

JAPAN P&I NEWS

No.933-17/12/04

To the Members

Dear Sirs,

China – Implementation of “the General Rules of the Civil Law of the Peoples Republic of China”

We have obtained the following information from Sloma & Co., a law firm in Shanghai, China:

The National People's Congress of the People's Republic of China approved the General Rules of the Civil Law of the P.R.C., the “New Civil Law”, on 27 March 2017 and this came into force as at 1 October 2017. In China, there has existed the General Principles of the Civil Law of the P.R.C., the “Old Civil Law”, since 1987. However, the “New Civil Law” was adopted because the “Old Civil Law” had become out of step with the times.

(Particular Rules of the Civil Law shall be developed and integrated gradually into the Civil Law by 2020.)

We would like to focus on how the “New Civil Law” deals with personal injury/death claims and the time bar, given their importance in the maritime and marine insurance fields.

I. Time of whereabouts becoming unknown

It is clearly defined by Article 41 of the *New Civil Law* that the time during which an individual's whereabouts becomes unknown shall be counted from *the day when it is realised that the individual is non-contactable*.

II. Time to declare death

While providing the same as the *Old Civil Law* that an interested party may apply to the court for declaration of an individual's death when his/ her whereabouts have been *unknown for two years due to an accident, or unknown for four years due to any other situation*, Article 46 of the *New Civil Law* provides a new option which may advance the time to declare death as follows:

If an individual's whereabouts become unknown due to an accident and the relevant authorities certify that it is impossible for him / her to survive, the application for declaration of his/ her death is not subject to the two years provision.

We believe this means that where a ship collision or any other accident has led to a crew member appearing to be un-contactable, the crew member's heirs/ relatives may apply to the court for declaration of his death right after a certification is issued by the relevant authorities

stating the impossibility of his survival after the accident.

The *New Civil Law*, however, does not specify which authority is qualified to issue such certification. In Chinese court practice, the proper authority is usually the police station of the place where the crew member was domiciled. But it is presumed that the administration in charge of the investigation into the ship accident, such as the local MSA, may be empowered to do so in the future.

III. Time of death

Article 48 of the *New Civil Law* clarifies that the date of death of an individual certified as having died shall be *the date of the accident* from which time the individual appears to be un-contactable, or otherwise *the date of judgment* under which the individual's death is declared by the court.

IV. Time bar

The most significant modification made by the *New Civil Law* is that the time bar for civil claims, unless otherwise provided in any other special law (e.g., the Chinese Maritime Law), is extended to three years. This compares with the *Old Civil Law's* two years for general claims and one year for personal injury claims. Moreover, Article 188 of the *New Civil Law* specifies that the time bar shall count from the date on which the claimant knows or should have known *(a) his/ her rights have been infringed; and (b) the party by whom his/ her rights were infringed.*

In addition, two examples of unwritten court practice in respect of the time bar have been adopted as written clauses of the *New Civil Law* as follows:

Article 192: *Where a civil claim is time barred, the obligor may file a defence of non-performance.*

Article 197: *The period, calculation method, and causes of suspension or interruption of the time bar shall be provided by law, so that any agreement in such respects, including prior waiver of time bar benefits, shall be invalid*

Yours faithfully,

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