

# **The Adoption of Chinese Civil Code and Its Implications on the Chinese Maritime Code**

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IUC Summer Course  
9 September 2020



## To what extent should the Civil Code impact on the application of the CMC?

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The relationship of the Chinese Civil Code (CCC) and the Chinese Maritime Code (CMC)

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## 01 The Relationship Between CCC and CMC



Structure of China's  
Civil Law System



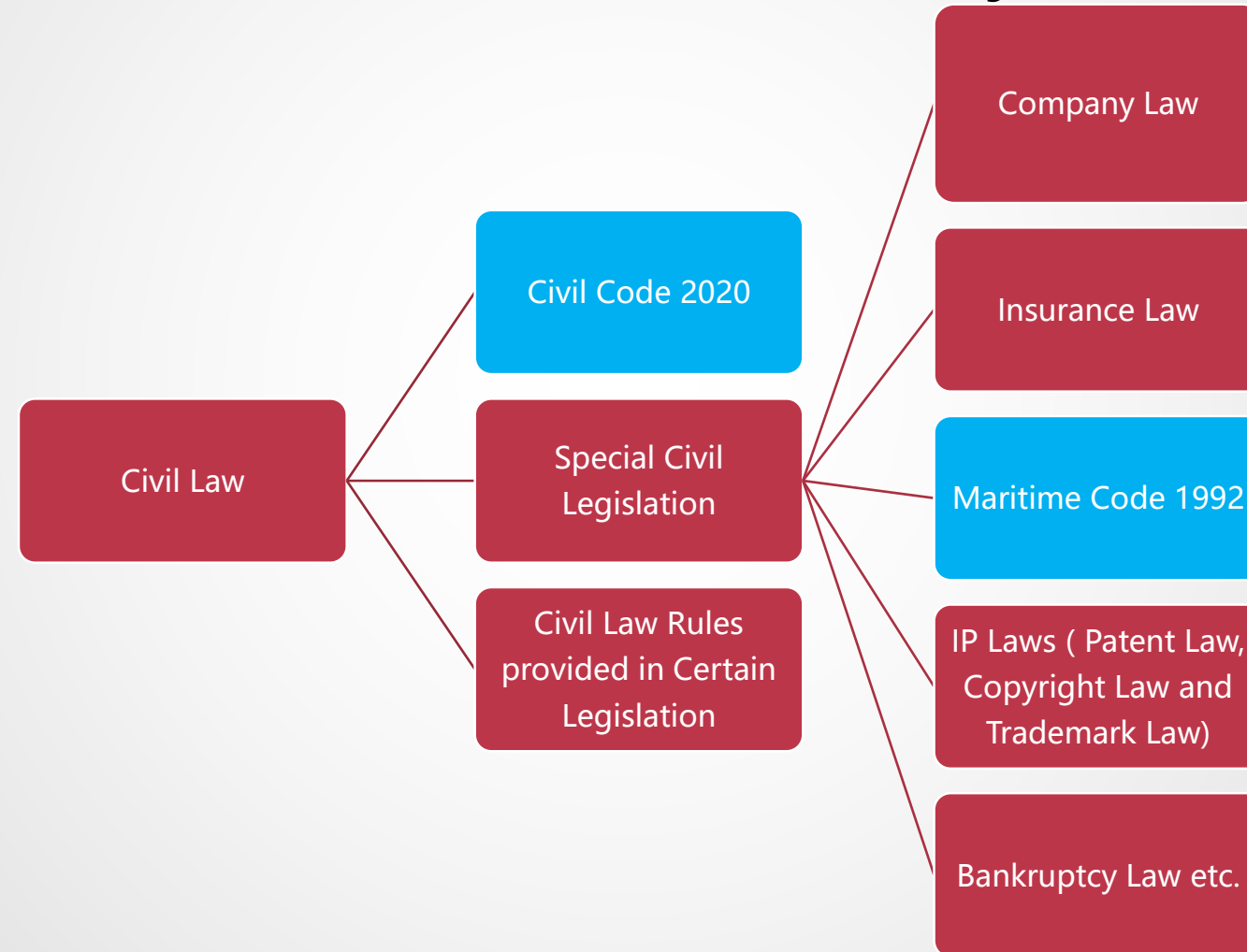
Legal Status of the CCC and the CMC



General Rule of the Application of Laws



# Structure of China's Civil Law System





# Legal Status of the CCC and the CMC



中华人民共和国  
民法典

## CCC 2020

- combine general rules of civil and commercial laws into a unified code ;
- Basic Law (general law);
- 7 Parts including General Rules, Property Rights, Contracts, Personality Rights, Marriage and Family, Right of Inheritance and Tort Liability with a total of 1260 Articles;
- come into effect on 1 January 2021.



中华人民共和国海商法

## CMC 1992

- special law in China' s civil law system;
- Chapters: ships, crew, carriage of goods by sea, carriage of passengers by sea, towage, collision, salvage, general average, limitation of liability for maritime claims, marine insurance, time bar and applicable laws for foreign-related matters.
- administrative rules + maritime procedural rules + civil and commercial rules



# General Rule of the Application of Laws

Art 11 of the CCC 2020 : Where there are special provisions set forth in other laws governing civil relationships, such provisions shall prevail.



CCC 2020 v CMC 1992

New General Law

Old Special Law



General Rule

CMC – Parts of the CCC ( Property Rights, Contracts, Tort Liability)-Other Commercial Laws ( Company Law, insurance law etc) – General Rules of the CCC 2020



Has the general rule of the application of laws been applied in legal practice?



## 02 Application of the CMC 1992 in Legal Practice

### CMC 1992

- **90% transplanted Articles ( combination H/V rules with Hamburg Rules in a carriage of goods by sea contract; by reference to Marine Insurance Act 1906; by reference to international standard forms such as Time/Bareboat Charterparties ) + 10% 'innovative' Articles (including administrative rules and procedural rules)**
- lack of detailed rules; being unable to meet the development of shipping industry, such as the establishment of electronic transport record, right of control in the Rotterdam Rules

### SPC Judicial Interpretations

- To address the issue on how to apply a certain law/a specific type of case or to fix the gap;
- special interpretations in relation to maritime disputes, such as *Provisions of the SPC on Special Issues Concerning the Trial of Cases of Marine Freight Forwarding 2012*, *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law during the Trial of Cases about Delivery of Goods without an Original Bill of Lading 2009*; but no interpretation governing transport law
- general interpretations over civil and commercial disputes, such as *Interpretation of the SPC Some Issues Concerning the Application of Law for the Trial of Cases on Compensation of Personal Injury 2003*

General Rules of Civil Law 2017, Contract Law 1999 ( Part 3 of the CCC 2020), Property Law 2007 ( Part 2 'Property Rights' of the CCC 2020) and other laws

- CMC 1992 + special judicial interpretations over maritime disputes: **± 15%** applied in judicial decisions
- other laws + general interpretations: **± 45%** applied
- maritime courts ( intermediate courts) are inclined to apply the CMC 1992 and special interpretations; but other courts (higher courts) are used to apply general laws.



## Tendency : Case Study on the Application of Law

*Zhejiang Longda Stainless Steel Co., Ltd. v. A.P. Moller-Maersk A/S (dispute over a contract for the carriage of goods by sea) [2017]SPC Civil Retrial No 412 (Guiding Case No. 108)*

### Fact

- Just two days before Maersk (carrier) arrived the destination port, Longda (shipper/consignor) requested to change the port or to return the cargo;
- The Carrier replied immediately that he could not reschedule to change the port in less than 2 days and could not return before the cargoes went through custom clearance
- The cargoes were auctioned by the Custom. Longda claimed the damages caused by the loss of the cargo.

### Legal Issue

- Was the shipper entitled to apply Article 308 of Contract Law 1999 to change or rescind the transport contract when the CMC 1992 was silent? ( Art 308 of Contract Law 1999 provides that 'Before the carrier delivers the goods to the consignee, the consignor may ask the carrier to stop the transportation, return the goods, change the place of destination, or deliver the goods to another consignee. However, the consignor shall compensate for the losses thus caused to the carrier.' )

### Decision

- The Ningbo Maritime Court (first instance) rejected the compensation;
- The Zhejiang High Court (second instance) held that the carrier was liable for the damages, but only undertook 50% damages;
- The SPC (retrial) overruled the decision by the second court.

### Rationale

- Art 308 of Contract Law 1999 should be applied when the CMC 1992 was silent on the ground that the Contract Law 1999 was the general law in comparison with the CMC 1992.
- However, the principle of fairness of Art 5 of Contract Law 1999 should be paramount when taking into consideration of two parties' obligations and rights;
- Because of the nature of the international liner service, it was difficult for the carrier to change the destination port or return the cargoes in the light of the shipper's instructions completely, otherwise it was unfair for the carrier. Meanwhile, the carrier informed the situation in a timely manner. Therefore, the carrier was not liable for any loss.





### 03 The Impact of the CCC on the CMC

#### Dichotomy of the Impact of the CCC 2020

CMC 1992: Special Law

CMC 1992: 'Unique' Law



#### Applicable Rules: Mandatory Application+Referenced Application

- 1) Principles of the CCC 2020: equal, voluntariness, fairness, good faith, saving resources and the protection of the environment, public order and good customs;
- 2) unified rules: e.g. in a technical sense, the unification of the legal term– a shipper/carrier' s negligence in Arts 50 (the liability of the delay delivery) and 70 ( the carrier' s liability) of the CMC to the shipper/carrier' s fault ( willful misconduct + negligence)

by reference to the relevant Articles of the CCC 2020, but how to apply it depends on 'unique' rules in the international transport law. However, the understanding of the 'unique' rules is debatable.



### 03 The Impact of the CCC on the CMC

#### E.g. Debates on the rule of the delay delivery

Art 50 (1) of the CMC 1992: Delay in delivery occurs when the goods have not been delivered at the designated port of discharge within the time expressly agreed upon

Article 811 of the CCC 2020: The carrier shall safely transport passengers and goods to the contracted destination within the contracted time limit or within a reasonable period of time.

conflicting opinions: 1) apply to Article 811 (Art 290 of Contract Law) of the CCC when there is no agreed time: [2014] Qiong Hai Fa Chong Zi No1 ( Haikou Maritime Court);  
2) The reasonable time to delivery does not comply with the custom and usage, see the Hague Rules



#### E.g. Debates on the rule of the refund for prepaid freight

Prepaid freight should be deemed and non-refundable--**custom and usage in the maritime law domain?**

Art 835 of the CCC 2020: In the event that goods are lost in the course of transport due to force majeure, if the freight has not yet been collected, the carrier may not demand the payment of the freight; if the freight has already been collected, the consignor may ask for a refund, **UNLESS OTHERWISE PROVIDED FOR IN THE LAW**

non-refundable prepaid freight=**UNLESS OTHERWISE PROVIDED FOR IN THE LAW?**



### 03 The Impact of the CCC on the CMC

Expected Revision of the CMC



On 7 September 2018, NPC issued its legislative plan in which revision of the Maritime Code, i.e. a preliminary draft will be finished this year; the final draft shall be submitted for examination no later than March 2023.



Dichotomy harmonization of the CCC 2020 and the CMC 1992 + the protection of specialization of the CMC 1992



## 04 Concluding Remarks

General rule: the CMC 1992 > the CCC 2020, but CMC 1992 is the old special law.



Application of the CMC 1992: 15% in judicial decisions; Shipping experts at the first instance + civil and commercial law experts at the second instance; most maritime cases are subject to general rules in civil and commercial law.



Feasible dichotomy: combination the guidance of the CCC 2020 with the 'unique' rules of the CMC 1992



Fundamental solution: the revision of the CMC 1992— to clarify the 'unique' rules in shipping industry



**Thank you for your attention!**



CECCA NEWSLETTER on  
cecca.org.uk

CNMLC ISSN 2631-7516  
CNCFL ISSN 2631-7524

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