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一、关于案件管辖 / I. Jurisdiction over the Cases

1.【排他性管辖协议的推定】涉外合同或者其他财产权益纠纷的当事人签订的管辖协议明确约定由一国法院管辖，但未约定该管辖协议为非排他性管辖协议的，应推定该管辖协议为排他性管辖协议。

1. [Presumption Regarding an Exclusive Jurisdiction Agreement] Where a jurisdiction agreement signed by the parties to a foreign-related contract or to any property right dispute clearly stipulates that the court of one country has the jurisdiction over the case, but does not specify the jurisdiction agreement is non-exclusive, it should be presumed to be an exclusive jurisdiction agreement.

2.【非对称管辖协议的效力认定】涉外合同或者其他财产权益纠纷的当事人签订的管辖协议明确约定一方当事人可以从一个以上国家的法院中选择某国法院提起诉讼，而另一方当事人仅能向一个特定国家的法院提起诉讼，当事人

2. [Determination of the Validity of an Asymmetric Jurisdiction Agreement] Where a jurisdiction agreement signed by the parties to a foreign-related contract or to any property right dispute clearly stipulates that one party may file a lawsuit with a court chosen from courts of one or more countries, while the other party may only file a lawsuit with a court of a specific country, if the parties claim that the jurisdiction agreement is invalid on the grounds that it is obviously unfair, the people's court should reject such claim, unless the jurisdiction agreement involves

以显失公平为由主张该管辖协议无效的，人民法院不予支持；但管辖协议涉及消费者、劳动者权益或者违反民事诉讼法专属管辖规定的除外。

3.【跨境消费者网购合同管辖协议的效力】网络电商平台使用格式条款与消费者订立跨境网购合同，未采取合理方式提示消费者注意合同中包含的管辖条款，消费者根据民法典第四百九十六条的规定主张该管辖条款不成为合同内容的，人民法院应予支持。

网络电商平台虽已尽到合理提示消费者注意的义务，但该管辖条款约定在消费者住所地国以外的国家法院诉讼，不合理加重消费者寻求救济的成本，消费者根据民法典第四百九十七条的规定主张该管辖条款无效的，人民法院应予支持。

4.【主从合同约定不同管辖法院的处理】主合同和担保合同分别约定不同国家或者地区的法院管辖，且约定不违反民事诉讼法专属管辖规定的，应当依据管辖协议的约定分别确定管辖法院。当事人主张根据《最高人民法院关于适用<中华人民共和国民法典>有关担保制度的解释》第二十一条第二款的规定，根据主合同确定管辖法院的，人民法院不予支持。

the rights and interests of consumers or workers or violates the provisions on exclusive jurisdiction in the Civil Procedure Law.

3. [Validity of a Jurisdiction Agreement on a Cross-border Consumer Online Shopping Contract] Where an online e-commerce platform uses standard terms to enter into a cross-border online shopping contract with a consumer, but fails to take reasonable measures to bring the jurisdiction clause contained in the contract to the attention of the consumer, if the consumer claims that the jurisdiction clause should not be part of the contract under Article 496 of the Civil Code, the people's court should uphold the claim.

Where the online e-commerce platform has fulfilled its obligation to reasonably remind the consumer, while the jurisdiction clause stipulates that litigation should be filed with a court in a country other than the country of the consumer's domicile, thereby unreasonably increasing the consumer's cost of seeking relief, if the consumer claims that the jurisdiction clause is invalid under Article 497 of the Civil Code, the people's court should uphold the claim.

4. [Specifying Different Competent Courts in the Master and Subordinate Contracts] Where a master contract and a guaranty contract have specified courts of competent jurisdiction in different countries or regions, which does not violate the exclusive jurisdiction provisions of the Civil Procedure Law, the competent courts should be determined respectively according to the jurisdiction agreement. Where a party concerned claims that the determination of the competent court should be subject to the master contract in accordance with Paragraph 2 of Article 21 of the Interpretation of the Supreme People's Court on the Application of the Security System of the Civil Code of the People's Republic of China, the people's court should reject the claim.

二、关于诉讼当事人

5.【“有明确被告”的认定】原告对住所地在中华人民共和国领域外的被告提起诉讼，能够提供该被告存在的证明的，即符合民事诉讼法第一百二十二条第二项规定的“有明确的被告”。被告存在的证明可以是处于有效期内的被告商业登记证、身份证明、合同书等文件材料，不应强制要求原告就上述证明办理公证认证手续。

6.【境外公司的诉讼代表人资格认定】在中华人民共和国领域外登记设立的公司因出现公司僵局、解散、重整、破产等原因，已经由登记地国法院指定司法管理人、清算管理人、破产管理人的，该管理人可以代表该公司参加诉讼。

管理人应当提交登记地国法院作出的判决、裁定及其公证认证手续等相关文件证明其诉讼代表资格。人民法院应当对上述证据组织质证，另一方当事人仅以登记地国法院作出的判决、裁定未经我国法院承认为由，否认管理人诉讼代表资格的，人民法院不予支持。

7.【外籍当事人委托公民代理的手续审查】根据民事诉讼法司法解释第五百二十八条、第五百二十九条的规定，涉外民事诉讼中的外籍当事人委托本国人为诉讼代理人或者委托本国律师以非律师身份担任诉讼代理人、外国驻华使领馆官员受本国公民委托担任诉讼代理人的，不适用民事诉讼法第六十一条第二款第三项的规定，无须提交当事人所在社区、单位或者有关社会团体的推荐函。

8.【外国当事人一次性授权的手续审查】外国当事人一次性授权诉讼代理人代理多个案件或者一个案件的多个程序，该授权办理了公证认证或者司法协助协定规定的相关证明手续，诉讼代理

II. Parties to the Proceedings

5. [Determination of "There Must Be a Specific Defendant"] Where the plaintiff files a lawsuit against the defendant whose domicile is outside the territory of the People's Republic of China, and can provide proof of the existence of the defendant, the condition "There Must Be a Specific Defendant" stipulated in Item 2 of Article 122 of the Civil Procedure Law is met. The proof of the existence of the defendant can be the defendant's business registration certificate, identity certificate, contract and other documents within the validity period, and the plaintiff should not be compelled to undergo the notarization or authentication formalities for such proof.

6. [Recognition of the Eligibility of a Litigation Representative of an Overseas Company] Where a judicial administrator, liquidation administrator or bankruptcy administrator has been appointed to a company registered and established outside the territory of the People's Republic of China by the court in the country of its registration due to company deadlock, dissolution, reorganization, bankruptcy or other reasons, such administrator may participate in litigation on behalf of the company.

The administrator should submit the relevant documents such as a judgment and ruling made by the court in the country of registration of the company, as well as notarization or authentication procedures, to certify its eligibility as litigation representative. The people's court should organize a cross-examination with respect to the above-mentioned evidence. If the other party concerned denies the administrator's eligibility as litigation representative only on the grounds that the judgment or ruling made by the court in the country of registration has not been recognized by the court in China, the people's court should reject it.

7. [Review of the Procedures for a Foreign Litigant to Authorize a Citizen Agent] Where a foreign litigant in a foreign-related civil proceeding entrusts his national to serve as his agent ad litem, or entrusts a lawyer of his home country to act as the agent ad litem as a non-lawyer, or where an official of an embassy or consulate of a foreign country in China is entrusted by a citizen of his home country to act as the agent ad litem of such citizen, the provisions of Item 3, Paragraph 2 of Article 61 of the Civil Procedure Law should not apply, and such foreign litigant or official is not required to submit the recommendation letter from his community or employer or relevant social groups.

8. [Review of the Procedures for the One-time Authorization by a Foreign Litigant] Where a foreign litigant authorizes his agent ad litem to represent multiple cases or multiple procedures of a case at one time, and the authorization has gone through the relevant certification procedures stipulated in the notarization, authentication or judicial assistance agreement, the agent ad litem should have the power to engage in litigation representation in the authorization scope and

人有权在授权委托书的授权范围和有效期内从事诉讼代理行为。对方当事人以该诉讼代理人的授权未就单个案件或者程序办理公证认证或者证明手续为由提出异议的，人民法院不予支持。

9.【境外寄交管辖权异议申请的审查】当事人从中华人民共和国领域外寄交或者托交管辖权异议申请的，应当提交其主体资格证明以及有效联系方式；未提交的，人民法院对其提出的管辖权异议不予审查。

within validity term of the power of attorney. Where the other party concerned raises an objection on the grounds that the agent's authorization has not gone through notarization, authentication or certification procedures for a single case or procedure, the people's court should reject the objection.

9. [Examination of the Application for a Jurisdictional Objection Delivered from Overseas] If a party concerned delivers or entrusts others to file an application for objection to jurisdiction from outside the territory of the People's Republic of China, it/he should submit its/his qualification certificate and valid contact information; otherwise, the people's court will not examine the objection to jurisdiction raised by it/him.

三、关于涉外送达

III. Foreign-related Service

10.【邮寄送达退件的处理】人民法院向在中华人民共和国领域内没有住所的受送达人邮寄送达司法文书，如邮件被退回，且注明原因为“该地址查无此人”“该地址无人居住”等情形的，视为不能用邮寄方式送达。

10. [Handling of a Returned Mail Served by Mail] When the judicial documents are to be served by the people's court on a recipient who is not located within the territory of the People's Republic of China, if the mail is returned for the reason indicating "no such person is found at the service address" or "no one lives at the service address", it should be deemed that the judicial documents cannot be served by mail.

11.【电子送达】人民法院向在中华人民共和国领域内没有住所的受送达人送达司法文书，如受送达人所在国法律未禁止电子送达方式的，人民法院可以依据民事诉讼法第二百七十四条的规定采用电子送达方式，但违反我国缔结或参加的国际条约规定的除外。

受送达人所在国系《海牙送达公约》成员国，并在公约项下声明反对邮寄方式送达的，应推定其不允许电子送达方式，人民法院不能采用电子送达方式。

11. [Electronic Service] When the judicial documents are to be served by the people's court on a recipient who is not located within the territory of the People's Republic of China, if the law of the country where the recipient is located does not prohibit the electronic service, the people's court may adopt the electronic service in accordance with Article 274 of the Civil Procedure Law, without prejudice to the provisions of the international treaties concluded or acceded to by China.

If the country where the recipient is located is a member state of the Hague Service Convention and declares against the service by mail under the Convention, it should be presumed that the electronic service is not allowed in the country where the recipient is located, and the people's court cannot adopt electronic service.

12.【外国自然人的境内送达】人民法院对外国自然人采用下列方式送达，能够确认受送达人收悉的，为有效送达：

（一）向其在境内设立的外商独资企业转交送达；

（二）向其在境内担任法定代表人、公司董事、监事和高级管理人员的企业转交送达；

（三）向其同住成年家属转交送达；

（四）通过能够确认受送达人收悉的其他方式送达。

12. [Domestic Service on a Foreign Natural Person] Where the people's court serves the judicial documents on a foreign natural person in the following ways, through which the receipt of the documents by the recipient can be acknowledged, it should be deemed as an effective service:

(1) service through sending the judicial documents to the wholly foreign-owned enterprise established by the foreign natural person within the territory of China;

(2) service through sending the judicial documents to the domestic enterprise for which the foreign natural person serves as the legal representative, director, supervisor or senior executive;

(3) service through sending the judicial documents to the adult family members living with the foreign natural person; or

(4) service by other means through which the receipt of the document by the recipient can be acknowledged.

13.【送达地址的认定】在中华人民共和国领域内没有住所的当事人未填写送达地址确认书，但在诉讼过程中提交的书面材料明确载明地址的，可以认定该地址为送达地址。

13. [Determination of the Address for Service] Where a party who has no domicile in the territory of the People's Republic of China fails to fill in the confirmation of the address for service, but the written materials submitted during the proceedings clearly state the address for service, such address may be determined as the address for service.

14.【管辖权异议文书的送达】对涉外商事案件管辖权异议程序的管辖权异议申请书、答辩书等司法文书，人民法院可以仅在相对方当事人之间进行送达，但管辖权异议裁定书应当列明并送达所有当事人。

14. [Service of Documents on Objection to Jurisdiction] The people's court may serve judicial documents such as the application for jurisdictional objection and the written defense in the jurisdictional objection procedure for foreign-related commercial cases only between the opposing parties, but the ruling on jurisdictional objection should list the judicial documents and be served on all parties.

四、关于涉外诉讼证据

IV. Evidence in Foreign-related Proceedings

15.【外国法院判决、仲裁裁决等作为证据的认定】一方当事人将外国法院作出的发生法律效力的判决、裁定或者外国仲裁机构作出的仲裁裁决作为证据提交，人民法院应当组织双方当事人质证后进行审查认定，但该判决、裁定或者仲裁裁决认定的事实，不属于民事诉讼法司法解释第九十三条第一款规定的当事人无须举证证明的事实。一方当事人仅以该判决、裁定或者仲裁裁决未经人民法院承认为由主张不能作为证据使用的，人民法院不予支持。

15. [Recognition of a Foreign Court Judgment, Arbitral Award or Other Document as Evidence] Where a party submits as evidence a legally effective judgment or ruling made by a foreign court or an arbitral award made by a foreign arbitration institution, the people's court should organize the parties to cross-examine the evidence for review and determination, but the facts identified by the judgment, ruling or arbitral award do not belong to the facts stipulated in Paragraph 1 of Article 93 of the Judicial Interpretation on the Civil Procedure Law, for which the parties are not required to assume the burden of proof. Where a party claims that the judgment, ruling or arbitral award cannot be used as evidence only on the grounds that the judgment, ruling or arbitral award has not been recognized by the people's court, the people's court should not uphold such claim.

16.【域外公文书证】《最高人民

16. [Extraterritorial Official Documentary Evidence] The official documentary evidence stipulated in Article 16 of the Several Provisions of the Supreme

法院关于民事诉讼证据的若干规定》第十六条规定的公文书证包括外国法院作出的判决、裁定，外国行政机关出具的文件，外国公共机构出具的商事登记、出生及死亡证明、婚姻状况证明等文件，但不包括外国鉴定机构等私人机构出具的文件。

公文书证在中华人民共和国领域外形成的，应当经所在国公证机关证明，或者履行相应的证明手续，但是可以通过互联网方式核查公文书证的真实性或者双方当事人对公文书证的真实性均无异议的除外。

17.【庭审中翻译费用的承担】诉讼过程中翻译人员出庭产生的翻译费用，根据《诉讼费用交纳办法》第十二条第一款的规定，由主张翻译或者负有翻译义务的一方当事人直接预付给翻译机构，人民法院不得代收代付。

人民法院应当在裁判文书中载明翻译费用，并根据《诉讼费用交纳办法》第二十九条的规定确定由败诉方负担。部分胜诉、部分败诉的，人民法院根据案件的具体情况决定当事人各自负担的数额。

People's Court on Evidence in Civil Proceedings includes judgments or rulings made by foreign courts, documents issued by foreign administrative bodies, and commercial registration, birth and death certificates, marital status certificates and other documents issued by foreign public institutions, but excludes documents issued by private institutions such as authentication institutions.

Where an official documentary evidence is produced outside the territory of the People's Republic of China, it should be certified by a notary's office of the home country, or go through relevant certification formalities, unless the authenticity of the official documentary evidence can be verified through the Internet or both parties have no objection to its authenticity.

17. [Bearing of Interpretation Expenses in Court Sessions] The expenses of interpreters appearing in court during the proceedings should be directly prepaid to the translation agency by the party that requests the interpretation service or that has the responsibility of interpretation in accordance with Paragraph 1 of Article 12 of the Measures for the Payment of Litigation Fees, and the people's court should not charge or pay such expenses on behalf of that party.

The people's court should specify the interpretation expenses in the adjudication document, and determine that such expenses should be borne by the losing party according to Article 29 of the Measures for the Payment of Litigation Fees. Where the party wins partially in an action, the people's court may, according to the specific circumstances of the case, decide the amount of interpretation expenses to be respectively borne by the parties.

五、关于涉外民事关系的法律适用

18.【国际条约未规定事项和保留事项的法律适用】中华人民共和国缔结或者参加的国际条约对涉外民商事案件中的具体争议没有规定，或者案件的具体争议涉及保留事项的，人民法院根据涉外民事关系法律适用法等法律的规定确定应当适用的法律。

19.【《联合国国际货物销售合同公约》的适用】营业地位于《联合国国际货物销售合同公约》不同缔约国的当事人缔结的国际货物销售合同应当自动适用该公约的规定，但当事人明确约定排除适用该公约的除外。人民法院应当在法庭辩论终结前向当事人询问关于适用该公约的具体意见。

20.【法律与国际条约的一致解释】人民法院审理涉外商事案件所适用的中华人民共和国法律、行政法规的规定存在两种以上合理解释的，人民法院应当选择与中华人民共和国缔结或者参加的国际条约相一致的解释，但中华人民共和国声明保留的条款除外。

V. Application of Law in Foreign-related Civil Relations

18. [Application of Law for Matters not Covered by International Treaties and Reservations] Where a specific dispute in foreign-related civil and commercial cases is not covered by the international treaties concluded or acceded to by the People’s Republic of China, or the specific dispute of the case involves reservations, the people's court should determine the applicable laws in accordance with the laws such as the Law on Application of Law in Foreign-related Civil Relations.

19. [Application of the CISG] The United Nations Convention on Contracts for the International Sale of Goods (“CISG”) automatically applies to the contracts for the international sale of goods concluded by the parties whose places of business are in different contracting states of the CISG, unless the parties expressly agree to exclude the application of the CISG. The people's court should question the parties on specific opinions on the application of the CISG before the conclusion of the court debate.

20. [Consistent Interpretations of Laws and International Treaties] In case of two or more reasonable interpretations of the laws and administrative regulations of the People's Republic of China applicable to the trial of foreign-related commercial cases by the people's court, the people's court should choose the interpretations consistent with the international treaties concluded or acceded to by the People's Republic of China, except for those provisions to which the People's Republic of China has declared its reservations.

六、关于域外法查明

21.【查明域外法的途径】人民法院审理案件应当适用域外法律时，可以通过下列途径查明：

（1）由当事人提供；

（2）由中外法律专家提供；

（3）由法律查明服务机构提供；

（4）由最高人民法院国际商事专家委员提供；

（5）由与我国订立司法协助协定的缔约相对方的中央机关提供；

（6）由我国驻该国使领馆提供；

（7）由该国驻我国使领馆提供；

（8）其他合理途径。

通过上述途径提供的域外法律资料以及专家意见，应当在法庭上出示，并充分听取各方当事人的意见。

22.【委托国际商事专家委员提供咨询意见】人民法院委托最高人民法院国

VI. Ascertainment of Extraterritorial Laws

21. [Ways to Ascertain Extraterritorial Laws] Where it is necessary for the people's court to apply an extraterritorial law in hearing a case, it may ascertain the law concerned by the following ways:

(1) as provided by the parties;

(2) as provided by Chinese and foreign legal experts;

(3) as provided by service agencies specialized in ascertaining extraterritorial laws;

(4) as provided by the International Commercial Expert Committee of the Supreme People's Court;

(5) as provided by the central authority of a country that has entered into the judicial assistance treaty with China;

(6) as provided by Chinese diplomatic mission or the consulate stationed in the country concerned;

(7) as provided by the diplomatic mission or the consulate of the country concerned stationed in China; or

(8) by other appropriate ways.

Materials and expert opinions concerning the extraterritorial law as provided by any of the above ways should be presented in court, and the opinions of all

际商事专家委员就审理案件涉及的国际条约、国际商事规则、域外法律的查明和适用等法律问题提供咨询意见的，应当通过高级人民法院向最高人民法院国际商事法庭协调指导办公室办理寄交书面委托函，写明需提供意见的法律所属国别、法律部门、法律争议等内容，并附相关材料。

23.【域外法专家出庭】当事人可以依据民事诉讼法第八十二条的规定申请域外法专家出庭。

人民法院可以就专家意见书所涉域外法的理解，对出庭的专家进行询问。经法庭准许，当事人可以对出庭的专家进行询问。专家不得参与域外法查明事项之外的法庭审理活动。专家不能现场到庭的，人民法院可以根据案件审理需要采用视频方式询问。

24.【域外法内容的确定】双方当事人提交的域外法内容相同或者当事人对相对方提交的域外法内容无异议的，人民法院可以作为域外法依据予以确定。当事人对相对方提交的域外法内容有异议的，人民法院应当结合质证认证情况进行审查认定。人民法院不得仅以当事人对域外法内容存在争议为由认定不能查明域外法。

25.【域外法查明不能的认定】当事人应当提供域外法的，人民法院可以根据案件具体情况指定查明域外法的期限并可依据当事人申请适当延长期限。当事人在延长期限内仍不能提供的，视为域外法查明不能。

26.【域外法查明费用】对于应当适用的域外法，根据涉外民事关系法律适用法第十条第一款的规定由当事人提供的，查明费用由当事人直接支付给查明方，人民法院不得代收代付。人民法院可以根据当事人的诉讼请求和具体案情，对当事人因查明域外法而发生的合理费用予以支持。

parties in this regard should be adequately listened to.

22. [Entrusted Provision of Advisory Opinions by the International Commercial Expert Committee] Where the people's court entrusts the International Commercial Expert Committee of the Supreme People's Court to provide advisory opinions on legal issues such as the ascertainment and application of international treaties, international commercial rules and extraterritorial laws involved in the trial of cases, it should, through the high people's court, send a written letter of entrustment to the Coordination and Guidance Office for the China International Commercial Court, indicating the country of law, legal department, legal dispute, among others, for which the opinions are sought, and attaching relevant materials.

23. [Appearance of an Expert in Extraterritorial Laws in Court] The parties may apply for an expert in extraterritorial laws to appear in court in accordance with Article 82 of the Civil Procedure Law.

The people's court may question the expert appearing in court regarding his/her understanding of the extraterritorial law involved in the expert opinion. With the permission of the court, the parties may question the expert appearing in court. The expert may not participate in court trials other than those concerning the ascertainment of extraterritorial laws. In case that an expert cannot appear in court, the people's court may conduct a video questioning as needed in the trial of the case.

24. [Determination of Contents of Extraterritorial Laws] If the contents of an extraterritorial law submitted by the parties are the same or a party has no objection to the contents of the extraterritorial law submitted by the opposite party, the people's court may determine the contents as the basis for the extraterritorial law. Where a party has an objection to the contents of the extraterritorial law submitted by the opposite party, the people's court should carry out examination and determination in combination with the cross-examination and authentication. The people's court should not determine that the extraterritorial law cannot be ascertained solely on the grounds that the parties have disputes over the contents of the extraterritorial law.

25. [Determination of Failure to Ascertain Extraterritorial Laws] Where a party should provide an extraterritorial law, the people's court may designate a time limit for ascertaining the extraterritorial law depending on the specific circumstances of the case and may appropriately extend the time limit for ascertainment upon requested. Where the party fails to complete the ascertainment within the extended time limit, it should be deemed a failure to ascertain the extraterritorial law.

26. [Expenses for Ascertaining Extraterritorial Laws] For the extraterritorial law that should be applied, if provided by a party in accordance with Paragraph 1 of Article 10 of the Law on Application of Law in Foreign-related Civil Relations, the ascertainment expenses should be paid by the party directly to the institution in charge of ascertainment, and the people's court should not charge or pay such expenses on behalf of the party. The people's court may, according to the claims of the party and the specific circumstance of the case, support the claim for the reasonable expenses incurred by the party for ascertaining the extraterritorial law.

七、关于涉公司纠纷案件的审理

27.【境外公司内部决议效力的法律适用】在中华人民共和国领域外登记设立的公司作出的内部决议的效力，人民法院应当适用登记地国的法律并结合公司章程的相关规定予以审查认定。

28.【境外公司意思表示的认定】在中华人民共和国领域外登记设立的公司的董事代表公司在合同书、信件、数据电文等载体上签字订立合同的行为，可以视为该公司作出的意思表示，未加盖该公司的印章不影响代表行为的效力，但当事人另有约定或者登记地国法律另有规定的除外。

公司章程或者公司权力机构对董事代表权的限制，不得对抗善意相对人，但登记地国法律另有规定的除外。

29.【外商投资企业隐名投资协议纠纷】因外商投资企业隐名投资协议产生的纠纷，实际投资者请求确认其在外商投资企业中的股东身份或者请求变更股东身份，并提供证据证明其已实际投资

VII. Trial of Cases Involving Company Disputes

27. [Application of the Law for the Validity of Internal Resolutions of an Overseas Company] The validity of internal resolutions made by a company registered and established outside the territory of the People's Republic of China should be examined and determined by the people's court according to the laws of the country where it is registered, and in combination of the relevant provisions of its articles of association.

28. [Determination of the Expression of Intent by an Overseas Company] Where a director of a company registered and established outside the territory of the People's Republic of China concludes a contract on behalf of the company and affixes his/her signature to the contract, letters, electronic messages and other carriers, it may be deemed an expression of intent made by the company, and failure to affix the company's seal does not affect the representation of the company, unless otherwise agreed by the parties or otherwise provided for by the laws of the country of registration.

The restriction on the director's power of representation imposed by the company's articles of association or by its governing body should not challenge any bona fide counterparty, except as otherwise provided for by the laws of the country of registration.

29. [Disputes over an Anonymous Investment Agreement of a Foreign-invested Enterprise] Where a dispute arises from an anonymous investment agreement of a foreign-invested enterprise, and the de facto investor files a claim for the

且名义股东以外的其他股东认可实际投资者的股东身份的，对其诉讼请求按照以下方式处理：

（1）外商投资企业属于外商投资准入负面清单禁止投资领域的，人民法院不予支持；

（2）外商投资企业属于外商投资准入负面清单以外投资领域的，人民法院应当判决由名义股东履行将所持股权转移登记至实际投资者名下的义务，外商投资企业负有协助办理股权转移登记手续的义务；

（3）外商投资企业属于外商投资准入负面清单限制投资领域的，人民法院应当判决由名义股东履行将所持股权转移登记至实际投资者名下的义务，并协助外商投资企业办理报批手续。判决可以同时载明，不履行报批手续的，实际投资者可自行报批。

因相对人已从名义股东处善意取得外商投资企业股权，或者实际投资者依据前款第3项报批后未获外商投资企业主管机关批准，导致股权变更事实上无法实现的，实际投资者可就隐名投资协议另行提起合同损害赔偿之诉。

confirmation of its shareholder status in the foreign-invested enterprise or for an alteration to the shareholder(s) of the foreign-invested enterprise, while producing evidence to indicate that it has actually invested and that the shareholders other than nominal shareholders recognize its shareholder status, its claim should be handled in the following ways:

(1) where an investment made by the foreign-invested enterprise falls within the fields prohibited by the negative list for foreign investment access, the people's court should reject such claim;

(2) where an investment made by the foreign-invested enterprise falls within the fields outside the negative list for foreign investment access, the people's court should rule that the nominal shareholders should perform the obligation to transfer and register the equity they hold under the name of the de facto investor, and the foreign-invested enterprise is obliged to assist in handling the formalities for the registration for transfer of such equity; or

(3) where an investment made by the foreign-invested enterprise falls within the fields restricted by the negative list for foreign investment access, the people's court should rule that the nominal shareholders should perform the obligation to transfer and register the equity they hold under the name of the de facto investor, and assist the foreign-invested enterprise in handling the formalities for approval. The judgment may also specify that the de facto investor may report for approval by itself in case of failure to perform the formalities for approval.

If the counterparty has obtained the equity of a foreign-invested enterprise in good faith from the nominal shareholders, or the de facto investor has not obtained the approval from the competent authority of the foreign-invested enterprise after reporting for approval in accordance with Item (3) of the preceding paragraph, resulting in failure to complete the equity change in fact, the de facto investor may file a separate lawsuit to seek contract damages with respect to the anonymous investment agreement.

八、关于涉金融纠纷案件的审理

30.【独立保函止付申请的初步实体审查】人民法院审理独立保函欺诈纠纷案件时，对当事人提出的独立保函止付申请，应当根据《最高人民法院关于审理独立保函纠纷案件若干问题的规定》第十四条的规定进行审查，并根据第十二条的规定就是否存在欺诈的止付事由进行初步实体审查；应当根据第十六条的规定在裁定中列明初步查明的事实和是否准许止付申请的理由。

31.【信用证通知行过错及责任认定】通知行在信用证项下的义务为审核确认信用证的表面真实性并予以准确通知。通知行履行通知义务存在过错并致受益人损失的，应当承担相应的侵权责任，但赔偿数额不应超过信用证项下未付款金额及利息。受益人主张通知行赔偿其在基础合同项下所受损失的，人民法院不予支持。

32.【外币逾期付款利息】外币逾期付款情形下，当事人就逾期付款主张利息损失时，当事人有约定的，按当事人约定处理；当事人未约定的，可以参照中国银行同期同类外币贷款利率计算。

VIII. Trial of Cases Involving Financial Disputes

30. [Preliminary Substantive Review of an Application for Cessation of Payment under an Independent Guarantee] In hearing a case involving independent guarantee fraud dispute, the people's court should carry out a review of the application for cessation of payment under an independent guarantee filed by a party in accordance with Article 14 of the Provisions of the Supreme People's Court on Several Issues concerning Trial of Cases Involving Disputes over Independent Guarantees, and conduct a preliminary substantive review on whether there are fraudulent grounds for ceasing the payment in accordance with Article 12 thereof, and specify in the ruling the preliminary ascertained facts and reasons for approving or rejecting the application for cessation of payment in accordance with Article 16 thereof.

31. [Determination of Faults and Liability of the L/C Advising Bank] The advising bank's obligation under the L/C is to review and confirm the apparent authenticity of the L/C and give an accurate notification. Where an advising bank is at fault in performing the notification obligation, thereby causing losses to the beneficiary, it should assume the corresponding infringement liability, but the amount of compensation should not exceed the unpaid amount under the L/C and interest thereon. The people's court should reject the claim of the beneficiary that the advising bank should compensate the losses it suffers under the underlying contract.

32. [Interest on Overdue Payment in Foreign Currency] In the case of overdue payment in foreign currency, when a party claims interest losses on the overdue payment, such claim should be dealt with as agreed by the parties if there is an agreement between them. In case of no agreement between the parties, the interest may be calculated with reference to the interest rate on foreign currency loans of the same type of the Bank of China for the same period.

九、关于申请承认和执行外国法院判决案件的审理

33.【审查标准及适用范围】人民法院在审理申请承认和执行外国法院判决、裁定案件时，应当根据民事诉讼法第二百八十九条以及民事诉讼法司法解释第五百四十四条第一款的规定，首先审查该国与我国是否缔结或者共同参加了国际条约。有国际条约的，依照国际条约办理；没有国际条约，或者虽然有国际条约但国际条约对相关事项未作规定的，具体审查标准可以适用本纪要。

IX. Trial of Cases concerning the Application for Recognition and Enforcement of Judgments Rendered by Foreign Courts

33. [Review Standards and Scope of Application] When hearing a case concerning the application for recognition and enforcement of a judgment or ruling rendered by a foreign court, the people's court should first examine whether the foreign country and our country have concluded or jointly acceded to an international treaty in accordance with Article 289 of the Civil Procedure Law and Paragraph 1 of Article 544 of the Judicial Interpretation on the Civil Procedure Law. If there is an international treaty, the case should be handled in accordance with the international treaty; or in the absence of an international treaty of or although there is an international treaty, it does not provide for relevant matters, the specific review standards may refer to this Summary.

破产案件、知识产权案件、不正当竞争案件以及垄断案件因具有较强的地域性、特殊性，相关判决的承认和执行不适用本纪要。

34.【申请人住所地法院管辖的情形】申请人申请承认外国法院判决、裁定，但被申请人在我国境内没有住所地，且其财产也不在我国境内的，可以由申请人住所地的中级人民法院管辖。

35.【申请材料】申请人申请承认和执行外国法院判决、裁定，应当提交申请书并附下列文件：

（1）判决书正本或者经证明无误的副本；

（2）证明判决已经发生法律效力的文件；

（3）缺席判决的，证明外国法院合法传唤缺席方的文件。

判决、裁定对前款第2项、第3项的情形已经予以说明的，无需提交其他证明文件。

申请人提交的判决及其他文件为外文的，应当附有加盖翻译机构印章的中文译本。

申请人提交的文件如果是在我国领域外形成的，应当办理公证认证手续，或者履行中华人民共和国与该所在国订立的有关国际条约规定的证明手续。

36.【申请书】申请书应当载明下列事项：

（1）申请人、被申请人。申请人或者被申请人为自然人的，应当载明其姓名、性别、出生年月、国籍、住所及身份证件号码；为法人或者非法人组织的，应当载明其名称、住所地，以及法定代表人或者代表人的姓名和职务；

（2）作出判决的外国法院名称、裁判文书案号、诉讼程序开始日期和判决日期；

（3）具体的请求和理由；

（4）申请执行判决的，应当提供被申请人的财产状况和财产所在地，并说明该判决在我国领域外的执行情况；

（5）其他需要说明的情况。

37.【送达被申请人】当事人申请承认和执行外国法院判决、裁定，人民法院应当在裁判文书中将对方当事人列为被申请人。双方当事人都提出申请的，均列为申请人。

人民法院应当将申请书副本送达被申请人。被申请人应当在收到申请书副本之日起十五日内提交意见；被申请人在中华人民共和国领域内没有住所的，应当在收到申请书副本之日起三十日内提交意见。被申请人在上述期限内不提交意见的，不影响人民法院审查。

38.【管辖权异议的处理】人民法院受理申请承认和执行外国法院判决、裁定案件后，被申请人对管辖权有异议的，应当自收到申请书副本之日起十五日内提出；被申请人在中华人民共和国领域内没有住所的，应当自收到申请书副本之日起三十日内提出。

人民法院对被申请人提出的管辖权异议，应当审查并作出裁定。当事人对管辖权异议裁定不服的，可以提起上诉。

39.【保全措施】当事人向人民法院

This Summary are not appliable to the recognition and enforcement of relevant judgments on bankruptcy cases, intellectual property cases, unfair competition cases and monopoly cases due to their territorial nature and specialty.

34. [Jurisdiction of the Court in the Applicant's Place of Domicile] Where an applicant applies for recognition of the judgment or ruling rendered by a foreign court, but the respondent does not have a domicile or any property in China, the intermediate people's court in the applicant's place of domicile may have the jurisdiction on the case.

35. [Application Materials] An applicant applying for recognition and enforcement of a judgment or ruling rendered by a foreign court should submit an application, attached with the following documents:

(1) the original or certified true copies of the judgment;

(2) documents proving that the judgment has taken legal effect; and

(3) documents proving that the foreign court has legally summoned the absent party in case of a default judgment.

Where a judgment or ruling has already explained the circumstances in Items (2) and (3) of the preceding paragraph, no other supporting document needs to be submitted.

If the judgment and other documents submitted by an applicant are in a foreign language, a Chinese translation affixed with the seal of a translation agency should be attached.

If the documents submitted by an applicant are produced outside the territory of China, the applicant should go through the notarization or authentication formalities, or go through the certification formalities as stipulated in the relevant international treaties concluded by and between the People's Republic of China and the country of the applicant.

36. [Application] An application should specify the following particulars:

(1) the applicant and the respondent. If the applicant or the respondent is a natural person, his/her name, gender, date of birth, nationality, domicile and ID number should be indicated; if the applicant is a legal person or an unincorporated organization, its name, domicile, and the name and position of its legal representative or representative should be indicated;

(2) the name of the foreign court that made the judgment, the case number of the judgment document, the start date of the proceedings and the judgment date;

(3) the specific claims and reasons;

(4) when applying for the enforcement of a judgment, the applicant should provide the property status and location of the respondent, and specify the enforcement of the judgment outside the territory of China; and

(5) any other situation that need to be explained.

37. [Service on the Respondent] When a party applies for the recognition and enforcement of a judgment or ruling rendered by a foreign court, the people's court should list the opposite party as the respondent in the judgment document. If both parties apply, they are all listed as applicants.

The people's court should serve a copy of the application on the respondent. The respondent should submit opinions within 15 days from the date of receipt of the copy of the application; if the respondent has no domicile in the territory of the People's Republic of China, it should submit opinions within 30 days from the date of receipt of the copy of the application. Where the respondent fails to do so within the aforesaid time limit, it will not affect the review by the people's court.

38. [Handling of an Objection to Jurisdiction] After the people's court accepts a case concerning the application for recognition and enforcement of a judgment or ruling rendered by a foreign court, the respondent should raise an objection to the jurisdiction, if any, within 15 days from the date of receipt of the copy of the application; if the respondent has no domicile in the territory of the People's Republic of China, it should raise the objection within 30 days from the date of receipt of the copy of the application.

The people's court should examine and make a ruling with respect to the objection to jurisdiction raised by the respondent. If a party is dissatisfied with the ruling, it may file an appeal.

39. [Preservation Measures] After a people's court accepts an application of a party for the recognition and enforcement of a judgment or ruling rendered by a foreign court, if the party applies for property preservation, the people's court may handle such application with reference to the Civil Procedure Law and relevant judicial interpretations. The applicant should provide a guarantee; if the applicant fails to do so, the application will be rejected.

40. [Case-filing Review] The people's court should make a ruling to reject the application if the application filed by an applicant does not meet the conditions for filing a case for the docket and explain the reason therefor. If the application has

申请承认和执行外国法院判决、裁定，人民法院受理申请后，当事人申请财产保全的，人民法院可以参照民事诉讼法及相关司法解释的规定执行。申请人应当提供担保，不提供担保的，裁定驳回申请。

40.【立案审查】申请人的申请不符合立案条件的，人民法院应当裁定不予受理，同时说明不予受理的理由。已经受理的，裁定驳回申请。当事人不服的，可以提起上诉。人民法院裁定不予受理或者驳回申请后，申请人再次申请且符合受理条件的，人民法院应予受理。

41.【外国法院判决的认定标准】人民法院应当根据外国法院判决、裁定的实质内容，审查认定该判决、裁定是否属于民事诉讼法第二百八十九条规定的“判决、裁定”。

外国法院对民商事案件实体争议作出的判决、裁定、决定、命令等法律文书，以及在刑事案件中就民事损害赔偿作出的法律文书，应认定属于民事诉讼法第二百八十九条规定的“判决、裁定”，但不包括外国法院作出的保全裁定以及其他程序性法律文书。

42.【判决生效的认定】人民法院应当根据判决作出国的法律审查该判决、裁定是否已经发生法律效力。有待上诉或者处于上诉过程中的判决、裁定不属于民事诉讼法第二百八十九条规定的“发生法律效力的判决、裁定”。

43.【不能确认判决真实性和终局性的情形】人民法院在审理申请承认和执行外国法院判决、裁定案件时，经审查，不能够确认外国法院判决、裁定的真实性，或者该判决、裁定尚未发生法律效力的，应当裁定驳回申请。驳回申请后，申请人再次申请且符合受理条件的，人民法院应予受理。

44.【互惠关系的认定】人民法院在审理申请承认和执行外国法院判决、裁定案件时，有下列情形之一的，可以认定存在互惠关系：

（1）根据该法院所在国的法律，人民法院作出的民商事判决可以得到该国法院的承认和执行；

（2）我国与该法院所在国达成了互惠的谅解或者共识；

（3）该法院所在国通过外交途径对我国作出互惠承诺或者我国通过外交途径对该法院所在国作出互惠承诺，且没有证据证明该法院所在国曾以不存在互惠关系为由拒绝承认和执行人民法院作出的判决、裁定。

人民法院对于是否存在互惠关系应当逐案审查确定。

45.【惩罚性赔偿判决】外国法院判决的判项为损害赔偿金且明显超出实际损失的，人民法院可以对超出部分裁定不予承认和执行。

46.【不予承认和执行的事由】对外国法院作出的发生法律效力的判决、裁定，人民法院按照互惠原则进行审查后，认定有下列情形之一的，裁定不予承认和执行：

（一）根据中华人民共和国法律，判决作出国法院对案件无管辖权；

been accepted, the people's court should make a ruling to dismiss the application. If a party is dissatisfied with the ruling, it may file an appeal. After the people's court makes a ruling to reject or dismiss the application, if the applicant files an application again which meets conditions for acceptance, the people's court should accept the application.

41. [Criteria for Determination of a Judgment Rendered by a Foreign Court] The people's court should, based on the substance of a judgment or ruling rendered by a foreign court, examine and determine whether the judgment or ruling falls within the scope of "judgments or rulings" stipulated in Article 289 of the Civil Procedure Law.

Judgments, rulings, decisions, orders and other legal documents made by foreign courts on substantive disputes in civil and commercial cases and legal documents on compensation for civil damages in criminal cases should be considered "judgments or rulings" stipulated in Article 289 of the Civil Procedure Law, with the exception of preservation rulings and other procedural legal documents made by foreign courts.

42. [Determination of the Entry into Force of a Judgment] The people's court should examine whether a judgment or ruling has taken legal effect according to the law of the country where the judgment is made. A judgment or ruling pending an appeal or in the process of appeal is not deemed as "judgments or rulings with legal effect" stipulated in Article 289 of the Civil Procedure Law.

43. [Inability to Confirm the Authenticity and Finality of a Judgment] When hearing a case concerning the application for recognition and enforcement of a judgment or ruling rendered by a foreign court, the people's court should dismiss such application if it is unable to confirm, upon review, the authenticity of the judgment or ruling rendered by the foreign court, or if the judgment or ruling has not yet taken legal effect. After dismissal of the application, if the applicant files an application again which meets conditions for acceptance, the people's court should accept the application.

44. [Determination of a Reciprocal Relation] Under any of the following circumstances, the people's court may determine that there is a reciprocal relation when hearing a case concerning the application for recognition and enforcement of a judgment or ruling rendered by a foreign court:

(1) subject to the laws of the country where the court is located, the civil and commercial judgments made by the people's court is recognized and enforced by the court of that country;

(2) China has reached a reciprocal understanding or consensus with the country where the court is located; or

(3) the country where the court is located has made a reciprocal commitment to China through diplomatic channels or China has made a reciprocal commitment to that country through diplomatic channels, and no evidence shows that the country where the court is located has refused to recognize or enforce the judgments or rulings made by the people's court on the grounds that there is no reciprocal relation.

The people's court should review and determine whether there is a reciprocal relation on a case-by-case basis.

45. [Judgment on Punitive Damages] If the award of a judgment rendered by a foreign court is damages which obviously exceeds the actual loss, the people's court may refuse to recognize or enforce the excess.

46. [Reasons for the Refusal of Recognition and Enforcement] After reviewing a judgment or ruling rendered by a foreign court that has taken legal effect in accordance with the principle of reciprocity, the people's court should make a ruling on refusal of the recognition and enforcement of such judgment or ruling under any of the following circumstances:

(1) subject to the laws of the People's Republic of China, the court of the country where the judgment is made has no jurisdiction over the case;

(2) the respondent has not been legally summoned or has been legally summoned but not been given a reasonable opportunity to present and debate, or the party who has no litigation capacity has not been properly represented;

(3) the judgment is obtained by fraud; or

(4) the people's court has made a judgment on the same dispute, or has recognized and enforced the judgment or arbitral award made by a third country on the same dispute.

A legally effective judgment or ruling made by a foreign court that contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security or the public interest, the people's court should refuse to recognize and enforce the judgment or ruling.

47. [Recognition of a Foreign Judgment Made in Violation of an Arbitration

（二）被申请人未得到合法传唤或者虽经合法传唤但未获得合理的陈述、辩论机会，或者无诉讼能力的当事人未得到适当代理；

（三）判决通过欺诈方式取得；

（四）人民法院已对同一纠纷作出判决，或者已经承认和执行第三国就同一纠纷做出的判决或者仲裁裁决。

外国法院作出的发生法律效力的判决、裁定违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

47.【违反仲裁协议作出的外国判决的承认】外国法院作出缺席判决后，当事人向人民法院申请承认和执行该判决，人民法院经审查发现纠纷当事人存在有效仲裁协议，且缺席当事人未明示放弃仲裁协议的，应当裁定不予承认和执行该外国法院判决。

48.【对申请人撤回申请的处理】人民法院受理申请承认和执行外国法院判决、裁定案件后，作出裁定前，申请人请求撤回申请的，可以裁定准许。

人民法院裁定准许撤回申请后，申请人再次申请且符合受理条件的，人民法院应予受理。

申请人无正当理由拒不参加询问程序的，按申请人自动撤回申请处理。

49.【承认和执行外国法院判决的报备及通报机制】各级人民法院审结当事人申请承认和执行外国法院判决案件的，应当在作出裁定后十五日内逐级报至最高人民法院备案。备案材料包括申请人提交的申请书、外国法院判决及其中文译本、人民法院作出的裁定。

人民法院根据互惠原则进行审查的案件，在作出裁定前，应当将拟处理意见报本辖区所属高级人民法院进行审查；高级人民法院同意拟处理意见的，应将其审查意见报最高人民法院审核。待最高人民法院答复后，方可作出裁定。

Agreement] After a foreign court makes a default judgment, if the party concerned applies to the people's court for recognition and enforcement of the judgment, and the people's court, upon review, finds that the parties to the dispute have a valid arbitration agreement, and the absent party has not expressly waived the arbitration agreement, the people's court should make a ruling on refusal of the recognition and enforcement of such foreign judgment.

48. [Handling of the Applicant's Withdrawal of an Application] Where an applicant requests the withdrawal of an application after the people's court accepts a case concerning the application for recognition and enforcement of the judgment or ruling rendered by a foreign court and before it makes a ruling on the case, the people's court may approve such withdrawal.

After the people's court approves the withdrawal of the application, if the applicant files an application again which meets the conditions for acceptance, the people's court should accept the application.

If the applicant refuses to participate in the question procedure without justifiable reasons, it should be deemed to automatically withdraw the application.

49. [Reporting and Notification Mechanism for the Recognition and Enforcement of Judgments Rendered by Foreign Courts] The people's courts at all levels, upon conclusion of cases concerning the application of the parties for recognition and enforcement of the judgments rendered by foreign courts, should report to the Supreme People's Court for filing level by level within 15 days of making the rulings. The filing materials include an application submitted by the applicant, a judgment rendered by a foreign court and Chinese translation thereof, and a ruling made by the people's court.

The people's court should, before making a ruling on the case that it reviews based on the principle of reciprocity, report the opinion to be issued to the high people's court within its jurisdiction for review; if the high people's court consents the opinion to be issued, it should submit the review opinion to the Supreme People's Court for review. A ruling may not be made before the Supreme People's Court gives a reply.

十、关于限制出境

50.【限制出境的适用条件】《第二次全国涉外商事海事审判工作会议纪要》第93条规定的“逃避诉讼或者逃避履行法定义务的可能”是指申请人提起的民事诉讼有较高的胜诉可能性，而被申请人存在利用出境逃避诉讼、逃避履行法定义务的可能。申请人提出限制出境申请的，人民法院可以要求申请人提供担保，担保数额一般应当相当于诉讼请求的数额。

被申请人在中华人民共和国领域内有足额可供扣押的财产的，不得对其采取限制出境措施。被限制出境的被申请人或其法定代表人、负责人提供有效担保或者履行法定义务的，人民法院应当立即作出解除限制的决定并通知公安机关。

X. Restriction on Departure

50. [Conditions for the Application of Restriction on Departure] The "possibility of evading litigation or evading statutory obligations" stipulated in Article 93 of the Summary of the Second National Conference on Foreign-related Commercial and Maritime Trial Work means that the applicant has a relatively high probability of winning the civil litigation it files, while the respondent is likely to evade litigation or evade statutory obligations by going aboard. If an applicant files an application for restriction on departure, the people's court may require the applicant to provide a guarantee, and the amount of guarantee should be generally equal to the amount claimed.

If the respondent has sufficient property available for seizure in the territory of the People's Republic of China, the people’s court may not take the measure of restriction on departure against the respondent. Where the respondent who is imposed restriction on departure or its legal representative or person in charge provides an effective guarantee or performs statutory obligations, the people's court should immediately make a decision to lift the restriction on departure and notify the public security authority of its decision.

海事部分

Maritime Cases

十一、关于运输合同纠纷案件的审理

（一）海上货物运输合同

51.【托运人的识别】提单或者其他运输单证记载的托运人与向承运人或其

XI. Trial of Cases concerning Transport Contract Disputes

(I) Contract of carriage of goods by sea

51. [Identification of the Shipper] In case of any inconsistency between the shipper recorded in the bill of lading(B/L) or other transport documents and the person who books shipping space with the carrier or its agent, the records in the

代理人订舱的人不一致的，提单或者其他运输单证的记载对于承托双方仅具有初步的证明效力，人民法院应当结合运输合同的订立及履行情况准确认定托运人；有证据证明订舱人系接受他人委托并以他人名义或者为他人订舱的，人民法院应当根据海商法第四十二条第三项第1点的规定，认定该“他人”为托运人。

52.【实际承运人责任的法律适用】海商法是调整海上运输关系的特别法律规定，应当优先于一般法律规定适用。就海上货物运输合同所涉及的货物灭失或者损坏，提单持有人选择仅向实际承运人主张赔偿的，人民法院应当优先适用海商法有关实际承运人的规定；海商法没有规定的，适用其他法律规定。

53.【承运人提供集装箱的适货义务】根据海商法第四十七条有关适货义务的规定，承运人提供的集装箱应符合安全收受、载运和保管所装载货物的要求。

因集装箱存在缺陷造成箱内货物灭失或者损坏的，承运人应当承担相应赔偿责任。承运人的前述义务不因海上货物运输合同中的不同约定而免除。

54.【“货物的自然特性或者固有缺陷”的认定】海商法第五十一条第一款第九项规定的“货物的自然特性或者固有缺陷”是指货物具有的本质的、固有的特性或者缺陷，表现为同类货物在同等正常运输条件下，即使承运人已经尽到海商法第四十八条规定的管货义务，采取了合理的谨慎措施仍无法防止损坏的发生。

55.【货损发生期间的举证】根据海商法第四十六条的规定，承运人对其责任期间发生的货物灭失或者损坏负赔偿责任。请求人在货物交付时没有根据海商法第八十一条的规定提出异议，之后又向承运人主张货损赔偿，如果可能发生货损的原因和区间存在多个，请求人仅举证证明货损可能发生在承运人责任期间，而不能排除货损发生于非承运人责任期间的，人民法院不予支持。

56.【承运人对大宗散装货物短少的责任承担】根据航运实践和航运惯例，大宗散装货物运输过程中，因自然损耗、装卸过程中的散落残漏以及水尺计重等的计量允差等原因，往往会造成合理范围内的短少。如果卸货后货物出现短少，承运人主张免责并举证证明该短少属于合理损耗、计量允差以及相关行业标准或惯例的，人民法院原则上应当予以支持，除非有证据证明承运人对货物短少有不能免责的过失;如果卸货后货物短少超出相关行业标准或惯例，承运人又不能举证区分合理因素与不合理因素各自造成的损失，请求人要求承运人承担全部货物短少赔偿责任的，人民法院原则上应当予以支持。

57.【“不知条款”的适用规则】提单是承运人保证据以交付货物的单证，承运人应当在提单上如实记载货物状况，并按照记载向提单持有人交付货物。根据海商法第七十五条的规定，承运人或者代其签发提单的人，在签发已装船提单的情况下没有适当方法核对提单记载的，可以在提单上批注，说明无法核

B/L or other transport documents only have preliminary probative effect for the carrier and the shipper, the people's court should accurately determine the shipper in light of the conclusion and performance of the contract of carriage; if there is evidence to prove that the booking person is entrusted by, and books shipping space in the name of or for, other person, the people's court should determine the "other person" as the shipper in accordance with Sub-item 1, Item 3 of Article 42 of the Maritime Law.

52. [Application of Law for the Liability of the Actual Carrier] The Maritime Law, which is a special legal provision regulating the maritime transport relations, should take priority over general legal provisions. For the loss of or damage to the goods involved in a contract of carriage of goods by sea, if the holder of a B/L chooses to claim compensation only from the actual carrier, the people's court should prioritize the application of the provisions of the Maritime Law on the actual carrier; if there is no such provision in the Maritime Law, other legal provisions should apply.

53. [The Carrier's Obligation to Provide Seaworthy Containers] According to Article 47 of the Maritime Law on the obligation of seaworthiness, the containers provided by the carrier should meet the requirements for the safe reception, carriage and preservation of the loaded goods.

The carrier should assume the corresponding compensation liability for loss of or damage to the goods in the container, arising from the defect in the container. The carrier will not relieved from the foregoing obligations by different agreements in the contract of carriage of goods by sea.

54. [Determination of the "Nature or Inherent Vice of Goods"] The term "nature or inherent vice of goods" stipulated in Item 9, Paragraph 1 of Article 51 of the Maritime Law refers to the essential and inherent nature or vice of goods, manifested as the inability to prevent the damage to the goods of the same kind under the same normal transport conditions, even if the carrier has fulfilled the obligation to manage the goods stipulated in Article 48 of the Maritime Law, and has taken reasonable precautions.

55. [Burden of Proof for the Period When the Goods Are Damaged] According to Article 46 of the Maritime Law, the carrier should be liable for the loss of or damage to the goods that occurs during its liability period. The claimant does not raise an objection in accordance with Article 81 of the Maritime Law when the goods are delivered, and later claims compensation for damage to the goods from the carrier. If there are multiple reasons and intervals for the possible damage to the goods, and the claimant only adduces evidence to prove that the damage to the goods may have occurred in the carrier's liability period, and cannot rule out that such damage may have occurred in the period other than the carrier's liability period, the people's court should not uphold such claim.

56. [The Carrier's Liability for the Short Delivery of Bulk Goods] According to shipping practices, a short delivery of bulk goods within a reasonable range is often caused by such reasons as natural loss, splitting and leaking during loading and unloading, and measurement tolerances such as weight by draft during the transport. Where the carrier claims exemption from the liability for the short delivery after unloading and provides evidence proving that such short is reasonable loss, falls within the measurement tolerances, and complies with relevant industry standards or practices, the people's court should uphold such claim in principle, unless there is evidence proving that the carrier is inexcusable for the short delivery of the goods; where the short delivery of goods after unloading does not comply with the relevant industry standards or practices, and the carrier cannot provide evidence to distinguish the losses arising therefrom respectively caused by reasonable and unreasonable factors, and the claimant requests the carrier to bear all the liability for the short delivery of goods, the people's court should support such request in principle.

57. [Applicable Rules of the "Unknown Clause"] A bill of lading (B/L) is a document based on which the carrier undertakes to deliver the goods. The carrier should faithfully record the condition of the goods in the B/L and deliver the goods to the holder of the B/L according to the record. According to Article 75 of the Maritime Law, if the carrier or any other person issuing the B/L on its behalf has had no reasonable means to check the record of the B/L when a shipped B/L is issued, the carrier or such other person may make a note in the B/L, specifying the lack of reasonable means of checking. Where the shipped goods are damaged and the carrier claims exemption from the liability for compensation in accordance with the "unknown clause" recorded on the B/L, the carrier should bear the burden of proof with regard to of conformity of the note to the circumstances specified in Article 75 of the Maritime Law; if evidence indicates that the damage to the goods is caused by the carrier's violation of the obligations

对。运输货物发生损坏，承运人依据提单记载的“不知条款”主张免除赔偿责任的，应当对其批注符合海商法第七十五条规定情形承担举证责任；有证据证明货物损坏原因是承运人违反海商法第四十七、第四十八条规定的义务，承运人援引“不知条款”主张免除其赔偿责任的，人民法院不予支持。

58.【承运人交付货物的依据】承运人没有签发正本提单，或者虽签发正本提单但已收回正本提单并约定采用电放交付货物的，承运人应当根据运输合同约定、托运人电放指示或者托运人以其他方式作出的指示交付货物。收货人仅凭提单样稿、提单副本等要求承运人交付货物的，人民法院不予支持。

59.【承运人凭指示提单交付时应合理谨慎审单】正本指示提单的持有人请求承运人向其交付货物，承运人应当合理谨慎地审查提单。承运人凭背书不连续的正本指示提单交付货物，请求人要求承运人承担因此造成损失的，人民法院应予支持，但承运人举证证明提单持有人通过背书之外其他合法方式取得提单权利的除外。

60.【承运人对货物留置权的行使】提单或者运输合同载明“运费预付”或者类似性质说明，承运人以运费尚未支付为由，根据海商法第八十七条对提单持有人的货物主张留置权的，人民法院不予支持，提单持有人与托运人相同的除外。

61.【目的港无人提货的费用承担】提单持有人在目的港没有向承运人主张提货或者行使其他权利的，因无人提取货物而产生的费用和风险由托运人承担。承运人依据运输合同关系向托运人主张运费、堆存费、集装箱超期使用费或者其他因无人提取货物而产生费用的，人民法院应予支持。

62.【无单放货纠纷的举证责任】托运人或者提单持有人向承运人主张无单放货损失赔偿的，应当提供初步证据证明其为合法的正本提单持有人、承运人未凭正本提单交付货物以及因此遭受的损失。承运人抗辩货物并未被交付的，应当举证证明货物仍然在其控制之下。

63.【承运人免除无单放货责任的举证】承运人援引《最高人民法院关于审理无正本提单交付货物案件适用法律若干问题的规定》第七条规定，主张不承担无单放货的民事责任的，应当提供该条规定的卸货港所在地法律，并举证证明其按照卸货港所在地法律规定，将承运到港的货物交付给当地海关或者港口当局后已经丧失对货物的控制权。

64.【无单放货诉讼时效的起算点】根据《最高人民法院关于审理无正本提单交付货物案件适用法律若干问题的规定》第十四条第一款的规定，正本提单持有人以无单放货为由向承运人提起的诉讼，时效期间为一年，从承运人应当向提单持有人交付之日起计算，即从该航次将货物运抵目的港并具备交付条件的合理日期起算。

65.【集装箱超期使用费标准的认定】承运人依据海上货物运输合同主张集装箱超期使用费，运输合同对集装箱

prescribed in Article 47 or 48 of the Maritime Law, and the carrier invokes the "unknown clause" in claiming exemption from the liability for compensation, the people's court should reject the claim.

58. [Basis for the Delivery of Goods by the Carrier] Where the carrier has not issued an original B/L, or has withdrawn the issued original B/L and agreed to deliver goods by telex release, the carrier should deliver goods in accordance with the contract of carriage, the shipper's telex release instruction, or instructions otherwise given by the shipper. Where the consignee requests the carrier to deliver the goods only on the strength of a sample or duplicate B/L, the people's court should reject the request.

59. [Exercise of Reasonable Care by the Carrier in Examining the B/L When Delivering against an Order B/L] Where the holder of an order B/L requests the carrier to deliver the goods to the holder, the carrier should exercise reasonable care in examining the B/L. Where the carrier delivers goods against an original B/L with discontinuous endorsement, and the claimant requests the carrier to bear the losses arising therefrom, the people's court should support the claim, unless the carrier provides evidence proving that the holder of the B/L obtained the right to the B/L by any lawful means other than endorsement.

60. [Exercise of the Lien on Goods by the Carrier] Where the B/L or contract of carriage contains "freight prepaid" or a statement of similar nature, and the carrier claims a lien on the goods of the holder of the B/L in accordance with Article 87 of the Maritime Law on the ground that the freight has not been paid, the people's court should reject the claim, unless the holder of the B/L is the shipper.

61. [Costs of Unclaimed Goods at the Port of Destination] Where the holder of a B/L does not claim delivery or exercise other rights against the carrier at the port of destination, the costs and risks arising from unclaimed goods should be borne by the shipper. Where the carrier claims freight, storage fee, demurrage, or any other expenses incurred in connection with unclaimed goods against the shipper in accordance with the contract of carriage, the people's court should support the claim.

62. [Burden of Proof for a Dispute over Delivery of Goods without Production of B/L] Where the shipper or holder of a B/L claims compensation for losses from the delivery of goods without production of B/L from the carrier, prima facie evidence should be provided to prove that it is the lawful holder of the original B/L, and that the carrier has delivered goods without production of B/L, and that it suffered losses therefrom. If the carrier argues that the goods have not been delivered, it should adduce evidence to prove that the goods remain under its control.

63. [The Carrier's Burden of Proof for Release from the Liability for Delivery of Goods without Production of B/L] Where the carrier invokes Article 7 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases Involving Delivery of Goods without Production of Original B/L in claiming that it should not bear the civil liability for delivery of goods without production of B/L, it should provide the law of the place where the port of discharge is located as stipulated in the said Article and provide evidence to prove that it has lost control over the goods after delivering the goods to the local customs or port authority in accordance with the law of the place where the port of discharge is located.

64. [Starting Point of the Prescription for Delivery of Goods without Production of B/L] According to Paragraph 1 of Article 14 of the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases Involving Delivery of Goods without Production of Original B/L, for a case filed by the holder of the original B/L against the carrier for delivery of goods without production of the original B/L, the prescription period of such case is one year, starting from the date on which the goods are due for delivery by the carrier to the holder, namely, a reasonable date on which the goods arrive at the port of destination and meet the conditions for delivery.

65. [Ascertainment of Standards for Demurrage] Where the carrier claims demurrage in accordance with a contract of carriage of goods by sea, and the contract of carriage stipulates the standards for demurrage, the people's court may determine the demurrage in accordance with such stipulations; if no standards are stipulated, but the carrier provides evidence on the standards published on the website of the container provider or the market standards published on the similar website of the container operator for the same period and at the same place, the people's court may accept such standards.

According to the rule of reasonable foreseeability provided for in Article 584 of the Civil Code and the rule of losses provided for in Article 591 of the Civil Code, the carrier should take timely measures to reduce the losses incurred by it from the

超期使用费有约定标准的，人民法院可以按照该约定确定费用；没有约定标准，但承运人举证证明集装箱提供者网站公布的标准或者同类集装箱经营者网站公布的同期同地的市场标准的，人民法院可以予以采信。

根据民法典第五百八十四条规定的可合理预见规则和第五百九十一条规定的减损规则，承运人应当及时采取措施减少因集装箱超期使用对其造成的损失，故集装箱超期使用费赔偿额应在合理限度之内。人民法院原则上以同类新集装箱市价1倍为基准确定赔偿额，同时可以根据具体案情适当浮动或者调整。

66.【请求集装箱超期使用费的诉讼时效】承运人在履行海上货物运输合同过程中将集装箱作为运输工具提供给货方使用的，应当根据海上货物运输合同法律关系确定诉讼时效；承运人请求集装箱超期使用费的诉讼时效期间为一年，自集装箱免费使用期届满次日起开始计算。

67.【港口经营人不能主张承运人的免责或者责任限制抗辩】根据海商法第五十八条、第六十一条的规定，就海上货物运输合同所涉及的货物灭失、损坏或者迟延交付提起的诉讼，有权适用关于承运人的抗辩理由和限制赔偿责任规定的为承运人、实际承运人、承运人和实际承运人的受雇人或者代理人。在现有法律规定下，港口经营人并不属于上述范围，其在港口作业中造成货物损失，托运人或者收货人直接以侵权起诉港口经营人，港口经营人援用海商法第五十八条、第六十一条的规定主张免责或者限制赔偿责任的，人民法院不予支持。

（二）多式联运合同

68.【涉外多式联运合同经营人的“网状责任制”】具有涉外因素的多式联运合同，当事人可以协议选择多式联运合同适用的法律；当事人没有选择的，适用最密切联系原则确定适用法律。

当事人就多式联运合同协议选择适用或者根据最密切联系原则适用中华人民共和国法律，但货物灭失或者损坏发生在国外某一运输区段的，人民法院应当根据海商法第一百零五条的规定，适用该国调整该区段运输方式的有关法律规定，确定多式联运经营人的赔偿责任和责任限额，不能直接根据中华人民共和国有关调整该区段运输方式的法律予以确定；有关诉讼时效的认定，仍应当适用中华人民共和国相关法律规定。

（三）国内水路货物运输合同

69.【收货人的诉权】运输合同当事人约定收货人可直接向承运人请求交付货物，承运人未向收货人交付货物或者交付货物不符合合同约定，收货人请求承运人承担赔偿责任的，人民法院应予受理；承运人对托运人的抗辩，可以向收货人主张。

70.【合同无效的后果】没有取得国内水路运输经营资质的承运人签订的国内水路货物运输合同无效，承运人请求托运人或者收货人参照合同约定支付违

overdue containers, so the compensation for the demurrage should be to a reasonable extent. The people's court should, in principle, determine the compensation based on one time the market price of new containers of the same kind, subject to appropriate fluctuation or adjustment according to the specific circumstances of cases.

66. [Prescription for Claims for Demurrage] Where the carrier provides a container as a means of transport to the shipper for use during the performance of the contract of carriage of goods by sea, the prescription should be determined according to the legal relationship of the contract of carriage of goods by sea; the prescription for the carrier to claim demurrage is one year, commencing on the day immediately following the expiration of free days of containers.

67. [Port Operators Cannot Claim the Carrier's Defense of Release from or Limitation of Liability] According to Article 58 or 61 of the Maritime Law, the carrier's defense and limitation of liability for compensation should apply to any legal action brought against the carrier, actual carrier, or the servant or agent of the carrier or actual carrier with regard to the loss of or damage to or delay in delivery of the goods covered by the contract of carriage of goods by sea. Under the existing laws and regulations, a port operator is not included. If the shipper or consignee directly sues the port operator for infringement that causes the loss of goods during port operations and the port operator invokes Article 58 or 61 of the Maritime Law in claiming exemption from or limitation of liability for compensation, the people's court should not uphold the claim.

(II) Multimodal transport contracts

68. [Reticular Responsibility System for Operators under a Foreign-related Multimodal Transport Contract] For a multimodal transport contract with foreign-related factors, the parties may choose the applicable laws of the multimodal transport contract through agreement; if the parties make no choice, the principle of the most significant connection should be applied in determining the applicable law.

Where the parties choose to apply the laws of the People's Republic of China through agreement or apply the laws of the People's Republic of China according to the principle of the most significant connection for the multimodal transport contract, but the loss of or damage to the goods occurs in a certain section of the transport in a foreign country, the people's court should, in accordance with Article 105 of the Maritime Law, apply the relevant laws and regulations of that country governing that specific section of the multimodal transport, and determine the liability for compensation of the multimodal transport operator and the limitation thereof, which should not be determined directly in accordance with the laws of the People's Republic of China governing that specific section of the multimodal transport; the relevant laws and regulations of the People's Republic of China should still apply to the determination of prescription.

(III) Domestic waterway cargo transport contracts

69. [Right of Action of the Consignee] Where the parties to a transport contract agree that the consignee may directly request the carrier for the delivery of goods to the carrier, but the carrier fails to deliver goods to the consignee or the delivery of goods does not conform to the contract, and the consignee requests the carrier to assume liability for compensation, the people's court should accept the case; the carrier may assert the defense against the shipper to the consignee.

70. [Consequences of Invalidity of a Contract] Where a contract of carriage of goods by domestic waterway signed by the carrier without the operating permit for domestic waterway transport is invalid, and the carrier requests the shipper or consignee to pay liquidated damages by reference to the contract, the people's court should reject the request.

Where a voyage charter signed by the lessor without the operating permit for domestic waterway transport is invalid, and the lessor requests the lessee or the consignee to pay the demurrage by reference to the contract, the people's court should reject the request.

71. [Limitation of Liability for Maritime Claims Not Applicable to Inland Waterway Ships] The ships to which the provisions on the limitation of liability for maritime claims in Chapter XI of the Maritime Law apply should be the sea-going ships as stipulated in Article 3 of the Maritime Law and should not include inland waterway ships. The sea-going ship should be identified according to the navigating ability and permitted navigating areas recorded in the ship inspection certificate. The nature and permitted navigating areas of an inland waterway ship should not change due to its actual navigating areas.

约金的，人民法院不予支持。

没有取得国内水路运输经营资质的出租人签订的航次租船合同无效，出租人请求承租人或者收货人参照合同约定支付滞期费的，人民法院不予支持。

71.【内河船舶不得享受海事赔偿责任限制】海商法第十一章关于海事赔偿责任限制规定适用的船舶应当为海商法第三条规定的海船，不适用于内河船舶。海船的认定应当根据船舶检验证书记载的航行能力和准予航行航区予以确认，内河船舶的船舶性质及其准予航行航区不因船舶实际航行区域而改变。

十二、关于保险合同纠纷案件的审理

72.【不定值保险的认定及保险价值的举证责任】海上保险合同仅约定保险金额，未约定保险价值的，为不定值保险。保险事故发生后，应当根据海商法第二百一十九条第二款的规定确定保险价值。

海上保险合同没有约定保险价值，被保险人请求保险人按照损失金额或者保险金额承担保险赔偿责任，保险人以保险价值高于保险合同约定的保险金额为由，主张根据海商法第二百三十八条的规定承担比例赔偿责任的，应当就保险价值承担举证责任。保险人举证不能的，人民法院可以认定保险金额与保险价值一致。

73.【超额保险的认定及举证责任】海上保险合同明确约定了保险价值，保险事故发生后，保险人以保险合同中约定的保险金额明显高于保险标的的实际价值为由，主张根据海商法第二百一十九条第二款的规定确定保险价值，就超出该保险价值部分免除赔偿责任的，人民法院不予支持；但保险人提供证据证明，被保险人在签订保险合同时存在故意隐瞒或者虚报保险价值的除外。

海上保险合同没有约定保险价值，保险事故发生后，保险人主张根据海商法第二百一十九条第二款的规定确定保险价值，并以保险合同中约定的保险金额明显高于保险价值为由，主张对超过保险价值部分免除保险赔偿责任的，人民法院应予支持。但被保险人提供证据证明，保险人在签订保险合同时明知保险金额明显超过根据海商法第二百一十九条第二款确定的保险价值的除外。

74.【与共同海损分摊相关的海上保险赔偿请求权的诉讼时效】因分摊共同海损而遭受损失的被保险人依据保险合同向保险人请求赔偿的诉讼时效，应当适用海商法第二百六十四条的规定，诉讼时效的起算点为保险事故（共同海损事故）发生之日。

涉及海上保险合同的共同海损分摊，被保险人已经申请进行共同海损理算，但是在诉讼时效期间的最后六个月内，因理算报告尚未作出，被保险人无法向保险人主张权利，属于被保险人主观意志不能控制的客观情形，可以认定构成诉讼时效中止。中止时效的原因消除之日，即理算报告作出之日起，时效期间继续计算。

75.【沿海、内河保险合同保险人代位求偿权诉讼时效起算点】沿海、内河

XII. Trial of Cases concerning Insurance Contract Disputes

72. [Determination of Unvalued Insurance and Burden of Proof for Insured Value] Unvalued insurance is a marine insurance contract which only specifies the insured amount but does not specify the insured value. After occurrence of an insured event, the insured value should be determined in accordance with Paragraph 2 of Article 219 of the Maritime Law.

Where the insured value is not stipulated in a marine insurance contract, and the insured requests the insurer to assume the insurance compensation liability based on the loss amount or the insured amount, and the insurer claims that it should assume the proportional liability in accordance with Article 238 of the Maritime Law on the ground that the insured value is higher than the insured amount as agreed in the insurance contract, the insurer should bear the burden of proof for the insured value. If the insurer is unable to do so, the people's court may determine that the insured amount is consistent with the insured value.

73. [Determination of Excess Insurance and Burden of Proof] Where the insured value is expressly stipulated in a marine insurance contract, and after the occurrence of an insured event, the insurer claims that the insured value should be determined in accordance with Paragraph 2 of Article 219 of the Maritime Law on the ground that the insured value as stipulated in the insurance contract is obviously higher than the actual value of the property insured and that it should be released from the liability in respect of the part in excess of the insured value, the people's court should reject such claim, except where the insurer provides evidence to prove that the insured intentionally conceals or falsely states the insured value when signing the insurance contract.

Where the insured value is not stipulated in the marine insurance contract, and after occurrence of an insured event, the insurer claims that the insured value should be determined in accordance with Paragraph 2 of Article 219 of the Maritime Law on the ground that the insured amount as stipulated in the insurance contract is obviously higher than the insured value and that it should be released from the insurance compensation liability in respect of the part in excess of the insured value, the people's court should support such claim, except where the insured provides evidence to prove that the insurer has the knowledge that the insured amount is obviously higher than the insured value determined according to Paragraph 2 of Article 219 of the Maritime Law when signing the insurance contract.

74. [Prescription of Claims for Marine Insurance Compensation Related to General Average Contribution] The prescription for the insured who suffers losses due to general average contribution to claim compensation from the insurer pursuant to the insurance contract should be subject to Article 264 of the Maritime Law, and the prescription runs from the date of occurrence of the insured event (general average accident).

In respect of the general average contribution in a marine insurance contract, where the insured has applied for general average adjustment, but the insured cannot claim rights against the insurer within the last six months of the prescription because the adjustment report has not been issued, it is an objective circumstance beyond the control of the subjective will of the insured, and may be deemed to have constituted the suspension of prescription. The prescription will continue to be calculated on the date when the reasons for suspending the prescription are eliminated, namely, the date when the adjustment report is issued.

75. [Starting Point of the Prescription for the Subrogation Right of the Insurer under a Coastal or Inland Water Insurance Contract] The starting date of prescription for the subrogation right of the insurer under a coastal or inland water insurance contract should be determined as per the starting date of prescription as specified in the Official Reply of the Supreme People's Court on How to

保险合同保险人代位求偿权的诉讼时效起算日应当根据法释[2001]18号《最高人民法院关于如何确定沿海、内河货物运输赔偿请求权时效期间问题的批复》规定的诉讼时效起算时间确定。

Determine the Prescription of Claims for Compensation in the Transport of Goods on Coastal and Inland Waters (Fa Shi [2001] No.18).

十三、关于船舶物权纠纷案件的审理

76.【就海上货物运输合同产生的财产损失主张船舶优先权的法律适用】承运人履行海上货物运输合同过程中，造成货物灭失或者损坏的，船载货物权利人对本船提起的财产赔偿请求不具有船舶优先权。碰撞船舶互有过失造成船载货物灭失或者损坏的，船载货物权利人可以根据海商法第二十二条第一款第五项的规定向对方船舶主张船舶优先权。

77.【就海上旅客运输合同产生的财产损失主张船舶优先权的法律适用】承运人履行海上旅客运输合同过程中，造成旅客行李灭失或者损坏的，旅客对本船提起的财产赔偿请求不具有船舶优先权。碰撞船舶互有过失造成旅客行李灭失或者损坏的，旅客可以根据海商法第二十二条第一款第五项的规定向对方船舶主张船舶优先权。

78.【挂靠船舶的扣押】挂靠船舶登记所有人的一般债权人，不属于民法典第二百二十五条规定的“善意第三人”，其债权请求权不能对抗挂靠船舶实际所有人的物权。一般债权人申请扣押挂靠船舶后，挂靠船舶实际所有人主张解除扣押的，人民法院应予支持。

对挂靠船舶享有抵押权、留置权和船舶优先权等担保物权的债权人申请扣押挂靠船舶，挂靠船舶实际所有人主张解除扣押的，人民法院不予支持，有证据证明债权人非善意第三人的除外。

XIII. Trial of Cases concerning Disputes over Real Rights on Ships

76. [Application of Law to Claims for Maritime Liens for Property Damage Arising from a Contract of Carriage of Goods by Sea] Where the carrier causes any loss of or damage to goods during the performance of a contract of carriage of goods by sea, the claim for property compensation lodged by the owner of goods on board against the ship should not be entitled to a maritime lien. Where the goods on board are lost or damaged due to mutual fault of the colliding ships, the owner of goods on board may claim a maritime lien against the other colliding ship in accordance with Item 5, Paragraph 1 of Article 22 of the Maritime Law.

77. [Application of Law to Claims for Maritime Liens for Property Damage Arising from a Contract of Carriage of Passengers by Sea] Where the carrier causes any loss of or damage to the luggage of any passenger during the performance of a contract of carriage of passengers by sea, the claim for property compensation lodged by the passenger against the ship should not be entitled to a maritime lien. Where the passenger's luggage is lost or damaged due to mutual fault of the colliding ships, the passenger may claim a maritime lien against the other colliding ship in accordance with Item 5, Paragraph 1 of Article 22 of the Maritime Law.

78. [Seizure of a Ship Operated under Affiliation] The general creditor of the registered owner of a ship operated under affiliation is not deemed a "bona fide third party" provided for in Article 225 of the Civil Code, and its claim for creditor's right cannot oppose the real right of the actual owner of the affiliated ship. Where the actual owner of the affiliated ship claims discharge of the seizure after a general creditor applies for the seizure of the affiliated ship, the people's court should support the claim.

Where a creditor with a security interest such as a mortgage, a lien, and a maritime lien over the affiliated ship applies for seizing the affiliated ship, and the actual owner of the affiliated ship claims for discharge of the seizure, the people's court should reject the claim, unless evidence indicates that the creditor is not a bona fide third party.

十四、关于海事侵权纠纷案件的审理

79.【同一事故中当事船舶适用同一赔偿限额】同一事故中的当事船舶的海事赔偿限额，有适用海商法第二百一十条第一款规定的，无论其是否申请设立海事赔偿责任限制基金或者主张海事赔偿责任限制，其他从事中华人民共和国港口之间货物运输或者沿海作业的当事船舶的海事赔偿责任限额也应适用该条规定。

80.【单一责任限制制度的适用规则】海商法第二百一十五条关于“先抵销，后限制”的规定适用于同类海事请求。若双方存在非人身伤亡和人身伤亡的两类赔偿请求，不同性质的赔偿请求应当分别抵销，分别限制。

81.【养殖损害赔偿的责任承担】因船舶碰撞或者触碰、环境污染造成海上及通海可航水域养殖设施、养殖物受到损害的，被侵权人可以请求侵权人赔偿其由此造成的养殖设施损失、养殖物损失、恢复生产期间减少的收入损失，以及为排除妨害、消除危险、确定损失支出的合理费用。养殖设施损失和收入损失的计算标准可以依照或者参照《最高人民法院关于审理船舶油污损害赔偿纠纷案件若干问题的规定》的相关规定。

被侵权人就养殖损害主张赔偿时，应当提交证据证明其在事故发生时已经

XIV. Trial of Cases concerning Maritime Infringement Disputes

79. [Same Limit of Compensation Applicable to Ships Involved in an Accident] Where Paragraph 1 of Article 210 of the Maritime Law applies to the limit of maritime compensation for ships involved in the same accident, regardless of whether the ships apply for the constitution of a fund for limitation of liability for maritime claims or claim for the limitation of liability for maritime claims, such provision should also apply to the limit of liability for maritime claims of other ships involved in the transport of goods between ports of the People's Republic of China or engaged in coastal operations.

80. [Rules for the Application of the Single Liability Limitation System] The provisions of Article 215 of the Maritime Law on "Set-off before Limitation" should apply to the maritime claims of the same kind. If there are two types of compensation claims for non-casualties and casualties, the compensation claims of different nature should be offset and limited respectively.

81. [Liability for Damages in Aquaculture] Where aquaculture facilities or aquaculture animals in sea or navigable waters are damaged due to collision or contact of ships or environmental pollution, the infringed party may request the infringer to compensate for the losses of aquaculture facilities or aquaculture animals and income losses reduced during the resumption of production arising therefrom, as well as reasonable expenses incurred for removing nuisances, eliminating dangers, and determining losses. The relevant provisions of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Dispute Cases on Compensation for Vessel-induced Oil Pollution Damage may apply or apply mutatis mutandis to the calculation standards for the losses of aquaculture facilities and income losses.

When the infringed party claims compensation for aquaculture damage, it should submit evidence to prove that it has obtained a certificate of right to use sea area and an aquaculture license in accordance with the law when the accident occurs; if the aquaculture has not been licensed by the relevant competent administrative authority, the people's court should reject the claim for income losses, unless the

依法取得海域使用权证和养殖许可证；养殖未经相关行政主管部门许可的，人民法院对收入损失请求不予支持，但被侵权人举证证明其无需取得使用权及养殖许可的除外。

被侵权人擅自在港区、航道进行养殖，或者未依法采取安全措施，对养殖损害的发生有过错的，可以减轻或者免除侵权人的赔偿责任。

infringed party produces evidence to prove that the infringed party is not required to obtain the relevant certificate or license.

Where the infringed party conducts aquaculture in harbors or waterways without authorization, or fails to take safety measures in accordance with the law, and it is the infringed party's fault for the aquaculture damage, the compensation liability of the infringer may be mitigated or relieved.

十五、关于其他海事案件的审理

82.【清污单位就清污费用提起民事诉讼的诉权】清污单位受海事行政机关指派完成清污作业后，清污单位就清污费用直接向污染责任人提起民事诉讼的，人民法院应予受理。

83.【用人单位为船员购买工伤保险的法定义务】与船员具有劳动合同关系的用人单位为船员购买商业保险的，并不因此免除其为船员购买工伤保险的法定义务。船员获得用人单位为其购买的商业保险赔付后，仍然可以依法请求工伤保险待遇。

84.【同一船舶所有人的船舶相互救助情况下的救助款项请求权】同一船舶所有人的船舶之间进行救助，救助方的救助款项不应被取消或者减少，除非其存在海商法第一百八十七条规定的情形。

85.【船员劳务纠纷的举证责任】船员因劳务受到损害，向船舶所有人主张赔偿责任，船舶所有人不能举证证明船员自身存在过错，人民法院对船员关于损害赔偿责任的诉讼请求应予支持；船舶所有人举证证明船员自身存在过错，并请求判令船员自担相应责任的，人民法院对船舶所有人的抗辩予以支持。

86.【基金设立程序中的管辖权异议】利害关系人对受理设立海事赔偿责任限制基金申请法院的管辖权有异议的，应当适用海事诉讼特别程序法第一百零六条有关期间的规定。

87.【光船承租人因经营光租船舶产生债务在光船承租人或者船舶所有人破产时的受偿问题】因光船承租人而非船舶所有人应负责任的海事请求，对光租船舶申请扣押、拍卖，如果光船承租人进入破产程序，虽然该海事请求属于破产债权，但光租船舶并非光船承租人的财产，不属于破产财产，债权人可以通过海事诉讼程序而非破产程序清偿债务。

因光船承租人应负责任的海事请求而对光租船舶申请扣押、拍卖，且该海事请求具有船舶优先权、抵押权、留置权时，如果船舶所有人进入破产程序，请求人在破产程序开始后可直接向破产管理人请求从船舶价款中行使优先受偿权，并在无担保的破产债权人按照破产财产方案受偿之前进行清偿。

88.【船舶所有人破产程序对船舶扣押与拍卖的影响】海事法院无论基于海事请求保全还是执行生效裁判文书等原因扣押、拍卖船舶，均应当在知悉针对船舶所有人的破产申请被受理后及时解除扣押、中止拍卖程序。

破产程序之前当事人已经申请扣押船舶，后又基于破产程序而解除扣押

XV. Trial of Other Maritime Cases

82. [Right of Action of a Pollution Cleanup Entity to Bring a Civil Action for Pollution Cleanup Expenses] Where a pollution cleanup entity, after completion of the cleanup operations assigned by a maritime administrative authority, directly brings a civil action against the person liable for pollution with respect to the pollution cleanup expenses, the people's court should accept the case.

83. [Statutory Obligation of Employers to Cover Work-related Injury Insurance for the Crew] Where an employer having a labor contract relationship with the crew covers commercial insurance for the crew, it does not release it from the statutory obligation to cover work-related injury insurance for the crew. The crew may still claim for work-related injury insurance benefits in accordance with the law after obtaining the compensation under the commercial insurance covered by the employer for them.

84. [Claim for Salvage Payment in the Case of Mutual Salvage between Ships of the Same Shipowner] In the case of salvage between ships of the same shipowner, the salvage payment for the salvor should not be cancelled or reduced except under the circumstances provided for in Article 187 of the Maritime Law

85. [Burden of Proof for a Dispute over Labor Services of the Crew] Where a crew member claims compensation liability against the shipowner for the damage to his labor services, and the shipowner fails to provide evidence to prove that the crew member is at fault, the people's court should support the crew member's claim for compensation for damages; if the shipowner provides evidence to prove that the crew member is at fault and requests that the crew member should be ordered to bear the corresponding liability, the people's court should support the defense of the shipowner.

86. [Objection to Jurisdiction in Fund Constitution Procedures] Where an interested party objects to the jurisdiction of the court accepting the application for the constitution of a fund for limitation of liability for maritime claims, Article 106 of the Special Procedure Law on Admiralty concerning the period should apply.

87. [Repayment of the Bareboat Charterer's Debts Arising from the Operation of Bareboat Charter in the Case of Insolvency of the Bareboat Charterer or Shipowner] For an application for seizure or auction of the bareboat charterer's ship which is filed on the basis of a maritime claim for which the bareboat charterer, not the shipowner, is liable, if the bareboat charterer enters bankruptcy proceedings, although the maritime claim is an insolvency claim, the bareboat charterer's ship is not the property of the bareboat charterer and therefore not the bankrupt property, the creditor may request the repayment of the debts through maritime proceedings rather than bankruptcy proceedings.

Where an application for the seizure or auction of the bareboat charterer's ship is filed due to a maritime claim for which the bareboat charterer is liable and which involves a maritime lien, mortgage, or lien, if the shipowner enters bankruptcy proceedings, the claimant may directly request the bankruptcy administrator to exercise the priority of compensation from the ship price after the commencement of bankruptcy proceedings, and request repayment before the unsecured bankruptcy creditors are compensated according to the bankruptcy property plan.

88. [Influence of the Shipowner's Bankruptcy Proceedings on the Seizure and Auction of a Ship] Whether a maritime court seizes or auctions a ship due to either maritime claims preservation or enforcement of a valid judgment document, it should, after learning that the bankruptcy application against the shipowner has been accepted, promptly discharge the seizure or suspend the auction procedures.

Where a party has applied for the seizure of a ship prior to the bankruptcy proceedings, and subsequently discharges the seizure based on the bankruptcy proceedings, the legal effect of the exercise of the maritime lien should not be affected. After the shipowner enters bankruptcy proceedings, the party cannot apply for seizing the ship. Periods of circumstances under which a maritime lien cannot be exercised through seizure under the law may not be included in the one-year period for the exercise of the maritime lien under the law. Where a

的，有关船舶优先权已经行使的法律效果不受影响。船舶所有人进入破产程序后，当事人不能申请扣押船舶，属于法定不能通过扣押行使船舶优先权的情形，该类期间可以不计入法定行使船舶优先权的一年期间内。船舶优先权人在船舶所有人进入破产程序后直接申报要求从产生优先权船舶的拍卖价款中优先受偿，且该申报没有超过法定行使船舶优先权一年期间的，该船舶优先权所担保的债权应当在一般破产债权之前优先清偿。

maritime lien holder directly declares to claim the priority of compensation from the auction price of the ship giving rise to the lien after the shipowner enters bankruptcy proceedings, and such declaration is made within the one-year period for the exercise of a maritime lien under the law, the claims secured by the maritime lien over the ship should be settled prior to general bankruptcy claims.

因扣押、拍卖船舶产生的评估、看管费用等支出，根据法发[2017]2号《最高人民法院关于执行案件移送破产审查若干问题的指导意见》第15条的规定，可以从债务人财产中随时清偿。

Expenditures such as appraisal fees and custody fees arising from the seizure and auction of ships may be liquidated from the debtor's property at any time in accordance with Article 15 of the Guiding Opinions of the Supreme People's Court on Several Issues concerning the Transfer of Enforcement Cases for Bankruptcy Review (Fa Fa [2017] No.2).

89.【海上交通事故责任认定书的不可诉性】根据《中华人民共和国海上交通安全法》第八十五条第二款“海事管理机构应当自收到海上交通事故调查报告之日起十五个工作日内作出事故责任认定书，作为处理海上交通事故的证据”的规定，海上交通事故责任认定行为不属于行政行为，海上交通事故责任认定书不宜纳入行政诉讼受案范围。海上交通事故责任认定书可以作为船舶碰撞纠纷等海事案件的证据，人民法院通过举证、质证程序对该责任认定书的证明力进行认定。

89. [Non-actionability of the Statement of Liability Determination for a Maritime Traffic Accident] According to Paragraph 2 of Article 85 of the Maritime Traffic Safety Law of the People's Republic of China: "The maritime administrative authority should, within 15 working days upon receipt of the investigation report on a maritime traffic accident, issue a statement of liability determination for the maritime traffic accident, serving as evidence for handling the maritime traffic accident," the act of liability determination for a maritime traffic accident is not an administrative action, and the statement of liability determination for a maritime traffic accident should not be included in the scope of acceptance of administrative litigation cases. The statement of liability determination for a maritime traffic accident may be used as evidence for maritime cases such as ship collision disputes. A people's court should ascertain the probative power of the statement of liability determination through the procedures of proof production and cross-examination.

仲裁司法审查部分

Arbitration-Related Judicial Review Cases

十六、关于申请确认仲裁协议效力案件的审查

XVI. Judicial Review in Cases of Application for the Confirmation of the Validity or Legal Force of an Arbitration Agreement

90.【申请确认仲裁协议效力之诉案件的范围】当事人之间就仲裁协议是否成立、生效、失效以及是否约束特定当事人等产生争议，当事人申请人民法院予以确认，人民法院应当作为申请确认仲裁协议效力案件予以受理，并针对当事人的请求作出裁定。

90. [Scope of Cases Eligible for the Application for Confirmation of the Validity or Legal Force of an Arbitration Agreement] Where a dispute arises between the parties as to whether an arbitration agreement is valid, or has become effective or ineffective and whether it is binding upon specific parties, the parties may apply to the people's court for making a confirmation, and the people's court should accept the case as a case of application for confirmation of the validity or legal force of an arbitration agreement and make a ruling on the request of the parties.

91.【申请确认仲裁协议效力之诉与仲裁管辖权决定的冲突】根据《最高人民法院关于确认仲裁协议效力几个问题的批复》第三条的规定，仲裁机构先于人民法院受理当事人请求确认仲裁协议效力的申请并已经作出决定，当事人向人民法院提起申请确认仲裁协议效力之诉的，人民法院不予受理。

91. [Conflict between an Application for the Confirmation of the Validity or Legal Force of an Arbitration Agreement and a Decision Made under Arbitral Jurisdiction] According to Article 3 of the Official Reply of the Supreme People's Court on Several Issues concerning the Confirmation of the Validity or Legal Force of an Arbitration Agreement, where an arbitration institution has accepted an application for confirmation of the validity or legal force of an arbitration agreement made by a party and has made a decision before the same application is made to a people's court, the people's court shall not accept the application.

92.【放弃仲裁协议的认定】原告向人民法院起诉时未声明有仲裁协议，被告在首次开庭前未以存在仲裁协议为由提出异议的，视为其放弃仲裁协议。原告其后撤回起诉，不影响人民法院认定双方当事人已经通过诉讼行为放弃了仲裁协议。

92. [Determination of a Waiver of an Arbitration Agreement] Where the plaintiff fails to declare an existing arbitration agreement when filing a suit with the people's court, and the defendant fails to raise an objection on the grounds of that existing arbitration agreement before the initial hearing, the defendant should be deemed as having waived the arbitration agreement. Subsequent withdrawal of the suit by the plaintiff should not affect the people's court's determination that both parties have waived the arbitration agreement by the act of engaging in a lawsuit.

被告未应诉答辩且缺席审理的，不应视为其放弃仲裁协议。人民法院在审理过程中发现存在有效仲裁协议的，应当裁定驳回原告起诉。

Where the defendant has not responded to the lawsuit and is absent from the trial, the defendant should not be deemed as having waived the arbitration agreement. If the people's court finds during trial that a valid arbitration agreement exists between the parties, it should rule to dismiss the lawsuit brought by the plaintiff.

93.【仲裁协议效力的认定】根据仲裁法司法解释第三条的规定，人民法院在审查仲裁协议是否约定了明确的仲裁机构时，应当按照有利于仲裁协议有效的原则予以认定。

93. [Determination of the Validity of an Arbitration Agreement] According to Article 3 of the Judicial Interpretation on the Arbitration Law, when examining whether a definite arbitration institution is specified in an arbitration agreement, the people's court should make a determination in accordance with the principle of a presumption in favor of the validity of the arbitration agreement.

94.【“先裁后诉”争议解决条款的效力认定】当事人在仲裁协议中约定争议发生后“先仲裁、后诉讼”的，不属于仲裁法司法解释第七条规定的仲裁协议无

94. [Determination of the Validity of an "Arbitration-before-Litigation" Dispute Resolution Clause] Where the parties agree in an arbitration agreement that

效的情形。根据仲裁法第九条第一款关于仲裁裁决作出后当事人不得就同一纠纷向人民法院起诉的规定，“先仲裁、后诉讼”关于诉讼的约定无效，但不影响仲裁协议的效力。

95.【仅约定仲裁规则时仲裁协议效力的认定】当事人在仲裁协议中未约定明确的仲裁机构，但约定了适用某仲裁机构的仲裁规则，视为当事人约定该仲裁机构仲裁，但仲裁规则有相反规定的除外。

96.【约定的仲裁机构和仲裁规则不一致时的仲裁协议效力认定】当事人在仲裁协议中约定内地仲裁机构适用《联合国国际贸易法委员会仲裁规则》仲裁的，一方当事人以该约定系关于临时仲裁的约定为由主张仲裁协议无效的，人民法院不予支持。

97.【主合同与从合同争议解决方式的认定】当事人在主合同和从合同中分别约定诉讼和仲裁两种不同的争议解决方式，应当分别按照主从合同的约定确定争议解决方式。

当事人在主合同中约定争议解决方式为仲裁，从合同未约定争议解决方式的，主合同中的仲裁协议不能约束从合同的当事人，但主从合同当事人相同的除外。

"arbitration should precede litigation" when a dispute arises, this should not be considered as a case in which an arbitration agreement is invalid as provided in Article 7 of the Judicial Interpretation on the Arbitration Law. According to the first paragraph of Article 9 of the Arbitration Law that after an arbitral award is rendered, the parties shall not initiate an action to the people's court in respect of the same dispute, the part regarding the subsequent litigation in the agreement that "arbitration should precede litigation" should become void, but the validity of the arbitration agreement should not be affected.

95. [Determination of the Validity of an Arbitration Agreement When Only Arbitration Rules are Agreed upon] Where the parties fail to agree on an explicit arbitration institution but agree on the application of arbitration rules of an arbitration institution in the arbitration agreement, the parties shall be deemed to have agreed on the arbitration institution, unless the arbitration rules provide otherwise.

96. [Determination of the Validity of an Arbitration Agreement When There is Inconsistency between the Agreed Arbitration Institution and Agreed Arbitration Rules] Where it is agreed between the parties in an arbitration agreement that an arbitration institution in the Chinese mainland shall apply the UNCITRAL Arbitration Rules to arbitrate a dispute between the parties, if one party claims that the arbitration agreement is invalid on the grounds that it is an agreement regarding ad hoc arbitration, the people's court shall reject such claim.

97. [Determination of a Dispute Resolution Method under the Master Contract and the Subordinate Contract] Where the parties respectively agree on two different dispute resolution methods, namely litigation and arbitration, or arbitration and litigation, in the master contract and the subordinate contract, the dispute resolution method shall be determined respectively according to the master and subordinate contracts for the respective matters thereunder.

Where the parties agree in the master contract that the dispute resolution method is arbitration, but the subordinate contract does not stipulate a dispute resolution method, the arbitration agreement in the master contract shall not be binding on the parties to the subordinate contract, unless the parties to the master contract and the subordinate contract are the same.

十七、关于申请撤销或不予执行仲裁裁决案件的审查

98.【申请执行仲裁裁决案件的审查依据】人民法院对申请执行我国内地仲裁机构作出的非涉外仲裁裁决案件的审查，适用民事诉讼法第二百四十四条的规定。人民法院对申请执行我国内地仲裁机构作出的涉外仲裁裁决案件的审查，适用民事诉讼法第二百八十一条的规定。

人民法院根据前款规定，对被申请人主张的不予执行仲裁裁决事由进行审查。对被申请人未主张的事由或其主张事由超出民事诉讼法第二百四十四条第二款、第二百八十一条第一款规定的法定事由范围的，人民法院不予审查。

人民法院应当根据民事诉讼法第二百四十四条第三款、第二百八十一条第二款的规定，依职权审查执行裁决是否违反社会公共利益。

99.【申请撤销仲裁调解书】仲裁调解书与仲裁裁决书具有同等法律效力。当事人申请撤销仲裁调解书的，人民法院应予受理。人民法院应当根据仲裁法第五十八条的规定，对当事人提出的撤销仲裁调解书的申请进行审查。当事人申请撤销涉外仲裁调解书的，根据仲裁法第七十条的规定进行审查。

100.【境外仲裁机构在我国内地作出的裁决的执行】境外仲裁机构以我国内地为仲裁地作出的仲裁裁决，应当视为我国内地的涉外仲裁裁决。当事人向仲裁地中级人民法院申请撤销仲裁裁决的，人民法院应当根据仲裁法第七十条的规定进行审查；当事人申请执行的，根据民事诉讼法第二百八十一条的规定

XVII. Judicial Review in Cases of Application for the Revocation or Non-enforcement of an Arbitral Award

98. [Basis for Review in Cases of Application for the Enforcement of an Arbitral Award] The people's court should apply Article 244 of the Civil Procedure Law in the review of cases of application for enforcement of a non-foreign-related arbitral award made by an arbitration institution in the Chinese mainland. The people's court should apply Article 281 of the Civil Procedure Law in the review of cases of application for enforcement of a foreign-related arbitral award made by an arbitration institution in the Chinese mainland.

The people's court should, in accordance with the provisions of the preceding paragraph, examine the reasons for non-enforcement of the arbitral award claimed by the respondent. The people's court should not examine any reason not claimed by the respondent or claimed by the respondent beyond the scope of the statutory reasons set out in the second paragraph of Article 244 and the first paragraph of Article 281 of the Civil Procedure Law.

The people's court should, in accordance with the third paragraph of Article 244 and the second paragraph of Article 281 of the Civil Procedure Law, examine ex officio whether the enforcement of an award violates the public interest.

99. [Application for the Revocation of a Mediation Agreement] A mediation agreement has the same legal effect as an arbitral award. Where a party applies for the revocation of a mediation agreement, the people's court should accept the application. The people's court should, in accordance with Article 58 of the Arbitration Law, review the application for the revocation of a mediation agreement submitted by the party. If the mediation agreement that the party applies to revoke is foreign-related, the review should be conducted in accordance with Article 70 of the Arbitration Law.

100. [Enforcement of an Award Rendered by an Overseas Arbitration Institution in the Chinese Mainland] An arbitral award rendered by an overseas arbitration institution in the Chinese mainland should be deemed as a foreign-related arbitral award made in the Chinese mainland. Where a party applies to revoke such an arbitral award to the intermediate people's court at the seat of arbitration, the people's court should review the application in accordance with Article 70 of the Arbitration Law; where a party applies to enforce such an arbitral award, the review should be conducted in accordance with Article 281 of the Civil Procedure Law.

101. [Determination of a Violation of a Statutory Procedure] Where the people’s

进行审查。

101.【违反法定程序的认定】违反仲裁法规定的仲裁程序、当事人选择的仲裁规则或者当事人对仲裁程序的特别约定，可能影响案件公正裁决，经人民法院审查属实的，应当认定为仲裁法第五十八条第一款第三项规定的情形。

102.【超裁的认定】仲裁裁决的事项超出当事人仲裁请求或者仲裁协议约定的范围，经人民法院审查属实的，应当认定构成仲裁法第五十八条第一款第二项、民事诉讼法第二百四十四条第二款第二项规定的“裁决的事项不属于仲裁协议的范围”的情形。

仲裁裁决在查明事实和说理部分涉及仲裁请求或者仲裁协议约定的仲裁事项范围以外的内容，但裁决项未超出仲裁请求或者仲裁协议约定的仲裁事项范围，当事人以构成仲裁法第五十八条第一款第二项、民事诉讼法第二百四十四条第二款第二项规定的情形为由，请求撤销或者不予执行仲裁裁决的，人民法院不予支持。

103.【无权仲裁的认定】作出仲裁裁决的仲裁机构非仲裁协议约定的仲裁机构、裁决事项系法律规定或者当事人选择的仲裁规则规定的不可仲裁事项，经人民法院审查属实的，应当认定构成仲裁法第五十八条第一款第二项、民事诉讼法第二百四十四条第二款第二项规定的“仲裁机构无权仲裁”的情形。

104.【重新仲裁的适用】申请人申请撤销仲裁裁决，人民法院经审查认为存在应予撤销的情形，但可以通过重新仲裁予以弥补的，人民法院可以通知仲裁庭重新仲裁。

人民法院决定由仲裁庭重新仲裁的，通知仲裁庭在一定期限内重新仲裁并在通知中说明要求重新仲裁的具体理由，同时裁定中止撤销程序。仲裁庭在人民法院指定的期限内开始重新仲裁的，人民法院应当裁定终结撤销程序。

仲裁庭拒绝重新仲裁或者在人民法院指定期限内未开始重新仲裁的，人民法院应当裁定恢复撤销程序。

court finds upon review of a case that a violation of the arbitration procedure specified in the Arbitration Law, the arbitration rules selected by the parties, or any special agreement on the arbitration procedure made between the parties may affect the fair adjudication of the case, the case should be determined as falling under the circumstance specified in Item 3 of the first paragraph of Article 58 of the Arbitration Law.

102. [Determination of an Excessive Arbitration Award] Where the people’s court finds upon review of an arbitral award that any matter decided in the arbitral award goes beyond what is requested in the request for arbitration or what is agreed in the arbitration agreement, the case should be deemed as falling under the circumstance specified in Item 2 of the first paragraph of Article 58 of the Arbitration Law or Item 2 of the second paragraph of Article 244 of the Civil Procedure Law that "any matter decided goes beyond the scope of the arbitration agreement".

Where the findings-of-fact or reasoning part of an arbitral award involves content that goes beyond the scope of matters submitted in the request for arbitration or matters subject to arbitration as agreed in the arbitration agreement, but no matter decided under the award goes beyond such scope, if a party applies for the revocation or non-enforcement of the arbitral award on the grounds that the case falls under the circumstance stipulated in Item 2 of the first paragraph of Article 58 of the Arbitration Law or Item 2 of the second paragraph of Article 244 of the Civil Procedure Law, the people's court should reject the application.

103. [Determination of Arbitration in Excess of Jurisdiction] Where the people’s court finds upon review of an arbitral award that the arbitration institution rendering the arbitral award is not the one agreed in the arbitration agreement, or any matter decided in the award is a non-arbitrable matter according to law or the arbitration rules selected by the parties, the case should be determined as falling under the circumstance of going "beyond the jurisdiction of the arbitration institution" as stipulated in Item 2 of the first paragraph of Article 58 of the Arbitration Law or Item 2 of the second paragraph of Article 244 of the Civil Procedure Law.

104. [Application of Re-arbitration in Cases] Where an applicant applies for the revocation of an arbitral award, if the people's court finds upon review that a circumstance exists under which the arbitration award should be revoked but it can be remedied by a re-arbitration, the people's court may notify the arbitral tribunal to conduct a re-arbitration.

If the people's court decides to have a case re-arbitrated by the arbitral tribunal, it should notify the arbitral tribunal to re-arbitrate the case within a certain time limit with the specific reasons for the re-arbitration stated in the notice, while suspending the revocation proceedings. If the arbitration tribunal commences re-arbitration proceedings within the time limit prescribed by the people's court, the people's court should rule to terminate the revocation proceedings.

If the arbitral tribunal refuses to re-arbitrate the case or fails to commence re-arbitration proceedings within the time limit prescribed by the people's court, the people's court should rule to resume the revocation proceedings.

十八、关于申请承认和执行外国仲裁裁决案件的审查

105.【《纽约公约》第四条的理解】申请人向人民法院申请承认和执行外国仲裁裁决，应当根据《纽约公约》第四条的规定提交相应的材料，提交的材料不符合《纽约公约》第四条规定的，人民法院应当认定其申请不符合受理条件，裁定不予受理。已经受理的，裁定驳回申请。

106.【《纽约公约》第五条的理解】人民法院适用《纽约公约》审理申请承认和执行外国仲裁裁决案件时，应当根据《纽约公约》第五条的规定，对被申请人主张的不予承认和执行仲裁裁决事由进行审查。对被申请人未主张的事由或者其主张事由超出《纽约公约》第五条第一款规定的法定事由范围的，人民法院不予审查。

人民法院应当根据《纽约公约》第五条第二款的规定，依职权审查仲裁裁决是否存在裁决事项依我国法律不可仲裁，以及承认和执行仲裁裁决是否违反

XVIII. Judicial Review in Cases of Application for the Recognition and Enforcement of a Foreign Arbitral Award

105. [Interpretation of Article IV of the New York Convention] Where an applicant applies to the people's court for the recognition and enforcement of a foreign arbitral award, it shall submit materials as required by Article IV of the New York Convention; if the materials submitted do not meet the requirements set out in Article IV of the New York Convention, the people's court should determine that the application does not meet the conditions for acceptance and rule that the application should not be accepted; or if the application has been accepted, the court should rule to reject it.

106. [Interpretation of Article V of the New York Convention] When applying the New York Convention in cases of application for the recognition and enforcement of a foreign arbitral award, the people's court should, in accordance with Article V of the New York Convention, examine the reasons for the non-recognition or non-enforcement of an arbitral award claimed by the respondent. The people's court should not examine any reason not claimed by the respondent or claimed by the respondent beyond the scope of the statutory reasons set out in the first paragraph of Article V of the New York Convention.

The people's court should, in accordance with the second paragraph of Article V of the New York Convention, examine ex officio whether the arbitral award involves any non-arbitrable matter under Chinese laws, and whether the recognition or enforcement of the arbitral award is contrary to the public policy of China.

我国公共政策。

107.【未履行协商前置程序不违反约定程序】人民法院适用《纽约公约》审理申请承认和执行外国仲裁裁决案件时，当事人在仲裁协议中约定“先协商解决，协商不成再提请仲裁”的，一方当事人未经协商即申请仲裁，另一方当事人以对方违反协商前置程序的行为构成《纽约公约》第五条第一款丁项规定的仲裁程序与各方之间的协议不符为由主张不予承认和执行仲裁裁决的，人民法院不予支持。

108.【违反公共政策的情形】人民法院根据《纽约公约》审理承认和执行外国仲裁裁决案件时，如人民法院生效裁定已经认定当事人之间的仲裁协议不成立、无效、失效或者不可执行，承认和执行该裁决将与人民法院生效裁定相冲突的，应当认定构成《纽约公约》第五条第二款乙项规定的违反我国公共政策的情形。

109.【承认和执行程序中的仲裁保全】当事人向人民法院申请承认和执行外国仲裁裁决，人民法院受理申请后，当事人申请财产保全的，人民法院可以参照民事诉讼法及相关司法解释的规定执行。申请人应当提供担保，不提供担保的，裁定驳回申请。

107. [Non-Performance of a Prerequisite Negotiation is Not Considered Against the Agreed Procedure] When the people's court applies the New York Convention in a case of application for the recognition and enforcement of a foreign arbitral award, if the arbitration was applied for by one party before negotiating with the other party while it was agreed between the parties in the arbitration agreement that "a dispute shall be settled through negotiation, and be submitted for arbitration if the negotiation fails", a claim for the non-recognition and non-enforcement of the award made by the other party on the grounds that the violation of the prerequisite requirement of negotiation by the party applying for arbitration constitutes the circumstance in which the arbitral procedure was not in accordance with the agreement between the parties as stipulated in Subparagraph (d) of the first paragraph of Article V of the New York Convention, should be rejected by the people's court.

108. [Contrary to the Public Policy] When a people's court hears a case concerning the recognition and enforcement of a foreign arbitral award under the New York Convention, if the arbitration agreement between the parties was decided in an effective ruling rendered by another people's court to have not been established, to be invalid, to have become ineffective or to be unenforceable and the recognition or enforcement of such award would conflict with that effective ruling, the case should constitute the circumstance in which the recognition or enforcement would be contrary to the public policy of China as stipulated in Item B, Paragraph 2 of Article 5 of the New York Convention.

109. [Preservation in Proceedings for the Recognition and Enforcement of an Arbitral Award] Where a party applies to a people's court for the recognition and enforcement of a foreign arbitral award, and after the people's court accepts the first application the party applies for preservation of property, the people's court may handle the case by reference to the provisions of the Civil Procedure Law and the relevant judicial interpretations. The applicant should provide a guarantee, and if the applicant fails to do so, the application should be rejected.

十九、仲裁司法审查程序的其他问题

110.【仲裁司法审查裁定的上诉和再审申请】人民法院根据《最高人民法院关于仲裁司法审查若干问题的规定》第七条、第八条、第十条的规定，因申请人的申请不符合受理条件作出的不予受理裁定、立案后发现不符合受理条件作出的驳回申请裁定、对管辖权异议作出的裁定，当事人不服的，可以提出上诉。对不予受理、驳回起诉的裁定，当事人可以依法申请再审。

除上述三类裁定外，人民法院在审理仲裁司法审查案件中作出的其他裁定，一经送达即发生法律效力。当事人申请复议、提出上诉或者申请再审的，人民法院不予受理，但法律、司法解释另有规定的除外。

XIX. Other Proceedings in the Arbitration-related Judicial Review Procedure

110. [Appeal of a Judicial Review Decision and Application for a Second Judicial Review] Where the people's court decides not to accept an applicant's application due to its failure to meet the acceptance conditions, rejects the application when it is found that the application does not meet the acceptance conditions after the case is docketed, or makes a decision on an objection to jurisdiction under respectively, Article 7, 8 or 10 of the Provisions of the Supreme People's Court on Several Issues concerning the Arbitration-related Judicial Review Cases and the party is not satisfied with the decision, the party may lodge an appeal. The party may apply for a second judicial review of the case in accordance with the law if the appeal is not accepted or rejected.

Apart from the above-mentioned three types of decisions, any other decision made by a people's court in an arbitration-related judicial review case should take legal effect upon service on the parties. Any application for reconsideration of the decision, appeal of the decision or application for a second review of the case will not be accepted by the people's court, unless otherwise stipulated by law or judicial interpretations.

二十、关于涉港澳台商事海事案件的参照适用

111.【涉港澳台案件参照适用本纪要】涉及香港特别行政区、澳门特别行政区和台湾地区的商事海事纠纷案件，相关司法解释未作规定的，参照本纪要关于涉外商事海事纠纷案件的规定处理。

XX. Application of the Summary Mutatis Mutandis in Hong Kong, Macao, or Taiwan-related Commercial or Maritime Cases

111. [Application of the Summary Mutatis Mutandis in Hong Kong, Macao, or Taiwan-related Cases] For commercial or maritime dispute cases involving the Hong Kong Special Administrative Region, the Macao Special Administrative Region, or the Taiwan region, where it is not provided for in the related judicial interpretations, the provisions of the Summary relating to foreign-related commercial or maritime dispute cases shall apply mutatis mutandis.

凡例：

1.法律文件名称中的“中华人民共和国”省略，如《中华人民共和国民法典》简称民法典；

2.《中华人民共和国仲裁法》，简称仲裁法；

3.《中华人民共和国海商法》，简称海商法；

4.《中华人民共和国涉外民事关系法律适用法》，简称涉外民事关系法律适用法；

5.《关于向国外送达民事或商事诉

Notes:

1. The words "of the People's Republic of China" in the names of legal documents are omitted. For example, the Civil Code of the People's Republic of China is referred to as the Civil Code.

2. The Arbitration Law of the People's Republic of China is referred to as the Arbitration Law.

3. The Maritime Law of the People's Republic of China is referred to as the Maritime Law.

4. The Law of the People's Republic of China on Application of Law in Foreign-related Civil Relations is referred to as the Law on Application of Law in Foreign-related Civil Relations.

5. The Convention on the Service Abroad of Judicial and Extrajudicial Documents

讼文书和非诉讼文书海牙公约》，简称《海牙送达公约》；

6.《承认及执行外国仲裁裁决公约》，简称《纽约公约》；

7.《中华人民共和国民事诉讼法》（2021修正），简称民事诉讼法；

8.《中华人民共和国海事诉讼特别程序法》，简称海事诉讼特别程序法；

9.《最高人民法院关于适用<中华人民共和国民事诉讼法>的解释》，简称民事诉讼法司法解释;

10.《最高人民法院关于适用<中华人民共和国仲裁法>若干问题的解释》，简称仲裁法司法解释。

in Civil or Commercial Matters is referred to as the Hague Service Convention.

6. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards is referred to as the New York Convention.

7. The Civil Procedure Law of the People's Republic of China (Revised in 2021) is referred to as the Civil Procedure Law.

8. The Special Procedure Law of the People's Republic of China on Admiralty is referred to as the Special Procedure Law on Admiralty.

9. The Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China is referred to as the Judicial Interpretation on the Civil Procedure Law.

10. The Interpretation of the Supreme People's Court on Certain Issues concerning the Application of the Arbitration Law of the People's Republic of China is referred to as the Judicial Interpretation on the Arbitration Law.