

**Year in review – other jurisdictions:
China, India and France/French
Polynesia**

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China
An Emerging Maritime Jurisdiction
Recent Trends Pointing to a New Regime

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I Geography

- A coastline of 14,500 kms
- The Yangtze River of 6,300 kms
- The Three Coast Theory
- Shanghai the head of the dragon and the head of a T junction
- The Cluster Theory in the context of Shanghai
- 40% of the population live in the Yangtze Basin and (3,000) tributaries
- Shanghai is important but remember the Pearl River Delta and Bohai regions
- Top container ports current ranking – Hong Kong (SAR) (2nd), Shanghai (3rd), Shenzhen/Guangzhou (4th) and Kaohsiung (Taiwan) (6th)
- Shipbuilding: China offers a homogenous workforce of 750 million
- The biggest economic event for the next 30 years will be the urbanization of China

II The Maritime Law System

- Sheer size by comparison to other jurisdictions
- Diversity versus centrality
- The role of Beijing

III A Brief History

The Maritime Courts in China

- 10 main courts plus 31 branch courts
- A total of 41 specialist courts in all (refer to attached map)
- As of June 2004 – 334 Maritime Judges including 18 in Shanghai Maritime Court

The Law

- 1993 Maritime Code
- 2000 Special Maritime Procedure Law of the People's Republic of China
- 2001 Supreme Court Provisions on Evidence in Civil Procedures
- 2002 Supreme Court Interpretation of the Special Maritime Procedure Law
- 2004 The Practical Questions and Answers relating to Foreign-related Maritime Trials (189 issues)

The Maritime Universities

- Two largest maritime universities in the world in Shanghai and Dalian
- The total number of students at DMU (17,000) and SMU (15,000)
- This does not take account of universities in Wuhan, Qingdao, Xiamen and other cities or the postgraduate maritime law courses taken in Chinese and overseas universities

The Legal Profession

- Grown from part-time academics practising maritime law in the mid '90s to specialist maritime law firms in each of the major ports in China
- Overseas international law firms
- Increasing in-house capability

Cases Running in the Maritime Courts

All Maritime Courts

- The total number of cases handled by all maritime courts in China since 1984 to May 2004: 64,759
- The total number of foreign related cases since 1984 to May 2004: 8,910
- The total number of cases handled by all maritime courts from 1984 to the end of half year of 1999: 25,000
- The number of new cases filed with all maritime courts each year: approaching 10,000
- Appeals to the ten provincial High Courts: figures not published but appeal process is active
- All cases, including criminal & civil cases, handled by Supreme Court on petition: 3,196 in 2005.

Shanghai Maritime Court

- The number of new cases handled by Shanghai Maritime Court each year: around 700
- Number of new foreign related cases each year: 273 (running at 25% of total)

Arbitration in China

- Total number filed in 2005: 48,339
- CIETC : 979
- Wuhan Arbitration Commission No. 1 : 5,013
- CIETC No. 1 in value
- CMAC : 35
- Shanghai Arbitration Commission: 1,592

IV China as a “neutral” jurisdiction

- A definition of neutral jurisdiction
- A reality or a future possibility
- From jurisdiction of last resort to jurisdiction of choice

V Recent cases that reflect the changes taking place

- Evidence preservation orders (relating to London arbitration proceedings)
- Attachment orders (relating to London arbitration proceedings)
- Stay of proceedings and application of foreign law (still a mixed record)
- Collision case settled (payment received within week of the collision)

VI The Past 13 years – a record sheet –

- A court system that was part of the port structure – judges drawn from the navy and various other sources
- The Maritime Safety Administration active in collision and other casualty cases
- Tendency of courts to apply law and facts to assist “local” interests
- State appointed surveyors – no credence given to foreign surveyors or experts
- Certain principles being applied for the first time – limitation of liability

But in recent years.....

- The law being updated and clarified on a constant basis – an amendment to the China Maritime Code under consideration
- No precedent system (because it is codified system) but the law being developed under the guidance of the Supreme Court
- The establishment of a specialist maritime appeal court under consideration
- Judges receiving legal training and exposure to foreign legal systems
- Foreign surveyors and experts being given some recognition
- China paying more attention to international conventions

VII The next 14 years – to 2020

- A judiciary and legal profession gaining in confidence in the application of the CMC and related laws and regulations
- Greater awareness of foreign laws and practices
- Three types of cases:
 - Purely domestic
 - Mixed
 - Purely foreign
- Category 3 increasing in number and importance
- Chinese jurisdiction (both courts and arbitration) a jurisdiction of choice
- A growing number of cases involving novel issues of fact and law
- A growing body of case law of relevance to all other jurisdictions

**Shanghai
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