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目录

新法速递 NEW LAWS AND REGULATIONS WATCH	2
海关总署发布《关于〈中西部外资目录（2013 年修订）〉海关执行中的有关问题的公告》	2
交通运输部办公厅发布《关于促进航运业转型升级健康发展的若干意见》	4
交通运输部发布《关于修改〈中华人民共和国船舶油污损害民事责任保险实施办法〉的决定》	6
交通运输部发布《关于修改〈中华人民共和国船员服务管理规定〉的决定》	8
交通运输部发布《关于修改〈中华人民共和国国际海运条例实施细则〉的决定》	9
交通运输部发布《关于修改〈中华人民共和国船舶及其有关作业活动污染海洋环境防治管理规定〉的决定》	11
实时资讯 REAL-TIME INFORMATION	12
海关总署发布《关于广东省行政审批制度改革中涉及海关保税监管业务有关问题的公告》	12
海关总署、国家外汇管理局联合发布《关于深化海关通关作业无纸化改革减少纸质单证流转完善贸易外汇服务和管理的通知》	14
交通运输部办公厅关于印发《道路运输从业人员从业资格证件编码规则和印制发放办法》	16
案例分析 CASE STUDY	18
海上货物运输合同中滞箱费收取的条件并《海商法》和《合同法》的顺序适用	18
资讯选编 INFORMATION SELECTION	24
Recent Chinese Supreme Court Interpretation - changes in the subrogation regime?	24

新法速递 NEW LAWS AND REGULATIONS WATCH

海关总署发布《关于〈中西部外资目录（2013 年修订）〉海关执行中的有关问题的公告》

General Administration of Customs Releases Announcement on Issues Concerning Customs Implementation of the Catalogue of Advantageous Industries for Foreign Investment in Central and Western Regions (Revised in 2013)

《中西部地区外商投资优势产业目录（2013 年修订）》（《目录》）已自 2013 年 6 月 10 日起施行。就海关执行中的有关问题，2013 年 8 月 20 日，海关总署发布《关于〈中西部外资目录（2013 年修订）〉海关执行中的有关问题的公告》（《公告》）。

《公告》规定，2013 年 6 月 10 日及以后核准（以项目的核准日期为准）的属于《目录》范围的外商投资项目（包括增资项目），享受鼓励类外商投资项目进口税收优惠政策；相关项目项下进口的自用设备以及按照合同随上述设备进口的技术和配套件、备件，按照《国务院关于调整进口设备税收政策的通知》（国发〔1997〕37 号）和海关总署公告 2008 年第 103 号的有关规定，免征关税，进口环节增值税照章征收。

The Catalogue of Advantageous Industries for Foreign Investment in Central and Western Regions (Revised in 2013) (the "Catalogue") was effective on June 10, 2013. In respect of relevant issues concerning customs implementation, the General Administration of Customs released the Announcement on Issues Concerning Customs Implementation of the Catalogue of Advantageous Industries for Foreign Investment in Central and Western Regions (Revised in 2013) (the "Announcement").

According to the Announcement, foreign investment projects, including capital increase projects, that are approved on and after June 10, 2013 (which is the approval date of such projects) and fall within the scope under the Catalogue enjoy the preferential import tax policies for encouraged foreign investment projects. Pursuant to relevant provisions of the Circular of the State Council on Adjusting the Tax Policy of Imported Equipments (Guo Fa [1997] No. 37) and the Announcement of the General Administration of Customs No. 103 of 2008 and other relevant provisions, self-use equipment imported under relevant projects and the technology and supporting spare and accessory parts imported together with the said equipment under the contracts are to be exempted from customs duties and levied import value-added tax in accordance with regulation

(Source: www.customs.gov.cn)

交通运输部办公厅发布《关于促进航运业转型升级健康发展的若干意见》

General Office of the Ministry of Transport Releases Several Opinions on Promoting Transformation, Upgrading and Healthy Development of Shipping Industry

2013 年 8 月 26 日，交通运输部办公厅发布《关于促进航运业转型升级健康发展的若干意见》（《意见》），从运力调控、转型升级、市场监管、减轻企业负担、提高服务水平五个方面制定二十条意见，积极应对当前航运业面临的严峻形势，促进国内航运市场平稳健康发展。

《意见》提出，减少运力存量，优化船队结构。调整延续老旧运输船舶和单壳油轮提前报废更新的政策至 2015 年 12 月 31 日，鼓励老旧远洋、沿海运输船舶提前报废。积极推进内河船型标准化，引导内河老旧运输船舶加快淘汰和更新改造，2013-2015 年期间中央财政、地方财政每年安排一定资金给予补贴。严格执行以船龄为标准的船舶强制报废制度，达到强制报废船龄的船舶按期退出航运市场。

On August 26, 2013, the General Office of the Ministry of Transport

released the Several Opinions on Promoting the Transformation, Upgrading and Healthy Development of Shipping Industry (the "Opinions"), putting forward 20 articles in five aspects, namely, shipping capacity control, transformation and upgrading, market regulation, reduction of burden of enterprises, and improvement on service level, to actively cope with the severe current situation of the shipping industry, promote the smooth, healthy development of the domestic shipping industry.

According to the Opinions, efforts shall be made to reduce the stock of shipping capacity and optimize fleet structure. The policies for advance scrapping and updating used shipping vessels and single-hulled tankers will be adjusted and extended until December 31, 2015 to encourage the advance scrapping of used ocean or coastal shipping vessels. Efforts shall be made to actively promote the standardization of inland ships, guide the accelerated elimination, updating and transformation of used inland shipping vessels, and arrange the central finance and local finance to provide certain funds for subsidy during the period of 2013 to 2015. The vessel age-based compulsory vessel scrapping system shall be strictly implemented to the extent that the vessels attaining the scrapped vessel age will be withdrawn from the shipping market on schedule.

(Source: www.moc.gov.cn)

交通运输部发布《关于修改〈中华人民共和国船舶油污损害民事责任保险实施办法〉的决定》

The Ministry of Transport Issues the Decision on the Revision of the Implementing Measures of Civil Liability Insurance for Vessel-induced Oil Pollution Damage of the People's Republic of China

2013 年 8 月 31 日，交通运输部发布《关于修改〈中华人民共和国船舶油污损害民事责任保险实施办法〉的决定》（《决定》），自公布之日施行。

《决定》删去第三章“船舶油污损害民事责任保险机构”。增加一条作为第八条，内容为“中国籍船舶的所有人应当向在我国境内依法成立的商业性保险机构、在我国境内依法成立或者在我国境内设有代表机构或者代理机构的互助性保险机构投保船舶油污损害民事责任保险，或者取得上述保险机构以及境内银行所出具的保函、信用证等其他财务保证。中国籍船舶的所有人应当向具有赔付能力的保险机构投保船舶油污损害民事责任保险或者取得财务保证，保险机构应当向中国籍船舶的所有人出示能够证明其具有赔付能力的相关文件”。此外，《决定》还对第二十条进行了修改。

On August 31, 2013, the Ministry of Transport ("MOT") issued the Decision on the Revision of the Implementing Measures of Civil Liability Insurance for Vessel-induced Oil Pollution Damage of the People's Republic of China (the "Decision"), effective as of the date of its issuance.

According to the Decision, Chapter III "Insurers Undertaking Civil Liability Insurance for Vessel-induced Oil Pollution Damage" shall be deleted and the following contents shall be added as Article 8: Owner of a Chinese vessel shall purchase a policy covering civil liability insurance for vessel-induced oil pollution damage from a commercial insurance company duly incorporated in the territory of China or a mutual insurance company duly incorporated or having its representative offices or agencies in the territory of China, or otherwise, the owner shall provide other financial guaranties, such as letter of guarantee or letter of credit issued by any of the insurance companies above or a bank based in China. The owner of a Chinese vessel shall purchase a policy covering civil liability insurance for vessel-induced oil pollution damage or obtain its financial guaranties from an insurer with sufficient compensation capability, and such insurer shall present the owner of the Chinese vessel relevant documents as an evidence for his capability of compensating the losses. In addition, a revision to Article 20 is also covered in the Decision.

(Source: <http://www.moc.gov.cn/>)

交通运输部发布《关于修改〈中华人民共和国船员服务管理规定〉的决定》

The Ministry of Transport Issues the Decision on the Revision of the Administrative Provisions on Crew Members Service of the People's Republic of China

2013 年 8 月 31 日，交通运输部发布《关于修改〈中华人民共和国船员服务管理规定〉的决定》（《决定》），自公布之日施行。

《决定》将第九条、第十条、第二十八条中的“船员服务”修改为“海船船员服务”。将《中华人民共和国船员服务管理规定》各条款中的“《船员服务机构许可证》”修改为“《海船船员服务机构许可证》”。此外，《决定》还对第六条、第十一条、第二十九条进行了修改。

On August 31, 2013, the Ministry of Transport ("MOT") issued the Decision on the Revision of the Administrative Provisions on Crew Members Service of the People's Republic of China (the "Decision"), effective as of the date of its issuance.

According to the Decision, "crew members service" mentioned in Article 9, 10 and 28 shall be revised into "seagoing vessel crew members service"; and the "License for Crew Members Service Agency" mentioned in any article in the Administrative Provisions on Crew Members Service of the People's Republic of China shall be revised as "License for Seagoing Ship Crew Members Service Agency". In addition, revisions to Article 6, 11 and 29 are also covered in the Decision.

(Source: <http://www.moc.gov.cn/>)

交通运输部发布《关于修改〈中华人民共和国国际海运条例实施细则〉的决定》

The Ministry of Transport Issues the Decision on the Revision of the Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation

2013 年 8 月 29 日，交通运输部发布《关于修改〈中华人民共和国国际海运条例实施细则〉的决定》（《决定》），自公布之日起施行。

《决定》删去第二十一条第一款中的“国际船舶代理经营者”。将第三十条修改为：“国际班轮运输经营者委托代理人接受订舱、代签提单、代收运费等项业务的，委托的代理人应当是依法成立的国际

船舶代理经营者”。此外，《决定》还对第七条、第九条、第四十九条等条款进行了修改。

On August 29, 2013, the Ministry of Transport ("MOT") issued the Decision on the Revision of the Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation (the "Decision"), effective as of the date of its issuance.

According to the Decision, "the international ship agency operator" mentioned in Paragraph 1 of Article 21 shall be deleted, and Article 30 shall be revised into "where an operator of international liner services entrusts an agent with the businesses including accepting space-booking, issuing bill of lading and collecting freight on its behalf, the agent entrusted shall be a duly incorporated international ship agency operator". In addition, the revisions to Article 7, 9 and 49 etc are also covered in the Decision.

(Source: <http://www.moc.gov.cn/>)

交通运输部发布《关于修改〈中华人民共和国船舶及其有关作业活动污染海洋环境防治管理规定〉的决定》

The Ministry of Transport Issues the Decision on the Revision of the Administrative Provisions of the Prevention and Control of Marine Environmental Pollution by Vessels and Their Operations of People's Republic of China

2013 年 8 月 31 日，交通运输部发布《关于修改〈中华人民共和国船舶及其有关作业活动污染海洋环境防治管理规定〉的决定》（《决定》），自公布之日起施行。

《决定》删去第四十四条第一款。

On August 31, 2013, the Ministry of Transport ("MOT") issued the Decision on the Revision of the Administrative Provisions of the Prevention and Control of Marine Environmental Pollution by Vessels and Their Operations of People's Republic of China (the "Decision"), effective as of the date of its issuance.

According to the Decision, Paragraph 1 of Article 44 shall be deleted.

(Source: <http://www.moc.gov.cn/>)

实时资讯 REAL-TIME INFORMATION

海关总署发布《关于广东省行政审批制度改革中涉及海关保税监管业务有关问题的公告》

General Administration of Customs Releases Announcement on Issues Concerning Customs Bonded Supervision Business Involved in the Administrative Examination and Approval System Reform of Guangdong Province

2013 年 9 月 2 日，海关总署发布《关于广东省行政审批制度改革中涉及海关保税监管业务有关问题的公告》（《公告》），就广东省内加工贸易企业合同备案（变更）、异地加工、内销等有关问题进行公告。

《根据》公告，企业开展异地加工贸易业务时，经营企业和加工企业均属于广东省内企业的，不再提交《加工贸易业务批准证》，其它事项仍按照《中华人民共和国海关关于异地加工贸易的管理办法》（海关总署令第 74 号）办理；经营企业或加工企业有一方不属于广东省内企业的，按照第 74 号署令办理。

On September 2, 2013, the General Administration of Customs ("GAC") released the Announcement on Issues Concerning Customs Bonded

Supervision Business Involved in the Administrative Examination and Approval System Reform of Guangdong Province (the "Announcement"), announcing the issues concerning the record-filing (change) of processing trade enterprise contracts, processing in different places, domestic sales, etc within Guangdong Province.

According to the Announcement, where an enterprise engages in the business of processing in different places and its operating enterprise and processing enterprise are Guangdong-based enterprises, the Approval Certificate for Processing Trade Business is not required to be submitted, and other matters shall be subject to the Administrative Measures of the General Administration of Customs of the People's Republic of China for Processing in Different Places (Order of the General Administration of Customs No. 74); if such operating enterprise or processing enterprise is not a Guangdong-based enterprise, the Order of the General Administration of Customs No. 74 applies.

(Source: www.customs.gov.cn)

海关总署、国家外汇管理局联合发布《关于深化海关通关作业无纸化改革减少纸质单证流转完善贸易外汇服务和管理的通知》

Two Departments Jointly Release Circular on Deepening the Paperless Customs Clearance Reform, Reducing the Circulation of Paper Documents and Improving the Service and Administration of Foreign Exchange on Trade

为进一步深化海关通关作业无纸化改革，减少纸质单证流转，完善货物贸易外汇服务和管理的，2013 年 9 月 3 日，海关总署、国家外汇管理局联合发布《关于深化海关通关作业无纸化改革减少纸质单证流转完善贸易外汇服务和管理的通知》（《通知》）。

《通知》规定，自 2013 年 9 月 16 日起，海关不再为国家外汇管理局分支局（以下简称外汇局）核定的货物贸易外汇管理 A 类企业（以下简称 A 类企业）提供纸质报关单收、付汇证明联。A 类企业办理货物贸易外汇收付业务，按规定须提交纸质报关单的，通过中国电子口岸自行以普通 A4 纸打印报关单证明联（出口收汇或进口付汇用）并加盖企业公章。对于外汇局核定的货物贸易外汇管理 B 类和 C 类的企业，海关仍按现行做法为其提供纸质报关单收、付汇证明联。

In order to further deepen the paperless customs clearance reform, reduce the circulation of paper documents and improve the service and

administration of foreign exchange on trade, the General Administration of Customs ("GAC") and the State Administration of Foreign Exchange ("SAFE") jointly released the Circular on Deepening the Paperless Customs Clearance Reform, Reducing the Circulation of Paper Documents and Improving the Service and Administration of Foreign Exchange on Trade (the "Circular") on September 3, 2013.

According to the Circular, from September 16, 2013, the customs shall no longer provide the paper form of any certification copy concerning the collection or payment of foreign exchange for customs declaration documents to Class-A enterprises ("Class-A enterprises") subject to the administration of foreign exchange under the trade in goods which are approved by the branches and sub-branches of the State Administration of Foreign Exchange ("foreign exchange branches"). Where Class-A enterprises are required to submit paper customs declaration documents in dealing with the collection or payment of foreign exchange on the trade in goods, such enterprises shall print the certification copies of such customs declaration documents (for the collection of foreign exchange for exports or payment of foreign exchange for imports) in regular A4 paper by themselves through China Electronic Port and annex their official seal to such copies. With regard to Class-B or C enterprises subject to the administration of foreign exchange on the trade in goods

which are approved by the foreign exchange branches, the customs still provide the paper form of the certification copies concerning the collection or payment of foreign exchange for customs declaration documents to such enterprises according to the current practice.

(Source: www.customs.gov.cn)

交通运输部办公厅关于印发《道路运输从业人员从业资格证件编码规则》和《印制发放办法》

General Office of Ministry of Transport Prints and Distributes Coding Rules and Printing and Issuing Measures for Practicing Qualification Certificates of Road Transportation Practitioners

2013 年 9 月 16 日，交通运输部办公厅关于印发《道路运输从业人员从业资格证件编码规则》和《印制发放办法》（《办法》），自发布之日起施行，原交通部办公厅 2007 年发布的《道路运输从业人员从业资格证件印制发放办法》（厅职评字〔2007〕65 号）同时废止。

《办法》规定，道路运输从业人员按照国家有关要求，通过岗位培训并参加从业资格考试合格后，取得《中华人民共和国道路运输从业人员从业资格证》或《中华人民共和国机动车驾驶培训教练员证》。

《中华人民共和国道路运输从业人员从业资格证》和《中华人民共和国

国机动车驾驶培训教练员证》统称道路运输从业人员从业资格证件。

On September 16, 2013, the General Office of the Ministry of Transport ("MOT") printed and distributed the Coding Rules and Printing and Issuing Measures for Practicing Qualification Certificates of Road Transportation Practitioners (the "Measures"), effective as of the date of release. The Printing and Issuing Measures for Practicing Qualification Certificates of Road Transportation Practitioners (Ting Zhi Ping Zi [2007] No. 65) previously issued by the General Office of the Ministry of Communications in 2007 shall be repealed simultaneously.

According to the Measures, road transportation practitioners who undergo on-the-job training and pass the practicing qualification examination according to relevant requirements of the State will possess the Practicing Qualification Certificate of Road Transportation Practitioners of the People's Republic of China or the Motor Vehicle Driving Training Coach Certificate of the People's Republic of China. Such certificates are collectively referred to as practicing qualification certificates of road transportation practitioners.

(Source: www.moc.gov.cn)

案例分析 CASE STUDY

海上货物运输合同中滞箱费收取的条件并《海商法》和《合同法》的顺序适用

The requirements of containers detention charges in a contract of carriage of goods by sea and applied sequence of *Maritime Law of the People's Republic of China* and *Contract Law of the People's Republic of China*

马来西亚国家航运有限公司（MISC BERHAD）诉山东莱钢永峰钢铁有限公司海上货物运输合同纠纷案

【案件基本信息】

1.判决书字号

青岛海事法院（2011）青海法海商初字第 85 号民事判决书

2.案由：海上货物运输合同纠纷

3.当事人

原告：马来西亚国家航运有限公司（MISC BERHAD）

被告：山东莱钢永峰钢铁有限公司

【基本案情】

2010 年 3 月 20 日，原告的代理签发了抬头为原告的、编号为 MISCKHI000020873 的正本提单，提单载明收货人为被告，交付地及目的港为中国青岛，货物品名为 132 个 20' GP 散货标箱氧化铁皮。

提单背面条款为印刷的格式条款，条款内容除标题加黑外，均为相同字体印刷。条款第 2 条规定：“承运人适用的费率表并入本提单。请特别注意其中的集装箱和运输工具的滞期费。适用的费率表的相关条款可以从承运人或者代理人处索取。当提单和适用的费率不一致的地方，提单优先。”条款第 13（4）条规定：“如果集装箱是由承运人或者代表承运人的人提供的，并且在货主的基地开封，货主有义务在指定时间内归还空的集装箱到承运人或者他的代理人指定的地点，并且内部刷洗干净。如果集装箱没有在指定的时间内归还，货主有责任赔偿因此造成的滞箱费、损失或费用。”

2010 年 4 月 4 日，涉案货物到达青岛港并卸下，堆放在青岛港前湾集装箱码头。4 月 6 日，被告持正本提单换取了提货单。提货单表面还对还箱时间及滞箱费的收取和标准没有记载。4 月 30 日，中华人民共和国出入境黄岛检验检疫局做出《检验检疫处理通知书》，涉案货物不符合《五部委关于调整进口废物管理目录的公告》须作退运处理。涉案集装箱在码头内开封并进行倒箱，货物最终退运。

原告确认没有单独指定被告涉案集装箱的归还时间和地点。132 个集装箱中 91 个于 2010 年 11 月 6 日还箱，41 个于 2010 年 11 月 7 日还箱。原告公司网站公布了青岛港进口集装箱滞箱费费率表载明 20 英尺干货箱费率。

2011 年 8 月 22 日，青岛市价格认证中心出具青价认【2011】80 号《山东省价格认证结论书》，认定 2010 年 4 月至 2010 年 11 月用于国际货物运输的 20 英尺通用集装箱（20' GP）的市场平均日租金价格为 1.7 美元。价格鉴证师夏青出庭接受质询。

【案件焦点】

- 一、原告主张收取的滞箱费能否成立；
- 二、被告未及时还箱给原告造成的损失如何计算。

【法院裁判要旨】

青岛海事法院经审理认为：我国《海商法》第七十八条第一款规定“承运人同收货人、提单持有人之间的权利、义务关系，依据提单的规定确定”。而该“提单的规定”无论是正面条款或背面条款，也无论是否在承运人同收货人、提单持有人之间达成合意或构成约定。本案中，提单背面条款规定在具备四项条件的情况下收货人未能及时还箱应赔偿滞箱费。原告系承运人，被告系收货人和提单持有人，该规定即成为判断原、被告之间权利义务的根据。但该规定中要求的条件在本案中不成就。因此，原告主张滞箱费的事实和法律根据不足，不予支持。

根据《中华人民共和国合同法》第一百零七条、第一百一十四条规定，被告未及时归还集装箱属于不及时履行合同义务的行为，应当承担赔偿责任。又因原告不能证明其具体损失，且原告应采取租用相

同类型的集装箱补充营运等措施防止损失的扩大。因此，被告迟延还箱给原告造成的损失为同期、同类型、同数量集装箱的租金损失 48315.7 美元。原告主张的利息损失应从 2010 年 11 月 8 日计算至被告实际支付之日以中国人民银行公布的美元存款利率计算。

依照《中华人民共和国民事诉讼法》第一百一十一条、《中华人民共和国合同法》第一百零七条、《中华人民共和国海商法》第八十七条的规定，判决：被告赔偿原告滞箱损失 48315.7 美元，加自 2010 年 11 月 8 日起至实际支付之日止、按照同期中国人民银行公布的美元存款利率计算的利息。

【法官后语】

关于承运人收取滞箱费的问题，只有在《国内水路货物运输规则》（第八十三条）中作了规定；该规定仅适用于内河航运而不适用于海上货物运输。因此，在海上货物运输中，滞箱费的收取没有直接的法律依据。只有在承运人和相对方（包括托运人、收货人、提单持有人）进行了特别约定的，承运人才能收取滞箱费。这一点在海事司法实践中基本取得了一致认识。

但究竟何种情形才能构成双方的约定？仅根据承运人的网站费率表不构成双方约定的观点已普遍接受。但对提单背面条款中对滞箱费的规定是否有效意见不一。有观点认为该提单背面条款为格式条款、没有明显标注或提醒相对人注意、与相对人没有达成合意等，根据《合同法》中合同条款无效的理由不能约束提单持有人。甚至有承运人在

提单正面特别规定的，也时有不被支持。

上述做法忽略了一点，就是在海上货物运输合同中，《海商法》是特别法，《合同法》是普通法，《海商法》应当优先适用。从法律的渊源和历史发展上，《海商法》和《合同法》有很多不同之处，不仅体现在条文上，而且体现在法律原理上。《海商法》是吸收了《海牙规则》、《维斯比规则》和《汉堡规则》等国际条约的先进内容而制定的，沿袭的是英美法系的法律思路；而《合同法》是典型的大陆法系的法律文本；二者在法律思维的基础上有着区别。本案所涉《海商法》第七十八条第一款的规定“承运人同收货人、提单持有人之间的权利、义务关系，依据提单的规定确定”。如果从《合同法》的角度，根本无法理解该规定的内容：提单是承运人单方制作并签发给托运人的运输单证，作为收货人或提单持有人根本没有同承运人协商的机会，提单内容如何能约束收货人或提单持有人？但这就是《海商法》的思维方式，该规定是从几千年来海上货物运输实践中总结而来的，是考虑了海上货物运输的各种特点而制定的。而该规定中“提单的规定”是确定而没有条件的，不以是正面条款或背面条款而有区别，也不要求双方达成合意或构成约定。由于《海商法》相对于《合同法》为特别法，在海上货物运输合同中应当优先适用。因此，在承运人同收货人或提单持有人之间，依据提单的规定确定其权利与义务符合我国法律规定。

本案中虽然确认了提单规定应当适用，但该规定中收取滞箱费的条件不成就，致使滞箱费损失的诉讼请求不能支持。但本案不是就此

驳回承运人的诉讼请求，而是判定收货人在履行海上货物运输合同过程中对迟延还箱给承运人造成的损失仍然要进行赔偿。而该种赔偿则是在特别法《海商法》没有规定的情况下适用普通法《合同法》中“合同的不当履行或迟延履行”的相关规定进行认定的。

本案中首先适用了《海商法》有关规定判明了提单条款的适用，又适用了《合同法》有关规定判明了迟延还箱损失的赔偿问题。很好地解决了当事人的诉求，判明了争议。判决后，双方当事人均服判息诉，并自动履行。

一审合议庭组成人员：郭俊莉/迟焕德/李华

案例编写人：郭俊莉

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资讯选编 INFORMATION SELECTION

Recent Chinese Supreme Court Interpretation - changes in the subrogation regime?

by Ik Wei Chong (Clyde + Co. (Shanghai))

The Chinese Supreme Court has recently published "The Interpretation (II) on Several Issues concerning the Application of the Chinese Insurance Law 2009" ("The Interpretation II"), which came into force on 8 June 2013. By way of background, the interpretations by the Chinese Supreme Court are not law. They are only judicial interpretations, although they are extremely persuasive and authoritative and will invariably be followed by the lower courts. Such interpretations are therefore in practical terms binding on lower courts. It is suggested that the Interpretation (II) aims to provide a clearer judicial guidance of certain provisions of the Insurance Law 2009 and to balance the interests of the various parties to the insurance contracts, with a view to reinforcing the protection of consumers in the insurance industry.

Some of the more significant changes are set out below.

1. Time limit for pursuing subrogation rights

Article 16 of the Interpretation II provides that the time limit for pursuing an insurer's subrogation right shall be calculated from the date when it acquires such a right, which should be the date of the insurance payment. This is quite different from previous practice of treating time limit for subrogation rights, the same as the "original" underlying time limit for claims between the assured and the liable third party. In *Zurich International (Deutschland) Versicherungs AG vs Chinese-Polish Joint*

Stock Shipping Co, a case decided prior to the publication of Interpretation II, the Higher People's Court of Guangdong Province held that a judgment should be issued against the insurer because it had made the insurance payment and filed a claim before the court after the expiry of the "original" underlying time limit.

Despite this change in interpretation, it should be noted that this time limit issue has not yet been decided by the Chinese courts since the implementation of the Interpretation II, especially the issue of whether the insurance payment should be paid within the "original" underlying time limit. It is suggested that a cautious approach should still be adopted in determining the time limit for pursuing insurer's subrogation rights, i.e. calculating the time limit as per the "original" underlying claim between the assured and the liable third party.

2. Probative value of conclusions on accidents as issued by administrative authorities

Article 18 of the Interpretation II states that the court shall examine, recognise and give probative effect to the written conclusion on a traffic accident or fire accident issued by an administrative authority, unless it can be overturned by any evidence to the contrary.

The Chinese courts could at their discretion decide whether or not to adopt such conclusions. Article 18 provides clear guidelines for the courts in the examination and recognition of such evidence.

3. Failure of the assured to claim against the liable third party

Article 19 of the Interpretation II states that in an insurance claim, the court shall not support the insurer's defence that the assured has failed to claim against the liable third party.

It is common practice for Chinese insurers to reject an insurance claim or to reduce the insurance payment on the basis that the assured has failed to protect the insurer's right of subrogation by claiming against the liable third parties in a timely manner, e.g. failing to file a law suit against the liable third party within the "original" underlying time limit. The rationale is that assured's failure to protect the original time limit would result in the insurer's loss of right to pursue its subrogated recovery claim (because the insurer's recovery claim against third parties would have been time barred as well). In *Vitro Cristal Glass S.L. vs Ping An Property & Casualty Insurance Co. Ltd*, a case before the Higher People's Court of Guangdong Province, the insurer successfully negotiated down the insurance payment to 65% of the loss amount on the basis that the assured has failed to file a claim against the carrier within the "original" underlying time limit.

The changes in the Interpretation II have no doubt created some legal uncertainty which would require clarification by the Courts in due course.

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联系我们

官方网站: www.dachenglaw.com

北京总部: 北京市东直门南大街 3 号国华投资大厦 5、12、15 层

邮编: 100007

联系人: 阎丝雨

电话: 86-10-58137087

传真: 86-10-58137788

邮箱: siyu.yan@dachenglaw.com

Beijing Dacheng Law Offices, LLP

www.dachenglaw.com

Address: 5-12-15/F, Guohua Plaza, 3 Dongzhimennan Avenue, Dongcheng

District, Beijing China

Postcode: 100007

Contact: Siyu Yan

Tel: 86-10-58137087

Fax: 86-10-58137788

E-mail: siyu.yan@dachenglaw.com