

中国法通讯 China Law Newsletter

跨境争议解决 Cross-border Dispute Resolution

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编者按：本刊旨在报道与中国有关的跨境争议解决的最新动态与我们的实务经验，但本刊不可替代个案的正式法律意见。若您重复收到本刊或者要订阅、退订或进一步了解本刊的内容，请与大成的有关律师联系。

Editor's note: the purpose of this publication is to report the most recent developments in the field of cross-border dispute resolution in connection with China, as well as our practical experience therein. However, this publication should not be treated as a substitute for a formal legal opinion in individual cases. If you have received this publication more than once, or would like to subscribe or unsubscribe to this publication, or follow up on any issues raised in this publication, please be in contact with the lawyer you usually deal with at Dacheng Law Offices.

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司法动态 **JUDICIAL DEVELOPMENTS**

- 最高院发布《最高人民法院关于适用〈中华人民共和国保险法〉若干问题的解释（二）》（来源：人民法院报，2013 年 6 月 8 日）
SPC Releases Interpretations on Certain Issues Concerning the Application of the Insurance Law of the People's Republic of China (II) (Source: www.court.gov.cn, June 8, 2013)

《最高人民法院关于适用〈中华人民共和国保险法〉若干问题的解释（二）》（《解释》）已于 2013 年 5 月 6 日由最高人民法院审判委员会第 1577 次会议通过，自 2013 年 6 月 8 日起施行。

The Interpretations of the Supreme People's Court on Certain Issues Concerning the Application of the Insurance Law of the People's Republic of China (II) (the "Interpretations") were adopted at the 1577th meeting of the Trial Committee of the Supreme People's Court (SPC) on May 6, 2013, and becomes effective as of June 8, 2013.

《解释》规定，投保人的告知义务限于保险人询问的范围和内容。当事人对询问范围及内容有争议的，保险人负举证责任。保险人以投保人违反了对投保单询问表中所列概括性条款的如实告知义务为由请求解除合同的，人民法院不予支持。但该概括性条款有具体内容的除外。

The Interpretations provide that the applicant's duty of disclosure is limited to the scope and content of enquiry by the insurer. If a party disagrees to the scope and content of enquiry, the burden of proof lays on the insurer. Where an insurer petitions for rescission of the contract on the ground that the applicant violates the duty of faithfully disclosing the general terms as listed in the questionnaire under the insurance slip, the people's court shall

not uphold such petition, except where such general terms contain specific contents.

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- 北京首次依据新民诉法对恶意逾期举证作出罚款决定（来源：www.chinacourt.org，2013 年 6 月 21 日）

Beijing Issues the First Fine for Malicious Overdue Evidence Based on New Civil Procedure Law (Source: www.chinacourt.org, June 21, 2013)

6 月 20 日下午，北京市第一中级人民法院在一起劳动纠纷案中，因用人单位逾期提交证据、妨害诉讼程序正常进行，对用人单位开出了 5 万元的罚款单。这是北京一中院首次对违反诚实信用原则、无正当理由迟延举证的当事人开出 5 万元数额的罚单。

In the afternoon of 20 June, the Beijing First Intermediate People's Court imposed a 50,000 yuan fine to an employer, for the employer had failed to provide evidence to the court in time and impaired normal judicial proceedings in a labour dispute case. This is the first fine given by the Beijing First Intermediate Court to one party for breach of good faith and late submission of evidence without an appropriate reason.

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- 最高人民法院发布《关于海事法院可否适用小额诉讼程序问题的批复》（来源：人民法院报，2013 年 6 月 26 日）

The Supreme People's Court Promulgates Reply to Whether the Maritime Court can Apply Petty Lawsuit Procedure (Source: www.court.gov.cn, June 26, 2013)

《最高人民法院关于海事法院可否适用小额诉讼程序问题的批复》（《批复》）已于 2013 年 5 月 27 日由最高人民法院审判委员会第 1579 次会议通过，自 2013 年 6 月 26 日起施行。

The Reply to Whether the Maritime Court can Apply Petty Lawsuit Procedure from the Supreme People's Court ("Reply") was adopted at the No.1579 Meeting of Judicial Committee of the Supreme People's Court on May 27, 2013 and will be implemented as of June 26, 2013.

《批复》明确，2012 年修订的《中华人民共和国民事诉讼法》简易程序一章规定了小额诉讼程序，《中华人民共和国海事诉讼特别程序法》第九十八条规定海事法院可以适用简易程序。因此，海事法院可以适用小额诉讼程序审理简单的海事、海商案件。适用小额诉讼程序的标的额应以实际受理案件的海事法院或其派出法庭所在的省、自治区、直辖市上年度就业人员年平均工资百分之三十为限。

It is identified in the Reply that the petty lawsuit procedure was provided in the Chapter of Summary Procedure in the Civil Procedure Law of the People's Republic of China amended in 2012 and Article 98 in the Special Maritime Procedure Law of the People's Republic of China provides that the maritime courts may apply summary procedure. Therefore the maritime courts may apply petty lawsuit procedure to judge simple

maritime trade cases. The maximum amount of subject matter applicable to petty lawsuit procedure shall be 30% of average annual salary of employees in the previous year in the province, autonomous region, municipality directly under the Central Government where the maritime court or its detached tribunal locates.

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- 上海高院知产庭制定《职务发明创造发明人或设计人奖励、报酬纠纷审理指引》（来源：上海市知识产权司法保护网，2013 年 6 月 28 日）

Intellectual Property Tribunal of Shanghai Municipal Higher People's Court Formulates the Guideline for Hearing Disputes Arising from Reward or Compensation to Inventors or Designers of Service Inventions (Source: www.shcipp.gov.cn, June 28, 2013)

近日，上海高院知产庭制定了《职务发明创造发明人或设计人奖励、报酬纠纷审理指引》（《指引》），供上海各法院在案件审理中参考。

Recently the Intellectual Property Tribunal of Shanghai Municipal Higher People's Court formulated the Guideline for Hearing Disputes Arising from Reward or Compensation to Inventors or Designers of Service Inventions ("Guideline") for reference by courts in Shanghai in hearing relevant cases.

《指引》明确，根据专利法实施细则的规定，职务发明创造奖励与报酬标准可以通过单位与发明人、设计人协商约定，也可以在单位依法制定的规章制度中规定。

It is expressly provided in the Guideline that according to the provisions of implementation rules of the Patent Law, the standard of reward and compensation for service inventions can be agreed between the unit and the inventor or designer after consultation, or provided in the regulations formulated by the unit according to laws.

根据《指引》，被授予专利权的单位未与发明人、设计人约定，也未在其依法制定的规章制度中规定职务发明奖励、报酬的方式和数额的，应适用法定标准确定职务发明人奖励、报酬。

According to the Guideline, if the unit granted patent right has not agreed with the designers or inventors or has not provided the method and amount of reward and compensation for service invention in its regulations formulated according to laws, the reward and compensation to the service inventors shall be confirmed according to statutory standards.

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判例研究 CASE ANALYSIS



Case Analysis on How Chinese Courts and Arbitration Institutes Decide Cases

判例研究—中国法院和仲裁机构如何判案

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申请执行人申请撤销仲裁裁决的期间，被申请人是否应支付迟延履行利息？

Should The Respondent Be Subject To Late Payment Interest During The Period While The Applicant Petitions For Revocation of An Arbitral Award?

【背景情况】申请执行人与被执行人因委托协议纠纷申请仲裁，被执行人败诉，并须履行一定金钱给付义务，逾期支付按照《民事诉讼法》第 229 条的规定支付逾期利息。申请执行人不服仲裁结果，申请法院撤销仲裁裁决，法院裁定驳回申请。后被执行人不按期履行仲裁裁决确定的义务，申请执行人申请法院强制执行。被申请人对执行金额提出异议，主张申请执行人向法院申请撤销仲裁裁决的期间，不应计算迟延履行利息。

【Background】The Applicant and the Respondent in the enforcement action had filed for arbitration to resolve their disputes regarding an entrustment agreement, and an adverse arbitral award is made against the Respondent who is ordered to make certain monetary payment, and any late payment is subject to late payment interest under Article 229 of the PRC Civil Procedural Law. The Applicant disagrees with the arbitral award and petitioned the court to revoke the arbitral award, and the court ordered to dismiss the Applicant's petition. Later, the Respondent failed to perform its obligations under the arbitral award during the specified period, and the Applicant petitioned the court to enforce the arbitral award. The Respondent challenges the amount of the enforcement, arguing that no late payment interest applies during the period while the Applicant petitions the court to revoke the arbitral award.

【执行法院】不计算。

【Court of the Enforcement Proceeding】No late payment interest applies.

【复议法院】计算。

【Review Court】Late payment interest applies.

【裁判理由】根据北京市高级人民法院的意见，一方面，申请执行人申请撤销仲裁裁决并未改变被执行人未按仲裁裁决履行义务的状态，应当双倍计算迟延履行利息；另

一方面，被执行人履行仲裁裁决后，仲裁裁决被撤销的，依照法律规定，执行回转制度可以保障被执行人的权利。因此，申请执行人申请撤销仲裁裁决不能成为阻却被执行人履行仲裁裁决的正当理由。申请执行人申请撤销仲裁裁决的期间，被申请执行人亦应当支付迟延履行利息。

【Basis of the Decision】 According to Beijing Superior Court, on the one hand, the petition of the Applicant to revoke the arbitral award does not alter the fact that the Respondent did not perform its obligations according to the arbitral award, and a double amount of late payment interest shall be assessed. On the other hand, were the arbitral award revoked after the Respondent has paid under the arbitral award, the interests of the Respondent is protected by the recovery of execution under relevant laws. Therefore, the petition of the Applicant to revoke the arbitral award is no justification for stopping the Respondent from discharging its obligations under the arbitral award. During the period while the Applicant made the petition for revocation of the arbitral award, the Respondent should also be subject to late payment interest.

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