

# **PORT LAW OF THE PEOPLE'S REPUBLIC OF CHINA**

(Adopted at the 3rd Meeting of the Standing Committee of the Tenth National People's Congress on June 28, 2003 and promulgated by Order No.5 of the President of the People's Republic of China on June 28, 2003)

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## Chapter I General Provisions

Article 1 This Law is enacted with a view to strengthening port administration, maintaining port safety and operational order, protecting the legitimate rights and interests of the parties and promoting the construction and development of ports.

Article 2 This Law is applicable to the planning, construction, maintenance, operation and administration of ports and other relevant activities.

Article 3 As used in this Law, the term "port" means a region comprising certain water and land areas, having the functions for vessels to enter, leave, lie at anchor and moor, for passengers to embark and disembark, and for goods to be loaded, unloaded, lightered and stored, and being equipped with the necessary dock facilities.

A port may consist of one or more port areas.

Article 4 The State Council and the local people's governments at or above the county level concerned shall embody the requirements of port development and planning in their plans of national economic and social development, protect and make rational use of the port resources in accordance with law.

Article 5 The State encourages economic organizations and individuals at home and abroad to invest in port construction and operation in accordance with law, and protects the legitimate rights and interests of the investors.

Article 6 The competent department of communications under the State Council shall be in charge of the administration of port affairs throughout the State.

The local people's governments shall, in accordance with the regulations on the system for port administration formulated by the State Council, decide on the administration of the port situated within their own administrative areas.

According to the port administration system decided on as prescribed in the preceding paragraph, for a port that comes under the administration of the people's government of the city or county where it is located, the said people's government shall assign a department to administer the port specifically; and for a port that comes under the administration of the people's government of a province, autonomous region, or municipality directly under the Central Government where it is located, the said people's government shall assign a department to administer the port specifically.

The departments assigned as per the provisions in the preceding paragraph to conduct specific port administration are hereinafter referred to as port administration authorities in general.

## Chapter II Port Planning and Construction

Article 7 Port plans shall be drawn up in accordance with the requirements of national economic and social development and the needs of national defense, shall embody the principle of rational use of the coastline resources, shall comply with the plans for the network of cities and towns, and shall be connected and coordinated with the general plans for land use, general city plans, river basin plans, flood-control plans, marine function divisions, waterway transport development plans, development plans for other modes of transport and other relevant plans provided for by laws or administrative regulations.

In drawing up a port plan, specialists shall be invited to expound and prove it; and the effects on the environment shall be evaluated in accordance with law.

Article 8 Port plans include port layout plans and port general plans.

A port layout plan means the plan for the geographical distribution of ports, embracing the national port layout plan and the port layout plan of a province, autonomous region, or municipality directly under the Central Government.

A port general plan means the specific plan of one port for a given period of time, embracing the scope of water and land areas, division of the port area, handling capacity and types of calling vessels, the character and functions of the port, use of water and land areas, use of coastline for the construction of port facilities, allocation of land for construction, the order of construction phases, etc.

The port general plan shall conform to the port layout plan.

Article 9 The national port layout plan shall be drawn up by the competent department of communications under the State Council after consulting with the relevant departments under the State Council and the military authorities concerned and shall be promulgated for implementation upon approval by the State Council.

With respect to the port layout plan of a province, autonomous region, or municipality directly under the Central Government, the people's government of the province, autonomous region, or municipality directly under the Central Government shall make arrangements to draw it up on the basis of the national port layout plan and submit it to the competent department of communications under the State Council for comments and suggestions. If the said department puts forward no suggestions for revision within 30 days from the date it receives the plan submitted for its comments and suggestions, the port layout plan shall be promulgated for implementation by the people's government of the province, autonomous region, or municipality directly under the Central Government. If the competent department of communications under the State Council considers the plan not in conformity with the national port layout plan, it shall put forward its suggestions for revision within 30 days from the date it receives the plan. If the people's government of the relevant province, autonomous region, or municipality directly under the Central Government raises objections to the suggestions for revisions, it shall report to the State Council for decision.

Article 10 A port general plan shall be drawn up by the port administration authority after consulting with the relevant departments and the military authorities concerned.

Article 11 With respect to the general plan of a major port with an important geographical position, a relatively great handling capacity and a fairly wide-spread effect on the economic development, the competent department of communications under the State Council shall consult with the relevant departments under the State Council and the military authorities concerned, before it gives approval to the plan in conjunction with the people's government of the relevant province, autonomous region, or municipality directly under the Central Government and promulgates it for implementation. The list of major ports shall be decided on and promulgated after the competent department of communications under the State Council consults with the relevant departments under the State Council.

The people's government of a province, autonomous region, or municipality directly under the Central Government shall decide on the major ports located there after consulting with the competent department of communications under the State Council. The general plans of the major ports shall be subject to approval and be promulgated for implementation by the people's government of the province, autonomous region, or municipality directly under the Central Government after consulting with the competent department of communications under the State Council.

The general plans of the ports other than the ones as specified in the preceding two paragraphs shall be promulgated for implementation upon approval by the people's government of the city or county where the ports are located and shall be submitted to the people's government of the province, autonomous region, or municipality directly under the Central Government for the record.

The general plan of a port belonging to the category of the ports as specified in the first or second paragraph of this Article which is drawn up by the port administration authority of the people's government of a city or county shall be subject to examination and agreement by the said people's government before it is submitted for examination and approval.

Article 12 Revision of port plans shall be made in accordance with the procedures for formulating port plans.

Article 13 Where deep-water coastline is to be used for the construction of port facilities in the area covered by the port general plan, the matter shall be subject to approval by the competent department of communications under the State Council together with the department in charge of comprehensive and macro-economic regulation and control under the State Council. Where non-deep-water coastline is to be used for the construction of port facilities, the matter shall be subjected to approval by the port administration authority. However, where port coastline is to be used for the construction of a project which has been approved by the State Council or the department in charge of comprehensive and macro-economic regulation and control under the State Council, there shall be no need to go through the formalities of examination and approval separately for such use.

The standard of port deep-water coastlines shall be formulated by the competent department of communications under the State Council.

Article 14 Port construction shall conform to port plans. No port facilities shall be constructed at variance with port plans.

Article 15 With respect to port construction projects subject to approval by the relevant authorities according to State regulations, the approval formalities shall be gone through in accordance with the relevant regulations of the State, and the projects shall conform to the relevant national standards and technical specifications.

The effect exerted by port construction projects on the environment shall be evaluated in accordance with law.

Safety facilities and environmental protection facilities for port construction projects shall be designed, constructed and put into use simultaneously with the principal parts of the projects.

Article 16 In port construction, land and water areas shall be used in conformity with the provisions of the laws and administrative regulations concerning administration of land and of the use of sea areas, administration of the river courses and of the fairways and administration of protection for military facilities, and other relevant laws and administrative regulations.

Article 17 Places in ports for handling dangerous cargoes and special places for sanitation and pest elimination shall conform to the general plans of ports and the requirements of the State for safe production, protection against fire, inspection and quarantine, and environmental protection; the distance between such places and densely-populated districts and the passenger transport facilities in the port shall conform to the regulations of the relevant departments under the State Council; and such places shall be constructed only after the relevant formalities are gone through in accordance with law and approval is given by the port administration authorities.

Article 18 Beacons and other auxiliary facilities shall be put up simultaneously with the construction of the port and their putting into use on schedule shall be guaranteed.

The construction of office facilities for the relevant administrative authorities in the port shall conform to the port general plan, and the expenses involved therefor shall not be apportioned among port operators.

Article 19 Upon completion of construction, port facilities shall be put into use only after they are checked and accepted as qualified in accordance with the relevant regulations of the State.

The ownership of port facilities shall be determined in accordance with the provisions of relevant laws.

Article 20 The relevant people's governments at or above the county level shall guarantee the necessary investment of funds in the construction and maintenance of the port infrastructures for public use, such as the fairways, breakwaters and anchorages. The specific measures thereof shall be formulated by the State Council.

Article 21 The relevant people's governments at or above the county level shall take measures and make arrangements for the construction of facilities subsidiary to the port, such as fairways, railways, roads, water supply and drainage, power supply and telecommunications.

### Chapter III Port Operation

Article 22 Whoever intends to operate a port shall submit a written application to the port administration authority for a port operation permit and register with the department for industry and commerce in accordance with law.

When granting permission for port operation, the port administration authority shall follow the principles of openness, impartiality and fairness.

Port operations include the operations of dock and other port facilities, port services for passenger transport, cargo loading, unloading, lightering and storing in the port area, and operations of tugs in port.

Article 23 Whoever intends to obtain a port operation permit shall have fixed business places and the necessary facilities, equipment, professional technicians and managerial staff for the operations, and meet the other requirements provided for by laws and regulations.

Article 24 The port administration authority shall make a decision whether to grant or not to grant permission within 30 days from the date it receives the written application prescribed in the first paragraph of Article 22 of this Law. If it decides to grant permission, it shall issue a port operation permit to the applicant. If it refuses to do so, it shall inform the applicant of the fact in writing and give the reasons why.

Article 25 Whoever intends to engage in port tallying shall obtain a permit in accordance with relevant regulations. Permission for port tallying shall be granted in adherence to the principles of openness, impartiality and fairness. The specific measures shall be formulated by the competent department of communications under the State Council.

A port tallyman shall do the tallying impartially and accurately; and he shall not concurrently engage in the loading, unloading and storing of cargoes as prescribed in the third paragraph of Article 22 of this Law.

Article 26 In conducting operational activities, a port operator shall abide by the relevant laws and regulations and the rules governing port operations formulated by the competent

department of communications under the State Council, perform in accordance with law the obligations agreed upon in contracts, and provide clients with fair and fine services.

A port operator engaged in passenger transport shall take effective measures to ensure the passengers' safety, provide them with quick and convenient services and keep a good environment for them when waiting to board a ship.

A port operator shall, in accordance with the laws and regulations concerning environmental protection, take effective measures to prevent and control pollution and hazards to the environment.

Article 27 A port operator shall give first priority to the materials for use in emergency, materials for relief of disasters and materials urgently needed for the buildup of national defence.

Article 28 At his business place, a port operator shall publicize the items of services on which fees are charged and the service rates. Unless publicized, they shall not be put into practice.

Where the rates of port operational fees are guided or fixed by the government in accordance with law, the port operator shall collect fees according to the relevant regulations.

Article 29 The State encourages and protects fair competition in port operational activities.

A port operator shall not make a monopoly of the operation or conduct illegitimate competition and shall not by any means compel another person to accept the port services he provides.

Article 30 The port administration authorities shall, in accordance with the provisions in the Statistics Law of the People's Republic of China and relevant administrative regulations, require the port operators to provide statistical data, the port operators shall provide truthful data.

The port administrative authorities shall, in accordance with the relevant regulations of the State, submit the statistical data provided by port operators to the authorities at a higher level without delay and shall keep the business secrets for the port operators.

Article 31 The legitimate rights and interests of the port operators are protected by law. No units or individuals may apportion charges among the port operators or collect fees from them in violation of laws, or illegally interfere with the right of the port operators to make their own decisions for their operation.

#### Chapter IV Port Safety and Supervision

Article 32 A port operator shall, in accordance with the provisions in the Law of the People's Republic of China on Work Safety and other relevant laws and regulations and the provisions of the rules formulated by the competent department of communications under the State Council concerning safe operation of ports, tighten supervision over safe production, establish sound rules and regulations on the responsibility system for safe production, keep improving the conditions for safe production, take effective measures for safe production and ensure safe production.

A port operator shall, in accordance with law, make its own contingency plans against accidents due to dangerous cargoes, emergency plans for evacuation and rescue of passengers in a major accident due to lack of safe production and plans against natural disasters, and shall ensure the implementation of the plans.

Article 33 A port administration authority shall formulate port contingency plan against accidents due to dangerous cargoes in port that may jeopardize public interests, emergency plans for evacuation and rescue of passengers in a major accident due to lack of safe production and plans against natural disasters, and shall establish a sound port emergency and rescue system major accidents due to lack of safe production in port.

Article 34 Before a vessel enters or leaves a port, the matter shall be reported to the maritime administration authority in accordance with the provisions in laws and administrative regulations concerning waterway traffic safety. After receiving the report, the maritime administration authority shall, without delay, notify the port administration authority thereof.

Before a vessel carrying dangerous cargoes enters or leaves a port, the descriptions, characteristics and package of the cargoes and the time of entry or departure shall be reported to the maritime administration authority in accordance with the regulations of the competent department of communications under the State Council. After receiving the report, the maritime administration authority shall make the decision whether to grant approval or not within the time limit specified by the competent department of communications under the State Council and notify the reporter and the port administration authority of the decision. However, fixed vessels navigating along fixed routes and carrying fixed categories of cargoes may make the report on a regular basis.

Article 35 Before loading, unloading and lightering dangerous cargoes in a port area, the descriptions, characteristics and package of the cargoes and the time and place for the operations shall be reported to the port administration authority in accordance with the regulations of the competent department of communications under the State Council. After receiving the report, the said authority shall make the decision whether to grant approval or not within the time limit specified by the competent department of communications under the State Council and notify the reporter and the maritime administration authority of the decision.

Article 36 A port administration authority shall, in accordance with law, conduct supervision and inspection of safe production in the port and maintain patrol of key docks where masses of passengers embark and disembark or relatively large quantities of cargoes are loaded and unloaded, or which are used for special purposes. If hidden dangers threatening safety are found during inspection, it shall instruct the party under inspection to eliminate, immediately or within a time limit, such dangers.

The department in charge of supervision of safe production and other departments concerned shall, within the limits of their respective duties, conduct supervision and inspection of safe production in the port in accordance with the provisions of laws and regulations.

Article 37 Aquaculture and planting in the water area of a port is prohibited.

Excavation, demolition and other activities in a port area that may threaten port safety are prohibited; but where such activities are really needed for construction or other purposes, the

necessary protective measures for safety shall be taken and the activities shall be reported to the port administration authority for approval; and where, according to the provisions of the laws and administrative regulations concerning waterway traffic safety, approval by the maritime administration authority is required, such activities shall, in addition, be reported to the said authority for approval.

Dumping of soil and sand and stone into the water area of a port and discharging of noxious and harmful substances in excess of the specified norms in violation of laws and regulations concerning environmental protection are prohibited.

Article 38 With respect to the construction of bridges, submarine tunnels, hydropower stations and other projects that may change the hydrologic conditions of a port, the department responsible for examination and approval of such projects shall consult with the port administration authority beforehand.

Article 39 With respect to vessels which need be piloted into or out of a port in accordance with the laws and administrative regulations concerning waterway traffic safety, an application for pilotage shall be submitted to the pilotage authority. The specific measures for pilotage shall be formulated by the competent department of communications under the State Council.

Article 40 In conditions where passengers and cargoes are held up so that the port is blockaded, the port administration authority shall take effective measures in time to regulate the flow of passengers and cargoes; and when it deems it necessary, the people's government of the city or county where the port is located may directly take measures to do so.

Article 41 The port administration authority shall take charge of the formulation of the charter of the port under its administration and make the charter known to the public.

The contents of the port charter shall include the descriptions of the port's geographical position, fairway conditions, harbor depth, mechanical equipment, cargo handling capacity, etc., together with the specific measures taken by this port for the implementation of laws and regulations concerning port administration and the relevant regulations of the competent department of communications under the State Council.

Article 42 The port administration authority shall supervise and inspect the implementation of this Law in compliance with its duties.

When exercising supervision and inspection in accordance with law, the supervisors or inspectors from the port administration authority shall have the right to ask the unit under inspection and the individuals concerned for relevant information and to look up and duplicate relevant materials.

The supervisor or inspector shall keep confidential the business secrets learnt during inspection.

The supervisor or inspector shall produce his law-enforcement papers when exercising supervision and inspection.

Article 43 The supervisor or inspector shall keep a written record of the time, place and items of supervision and inspection, the problems found, and the solutions thereof, and the record shall be signed by the supervisor or inspector and the person in charge of the unit under inspection. Where the person in charge of the unit under inspection refuses to sign, the supervisor or inspector shall put such refusal on record and report it to the port administration authority.

Article 44 The unit under inspection and individuals concerned shall accept the supervision and inspection conducted by the port administration authority in accordance with law, truthfully provide the relevant information and materials and shall not refuse to accept inspection, conceal the relevant information and materials, or provide false information and materials.

## Chapter V Legal Responsibilities

Article 45 Whoever commits one of the following acts shall be instructed by the local people's government at or above the county level or by the port administration authority to rectify within a time limit; if he fails to do so at the expiration of the time limit, the authority that makes the decision for rectification within a time limit shall apply to the people's court for compulsory demolishing of the facilities constructed in violation of law; and a fine of not more than RMB 50,000 yuan may be imposed on him:

- (1) constructing a port, dock or other port facilities at variance with port plans; or
- (2) using port coastlines in the construction of port facilities without obtaining approval in accordance with law.

Where the department in charge of examination and approval of construction projects grants approval to the construction of a project at variance with port plans, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law.

Article 46 Whoever, without obtaining approval in accordance with law, has places constructed in a port for handling dangerous cargoes or special places constructed for sanitation and pest elimination, or fails to keep the distance between the said places and the densely-populated districts or the passenger transport facilities in the port in conformity with the regulations of the relevant departments under the State Council shall be instructed by the port administration authority to stop their construction or use and to rectify within a time limit and may be imposed a fine of not more than 50,000 yuan.

Article 47 Whoever puts into use the handling facilities or passenger transport facilities which are not checked and accepted as qualified shall be instructed by the port administration authority to stop their use and to rectify within a time limit and may be imposed a fine of not more than 50,000 yuan.

Article 48 Whoever commits one of the following acts shall be instructed by the port administration authority to stop the illegal operation, and his illegal gains shall be confiscated; where the illegal gains exceed 100,000 yuan, he shall, in addition, be fined not less than two times but not more than five times the illegal gains; and where the illegal gains

are less than 100,000 yuan, he shall be fined not less than 50,000 yuan but not more than 200,000 yuan :

(1) engaging in port operation without obtaining a port operation permit in accordance with law;

(2) engaging in port tallying without obtaining permission in accordance with law; or

(3) in the case of a port tallyman, concurrently engaging in loading, unloading or storing cargoes.

For a person who commits the act specified in Sub-paragraph (3) of the preceding paragraph, if the circumstances are serious, his port tallying permit shall be revoked by the relevant competent authority.

Article 49 Where a port operator does not give first priority to the materials for use in emergency, materials for relief of disasters and materials urgently needed for the buildup of national defence, he shall be instructed by the port administration authority to rectify; and if the consequences are serious, his port operation permit shall be revoked by the authority.

Article 50 Where a port operator, in violation of the provisions of relevant laws and administrative regulations, makes a monopoly of the operation or conduct illegitimate competition, he shall bear legal responsibility in accordance with the provisions of relevant laws and administrative regulations.

Article 51 Where a port operator violates of the provisions in Article 32 of this Law concerning safe production, he shall, in accordance with law, be sanctioned by the port administration authority or other departments charged with the duty of supervising safe production in accordance with law; if the circumstances are serious, the port administration authority shall revoke his port operation permit and shall punish the principal leading member in accordance with law; and if a crime is constituted, the offender shall be investigated for criminal responsibility in accordance with law.

Article 52 Where, before entering or leaving a port, a vessel fails to report to the maritime administration authority in accordance with the provisions in Article 34 of this Law, the said authority shall impose a punishment according to the provisions in the laws and administrative regulations concerning waterway traffic safety.

Article 53 Whoever fails to report to and obtain approval from the port administration authority in accordance with law before loading, unloading and lightering dangerous cargoes in a port area shall be instructed by the port administration authority to stop the operation and shall be fined not less than 5,000 yuan but not more than 50,000 yuan.

Article 54 Whoever engages in aquiculture or planting in the water area of a port shall be instructed by the maritime administration authority to rectify within a time limit; if he fails to do so at the expiration of the time limit, the cultivation and planting facilities shall be demolished compulsorily, and the expenses thus entailed shall be borne by the law-breaker; and he may be fined not more than 10,000 yuan.

Article 55 Whoever, without obtaining approval in accordance with law, engages in excavation, demolition or other activities in a port area that may threaten port safety, or dumps soil or sand and stone into the water area of a port shall be instructed by the port administration authority to stop the illegal acts and eliminate, within a time limit, the hidden dangers that threaten safety; if he fails to eliminate the hidden dangers at the expiration of the time limit, the dangers shall be eliminated compulsorily and the expenses thus entailed shall be borne by the law-breaker; he shall be fined not less than 5,000 yuan but not more than 50,000 yuan; where, according to the provisions in the laws and administrative regulations concerning waterway traffic safety, punishment shall be imposed by the maritime administration authority, those provisions shall prevail; and if a crime is constituted, the offender shall be investigated for criminal responsibility in accordance with law.

Article 56 Where the competent department of communications, the port administration authority or the maritime administration authority fails to perform its duties in accordance with law and commits one of the following acts, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law:

(1) in violation of law, approving the use of port coastlines for the construction of port facilities, or approving construction of places in port for handling dangerous cargoes or special places for sanitation and pest elimination, or approving the entry or departure of a vessel carrying dangerous cargoes, or approving the loading, unloading or lightering of dangerous cargoes in port;

(2) granting permission for port operation or port tallying to applicants who do not meet the statutory requirements;

(3) failing to revoke the permit obtained by a the port operator or port tallyman immediately after discovering that he no longer meets the statutory permission requirements; or

(4) failing to perform the duties of supervision and inspection in accordance with law and failing to investigate and impose punishment on the construction of ports, docks or other port facilities at variance with port plans, on port operation or port tallying engaged in without obtaining permission in accordance with law, on failure to comply with the regulations concerning administration of safe production, on acts threatening the safety of port operation, and on other acts violating the provisions of this Law.

Article 57 Where an administrative organ interferes with the right of a port operator to make his own decisions for his operation, it shall be instructed by the administrative organ at the next higher level or a supervisory authority to rectify; where such an organ collects money or things of value from among port operators or collects fees from among them in violation of law, it shall be instructed to return the same; and if the circumstances are serious, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law.

## Chapter VI Supplementary Provisions

Article 58 To open a port to vessels navigating along international routes, the relevant people's government of the province, autonomous region, or municipality directly under the Central Government shall, in accordance with the relevant regulations of the States, consult

the relevant departments under the State Council and the military authorities concerned and, after obtaining their consent, submit the matter to the State Council for approval.

Article 59 The competent fishery administration department of the people's government at or above the county level shall be in charge of the administration of fishery ports. The specific measures in this regard shall be formulated by the State Council.

As used in the preceding paragraph, fishery ports mean man-made ports or natural harbors, including the special fishing harbors, special water areas for fishery and special anchorages for fishing boats in a multi-purpose port, which are specially in the service of fishery production, for fishing boats to anchor, to take shelter from the winds, to load and unload their catches and to replenish the supply of the necessities for fishing.

Article 60 The measures for the construction and administration of military ports shall be formulated by the State Council and the Central Military Commission.

Article 61 This Law shall go into effect as of January 1, 2004.