

起施行。交通部 1985 年 4 月 11 日发布的《交通部对从事国际海运船舶公司的暂行管理办法》、1990 年 3 月 2 日发布的《国际船舶代理管理规定》、1990 年 6 月 20 日发布的《国际班轮运输管理规定》、1992 年 6 月 9 日发布的《中华人民共和国海上国际集装箱运输管理规定实施细则》和 1997 年 10 月 17 日发布的《外国水路运输企业常驻代表机构管理办法》同时废止。

Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation

(Adopted at the 14th Ministerial Executive Meeting of the Ministry of Communications on December 25th, 2002, promulgated by Decree No. 1 of the Ministry of Communications on January 20th, 2003, and effective as of March 1st, 2003)

Chapter One General Provisions

Article 1 These Rules are formulated in accordance with the provisions of the Regulations of the People's Republic of China on International Maritime Transportation (hereinafter referred to as the Maritime Transportation Regulations).

Article 2 The Ministry of Communications and the relevant competent communications department of the people's government in the province, autonomous region or municipality directly under the Central Government shall, in accordance with the provisions of the Maritime Transportation Regulations and these Rules administer the international maritime transportation business operations as well as the auxiliary business operations relating to international maritime transportation under the principles of fairness, high effi-

ciency and facilitation with the purpose of encouraging fair competition and preventing illegitimate competition.

Article 3 For the purpose of the Maritime Transportation Regulations and these Rules, the definitions of the terms are as follows:

(1) "International shipping services" shall mean the services provided by the operators of international shipping services relating to international maritime cargo and/or passenger transportation, and/or the activities conducted relating to such operators' vessels, passengers or cargo for the purpose of completing such international maritime cargo and/or passenger transportation by using their owned or operated vessels or space on board the vessels. Such services shall include the signing of the relevant agreements, accepting of space-booking, discussing and collecting freights, issuing of bill of lading and other related transportation documents, arranging cargo-handling and the care of the cargo, taking delivery of cargo or delivering cargo, arranging the transshipment of cargo and the entry into and departure from ports by vessels etc.

(2) "Operators of international shipping services" shall include the Chinese enterprise legal persons who have acquired the Permits for Operation of International Shipping Services for operating the international shipping services according to the Maritime Transportation Regulations, or foreign enterprises established in accordance with foreign laws who operate the international shipping services to and from Chinese ports.

(3) "International liner services" shall mean the regular international maritime cargo/or passenger transportation services provided between the fixed ports by means of using the owned or operated vessels or by means of the cases specified in paragraph 3, Article 16 of the Maritime Transportation Regulations.

(4) "Non-vessel-operating services" shall mean the services provided in paragraph 2, Article 7 of the Maritime Transportation Regulations, including the following activities conducted relating to the cargo transported for the purpose of completing such services:

- a. concluding international cargo transportation contracts with the shippers in the name of carriers;
- b. taking delivery of cargo and delivering cargo in the name of carriers;
- c. issuing bills of lading or other transportation documents;
- d. collecting freight and other service charges;
- e. booking space from operators of international shipping services or contracting with operators of other means of transportation for cargo transportation;
- f. paying the freight of port to port transportation or other transportation charges;
- g. unstuffing and/or cargo container consolidation;
- h. other related activities.

(5) "A non-vessel-operating common carrier" shall include a Chinese enterprise legal person who has acquired the license for the non-vessel-operating services in accordance with the Maritime

Transportation Regulations and these Rules, and a foreign enterprise established in accordance with foreign laws or regulations who has acquired the qualification in accordance with the Maritime Transportation Regulations and these Rules for non-vessel-operating services for cargo to and from Chinese ports.

(6) "An international shipping agent" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the services as specified in Article 29 of the Maritime Transportation Regulations.

(7) "An international ship management operator" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the services as specified in Article 30 of the Maritime Transportation Regulations.

(8) "An operator of the business relating to storage and warehousing of international shipments" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the services of cargo storage and custody in warehouses, cargo inventory management, as well as sorting and packing, repacking and distributing of cargo etc.

(9) "An operator of international maritime container freight station and container yard services" shall mean a Chinese enterprise legal person established in accordance with Chinese laws who provides the storage, custody, cleaning, repairing of containers as well as the storage, consolidation, distribution of container cargo.

(10) "A foreign-invested enterprise" shall mean a Chinese-

foreign equity joint venture, a Chinese-foreign contractual joint venture or a wholly foreign capital enterprise established in accordance with Chinese laws.

(11) "A foreign-invested representative office" shall mean a non-commercial organization established according to laws within Chinese territory by a foreign enterprise or another economic organization which conducts introduction of business, sales promotion, business consultation and the liaison services for such a foreign enterprise or economic organization.

(12) "Business registration documents of an enterprise" shall mean the business license or the documents certifying the registration of an enterprise issued by the enterprises registration authority or the relevant authority of the country where the enterprise was registered. Where the photocopies of such business registration documents are submitted, a confirmation on such photocopies about the truthfulness of such photocopies by the registration authority or notary documents certifying the identity between the photocopies and the originals shall be provided at the same time.

(13) "A special-purpose invoice" shall mean the bills approved and uniformly printed by the State Administration of Taxation. It is a receipt which certifies the payment of the freights or other related charges by the payer to the operator of international shipping services or its agents, or to the non-vessel-operating carrier or its agents. Such an invoice shall include the Special Invoice for International Shipping and the Special Invoice for Inter-

national Shipping Agency.

(14) "An agreement of liner conference" shall mean the kind of agreement concluded between members of a liner conference or between liner conferences, which is defined in the UN Convention on A Code of Conduct for Liner Conferences, 1974.

(15) "An operational agreement" shall mean an agreement relating to the increase or decrease of shipping capacity in one or more shipping routes concluded between two or more than two international operators of international liner services for the purpose of stabilizing or controlling the freight rates, or other agreement coordinating the joint efforts of operators of international liner services. Such an agreement includes the agreed minutes with the natures of the above-mentioned agreement. Such an agreement shall also mean the agreement relating to the joint operation of the vessels, joint usage of the port facilities and other cooperative operation agreement and various kinds of alliance or consortia agreements concluded between two or more than two operators of international liner services for the purpose of improving the operational efficiency.

(16) "A freight rate agreement" shall mean an agreement relating to the kinds of charges to be collected, the rates thereof, the freight rates or surcharges etc. which is concluded between two or more than two operators of international liner services. Such an agreement shall also include the agreed minutes with the natures of the above-mentioned agreement.

(17) "Tariff rates" refer to the freight rates provided in the

tariff book of international liner services operators and non-vessel-operating common carriers. Such rates include the freight rates, the rules related to the freight rates and the rules which shall be complied with both by carriers and shippers.

(18) "Negotiated rates" refer to the freight rates agreed upon between international liner services operators and shippers or non-vessel-operating common carriers. Such rates shall include the freight rates and the related elements. Negotiated rates shall be concluded in the form of written contracts or agreements.

(19) "Documents certifying the business experience" refer to the curriculum vitae certifying that the person to be certified has more than three years' experience in the international shipping services and the auxiliary businesses thereof. The curriculum vitae shall be notarized by a notary office.

Chapter Two Operators of International Shipping Services and Auxiliary Businesses thereof

Article 4 The criteria specified in Article 5 in the Maritime Transportation Regulations shall be satisfied and the policies of the State for the development of international shipping industry and the actual competition situations in international shipping market issued by the Ministry of Communications shall be considered before an enterprise can be set up within the Chinese territory to operate the international shipping services or before a Chinese enterprise legal person can apply to operate the international ship-

ping services.

The Ministry of Communications shall publish the policies of the State for the development of international shipping industry and the actual competition situations in international shipping market at its official website and the other appropriate media. Where the above-mentioned policies or situations fail to be published, they shall not be used as the reasons for the refusal of applications.

Article 5 The applicant shall make an application and submit the relevant documents to the Ministry of Communications for applying to set up an enterprise within the Chinese territory to operate international shipping services, or, for applying to operate international shipping services when such an applicant is a Chinese enterprise legal person. A duplicate of the same documents shall be sent to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is or is to be registered, as the case may be. The following application documents shall be included:

- (1) the letter of application;
- (2) the feasibility study report and the agreement of investment;
- (3) the business registration document of the applicant (if applying to set up an enterprise, the main investor's business registration document or, as the case may be, the identity document);

(4) the duplicate or photocopy of the vessel's ownership document, nationality document or inspection document;

(5) the sample of bill of lading, passage ticket or multimodal transport documents; and

(6) the documents certifying the business experience of the senior executives who satisfy the requirements of the Ministry of Communications.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall give its comments thereon upon the acceptance of the documents and submit its comments to the Ministry of Communications within 10 working days from the date of acceptance of the application.

The Ministry of Communications shall, within 30 working days from the date when the application documents are complete and authentic, complete the examination and verification and make a decision of granting or not granting permission in accordance with Article 5 and 6 of the Maritime Transportation Regulations. If the permission is granted, a Permit for Operation of International Shipping Services shall be issued to the applicant, or, if no permission is granted, the applicant shall be notified in writing and given the reasons therefor.

Article 6 If a Chinese operator of international shipping services applies to set up a branch within Chinese territory, the provisions relating to the procedures as specified in Article 5 of these Rules shall apply. The following application documents shall

be included:

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the business registration document of the parent company;

ny;

(4) the photocopy of the Permit for Operation of International Shipping Services of the parent company;

(5) the letter of confirmation by the parent company of the business scope of the branch; and

(6) the documents certifying the business experience of the senior executives who satisfy the requirement of the Ministry of Communications.

The branches of the Chinese operators of international shipping services may provide the services to the vessels of the parent company with regard to port entry and departure, arranging for the port handling, accepting of space booking, issuing of bill of lading and collecting of freight etc.

Article 7 If applying to set up of an enterprise legal person within Chinese territory to operate international shipping agency services or to operate international shipping agency services, an application shall be submitted to the Ministry of Communications, and the relevant documents shall be attached thereto. The same documents shall be submitted to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the enterprise is or is to be registered, as the case

may be. The application documents shall include the following:

- (1) the letter of application;
- (2) the feasibility study report and the agreement of investment;

ment;

(3) the business registration document of the applicant (if applying to set up an enterprise, the main investor's business registration document or, as the case may be, the identity document);

(4) the document certifying that there is a fixed place of business;

(5) the documents certifying the business experience of the senior executives as specified in subparagraph 1 of Article 9 of the Maritime Transportation Regulations; and

(6) the agreement of having EDI with the ports and customs etc. If there is no such EDI arrangement, the certifying document issued by the relevant port or customs shall be provided.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall give its comments thereon upon the acceptance of the documents and submit its comments to the Ministry of Communications within 7 working days from the date of acceptance of the application.

The Ministry of Communications shall, within 15 working days from the date when the application documents are complete and authentic, complete the examination and verification in accordance with Article 9 of the Maritime Transportation Regulations.

If the application documents are examined and verified as qualified, the registration shall be granted and a Registration for Operation of International Shipping Agency Services shall be issued to the applicant. If the application documents are examined and verified as unqualified, the applicant shall be notified in writing and given the reasons therefor. The applicant shall, go through the enterprise registration procedures at the enterprise registration authority by holding the Registration for Operation of International Shipping Agency Services issued by the Ministry of Communications and the relevant procedures at the customs, taxation and foreign exchange administration authorities.

Article 8 If a Chinese enterprise legal person applies to operate international ship management services or to set up an enterprise within Chinese territory to operate international ship management services, an application shall be submitted to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government. The following application documents shall be included:

- (1) the letter of application;
- (2) the feasibility study report and the agreement of investment;
- (3) the business registration document of the applicant (in case of applying to set up an enterprise, the main investor's business registration document or, as the case may be, the identity document);

(4) the document certifying that there is a fixed place of business;

(5) the documents certifying the business experience of the senior executives as specified in subparagraph 1 of Article 11 of the Maritime Transportation Regulations; and

(6) the photocopies of the master, the chief engineer's documents of competence as specified in subparagraph 2 of Article 11 of the Maritime Transportation Regulations.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 15 working days from the date when the application documents are complete and authentic, complete the examination and verification. If the application documents are examined as authentic and satisfy the provisions in Article 11 of the Maritime Transportation Regulations, the registration shall be granted and a Registration for Operation of Auxiliary Businesses Relating to International Maritime Transportation shall be issued to the applicant. If the application documents are examined and verified as inauthentic or if the application fails to satisfy the conditions specified in Article 11 of the Maritime Transportation Regulations, no registration shall be granted and the applicant shall be notified in writing and given the reasons therefor. The applicant shall, go through the enterprise registration procedure at the enterprise registration authority, the relevant procedures at the taxation authority and the banks designated by the foreign exchange administration authority with the

shall be submitted at the same time to the competent communications department of the people's government of the province, autonomous region, municipality directly under the Central Government where the non-vessel-operating common carrier is registered, or, in case of application for registration of a bill of lading by a foreign non-vessel-operating common carrier, to the competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government where the liaison office appointed by such non-vessel-operating common carrier is registered. The following application documents shall be included:

- (1) the letter of application;
- (2) the feasibility study report;
- (3) the business registration document;
- (4) the sample of bill of lading;
- (5) the photocopy of the receipt certifying that the surety bond has been deposited at the bank.

If the applicant is a foreign non-vessel-operating common carrier, the relevant documents specified in Article 25 of these Rules which relate to its appointed liaison office shall be submitted as well.

The competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government shall complete the examination, verification and give its comments on the application documents after the acceptance of the above-mentioned duplicate.

Such communications department shall report its comments to the Ministry of Communications within 7 working days after the acceptance of the application documents.

The Ministry of Communications shall complete the examination and verification specified in Article 7 and 8 in the Maritime Transportation Regulations within 15 working days after the acceptance of the complete application documents. If the application documents are authentic and complete, the registration of the bill of lading shall be granted and a Registration of Non-Vessel-Operating Services Qualification shall be issued. If the application documents are inauthentic and incomplete, the applicant shall be notified in writing that no registration is granted and the reasons therefor shall be given.

After acquiring a Registration of Non-Vessel-Operating Services Qualification, a Chinese applicant shall go through the registration procedure at the enterprise registration authority where it is registered before starting the non-vessel-operating services.

Article 12 If a foreign non-vessel-operating common carrier has acquired the qualification for the non-vessel-operating services in accordance with foreign laws and has obtained a legal financial liability guaranty, it does not need to deposit the surety bond at the bank within Chinese territory when it applies to engage in the non-vessel-operating services to and from Chinese ports in accordance with the Maritime Transportation Regulations and these Rules. However, in order to ensure that the debt to be paid which is incurred from the foreign non-vessel-operating common carrier'