

Maritime and Commercial Law Newsletter

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| NEWS

WJNCO Continues to rank in the Chambers Guide

At the beginning of the new year, Chambers & Partners released its Chambers Greater China Region 2024 Guide on 18 January 2024. Wang Jing & Co. continues to be ranked Band 1 Shipping Law Firm in Southern China and Eastern China and is also recognized as Band 2 Insurance Law Firm in China, which is not only a recognition of our professional proficiency, but also a commendation of our persistent perseverance, insistent innovation, and superior service.

Those with aspirations can reach any place however far it is. 2013 has been a fruitful year for Wang Jing & Co.'s foreign-related business with multiple awards and honours. In The Legal 500 Greater China 2024 Rankings, Wang Jing & Co. is listed as a "Top Tier Firm" in Shipping and a "Firm to Watch" in Insurance, while in The Legal 500 China Awards 2023, Wang Jing & Co. was honoured with awards of "Boutique of the Year" and "Shipping Lawyer of the Year". In the Asialaw 2023/24 Rankings, Wang Jing & Co. is listed as a "Highly Recommended" law firm in the two sectors of aviation & shipping and insurance. In the LEGALBAND 2023 Client's Guide – Top Ranked Law Firms and Top Ranked Lawyers, Wang Jing & Co. is also recommended in the fields of shipping and insurance.

Those with aspirations can break through any defence however tough it is. In 2023, Wang Jing & Co. continued to be honoured by the Asian Legal Business (ALB) with awards of "Shipping Law Firm of the Year", "Maritime Law Firm of the Year: South China & Central China", and "Maritime Law Firm of the Year: East China" and is listed on the ALB China Regional Rankings: Circum-Bohai Sea Area Firms & Rising Lawyers. Also, Wang Jing & Co. was honoured by the China Business Law Journal with two awards in the Insurance & Reinsurance and Shipping sectors.

Those with aspirations shall strive forward with determined dedication. In this year's Chambers Guide, Wang Jing & Co. once again stands out and stays as

a leading law firm in the traditional fields of shipping and insurance with salient strength. With its release, 2023 has come to a perfect end for us. In the coming year, Wang Jing & Co. shall further commit to providing more comprehensive and efficient quality legal service to our clients worldwide.



Ranked Band 1 Shipping Law Firm in Southern China and Eastern China for 14 Consecutive Years

Comments:

"The team are straightforward, user-friendly and practical."

"They are extremely helpful in hand-holding the client in navigating through the litigation process and providing timely advice as to the next steps."



Listed on the Insurance Rankings for 14 Consecutive Years

Comments:

"They are highly recognised in the industry. The case was very well handled and protected the interests of the company very well."

"The team's performance is very satisfactory and professional."

In the lawyer rankings, Mr. Chen Xiangyong has been listed as Band 1 in shipping for years, and is once again listed in the insurance rankings, while Mr. John Wang and Mr. Yuan Hui have also been consistently listed in the rankings for years.



Mr. Chen Xiangyong

Comments:

"He is a very senior lawyer who has worked with us for a long time and is one of our preferred lawyers in difficult and complex cases."

"He is willing to help and make clarifications if any of the numbers are unreasonable. He will call me and tell me what he thinks and what the most reasonable next steps are."

"He is very commercially minded and can handle commercial cases in a shipping context."

"Chen Xiangyong is very effective in coordinating work across the different offices."



Mr. John Wang

Comments:

"John particularly stands out; he has deep industry knowledge and understands the commercial issues while giving out practical advice."



Mr. Yuan Hui

Comments:

"He has an understanding of maritime law, proactively resolving complex disputes with strong negotiation skills tailored to legal and commercial issues."

Over the years, Wang Jing & Co. has witnessed the development of the economy and the society, benefiting from the interactions between China and the rest of the world. At the beginning of 2024, we shall embark on our new journey with continuous efforts in contributing to the construction of rule of law by delving into our professional fields and delivering trustworthiness to our clients.

Mr. John Wang and Ms. Zhang Jing Honored by the Legal Industry of Guangzhou

On 26 December 2023, the Conference on High-Quality Development and High-Level Opening of the Legal Industry with the theme of "Encourage at the 30th Anniversary and Moving Towards the New Era" was held by Party Committee of the Legal Industry of Guangzhou and the Guangzhou Lawyer Association. The conference reviewed the achievements of Guangzhou's deepening reform of lawyer's system in the past 30 years, envisioned and discussed new initiatives and ideas for high-quality development of the economy with support from high-quality legal service.

To commend a group of outstanding lawyers and law firms in Guangzhou, a grand award ceremony was held during the conference, presenting awards including Outstanding Industry Figure, Model of Aggressive Competitor, Role Model in Serving the People, Outstanding Law Firms and other major awards and releasing the Second List of Top Foreign-related Lawyers of Guangzhou and a series of new measures.

The "Excellent Law Firm with Integrity" award paid tribute to 30 law firms with outstanding performance in Party building, business development, management system, and fulfillment of social responsibilities who have played a leading role in promoting the high-quality development of the legal industry of Guang-

zhou. Wang Jing & Co., with our prominent capabilities for foreign-related legal service and progressive management philosophies, had the honor to receive the award.



Wang Jing & Co. Honored “Excellent Law Firm with Integrity”

Foreign-related lawyers are an important force in the construction of foreign-related legal systems and comprehensive escort of high-level opening up of China. Among the Second Top 10 “Foreign-related Lawyers of Guangzhou” selected by the industry, **Mr. John Wang** (Executive Managing Partner) and **Ms. Zhang Jing** (Partner) were made to the list. Two out of the ten lawyers are from Wang Jing & Co., which once again demonstrates recognition of the industry on our firm for our forefront in foreign-related legal services.

Wang Jing & Co., encouraged at the 30th Anniversary of Guangzhou’s deepening reform of the lawyer’s system and stimulated to move forward towards the new era, are grateful for the affirmation and recognition from the Guangzhou Municipal Justice Bureau, the Guangzhou Lawyers Association, and colleagues in the industry, especially for the trust and support from our clients. We shall keep moving forward with continuous efforts in improving our service to serve and support the construction of foreign-related legal system as well as to make greater contributions to the economic and social development and construction of rule of law of Guangzhou and to China’s building of new development patterns.



Mr. John Wang is familiar with Chinese law and British law, whose practice spans dispute resolution and related transaction design in all fields of shipping, marine insurance and ship finance cases. He has acquired extensive experience in international maritime arbitration in London, Singapore, and Hong Kong. He also has in-depth research in the fields of certification disputes and maritime administrative law. Many of the cases he has represented have been included in the Typical Cases of National Maritime Trials by the Supreme Court, China Maritime Trial, “Belt and Road” Maritime and Commercial Case Selection, All-China Lawyers Association’s Outstanding Cases of Foreign-related Legal Services, and Typical Cases of the Higher People’s Court and Maritime Court, etc.



Ms. Zhang Jing focuses on dispute resolution in Maritime & Admiralty, Offshore Engineering, Commercial Disputes and International Trade. Ms. Jing was honored as “1,000 Elite Lawyers on Foreign-Related Matters” by the Ministry of Justice of the People’s Republic of China in 2019, was shortlisted for the “Woman Lawyer of the Year of ALB China Regional Law Awards: Coastal Areas” by Asian Legal Business in 2021 and 2022 consecutively, the “Woman Lawyer of the Year: South China & Central China” in 2022 and 2023 and was nominated as “Women in Business Law Awards 2023”. Her clients include major P&I clubs, shipping companies, offshore engineering companies, and trade companies, and many major and difficult maritime and commercial cases that she has represented are of great influence.

| CASES AND INSIGHTS

Should Carriers be Liable for Soybean Cargo Damage

Soybeans are the most important feed grains imported by China, mainly used as protein supply in animal feeding and for extracting edible oil. Domestic soybeans, albeit their growing areas and production output keep increasing, cannot satisfy the market demand. Moreover, domestic soybeans are mainly for human consumption, whilst imported beans are mostly for oil extraction. Therefore, total amount of soybeans imported by China maintains at a high level in recent years. According to data released by the National Bureau of Statistics of the PRC (NBS), China imported 91.08 million tons of soybeans in 2022, whilst statistics by the General Administration of Customs of the PRC (GACC) shows that importation of soybeans by China in the first ten months of 2023 has amounted to over 80 million tons. It is anticipated that total quantity of soybeans imported by China for 2023 will exceed 100 million tons.

China imports soybeans predominantly from the United States and Brazil. According to GACC's statistics, in 2022, 54.39 million tons of soybeans were imported from Brazil, accounting for 59.72% of the total soybean importation; 29.53 million tons from the United States, accounting for 32.42%; and 3.64 million tons from Argentina accounting for 4.00%. Due to trade friction between the US and China and raising output of Brazilian soybeans, importation percentage of Brazilian soybeans has further ascended this year.

The experts believe that despite being processed such as drying after harvested, soybeans are still living organisms and can respire. Soybeans are rich in protein and fat, and the surface of soybean kernels is covered by dormant fungal spores. Fungal spores will grow, reproduce, metabolise and generate heat in an environment with suitable moisture and temperature. Particularly, they are more active when there are more impurities and broken kernels in the soybean cargo stow. Meanwhile, soybeans are of strong hygroscopicity and poor thermal conductivity. If the heat generated by respiration and microbial activities cannot be dispersed in time, soybeans will get mildewed, caked, carbonized and eventually heat-damaged. Among the soybean quality parameters, the moisture content will substantially influence the biological stability of soybeans, whilst the percentages of impurities and broken kernels also bear a certain influence on likely heat damage to soybeans. Therefore, professional research on relations among moisture content, temperatures and safe stowage period of soybeans reveals that the lower temperatures and moisture contents of soybeans are, the longer soybeans can be safely stowed for transport. For example, the equilibrium relative humidity (ERH) of the gap air should be maintained below 70%; at temperature of

Author:



Chen Xiangyong, managing partner of Wang Jing & Co's, leads Wang Jing & Co's shipping, insurance and commercial dispute resolution practice. He is recognized and recommended by various legal directories including Chambers & Partners, Legal 500, and Asia legal Business as one of the leading lawyers for shipping, insurance and dispute resolution in China.

Being an experienced practitioner in maritime and shipping law, Xiangyong has handled numerous complicated and remarkable shipping cases, a handful of which had been written into the PRC Supreme Court's Selected Cases of Maritime Trial in China over the past 30 years.

He sat in the advisory panel for amendments to the Chinese Maritime Code to contribute the sections of liability limitation and oil pollution damage. He is frequently invited as expert witness to assist the foreign litigation/arbitration proceedings in UK, Australia, Hong Kong, etc. Xiangyong has been closely working with various P&I Clubs, shipping companies, financial institutes worldwide for three decades and well-establishes his eminent reputation across the industry.

21 Centigrade, soybeans with moisture content at 13% could be safely stowed and transported for 70 days; if the moisture content increases to 14%, the safe period may be reduced to 45 days. Some experts even believe that the above standards are applicable to grain storage in silos on land where external environment is relatively stable. For ocean carriage under variable conditions, the moisture content of soybeans should be controlled at 11.5% for purpose of safe transport.

Standards given by the Ministry of Agriculture, Livestock and Food Supply of Brazil (hereinafter referred to as "the MAPA Standard") stipulates the moisture content limit of soybeans to be 14%, whilst National Standards of the PRC states it to be 13%, but maximum moisture content normally specified in sales contracts for soybeans imported to China is within 14%. The sea voyage from Brazil to China is about 40 days. Taking into account the time required for cargo operation and storage prior to loading and after discharge, the soybeans should be stowed in transit for 2 months in total. Brazilian soybeans are harvested during February to April, and the peak export season is from May to August. It is winter in Southern Hemisphere but summer in Northern Hemisphere. The large temperature difference between the loading port and the destination port is not conducive to safe stowage of soybeans. Compared to Brazilian soybeans, US soybeans are harvested in September to October. The sea voyage from the US to China is slightly shorter and there is no substantial temperature difference from Southern to Northern Hemispheres. Besides, the quality control and drying measures of US soybeans are much stricter, so cargo damage disputes over US soybeans are much less than those concerning Brazilian soybeans.

For ocean carriage, soybeans are usually loaded in bulk carriers, generally 50,000-70,000 tons by each vessel. To reduce the heat generated by respiration of soybeans and reproduction of fungi and for moisture evaporation, and to mitigate or prevent cargo damage caused by ship sweat, the carrier should, during sea transit, carry out appropriate ventilation according to actual condition, to introduce dry air and remove the warm moist air in cargo holds. When considering whether to ventilate or not, the carrier should be aware that ventilation is not allowed during fumigation, at night time or under adverse weather and sea conditions. The carrier should monitor air conditions inside and outside ship holds and the dew points, and determine whether ventilation is required in accordance with the "Dew Point Rules" or the simplified "Three Degree Rules".

Consequently, while China keeps importing large quantities of soybeans, disputes over soybean cargo damage at sea continuously occur. The China Maritime Law Association (CMLA) therefore hosted a seminar on "Disputes Resolution concerning Sea Carriage of Soybeans" in November 2023 and invited cargo insurers, P&I clubs, judges of maritime courts, lawyers, surveyors and experts to participate in discussion. The seminar also widely attracted attention from the public. In the following paragraphs, we will discuss whether the carrier shall be held liable for the soybean cargo damage at sea, which was a hot topic during the seminar.

I. Should carrier clause the B/L?

In some soybean cargo damage claims, percentages of impurities, heat-damaged kernels and broken kernels figured out at the discharge ports were found to be higher than the contractual specifications.

There seems to be no internationally applicable definition for "impurities". In general, impurities include foreign substances sifted out by a sieve with standardised pores and some non-soybean substances left on the sieve, such as grits, etc. It is arguable whether sifted soybean hulls, stems, pods should be regarded as "impurities". According to MAPA, soybean hulls are not impurities, but the PRC National Standards do not specify in this regard.

Technically, the carrier is entitled to clause the B/L or to reject the cargo if impurities, heat-damaged kernels and broken kernels are found in cargo stow at the loading port. In practice, determination on percentages of impurities and heat-damaged kernels requires professionals with special equipment. The carrier/ship crew can only as-

sess the apparent cargo condition by visual inspection during loading, where is very dusty; hence it is impractical to require the ship crew to assess the proportion of impurities. In one case precedent, the carrier shipped 60,000 tons of Brazilian soybeans to the Chinese port and found impurities, carbonisation and heat-damage in the cargo stow. All parties concerned agreed that the cargo damage might have occurred at the time of loading. The receiver therefore argued that the carrier should have clause the B/L in terms of "a large quantity of" impurities and heat-damaged kernels at the time of loading. The dispute aroused was whether the carrier's failure to clause the B/L deprived of the receiver's right to refuse cargo payment under the L/C. The PRC court held that the impurity percentage was an indication of cargo quality and beyond the scope for the carrier to clause the B/L. Remarks by the carrier on a B/L should be precise and appropriate, and no ambiguous quantifiers such as "a large amount", "a lot", "a little" should be used to avoid over-clausing. In addition, it was reasonable for the carrier to judge the cargo as in apparent good condition by relying on common sense and normal standards.

In shipping practice, seldom would the carrier clause the B/L in terms of soybean cargo conditions. Presently, for purpose of judicial practice, it has been generally agreed that the carrier should only clause the B/L in respect of the apparent cargo condition; they are not required to identify or remark internal quality indicators such as impurities and heat-damaged kernels; however the carrier should properly and carefully monitor the apparent cargo condition at the time of loading soybeans.

II. What resulted in the damage – inherent vice of cargo or carrier's failure in caring for cargo?

The key issue was whether the heat damage to soybeans was due to nature/inherent vice of cargo, or the carrier's failure in taking care of cargo. Ocean carriers state that soybeans are active organisms with respiration and fungi can easily reproduce on the surface of soybeans; also some soybeans have a high moisture content and are of strong hygroscopicity but poor thermal conductivity; thus the nature or inherent vice of soybeans were the fundamental cause leading up to heat damage during sea transit. However, the cargo interests argued that the carrier should have taken good care of the cargo and adopted proper ventilation; the carrier's failure in doing so was the main cause of cargo damage.

Many experts consider that natural ventilation during sea voyage to each hold loaded with 7,000-8,000 tons of soybeans or more is not substantially effective. Sometimes it may be counter-productive to bring into ship holds warm and moist air. However, judicial practice reveals that the PRC courts generally deny "ventilation is useless". The PRC courts hold that, notwithstanding disputes over effectiveness of ventilation, a prudent carrier should have made every effort to provide proper ventilation and to keep complete and reliable records on cargo temperature, air humidity, dew points and ventilation measures adopted. This is a precondition for the carrier to argue that they have properly and carefully cared for the cargo.

Turning to nature or inherent vice of cargo, *Minutes of the 2021 National Conference on Foreign-Related Commercial and Maritime Trial Work of Courts* points it out that the "nature or inherent vice of cargo" said in the China Maritime Code (CMC) refers to the essential and inherent attributes and vice of the cargo, manifested in that under similar conditions of sea carriage, the carrier cannot prevent damage to the same kind of cargo even though they have fulfilled obligations as stipulated by Article 48 of the CMC to take reasonable precautionary measures in caring for the cargo. Court case precedents reveal that the carriers are required to prove that damage to the same kind of cargo under the similar conditions of sea carriage is inevitable rather than accidental.

Apparently, the above burden of proof is rather heavy and difficult to accomplish. It is a paradox in logic. When the carriers defend that the cargo damage should be ascribed to the nature or inherent vice of cargo, they do not mean that all cargo of same nature or inherent vice will definitely suffer damage during sea voyage, but conversely it cannot be said that the nature or inherent vice of cargo is not the cause leading up to the damage. In

one case precedent, Argentinean soybeans and Uruguayan soybeans were loaded into a same ship and when arriving at the Chinese discharging port, Uruguayan beans suffered damage, but Argentinean beans were in sound condition. In conjunction with other evidence, the carrier argued that under similar conditions of sea carriage the damage was directly caused by inherent vice of Uruguayan beans, but the PRC courts rejected it on grounds that Uruguayan beans and Argentinean beans were not same kind of cargo under similar sea carriage conditions and still held the carrier liable for the cargo damage. We view such a court decision as not convincing.

III. Apportioning liability for damage due to delay in delivery by assessing causative potency

The carrier's period of responsibility for carrying and caring of bulk soybeans is from rail to rail. In judicial practice, if the time duration for carriers to hold the cargo exceeds the normal sea voyage plus time required for cargo loading and discharging, the PRC courts usually distinguish liabilities based on actual circumstances. For instance, a vessel laden with Brazilian soybeans was kept waiting at anchorage per Charterers' instructions, in the meantime, she was delayed to berth alongside due to failure of the cargo interests to timely obtain the import permit. After berthing, the cargo discharge was further prolonged due to manually picking out beans with seed coating agent. The court then concluded that various elements resulting in cargo damage during the sea voyage, including the cargo nature, the voyage duration, whether ventilation had been conducted, the sea and weather conditions, etc. They thus adjudicated both the carrier and the cargo interests to undertake 50% liability for the damage. In another precedent, the cargo receiver failed to timely acquire original B/L due to trading disputes and thus the ship was kept waiting for quite a long time to discharge the cargo. Although cargo damage occurred during the carrier's period of responsibility, the PRC court held the cargo interests to undertake major liability according to the actual circumstances.

The above precedents demonstrate that Chinese courts are constantly considering and adjusting the mechanism for apportioning liability for soybean cargo damage. They have now, according to case facts and evidence, allocated the liability for cargo damage by assessing the causative potency. In other words, even though the carrier is deemed as obligated to properly ventilate the onboard cargo, the Chinese courts shall, depending on actual circumstances and respective faults of the carrier and the cargo interests, as well as the cargo nature, to consider liability apportionment or liability exoneration. It may be more reasonable and practicable to apportion liability by assessing the causative potency than to require the carrier to prove the inevitability of damage to same kind of cargoes.

IV. Absence of Unified Standard for Loss Assessment

According to CMC, compensation for cargo damage is calculated as per the difference between the actual cargo values before and after suffering damage or the restoration costs of cargo. It does not cover any market loss. In fact, it is impossible to restore damaged soybeans, whilst occurrence of disputes over cargo damages is often associated with fluctuation of soybean market price. Therefore, how to ascertain the actual price difference becomes crucial for loss determination. So far no unified or generally accepted methodology for loss assessment has been developed in judicial practice or within the industry. Methods commonly adopted include calculating depreciation rate, calculating price difference between sound and damaged soybeans, calculating difference in values between products processed from sound cargo and those from damaged cargo, direct reduction from the cargo insured amount, and the output percentage of processed products, etc. Each method has its pros and cons and may also be affected by the market. Some experts suggest China voice to advocate a set of fair, reasonable and effective standards for loss assessment. In addition, different standards apply to the current testing of various parameters of soybeans. This is one of the other key reasons leading up to discrepancy in appraisal on cargo conditions and loss assessment.

V. Prospect on dispute resolution for soybean damage

Despite the substantial quantity of importation, Chinese buyers seems not in a dominant position in the international soybean trade. In case of soybean cargo damage, Chinese importers and receivers usually first claim against their cargo insurers or the third-party ocean carriers, which leads to continuous disputes over soybean damage. It thus forces some Chinese insurers to reject providing insurance for ocean carriage of soybean cargo. In our views, legal approaches are, after all, the last resort to resolve soybean damage disputes, and the preferable solution shall first start from commercial arrangements. On the one hand, the survey standards for soybean cargo quality at loading and discharging ports are expected to be unified, so as to reduce or avoid disputes arising from different testing standards. On the other hand, the cargo quality and shipping criteria of soybeans at loading ports shall be improved. Certainly, from the commercial perspective, efficiency and costs of commercial transactions shall also be borne in mind whilst trying to ensure impartiality and justice. Turning to dispute resolution for each specific case, how to reasonably assess the cargo nature and the carrier's responsibilities, to allocate the burden of proof and to admit reliable evidence, the Chinese courts shall, based on facts and laws, make fair and reasonable judgements.

Reference

1. Statistical Communiqué by National Bureau of Statistics of China on National Economic and Social Development of the PRC for Year 2022;
2. Quantities and Values of China's Major Imported Commodities in October 2023 (in CNY) by General Administration of Customs of the PRC;
3. Speeches and transcripts by guest speakers at the Seminar on Disputes Resolution concerning Soybeans Carriage hosted by China Maritime Law Association

| CASES AND INSIGHTS

Promulgation of Procedural Regulations on the Handling of Criminal Cases by Coast Guard Agencies — an Enrichment of Case-handling Guidelines for Criminal Lawyers related to Maritime and Shipping Affairs.

I. Promulgation and enforcement of the *Procedural Regulations on the Handling of Criminal Cases by Coast Guard Agencies*

On 15 May 2023, the *Procedural Regulations on the Handling of Criminal Cases by Coast Guard Agencies* (hereinafter referred to as the “Coast Guard Regulations” or “CGR”) was approved after review and formally issued. The CGR is the first regulation on maritime rights protection and law enforcement formulated and issued by the China Coast Guard under the authority of the *Coast Guard Law of China*.

The CGR consists of 12 chapters and 345 articles. It is stipulated straightforwardly in the beginning that the regulations are enacted to ensure correct performance of the duties of coast guard agencies during criminal proceedings, regulate the procedures of case handling, secure the quality of case handling and improve the efficiency of case handling, and the tasks, duties, and basic principles of the coast guard agencies during the criminal proceedings are also defined. The promulgation of the CGR marks another milestone on the progress towards clarifying the investigative procedures of criminal cases handled by coast guard agencies and improving the criminal procedural laws of China since the establishment of the China Coast Guard’s right to investigation by the *Criminal Procedure Law of China* in 2018 and the implementation of the *Coast Guard Law of China* in 2021.

II. Brief comparison between the *Procedural Regulations on the Handling of Criminal Cases by Coast Guard Agencies (CGR)* and the *Procedural Regulations on the Handling of Criminal Cases by Public Security Organs (PSR)*

As a law firm specialized in handling maritime case in respect of wet and dry loss, Wang Jing & Co. possesses extensive experience in handling criminal cases involving maritime and shipping affairs. Handling of these complex cases would often result in a circumstance where multiple law enforcement organs are involved with overlapping functions. Therefore, it is crucial to clearly define the case handling procedures, functions and authorities, and the mode of coordination of each law enforcement organ in the handling of criminal cases. Prior to the introduction of the CGR, maritime lawyers conform to the procedures outlined in the *Procedural Regulations on the Handling of Criminal Cases by Public Security Organs* (hereinafter referred to as the “Public Security Regulations” or “PSR”) when handling maritime criminal cases investigated by the China Coast Guard. Drawing on the advanced legislative experiences from other departments and considering the unique requirements of maritime crime

Author:



Zhang Changtao has been practicing since 2007 and now is a partner in Shanghai Office. Changtao has rich experience in dealing with litigation and arbitration and handled hundreds of dispute cases ranging from maritime, admiralty, international trade, corporate, shipping finance, crossed case of civil law and criminal law, marine related criminal cases and labor law. Changtao acts for underwriters, P&I clubs, ship owners, traders, logistics companies and freight forwarders, leasing companies and production companies.



Wang Zhaoyi joined Wang Jing & CO. Shanghai Office in 2020. She has experience in areas of insurance, freight forwarding and international transportation.

investigation, the CGR is formulated to address the special investigative needs. This article will briefly compare the PSR and the CGR in the following aspects:

● **Comparison of chapters**

PSR	Article No.	CGR	Article No.
Chapter I. Aim and basic principles	1-13	Chapter I. General Provisions	1-12
Chapter II. Jurisdiction	14-31	Chapter II. Jurisdiction	13-22
Chapter III. Withdrawal	32-41	Chapter III Withdrawal	23-31
Chapter IV. Attorneys' Participation in Criminal Proceedings	42-58	Chapter IV. Attorneys' Participation in Criminal Proceedings	32-47
Chapter V. Evidence	59-77	Chapter V. Evidence	48-68
Chapter VI. Compulsory Measures	78-168	Chapter VI. Compulsory Measures	69-162
Chapter VII. Filing and Closing a Case	169-190	Chapter VII. Receiving, Filing and Closing a Case	163-184
Chapter VIII. Investigation	191-297	Chapter VIII. Investigation	185-288
Chapter IX. Execution of Criminal Punishment	298-316	Chapter IX Special Procedures	289-316
Chapter X. Special Procedures	317-345	Chapter X. Handling of foreign-related cases	317-330
Chapter XI. Cooperation in Case-Handling	346-356	Chapter XI. Cooperation in Case-Handling	331-338
Chapter XII. Cases Involving Crimes Committed by Foreign Nationals	357-373	Chapter XII. Supplementary Provisions	339-345
Chapter XIII. Judicial Assistance in Criminal Affairs and Police Cooperation	374-384		
Chapter XIV Supplementary Provisions	385-388		

With respect of chapters, the CGR does not include the chapters on execution of criminal punishment, and judicial assistance in criminal affairs and police cooperation, which further clarifies that the coast guard agencies do not have the authority to execute criminal punishment. In cases where the coast guard agencies shall request assistance from The International Criminal Police Organization (INTERPOL) or utilize the cross-border law enforcement cooperation mechanism with the Ministry of Public Security, as stipulated in Article 343 of the CGR, the China Coast Guard shall request the Ministry of Public Security for the formalities.

With respect of specific sections, the CGR specifically separates a section of “disposal of property involved” in its eighth chapter, which explicitly outlines the process of returning the legitimate property of victims after ascertaining the criminal facts and clearly clarifies the procedures for disposal of property involved in maritime criminal cases.

● **Comparison of specific provisions**

This article aims to briefly list the main provisions added to the CGR compared to the PSR which are in line with the needs of maritime criminal cases handling, including:

(1) Clarification of the territorial jurisdiction and hierarchical jurisdiction of criminal cases handled by the coast guard agencies, with further delineation from public security organs regarding jurisdictional scope. According to Article 14 of the PSR and Article 13 of the CGR, the coast guard agencies have jurisdiction over criminal cases that occur in the internal waters and territorial seas of the People’s Republic of China. To be specific, criminal cases that occur within the territorial waters outside the coastlines (islands) are under the jurisdiction of the coast guard agencies while those occurring in areas such as plains along the coast, docks, shoals, berthing locations for Taiwanese-flagged ships, and islands with public security agencies fall within the jurisdiction of the public security organs.

(2) Evidence rules

Article 55 of the CGR specifies that electronic files in electronic data include electronic nautical charts, ship navigation trajectories, etc. Article 62 states that *“if the People’s Procuratorate requests the coast guard agencies to explain the legality of evidence collection, the coast guard agencies shall provide a written explanation”*, which emphasizes the coast guard agencies’ obligations on legality of evidence collection.

(3) Compulsory measures

The coast guard agencies have the power to take compulsory measures such as summoning by warrant, detention, pretrial release, residential surveillance, and arrest of criminal suspects. Article 81-85 of the CGR stipulate that the coast guard agencies are entitled to order the suspects not to enter specific waters when granting pretrial release and to set forth *“specific place”, “specific individuals”* and *“specific activities”*.

Article 121 stipulates that detention at sea should be followed with prompt transfer of the suspect to a detention centre upon arrival ashore, no later than twenty-four hours.

Article 145 stipulates that when extending the period of detention, the coast guard agencies shall produce a notice on alternation of detention period and serve the same to the detention centre before expiry of the detention period.

Article 149 stipulates the circumstances where the formalities for custody change shall be fulfilled.

(4) Investigation

Article 195 clarifies the calculation method for the duration of a summoned criminal suspect arrested at sea. Regarding technical investigation, the procedures for handing over technical investigation measures to public security and state security agencies are explicitly defined.

Article 266 specifies that when the coast guard agencies issue an order for arrest, they should notify the public security organs and request their assistance in pursuit of the suspect.

(5) Handling of foreign-related cases

Article 321 stipulates that where a foreign suspect is found to enjoy diplomatic or consular privileges and immunities, a deadline of an additional forty-eight hours shall be added for reporting to the China Coast Guard. Article 323 states that where a foreign suspect in custody who is entitled to retain an attorney, appointment of the attorney may be carried out by the embassy or consulate of their nationality. Article 327 stipulates the procedures for guardians or close relatives of foreign-nationality suspects to apply for meetings.

● Significance of the Coast Guard Regulations

The implementation of the CGR does benefit to further clarify the jurisdiction of the coast guard agencies, safeguard the legal practice rights of lawyers involved in criminal proceedings, strengthen procedural requirements for evidence collection and retrieval, enhance coordination and cooperation between coast guard agencies and other investigative authorities, specify the supervision of coast guard agencies by the People’s Procuratorate, establish an information sharing platform with the People’s Procuratorate, promote coordination between administrative law enforcement and criminal justice reported to People’s Procuratorate, and elevates the quality of case handling. This is of great significance in combating maritime crime, protecting the legitimate rights and interests of citizens, legal persons, and other organizations, and safeguarding the national maritime rights and interests.

III. Wang Jing & Co.'s participation in criminal cases related to maritime and shipping affairs.

This article briefly compares key provisions in the CGR that feature characteristics of the handling of maritime criminal cases. Subsequent articles will put more efforts into introducing common types of criminal cases related to the maritime and shipping affairs. Combining these with successful case handling experiences, a series of articles will be written to explore in-depth the relevant issues in this field.

As a long-standing law firm in the field of maritime and admiralty law, Wang Jing & Co. sticks to the values of sharing and inheritance. While refining expertise in the professional domain, we also shoulder the responsibility of sharing case-handling experiences to contribute to maintaining a favourable judicial environment for lawyers involved in maritime criminal proceedings. Wang Jing & Co. gathers a professional team of lawyers experienced in maritime and shipping criminal cases who have handled numerous complex and significant cases involving crimes such as foreign traffic accidents, smuggling, theft, embezzlement, and crime over liability of violation of safety management. Wang Jing & Co. will focus on developing a practical handbook for lawyers handling maritime and shipping criminal cases with the aim to contribute the most modest efforts to the development and progress in the industry.