measures to maintain the efficiency of the ship;

(b) Crew deficiencies and strikes;

(c) Lack or deficiency of stores;

(d) Breakdown of machinery;

(e) Damage to the hull; and

(f) Accidents or any other cause which hinders or prevents the full working of the vessel for more than twenty-four (24) hours.

(2) The off-hire period shall terminate when the vessel's efficiency or full use is restored. However, where the vessel deviated from its course for repairs, and the repairs have been completed at the port of refuge, off-hire does not terminate until the vessel is in the same position as it was when the event rendering the vessel off-hire occurred, or until the vessel has regained the line of the voyage, whichever is the shorter distance to the port of destination.

ART. 148. *Redelivery of Vessel.* – The time charterer is obliged to redeliver the ship in the same condition as it was on delivery, except those due to ordinary wear and tear. The condition of the ship on delivery and redelivery shall be based on the "on-hire" and "off-hire" survey reports.

Section Four – *Bareboat Charter Party*

ART. 149. *Bareboat Charter Party defined.* - A bareboat charter party is a contract whereby the charterer takes over the control, management, manning and provisioning of the vessel.

ART. 150. *Form and Contents.* – A bareboat charter party must be in writing, signed by the parties, or by their authorized representative, and shall include among others, the following:

(1) Name, surname, and domicile of the owner,

(2) Name, surname, and domicile of the charterer,

(3) Type, name, class, and tonnage of the vessel,

(4) Its flag, country of registry, call sign, year and place and built,

(5) Port and time of delivery, canceling date, and port of redelivery, and

(6) Trading limits, period, hire, and frequency of dry-docking.

ART. 151. *Obligations of the Owner.* – The owner is obliged:

(a) to deliver the vessel properly documented and seaworthy in every respect ready in hull and machinery fit for the use intended at the port and time stipulated.

(b) to maintain the charterer in the peaceful and adequate enjoyment of the charter for the entire duration of the contract.

(c) Unless otherwise stipulated, to bear the expenses for repairs and replacements occasioned by latent defects in the vessel, her machinery or appurtenances existing at the time of delivery, provided such defects have manifested themselves within eighteen months after delivery.

ART. 152. *Obligations of the Charterer.* – The charterer is obliged:

(a) To pay the charter hire according to the terms stipulated;

(b) To maintain the vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition, and in accordance with good commercial maintenance practice;

(c) To man, provide victuals, and to operate, navigate, supply and fuel the vessel at his own expense.

(d) To make no structural changes in the vessel or in the machinery, boilers, appurtenances or spare parts, without, in each instance, first securing the owner's approval thereof;

(e) To bring to the knowledge of the owner, within the shortest possible time, every usurpation or untoward act which any third person may have committed or may be openly preparing to carry out upon vessel;

(f) To redeliver the vessel, all its outfit, equipment, and appliances in the same or as good structure, state, condition, and class as that in which it was delivered, save ordinary wear and tear.

Section Five - *Volume Contract of Affreightment*

ART. 153. *Definition.* – A volume contract of affreightment is a charter party for the carriage of a large quantity of cargo at an agreed schedule of shipments over a long period of time.

ART. 154. *Obligation of the Owner.* – The owner undertakes to carry on vessels owned or chartered by him a specified quantity of cargo during a specified period of time, in lots of specified minimum and maximum weight or volume, at the option of either the owner or charterer, to specified ports or areas of loading and unloading.

ART. 155. *Period of Contract.* – The period of the contract shall be expressly provided, indicating the first layday for the initial vessel and the canceling date for the final vessel.

ART. 156. *Schedule and Quantity of Shipment.* – (1) The parties shall agree on the schedule of shipments and nomination of tonnage.

(2) The total quantity to be shipped shall state the minimum and maximum weight or volume, giving the charterer the option to increase the same, subject to the determination by the shipowner of the exact quantity to be carried.

(3) The shipowner shall not be bound to carry any shipment, which is less than the minimum quantity agreed upon in the contract.

ART. 157. *Failure to Give Program of Shipment.* – If the charterer fails to give specific program of shipment in due time, any expenses incurred or any loss suffered by the shipowner shall be refunded by the charterer.

ART. 158. *Nomination of Vessels.* – The shipowner shall nominate vessels with detailed specifications, depending on the type of transportation agreed upon. The nomination shall give the vessel's name, the approximate quantity of cargo required, and first layday for such vessel.

ART. 159. *Failure to Nominate Tonnage.* – Unless otherwise agreed upon by the parties, should the owner fail to nominate tonnage in accordance with the provisions of the contract, the charterer shall have the option to postpone the shipment within the period agreed upon, or cancel the agreement.

ART. 160. *Charterer's Refusal of Tonnage.* – If the charterer has refused tonnage validly nominated in due time, the shipowner shall have the option to postpone the shipment within the period of the contract or to cancel the agreement.

Chapter 4 – *Non-Vessel-Operating-Common-Carrier*

ART. 161. *Definitions.* – (1) A "***freight forwarder***" is a person who, for compensation, without being a common carrier, holds himself out to the general public, to procure transportation of goods, assemble and consolidate shipments of such goods, perform or provide for the performance of break-bulk and distribution with respect to such consolidated shipments.

(2) A "***Non-Vessel-Operating-Common-Carrier***" or NVOCC is a freight forwarder who assumes responsibility for the transportation of such goods from the point of receipt to the point of destination, utilizing for such transportation, the services of common carriers.

ART. 162. *Issuance of Bill of Lading and Manifest.* – The NVOCC shall prepare an accurate bill of lading for each shipment consigned for transportation to a common carrier, and a copy thereof furnished the consignor and consignee of such shipment.

He shall also prepare an accurate manifest, showing every individual shipment included in each consolidated shipment consigned for transportation to a common carrier.

ART. 163. *Liability.* – The NVOCC assumes the liability of a common carrier with respect to the shipper, but in relation to the common carrier, the NVOCC is the shipper.

ART. 164. *Options.* – The NVOCC may accept a particular shipment as an agent of the shipper or as the agent of a common carrier, in the event that a volume of freight adequate to permit a consolidated shipment cannot be assembled.

Chapter 5 – *Towage*

ART. 165. *Definition of Terms.* – The following terms used in this Chapter shall have these meaning, unless the context or usage of the term indicates otherwise:

(a) "***Tow***" is any vessel that is the object of towage.

(b) "***Towage***" or "***towing***" is the hiring of a vessel in connection with the holding, pushing, pulling, moving, escorting or guiding of a vessel owned by another, not constituting a salvage operation.

(c) "***Tug***" is any vessel designed for towage.

ART. 166. *Harbor Towage.* – In harbor towage, navigation and maneuvering are conducted under the direction and responsibility of the tow owner or the hirer.

ART. 167. *Liability of the Tow.* – The tow owner or hirer shall indemnify the tug owner against any claim by any person not a party to the contract of towage for any loss, damage, delay, personal injury or death, unless the cause is due to the negligence of the tug.

The tug owner shall not be liable to the tow owner for any loss, damage or delay suffered by the tow or for any personal injury or loss of life suffered by any person on the tow, unless the cause is due to the negligence of the crew of the tug.

ART. 168. *Termination of Contract.* – If the tow is in serious danger of being lost or damaged, and the cause thereof is not due to any breach of the contract by the tug owner, the contract of towage shall be terminated, and the relationship between the tug and the tow shall be governed by the law on salvage. If the danger is due to a breach of contract of towage on the part of the tug, the contract shall be terminated at the option of the tow owner, without prejudice to the tug owner's liability for damages.

TITLE IV - MARINE INSURANCE

Chapter 1 – *Scope and Coverage of Marine Insurance*

ART. 169. *Marine insurance defined.* – A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured in manner and to the extent thereby agreed, against marine losses, i.e. losses incident to marine adventure.

ART. 170. *Mixed sea and land risks.* – (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launching of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provision of this Title insofar as applicable, shall apply thereto: *Provided, however,* that nothing in this Title shall alter or affect any law applicable to a contract of insurance other than marine insurance.

ART. 171. *Marine adventure defined.* – (1) Subject to this Title, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where –

(a) any ship, equipment on ships, cargo, cargo containers or other movables are exposed to marine perils. Such property is referred to as "insurable property";

(b) the earning or acquisition of any freight, wages, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements is endangered by the exposure of insurable property to marine perils;

(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of marine perils.

ART. 172. *Marine perils defined.* – "Marine perils" mean perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, embargoes, blockades, jettisons, barratry of the master and mariners, and any other perils, either of the like, kind or which may be designated by the policy.

Chapter 2 – *Insurable Interest and Insurable Value*

ART. 173. *Wagering or gaming contracts.* – (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract –

(a) where the assured has no insurable interest as defined by this Title, and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like them: *Provided,* that where there is no possibility of salvage, a policy may be effected without benefit or salvage to the insurer.

ART. 174. *Insurable interest defined.* – (1) Subject to the provisions of this Title, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence

of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

Art. 175. *When interest must attach.* – (1) The assured must be interested in the subject matter insured at the time of the loss though he need not be interested when the insurance is effected: *Provided* that where the subject-matter is insured "lost or not lost", the assured may recover for loss occurring during the period covered by the insurance, notwithstanding that the loss occurred before the contract of insurance was concluded unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

ART. 176. *Defeasible or contingent interest.* – (1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

ART. 177. *Who has Insurable Interest.* – (a) *Re-insurance.* – The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it. Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance.

(b) *Bottomry.* – The lender of money on bottomry or *respondentia* has an insurable interest in respect of the loan.

(c) *Master's and seamen's wages.* – The master or any member of the crew of a ship has an insurable interest in respect of his wages.

(d) *Advance freight.* – In the case of advance freight, the person advancing the freight has an insurable interest, insofar as such freight is not repayable in case of loss.

(e) *Charges of insurance.* – The assured has an insurable interest in the charges of any insurance that he may effect.

(f) *Mortgaged property.* – Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage. A mortgagee, consignee, or other person having an interest in the subject matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(g) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

ART. 178. *Measure of insurable value.* – Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

(a) in insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole. The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for the trade;

(b) in insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight exclusive of primage at the risk of the assured, plus the charges of insurance;

(c) in insurance on goods or merchandise, the insurable value is the actual cost to the assured or its market value at the time and place of lading of the property insured, plus the expenses of and in incidental to shipping and the charges of insurance upon the whole;

(d) in insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

Chapter 3 – *Disclosure and Representations*

ART. 179. *General Principle.* – A contract of marine insurance is based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

ART. 180. *Disclosure by assured.* – Subject to the provisions of the following Article, the assured must disclose to the insurer, before the contract is concluded, every material circumstance that is known to the assured. The assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

ART. 181. *What constitutes material fact.* – (1) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. The term "circumstance" includes any communication made to, or information received by the assured.

(2) In the absence of inquiry, the following circumstances need not be disclosed, namely:

(a) any circumstance which diminishes the risk;

(b) any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business ought to know;

(c) any circumstance as to which information is waived by the insurer;

(d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

ART. 182. *Disclosure by agent effecting insurance.* – Subject to the provisions of the preceding Article, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer -

(a) every material circumstance which is known to himself. An agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and

(b) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

ART. 183. *Representations pending negotiation of contract.* – (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue, the insurer may avoid the contract.

(2) A representation is material, which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true, if it be substantially correct; that is, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it be made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation be material or not is, in each case, a question of fact.

ART. 184. *Assessed Insurable Value.* – Where the insurable value by agreement between the parties has been fixed at a definite amount, the assessment is not binding on the insurer if the person affecting the insurance has given misleading information concerning those particulars of the subject-matter insured, which were of importance for the insurer to know for the purpose of the valuation.

ART. 185. *Over-Insurance.* – Where the sum insured exceeds the insurable value, the insurer shall compensate the loss up to the insurable value.

Where the interest is over-insured with fraudulent intent, the contract is not binding on the insurer. Fraudulent intent is presumed when the assured had knowledge that the property was grossly over-insured at the time of effecting the insurance.

Chapter 4 – *Perfection of Contract*

ART. 186. *When contract is deemed to be concluded.* – A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract.

ART. 187. *When premium payable.* – Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium.

ART. 188. *Policy effected through broker.* – (1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has acted as broker for a person who purports to be the assured, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred, he had reason to believe that such person was only an agent of the owner of the insured property.

ART. 189. *Effect of receipt on policy.* – Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.

Chapter 5 – *The Policy*

ART. 190. *Contract must be embodied in policy.* – Subject to the provisions of the preceding Articles, a contract of marine insurance is inadmissible in evidence unless it is

embodied in a marine policy in accordance with this Title. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

ART. 191. *What policy must specify.* – A marine policy must specify:

(a) the name of the assured, or of the person who effects the insurance on his behalf;

(b) the identity or nature of the subject-matter insured;

(c) the risks insured against;

(d) the amount of premium;

(e) the sum insured or the maximum amount for which the insurer may be liable under the contract;

(f) the interest of the assured in the property insured, if he is not the absolute owner thereto; and

(g) the period during which the insurance is to continue.

ART. 192. *Signature of insurer.* – (1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation, the corporate seal may be sufficient, but nothing in this Article shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

ART. 193. *Voyage and time policies.* – Where the contract is to insure the subject matter "at and from", or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject matter for a definite period of time, the policy is called a "time policy". A contract for both voyage and time may be included in the same policy.

ART. 194. *Designation of subject matter.* – (1) The subject matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject matter insured need not be specified in the policy.

(3) Where the policy designates the subject matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this Article, regard shall be had to any usage regulating the designation of the subject matter insured.

ART. 195. *Valued policy.* – (1) A policy may be either valued or unvalued.

(2) A valued policy is a policy that specifies the agreed value of the subject-matter insured.

(3) Subject to the provisions of this Title, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

ART. 196. *Unvalued policy.* – An unvalued policy is a policy which does not specify the value of the subject matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner herein before specified.

ART. 197. *Floating policy by ship or ships.* – (1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declaration may be made by indorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declaration must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

ART. 198. *Premium to be arranged.* – (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium, as determined by reference to the main insurance market, is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium, as determined by reference to the main insurance market, is payable.

Chapter 6 – *Warranties*

ART. 199. *Nature of warranty.* – (1) A warranty, as used in this Chapter, means a promissory warranty; that is, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negates the existence of a particular state of facts.

(2) A warranty is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

ART. 200. *When breach of warranty excused.* – (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured can avail himself of the defense that the breach has been remedied, and the warranty complied with, before loss, unless such breach contributed to the risk.

(3) A breach of warranty may be waived by the insurer.

ART. 201. *Express warranties.* – (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in, or written upon, the policy or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith.

ART. 202. *Warranty of neutrality.* – (1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral", there is also an implied condition that, so far as the assured can control the matter, it shall be properly documented; that is, that it shall carry the necessary papers to establish its neutrality, and that he shall not falsify or suppress its papers, use simulated papers, or carry any documents which cast reasonable suspicion thereon. If any loss occurs through breach of this condition, the insurer may avoid the contract.

ART. 203. *No implied warranty of nationality.* – There is no implied warranty as to the nationality of a ship, or that its nationality shall not be changed during the risk.

ART. 204. *Warranty of good safety.* – Where the subject matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

ART. 205. *Warranty of seaworthiness of ship.* – (1) In a voyage policy, there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that it shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage, the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when it is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy, there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

ART. 206. *No implied warranty that goods are seaworthy.* – (1) In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables, there is an implied warranty that at the commencement of the voyage, the ship is not only seaworthy as a ship, but also that it is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

ART. 207. *Warranty of legality.* – There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

Chapter 7 – *The Voyage*

ART. 208. *Implied condition as to commencement of risk.* – (1) Where the subject matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded; but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced, the insurer may avoid the contract.

(2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

ART. 209. *Alteration of port of departure.* – Where the place of departure is specified by the policy, and the ship, instead of sailing from that place, sails from any other place, the risk does not attach.

ART. 210. *Sailing for different destination.* – Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

ART. 211. *Change of voyage.* – (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change; that is, as from the time when the determination to change it is manifested.

ART. 212. *Deviation.* – (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation.

(2) There is a deviation from the voyage contemplated by the policy –

(a) where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(b) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

ART. 213. *Several ports of discharge.* – (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, it must proceed to them, or such of them as it goes to, in the order designated by the policy. If it does not, there is a deviation.

(2) Where the policy is to "ports of discharge", within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them, in their geographical order. If it does not, there is a deviation.

ART. 214. *Delay in voyage.* – In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

ART. 215. *Excuses for deviation or delay.* – (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused –

(a) where authorized by any special term in the policy;

(b) where caused by circumstances beyond the control of the master and his employer;

(c) where reasonably necessary in order to comply with an express or implied warranty;

(d) where reasonably necessary for the safety of the ship or subject-matter insured;

(e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger;

(f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume its course, and prosecute its voyage, with reasonable dispatch.

Chapter 8 – *Assignment of Policy*

ART. 216. *When and how policy is assignable.* – (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defense arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

ART. 217. *Assignment of Interest.* – Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights

under the policy, unless there be an express or implied agreement with the assignee to that effect. This provision does not affect a transmission of interest by operation of law.

ART. 218. *Assured who has no interest cannot assign.* – Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

Nothing in this Article affects the assignment of a policy after loss.

Chapter 9 – *Loss and Abandonment*

ART. 219. *Included and excluded losses.* – (1) Subject to the provisions of this Title, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against.

(2) In particular, –

(a) the insurer is not liable for any loss attributable to the willful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Art. 220. *Willful misconduct defined.* – Willful misconduct is the personal act or omission of the assured with intent to cause the loss, or with recklessness and knowledge that such loss would probably result.

ART. 221. *Inherent vice defined.* – Inherent vice is the natural propensity or tendency found in all property of the same kind as the insured property to suffer damage or deterioration within the same period.

ART. 222. *Combination of perils.* – Where the loss has been caused by a combination of different perils and one or more of these perils are not covered by the insurance, the loss shall be apportioned proportionally over the several perils according to the influence which each of them must be assumed to have had on the occurrence and extent of the loss, and the insurer shall only liable for that part of the loss which is attributed to the perils covered by the insurance.

ART. 223. *Combination of marine and war perils.* – Where the loss has been caused by a combination of marine and war perils, the whole loss shall be deemed to be caused either by the marine or war perils, whichever is considered dominant. Where neither the marine nor the war perils can be considered dominant, both shall be deemed to have had equal influence on the occurrence and extent of the loss.

ART. 224. *Losses deemed to be caused entirely by war perils.* – War perils shall always be deemed to be the dominant cause of:

(a) loss attributable to the ship being damaged through the use of other implements of war for war purposes, or in the course of military maneuvers in times of peace or during armed neutrality;

(b) loss attributable to the ship, in consequence of war or warlike conditions, having an alien crew placed aboard, depriving the Master, wholly or partly, of his free command of the ship;

(c) loss of or damage to a life-boat attributable to its having been swung out owing to war perils, and damage to the ship caused by such boat.

ART. 225. *Loss attributable either to marine or to war perils.* – If it is evident that a loss is occasioned either by marine perils or by war perils but impossible to identify either marine or war perils as the more probable cause, both shall be deemed to have had equal influence on the occurrence and extent of the loss.

ART. 226. *Kinds of loss.* – (1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

ART. 227. *Actual total loss defined.* – (1) Where the subject matter insured is destroyed, or so damaged that from a commercial point of view, it has ceased to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss, no notice of abandonment need be given.

ART. 228. *Missing ship.* – Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time, no news of it has been received, an actual total loss may be presumed.

ART. 229. *Effect of transshipment, etc.* – Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and re-shipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment.

ART. 230. *Constructive total loss defined.* – (1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure, which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss –

(i) where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he can recover the ship or goods, as the case may be, or (b) the cost of recovering the ship or goods as the case may be would exceed their value when recovered; or

(ii) in the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired;

(iii) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival; or

(iv) the contemplated adventure is frustrated by reason of loss of or damage to the ship or physical destruction of ports, in case of cargo insured.

ART. 231. *Effect of constructive total loss.* – Where there is a constructive total loss, the assured may either treat the loss as a partial loss, or abandon the subject matter insured to the insurer and treat the loss as if it were an actual total loss.

ART. 232. *Notice of abandonment.* – (1) Subject to the provisions of this Article, where the assured elects to abandon the subject matter insured to the insurer, he must give notice of abandonment. If he fails to do so, the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given orally or in writing, within a reasonable time after receipt by the assured of reliable information of the loss. If notice was given orally, a written notice shall be given within seven days from such oral notice.

(3) Notice of abandonment must be explicit, specifying the cause of the abandonment and indicating the intention of the assured to abandon his interest in the subject matter unconditionally to the insurer.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment, in which case, the

insurer shall be liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have been received by the assured.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer for an unreasonable length of time after notice shall be construed as an acceptance.

(6) Where notice of abandonment is accepted, the abandonment is irrevocable, unless the ground upon which it was made proves to be unfounded. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

ART. 233. *Effect of abandonment.* – (1) Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer therefore is entitled to any freight in course of being earned, and which is earned subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

Chapter 10 – *Measure of Indemnity*

ART. 234. *Definitions.* – (1) "***Particular average loss***" is a partial loss of the subject matter insured, caused by a peril insured against, and which is not a general average loss.

(2) "***Particular charges***" are expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and salvage

charges. They include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

(3) "***General average loss***" is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice. There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in the common adventure.

(4) "***Salvage charges***" means the charges recoverable by a salvor independently of contract. Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recover as a loss by those perils.

ART. 235. *Extent of liability of insurer for loss.* – (1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

ART. 236. *Total loss.* – Subject to the provisions of this Title and to any express provision in the policy, where there is a total loss of the subject matter insured –

(a) if the policy be a valued policy, the measure of indemnity is the sum fixed by the policy;

(b) if the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject matter insured.

ART. 237. *Partial loss of ship.* – Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

(a) where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less customary deductions, but not exceeding the sum insured in respect of any one casualty;

(b) where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregated amount shall not exceed the cost of repairing the whole damage, computed as above;

(c) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

ART. 238. *Partial loss of freight.* – Subject to any express provision in the policy, where is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

ART. 239. *Partial loss of goods, merchandise, etc.* – Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows:

(a) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is a proportionate part of the sum fixed by the policy;

(b) where part of the goods, merchandise, or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost;

(c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is the proportionate part of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy based on the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound.

ART. 240. *Apportionment of valuation.* – (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole.

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

ART. 241. *Liability of Insurer for General Average.* – (1) Where there is general average loss, the party on whom it falls is entitled, subject to the conditions imposed by this Code, to a ratable contribution from other parties interested, and such contribution is called a general average contribution.

(2) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss, without having enforced his right of contribution from the other parties liable to contribute.

(3) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(4) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

(5) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

ART. 242. *Apportionment of general average contributions and salvage charges.* – (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject matter liable to contribution is insured for its full contributory value; but, if such subject matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under-insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the same principle.

ART. 243. *Liabilities to third parties.* – Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

ART. 244. *All other losses.* – (1) Where there has been a loss in respect of any subject matter not expressly provided for in the foregoing provisions, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Chapter relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss, the whole or any part of the subject matter insured was not at risk under the policy.

ART. 245. *Particular average warranties.* – (1) Where the subject matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject matter insured in warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and laboring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject matter is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

ART. 246. *Successive losses.* – (1) Unless the policy otherwise provides, and subject to the provisions of this Title, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss; *Provided,* that nothing in this Article shall affect the liability of the insurer under the suing and laboring clause.

ART. 247. *Suing and laboring clause.* – (1) Where the policy contains a suing and laboring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly and reasonably incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges are not recoverable under the suing and laboring clause, but expenses or services in the nature of salvage rendered by the assured or his agents, or any person employed by them, for the purpose of averting a peril insured against, are recoverable under this clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and laboring clause.

(4) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimizing a loss, and to take any rights of recourse against third parties in respect of the loss. The insurer shall not be liable to indemnify the assured to the extent that the assured's failure to comply with these obligations increased the loss or prejudiced any right of recovery. Nevertheless, the insurer is not exonerated by the negligence of the master, officers or crew.

Chapter 11 – *Rights of Insurer on Payment*

ART. 248. *Right of subrogation.* – Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.

Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, by such payment for the loss.

ART. 249. *Double insurance.* – (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Title, the assured is said to over-insured by double insurance.

(2) Where the assured is over-insured by double insurance –

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Title;

(b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy, without regard to the actual value of the subject matter insured;

(c) where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

(d) where the assured receives any sum in excess of the indemnity allowed by this Title, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

ART. 250. *Right of contribution.* – (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to similar remedies as a surety who has paid more than his proportion of the debt.

ART. 251. *Effect of under-insurance.* – Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

Chapter 12 – *Return of Premium*

ART. 252. *Enforcement of return.* – Where the premium or a proportionate part therefore is, by this Title, declared to be returnable, –

(a) if already paid, it may be recovered by the assured from the insurer; and

(b) if unpaid, it may be retained by the assured or his agent.

ART. 253. *Return by agreement.* – Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

ART. 254. *Return for failure of consideration.* – (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular –

(a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;

(b) where the subject matter, or part thereof, has never been imperiled, the premium, or as the case may be, a proportionate part thereof, is returnable; *Provided*, that where the subject matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival.

(c) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy affected by way of gaming or wagering;

(d) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;

(e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(f) subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable, unless the double insurance is effected knowingly by the assured; for this purpose, the person effecting the insurance is entitled to demand a proportionate reduction of the sum insured as soon as he becomes aware that the total sums insured will exceed the indemnity allowed by this title. The reduction takes

effect from the moment the demand reaches the insurer, *Provided, however*, that if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy.

TITLE V – *MARITIME FRAUD*

ART. 255. *Declaration of policy.* – It is the policy of the State to consider maritime fraud as inimical to the best interest of the nation and international maritime commerce, and towards this end support efforts of every state to minimize, if not suppress and prevent, the occurrence of fraud and other deceits in maritime commerce.

ART. 256. *Extraterritorial application.* – This Title shall apply to maritime fraud, which shall be committed not only within Philippine territory but also outside its jurisdiction, in any of the following cases:

(a) Where the offender is a national or a resident of the Philippines or is under the custody of the Philippine government;

(b) Where the offense was committed, planned, or set in motion within the Philippines;

(c) Where it affects the national interest of the State;

(d) Where the injured party is a political subdivision, instrumentality or agency of the Philippine government, including government-owned or controlled corporation or a national of the Philippines;

(e) Where a Philippine flag vessel is used as an instrument of the offense;

(f) Where the offender is on board a vessel or airship, which docked or landed at or on Philippine territory.

ART. 257. *Maritime documents defined.* – For purposes of this Title, the term "***maritime documents***" shall include bills of lading, charter party, marine insurance, commercial letters of credit and other similar documents used in maritime commerce.

ART. 258. *Maritime fraud.* – The penalty of imprisonment for not less than six years nor more than twelve years or a fine not less than the amount of the actual damage nor more than

three times of the same, or both, shall be imposed upon any person, who, with intent to defraud, shall:

(a) issue, alter or substitute any bill of lading, letter of credit, commodity sales contract or other maritime document to misrepresent the quality, quantity, description or existence of goods for shipment or shall knowingly use, negotiate, or transfer the same for value to the prejudice of another;

(b) print, photograph, or in any manner reproduce any maritime document or a colorable "imitation" thereof, and shall use or allow the use of such document;

(c) affix, annex, or use in connection with any goods for maritime transport or services, or any container or containers for goods, a false designation or origin, or any false description or representation, and shall sell such goods or services;

(d) being the charterer of a vessel, sub-charter the same and collect the freight in full, and shall not pay the shipowner the hire under the charter party, resulting in the retention of the cargo shipped by the sub-charterer, to answer for the hire or freight under the charter party; or

(e) being the shipowner, ship operator or assured, either as principal or agent, in order to collect the insurance on the vessel and/or cargo, scuttle or sink the vessel to conceal the theft of cargo, or the fact of its non-existence or the fact of deviation of the vessel, or to make it appear that the loss was due to marine peril.

TITLE VI – *ACCIDENTS AT SEA*

Chapter 1 – *Arrivals under Stress*

ART. 259. *When Necessary.* – The ship may head for the nearest and most convenient port if during the voyage or trip, the ship cannot continue to the port of destination on account of lack or provisions, well-founded fear of seizures, pirates, or bad weather conditions, or by reason of any accident at sea disabling it to navigate.

Art. 260. *Expenses of Arrival.* – The expenses of arrival under stress shall always be for the account of the carrier, unless they constitute general average. However, the carrier shall not be liable for damages caused by such delay, if the arrival under stress is legitimate.

ART. 261. *When Arrival Not Legitimate.* – An arrival shall not be considered legitimate in the following cases:

(a) If the lack of provisions should arise from the failure to take the necessary provisions for the voyage or trip according to usage and custom or if they should have been rendered useless or lost through bad stowage or negligence in their care.

(b) If the risk of enemies or pirates should not have been well known, manifest, and based on positive and provable facts.

(c) If the defect of the vessel should have arisen from the fact that it was not repaired, rigged, equipped, and prepared in a manner suitable for the voyage or trip, and

(d) Whenever malice, negligence, want of foresight or lack of skill on the part of the master exists in the act causing the damage.

ART. 262. *Unloading of Cargo.* – (1) If in order to make repairs on the vessel, it should be necessary to unload some or all of the cargo, the expenses of unloading and reloading shall be for the account of the carrier unless they constitute general average.

(2) If there is danger that the cargo may suffer damage, and it should be necessary to unload them, the expenses shall be for the account of the owners of the cargo.

(3) If the unloading is necessary for both purposes, the expenses shall be borne by the carrier and the cargo owners, in proportion to the value of the ship and the cargo.

ART. 263. *Damaged Cargo.* – If the entire cargo or part thereof should appear to be damaged, or there should be imminent danger thereof, the master shall notify the shipper and the consignee of such fact and await instructions. In default of instructions, the master may proceed to sell perishable goods at a public sale and hold the proceeds in trust for the owner of the goods, after deducting the expenses of the sale.

Chapter 2 – *General Average*

ART. 264. *Kinds of Average.* – Averages may be either particular or general.

ART. 265. *Particular Averages Defined.* – Particular averages shall include all the expenses, damages, and losses incurred or caused to the ship or to the cargo which have not

inured to common benefit of all the persons interested in the ship and the cargo, and shall be borne by their respective owners, without prejudice to the right of the aggrieved party to recover the corresponding indemnity from the party at fault.

ART. 266. *General Averages Defined.* – There is general average when and only when any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety, for the purpose of preserving from peril the property involved in a maritime voyage and more particularly any of the following:

(a) The effects jettisoned to lighten the ship whether they pertain to the cargo, ship or crew, where such effects are carried in accordance with maritime custom;

(b) Damage done to the ship or cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water entering through the opening of the ship's hatches or other opening made for the purpose of making a jettison for the common safety;

(c) Damage done to the ship or cargo by intentionally stranding for the common safety or scuttling the ship to extinguish a fire on board;

(d) The expenses of removing or transferring a portion of the cargo in order to lighten the ship in case of a storm and place it in a condition to enter a port or roadstead, and the damage resulting therefrom to the goods removed or transferred;

(e) Expenses of arrival under stress, in consequence of accident, sacrifice or other extraordinary circumstances which render such act necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, including the wages and maintenance of the officers and crew, fuel and provisions consumed during the period of detention until the ship shall be ready to proceed upon its voyage or trip, and the cost of unloading and reloading the cargo and storage charges when such unloading is necessary to enable such repairs to be made for the safe prosecution of the voyage;

(f) The expenses caused in order to float a ship intentionally stranded for the purpose of saving it;

(g) Damage caused to any machinery or boilers of the stranded ship which was in a position of peril in the effort to refloat it for the common safety;

(h) Expenditure on account of salvage, to the extent that the salvage operations were undertaken for the purpose of preserving from peril the property involved in maritime adventure, and

(i) Expenses of the liquidation of the average.

ART. 267. *Contribution.* – In order to satisfy the amount of general averages, all the persons having an interest in the ship and cargo at the time of the occurrence of the average shall contribute: *Provided, however*, that there can be no general average contribution when the peril arose through the fault of one of the parties to the maritime voyage or when the sacrifice or expenditure was not useful or beneficial to the party called upon to contribute.

The burden of proof is on the master to show that the loss or expense claimed is properly allowable as general average.

ART. 268. *Requisites for Jettisoned Goods as General Average.* – In order that the goods jettisoned may be included in the general average and the owners thereof be entitled to indemnity, it shall be necessary insofar as the cargo is concerned that their existence on board be proven by means of the bill of lading, and with regards to those belonging to the ship, by means of the inventory prepared before departure.

ART. 269. *Proof and Liquidation of Averages.* – Those interested in the proof and liquidation of averages may mutually agree and bind themselves at any time with regard to the liability, liquidation, and payment thereof. In the absence of such an agreement, the provisions of this Chapter shall apply.

ART. 270. *Venue.* – The venue for proving the average shall be in the port where the repairs are made, should any be necessary, or in the port of unloading. The liquidation shall be in the port of arrival, of unloading, or in the port of destination at the option of the master.

ART. 271. *Procedure.* – (1) At the instance of the master, the adjustment, liquidation, and distribution of general averages may be held extra-judicially, with the consent of all the interested parties. Within seventy-two (72) hours following the arrival of the ship at the port where liquidation is to be held, the master shall convene all the persons interested in order to decide on

whether the adjustment or liquidation of the general average is to be made by experts and liquidators appointed by them.

(2) If they cannot agree the master, the ship agent or any of the shippers shall apply to the court in the port where liquidation is to be held.

ART. 272. *Valuation of Objects for Contribution.* – (1) Merchandise saved which are to contribute to the payment of general average shall be valued at the current price at the port of unloading, deducting the freightage, customs duties, and expenses of unloading, without considering the value appearing in the bill of lading, unless there is an agreement to the contrary. If the liquidation is to be made in the port of departure, the value of the merchandise loaded shall be determined by the purchase price, including the expenses incurred until they are placed on board, the insurance premium excluded.

(2) Damaged merchandise shall be appraised at their actual value.

(3) The net proceeds of merchandise sold in a foreign port, as a result of a general average, shall be taken as the contributing capital.

(4) The ship shall be appraised at its actual value in the condition in which it is found.

(5) Fifty percent of the freightage shall represent the contributing capital. For this purpose, merchandise jettisoned for the common safety and merchandise seized by pirates or enemies shall not pay freightage, but merchandise sold by the master to pay for necessary repairs to the ship or for unavoidable and urgent needs shall pay freightage.

ART. 273. *Valuation of Objects Constituting General Average.* – (1) Merchandise lost, which constitute general average, shall be appraised at the value which merchandise of the same kind may have in the port of unloading, provided the kind and quality appeared in the bill of lading; should they not appear, the value shall be that stated in the invoices of purchase issued in the port of shipment, adding thereto the expenses and freightage subsequently incurred: Provided, *however,* that goods which were wrongfully declared at a value lower than their real value, shall be contributed for at the declared value.

(2) Equipment rendered useless for the purpose of saving the ship shall be appraised at the current value, deducting reasonable depreciation except as to anchors and chains.

(3) Freightage lost, as a result of a general average act, shall exclude the charges that have not been incurred by the ship-owner to earn such freightage.

(4) If repairs were made on the ship, the actual reasonable cost of replacing the damage or loss shall be subject to reduction where old materials or parts are replaced by new ones. If no repairs were made, reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

(5) The cost of temporary repairs on the ship at a port for the common safety or to repair the damage caused by general average sacrifice shall also be admitted as general average.

ART. 274. *Object Not Entitled to Indemnity.* – (1) Merchandise loaded on the upper deck of the ship shall contribute to the general average should they be saved, but there shall be no right to indemnity if they should be jettisoned for common safety, except when marine ordinances or maritime custom allow their shipment in this manner.

In any case, the shipowner and the master shall be liable to the shippers for the damages from the jettison if the storage on the upper deck was made without the consent of the latter.

(2) Goods willfully misdescribed at the time of shipment, shall not be allowed as general average, but such goods, if saved, shall remain liable to contribute upon their actual value.

ART. 275. *Objects Not Bound to Contribute.* – (1) Provisions and personal effects of the master, officers and crew shall not contribute to the general average.

(2) Passengers' luggage and personal effects not shipped under a bill of lading shall not contribute to the general average.

(3) Neither shall the goods jettisoned contribute to the payment of the general averages, which may occur to the merchandise saved in a different and subsequent risk.

ART. 276. *Apportionment of the General Average.* – (1) After determining the amount of the contributing capital and of the general average in accordance with the provisions of this Code, the amount of the general average shall be apportioned *pro rata* among all persons having an interest in the ship and cargo at the time of the occurrence of the average.

(2) The insurers of the ship, of the freightage and of the cargo shall be obliged to pay for the general average insofar as is required of each respectively.

(3) The apportionment of the general average shall not be final until it has been agreed to or until approved by the court after conducting a hearing for such purpose.

ART. 277. *Collection of Contribution.* – (1) After the liquidation has been approved, it shall be the duty of the master to collect the amount of the contributions, and he shall be liable to the owners of the goods averaged for the damages they may suffer through his delay or negligence.

(2) If the persons interested in receiving the goods saved should not give security sufficient to answer for the amount corresponding to the general average, the master may defer delivery thereof until payment has been made.

(3) If the persons liable to contribute should not pay the amount of the contribution at the end of the third day after having been required to do so, the goods saved shall be sold at the instance of the master and the proceeds applied to the payment of the contribution.

Chapter 3 – *Collision*

ART. 278. *Definitions.* – For purposes of this Chapter, the term:

(a) "***Collision***" not only includes physical contact between ships but also a physical maneuver by one ship causing damage to another, like excessive speed, causing another ship to break its anchor.

(b) "***Ships***" include floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea bed or its subsoil when in the process of moving from one place to another, or vessels constructed for or adapted to and engaged in drilling or dredging at sea, but not warships or ships operated by any State for non-commercial purposes.

ART. 279. *Liability in case of collision.* – The liability of the parties shall be governed by the following rules:

(a) In case of collision between ships through the fault of one, the owner of the ship at fault shall be liable for the loss and the damage resulting therefrom;

(b) If the collision is imputable to both ships, the owner of both ships shall be jointly liable in equal amounts for the total loss and damage suffered by both ships and their cargo,

unless otherwise determined by the court, taking into consideration the degree of fault of each ship. With respect to damages resulting from death or personal injuries, the owners of both ships at fault shall be solidarily liable therefor, without prejudice to the right of the shipowner making the payment to obtain reimbursement from the owner of the ship or ships at fault in accordance with the preceding rule. The same rule shall apply where it cannot be determined which of the ships caused the collision.

(c) If the collision is due to *force majeure*, each ship and cargo shall bear its own loss or damage.

ART. 280. *Condition Precedent to Recovery.* – No action for recovery of loss or damage to a Philippine flag vessel arising from collision can be brought unless a protest or declaration is presented as soon as possible before the competent authority of the nearest port where the collision took place or of the first port of arrival in the Philippines, or the duly authorized consul of the Philippines in a foreign country. With respect to damage caused to persons or to cargoes, the absence of a protest shall not be a bar to an action for recovery of damages.

ART. 281. *Investigation of Collision.* – If the collision should take place between Philippine flag vessels in foreign waters or on the high seas, and the ship should arrive at a foreign port, the consul of the Philippines in said port shall hold a summary investigation of the collision which may be held behind closed doors, at the petition of the shipowner or master, and forward a report thereof to the proper maritime authority.

ART. 282. *Limitation of Action.* – All claims arising out of this Chapter shall be brought within four years from the time the collisions occurred.

Chapter 4 – *Salvage*

Section One – *Pure Salvage*

ART. 283. *Definition.* – Pure salvage is service voluntarily rendered on the occasion of a shipwreck, when the ship and its cargo are beyond the control of or have been abandoned by the crew, by those under no obligation to do so and who conveyed the ship and its cargo to a safe place.

ART. 284. *Effect of Opposition.* – If the master of the ship or the person acting in his stead is present, no one shall take from the sea or from the shores or coasts, merchandise or effects proceeding from a shipwreck or proceed to the salvage of the vessel, without the consent of such master or person acting in his stead.

ART. 285. *Obligation of the Salvor.* – He who shall save or pick up a vessel or merchandise at sea, in the absence of the master of the ship, owner or a representative of either of them, if they are unknown, shall convey and deliver such vessel or merchandise, as soon as possible, to the nearest Coast Guard District, and give the particulars of the salvage operation, a list of merchandise saved, the name and registry of the vessel, and other circumstances relative to the salvage operation.

ART. 286. *Salvor's Lien.* – (1) The expenses of salvage as well as the reward for the salvage shall be a charge on the thing salvaged or its value.

(2) The proper reward of a salvor is one half (½) of the value of the ship or things saved.

(3) After the salvage is accomplished, the owner or his representative shall have the right to delivery of the ship or things saved provided that he pays, or gives a bond from a reputable bonding company to secure the payment of expenses and the proper reward. The amount and sufficiency of the bond, in the absence of agreement, shall be determined by the court or by arbitration.

ART. 287. *Procedure after Salvage.* – The District Coast Guard Commander, to whom a salvage is reported, shall:

(a) Cause the things saved to be safeguarded and inventoried;

(b) Ascertain the identity of the vessel and the persons involved in the salvage operation;

(c) Coordinate with the Bureau of Customs which shall sell at public auction the things saved which may be in danger of immediate loss or those whose conservation is evidently prejudicial to the interests of the owner, when no objection is made to such sale;

(d) Cause the advertisement within thirty days subsequent to the salvage in a newspaper of general circulation, of the details of the disaster, with a statement of the marks and number of the effects, and notifying all interested persons to file their claims; and

(e) Recommend to the Commandant of the Coast Guard the issuance of a permit to qualified salvors if further salvage operation is necessary to save the vessel from further destruction.

ART. 288. *Claim by the Owner.* – While the ship or things saved are at the disposition of the authorities, if the owner or his representative shall claim them, such authority shall order their delivery to the owner or his representative upon payment of the expenses and the proper reward or delivery of a bond from a reputable bonding company to secure the payment of the expense and the proper reward, and there is no controversy over their value; otherwise, delivery shall not be made until the matter is decided by the court, by arbitration, or by agreement with the salvor.

ART. 289. *Effect of no claim.* – No claim having been presented by the owner or his representative within three months after the publication of the prescribed advertisement, the things saved shall be sold at public auction, and the proceeds, after deducting the expenses and the proper rewards, shall be deposited into the National Treasury. If three years shall elapse without anyone claiming it, one-half of the deposit shall be adjudged to him who saved the things, and the other half to the National Government.

ART. 290. *Salvors who are not entitled to reward.* – The following shall have no right to a reward for salvage:

(a) The crew of the ship shipwrecked or which was in danger of shipwreck;

(b) He who shall have commenced the salvage notwithstanding the express and reasonable prohibition of the master or of his representative; and

(c) He who shall have failed to comply with the provisions of Article 285.

ART. 291. *Deductions.* – From the proceeds of the sale of the things saved shall be deducted first: the expenses of their custody, conservation, advertisement, and auctions, as well as whatever taxes or duties imposable on them; then, the expenses of salvage, and from the net amount remaining, shall be taken the reward for the salvage which shall not exceed fifty percent (50%) of the remainder.

ART. 292. *Apportionment of the Reward.* – (1) If in the salvage, different persons shall have intervened, the reward shall be divided among them in proportion to the services which each may have rendered, and in case of doubt, in equal parts.

Those who, in order to save persons, shall have been exposed to the same dangers shall also have a right to participation in the reward.

(2) If salvage was effected by another ship, the reward for salvage shall be divided among the owner, the master, and the crew of the ship, so as to give the owner a half, the master a fourth and the remainder of the crew the other fourth of the reward, in proportion to their respective salaries, in the absence of an agreement to the contrary.

ART. 293. *Measures in Preventing Damage to Marine Environment.* – Notwithstanding failure to save an oil-laden tanker, the efforts of the salvors in minimizing or preventing damage to the environment shall be rewarded by the owner or charterer of the tanker. Such reward shall include expenses reasonably incurred by the salvor in the salvage operation, and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, which amount shall not exceed the reward which would be payable if the tanker were saved.

Section Two – *Assistance or Contract Salvage*

ART. 294. *Definition.* – Assistance or contract salvage is an agreement for the purpose of saving a distressed ship or its cargo or both from an impending peril at sea whereby, for compensation, service will be rendered by a person duly licensed by the proper government authority to engage in the business of salvage.

ART. 295. *Duty of the Salvor.* – The salvor shall endeavor to prevent or minimize damage to the marine environment. He shall accept the intervention of other salvors when requested to do so by the owner or master of the ship: *Provided, however,* that the amount of his reward shall not be reduced, should it be found that such intervention was unnecessary.

ART. 296. *Effect of Salvor's Misconduct.* – A salvor may be deprived of the whole or part of the compensation to the extent that the salvage operations have become unnecessary or more difficult due to the fault, neglect or fraud on the part of the salvor.

ART. 297. *Amount of Reward.* – If, during the danger, an agreement is entered into concerning the amount of the reward for assistance, the amount, if excessive, may be reduced by the court, after taking into consideration the factors as follows:

(a) The value of the property saved;

(b) The nature and degree of danger from which the property was rescued;

(c) The efforts of the salvors in rendering the salvage service, including the time, expenses, and losses incurred by them;

(d) The promptitude, skill, energy displayed in rendering the service and saving the property;

(e) The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed;

(f) The risk incurred by the salvors in securing the property from the impending peril; and

(g) The skill and efforts of the salvors in preventing or minimizing any damage to the marine environment, which may be caused by, oil spillage, explosion or contamination.

The same factors shall also be taken into consideration by the court if the parties have not fixed the amount of the reward.

ART. 298. *Removal of Wreck.* – The owner of a vessel which was shipwrecked is obliged to remove the same if it would obstruct navigation or, if it occurred without his fault or that of the master or crew, he may abandon the wreck in favor of the salvor.

TITLE VII – *LIMITATION OF SHIPOWNERS' LIABILITY*

Chapter 1 – *General Provisions*

ART. 299. *Scope of Applicability.* – This Title shall apply to the liability of shipowners arising out of claims arising from contracts of transport under Title III and from cases arising out of collision under Title VI, Chapter III of this Code, except for loss or damage resulting from their personal act or omission done with intent to cause such damage, or recklessly and with knowledge that such loss or damage would probably result.

ART. 300. *Definitions.* – For purposes of this Title, the following terms shall mean:

(a) "***Shipowner***" includes the owner, charterer, manager and operator of any ship, whether engaged in domestic or international transportation;

(b) "***Ship***" does not include ships constructed for or adapted to and engaged in drilling at sea, floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or its subsoil, or to air-cushioned vehicles.

(c) "***Units of Account***" shall have the same meaning as defined in Article 84(h) of this Code.

ART. 301. *Effect of loss of ship.* – The loss of the ship as a result of collision or sinking does not relieve the shipowner from liability under this Code, although his liability shall be limited to an amount of the value of the ship at the time of the occurrence giving rise to his liability or in accordance with the following Articles, whichever amount is lower.

Chapter 2 – *Limits of Liability*

ART. 302. *Aggregation of Claims.* – (1) The limits of liability provided in the following Articles apply to the aggregate of all claims arising on a distinct occasion or event against the shipowner and any person for whose act, neglect or default he is responsible.

(2) Such claims include loss of life or personal injury or loss of or damage to property occurring on board or in direct connection with the operation of the ship or loss resulting from delay in the carriage by sea of cargo, passengers or their luggage.

ART. 303. *Limit for passenger claims.* – In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be in the amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry, but not exceeding 25 million Units of Account for all such aggregate claims. The term "passengers" shall have the same meaning as defined in Article 84(c) of this Code.

ART. 304. *Limits for all other claims.* – (1) The limits of liability for all claims other than those mentioned in the preceding Article arising on any distinct occasion, shall be calculated as follows:

(a) in respect to claims for loss of life or personal injury (other than to a passenger):

(i) 166,667 Units of Account for a ship with a tonnage of less than 300 tons

(ii) 333,000 Units of Account for a ship with a tonnage from 300 tons but not exceeding 500 tons;

(iii)for a ship with tonnage in excess thereof, the following amount in addition to that mentioned in (i): for each ton from 501 to 3,000 tons, 500 Units of Amount; for each ton from 3, 001 to 30,000 tons, 333 Units of Account; for each ton from 30,001 to 70,000 tons, 167 Units of Account; and, for each ton in excess of 70,000 tons, 167 Units of Account;

(b) in respect to any other claims:

(i) 83,333 Units of Account for a ship with a tonnage of less than 300 ton;

(ii) 167,000 Units of Accounts for a ship with tonnage from 300 tons but not exceeding 500 tons;

(iii)for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (ii): for each ton from 501 to 30,000 tons, 167 Units of Account; for each ton from 30,001 to 70,000 tons, 125 Units of Account; and for each ton in excess of 70,000 tons, 83 Units of Account.

(2) Where the amount calculated in accordance with paragraph (1) (a) above is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph (1) (b) above shall be available for payment of the unpaid balance of claims under paragraph (1) (a) and such unpaid balance shall rank ratably with claims mentioned under paragraph (1) (b).

(3) For the purpose of this Article, the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

TITLE VIII – *ARBITRATION*

Chapter 1 – *Enforcement and Validity of Agreements to Arbitrate*

ART. 305. *Form of Agreements to Arbitrate.* – (1) Any dispute between the parties arising out of this Code, except under Titles I and II, may be settled by arbitration.

(2) A written provision in any maritime transaction to settle by arbitration a controversy thereafter arising out of such transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out such transaction shall be valid and enforceable, except upon grounds for annulment or invalidity of contracts.

(3) The term "***agreement in writing***" shall include an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in an exchange of letters or communications.

(4) The term "***maritime transaction***" means charter parties, bills of lading of water carriers, supplies furnished vessels, repairs to vessels, collisions, salvage or other matters relating to admiralty.

(5) Where a charter party contains an arbitral clause and the bill of lading issued pursuant to the charter party does not contain a special annotation providing that such arbitral clause shall be binding upon the holder of the bill of lading, the carrier may not invoke such arbitral clause as against a holder who acquires the bill of lading in good faith.

ART. 306. *Failure to Arbitrate.* – Unless otherwise provided in the agreement between the parties or the arbitration rules referred to therein, any party aggrieved by the failure, neglect or refusal of another to arbitrate under a written agreement for arbitration, may apply in court for an order directing that such arbitration proceed in the manner provided in such agreement. Five days' notice in writing of such application shall be served on the party in default. The court shall summarily hear the issues and direct the parties to proceed with the arbitration if the finding is that such agreement was made and there is default in the proceeding thereunder.

ART. 307. *Summary Proceeding.* – Any proceeding filed in court relating to arbitration shall be summary in nature. The court shall decide all applications in the same manner as motions within ten (10) days after hearing, except petitions for the confirmation, vacating, modification or correction of final awards of arbiters.

ART. 308. *Stay of Court Proceedings.* – (1) If any suit or proceeding is brought in court upon any issue referable to arbitration under an agreement in writing for such arbitration, the court, upon being satisfied that the issue is referable to arbitration, shall, on application of any of the parties to the agreement, stay the trial of the action until such arbitration has been held in accordance with the terms of their agreement.

(2) Where the issue involved in the suit is that the arbitration agreement is null and void or inoperative or incapable of being performed or that there is in fact no dispute referable to arbitration, the court shall proceed summarily to the determination of such issues.

Chapter 2 – *Appointment and Powers of Arbitrators*

ART. 309. *Appointment of Arbitrators.* – (1) If in the arbitration agreement, provision is made for a method of naming or appointing an arbitrator or arbitrators or any umpire, such method shall be followed. If no method is provided therein, or if a method is provided and any party thereto shall fail to avail himself of such method or if for any other reason there shall be a default in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then, upon application of any party to the controversy, the court shall designate or appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under said agreement with the same effect as if he or they had been specifically named therein.

(2) Unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator who must be either a maritime lawyer, a professional maritime arbitrator, a maritime expert or one engaged in maritime commerce.

(3) Arbitrators appointed shall either accept or decline their appointment. In case of declination or failure of an arbitrator to accept the appointment, the parties or the court, as the case may be, shall proceed to appoint a substitute.

ART. 310. *Duty to Disclose.* – (1) Each arbitrator shall make a full and detailed disclosure on record at the commencement of the hearing any relationship within the fourth civil degree of consanguinity or affinity, any business relationship or dealings he has had, if any, with a party to the arbitration or with any of their counsel.

(2) A party may challenge in writing the qualification or partiality of an arbitrator who shall determine whether to withdraw therefrom or proceed with the hearing. His decision to proceed with the hearing shall not be reviewed by the court until after a final award is rendered.

ART. 311. *Power to Issue Subpoena and Subpoena Duces Tecum.* – (1) The arbitrator or arbitrators, or a majority of them, may summon in writing any person to attend before them as a witness, and in a proper case, to bring with him any book, record, document or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as fees of witnesses before courts.

(2) Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by said persons. If any person so summoned shall refuse or neglect to obey said summons, the arbitrators may petition the court to compel the attendance of said person before them or to punish said person to contempt in the same manner provided by law for neglect or refusal to attend in court.

ART. 312. *Arrest of Vessel.* – Notwithstanding an agreement to arbitrate, the aggrieved party may start proceedings in court for the arrest of the vessel for the purpose of securing it until the arbitration is concluded. The court shall have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter a decree upon the rendition of the award.

ART. 313. *Powers of Arbitrators.* – (1) The arbitrator or arbitrators, or a majority of them, shall be the sole judge of the relevancy and materiality of the evidence offered or produced before them, and shall not be bound by the technical rules of evidence.

(2) They may grant any remedy or relief which they deem just and equitable and within the scope of the agreement of the parties. They shall have the power to decide only those matters that have been submitted to them. The terms of the award shall be confined to such disputes.

(3) All proceedings before the arbitrator or arbitrators shall be duly recorded.

ART. 314. *Disqualification of Arbitrators.* – An arbitrator shall not act as champion or advocate the cause of any party to the controversy. No arbitrator shall act as a mediator in the settlement of the dispute before him. All negotiations towards settlement of the dispute must take place without the presence of arbitrators.

Chapter 3 – *Final Arbitral Award*

ART. 315. *Confirmation of Award.* – (1) If the parties agreed that the award shall be confirmed by the court, any party to the arbitration may apply to the court for an order confirming the award. The petition shall be accompanied by (a) the original agreement to arbitrate or duly certified copy thereof; and (b) the duly authenticated original award or a certified copy thereof. Notice of the application shall be served on the adverse party, as in motions, within thirty (30) days from the filing of the application.

(2) The court shall confirm the award unless vacated, modified or corrected on grounds provided in the succeeding Articles. The judgment confirming the award may be enforced in the same manner as judgment of the court rendered in actions brought before it.

ART. 316. *Grounds for Vacating Award.* – (1) Within thirty (30) days from the rendition of the award, any party to the arbitration may apply to the court to vacate the award, on any of the following grounds:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality or corruption of any of the arbitrators;

(c) Where the party against whom the award is rendered was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his evidence; or

(d) Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award on the dispute submitted was not made; or

(e) Where the enforcement of the award would be contrary to public policy.

(2) Where an award is vacated, and the time within which the agreement required the award to be made has not expired, the court, may in its discretion, direct a rehearing by the arbitrators or the reappointment of new arbitrators.

ART. 317. *Modification or Correction of Award.* – (1) In any of the following cases, the court may take an order modifying or correcting the award, on application of any party to the arbitration:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or

(c) Where the award is imperfect in matter of form, not affecting the merits of the controversy.

(2) The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

TITLE IX – *FINAL PROVISIONS*

ART. 318. *Repealing Clause and Consequential Amendments.* – (1) The provisions of the Civil Code on Common Carriers shall not apply to common carriers by water.

(2) The provisions of Republic Act No. 876 (Arbitration Law) shall not apply to arbitrations in maritime disputes.

(3) The provisions of the Revised Penal Code (Act 3815) and the Rules of Court shall apply in matters not regulated by this Code.

(4) The following laws, decrees, Executive Orders, Letters of Instructions, Rules and Regulations are hereby expressly repealed:

(a) Presidential Decrees 760, 761, 866, and 1711;

(b) Presidential Decrees Nos. 214 and 1521;

(c) Commonwealth Act No. 65;

(d) Articles 580 to 584 inclusive and Articles 5 and 7, 652 to 869 inclusive of the Code of Commerce;

(e) Act No. 2616 or the Salvage Law;

(f) Any other law, decree, executive order, letters of instruction, rules and regulations which are inconsistent with this Code.

(g) Section 99 to 166 (inclusive) of the Insurance Code, Presidential Decree 612.

ART. 319. *Separability Clause.* – If for any reason any section or provision of this Act, or any portion thereof, or the application of such section, provision or portion to any person, group or circumstances is declared invalid or unconstitutional, the remainder of this Act or the application of such section, provision or portion thereof to other persons, groups or circumstances shall continue to be in full force and effect.

ART. 320. *Date of Effectivity.* – This Code shall take effect one (1) year after its publication in at least two (2) newspapers of general circulation or the Official Gazette.

Approved.