

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：本刊旨在报道中国法下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 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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立法新闻 **LEGISLATIVE NEWS**

- 全国人大常委会关于批准《中华人民共和国和阿尔及利亚民主人民共和国关于民事和商事司法协助的条约》的决定（来源：新华网，2011年7月1日）

Decision of the Standing Committee of the National People's Congress on Ratifying the Treaty on Judicial Assistance in Civil and Commercial Matters between the People's Republic of China and the Democratic People's Republic of Algeria (source: Xinhuanet.com, 1 July 2011)

第十一届全国人民代表大会常务委员会第二十一次会议决定：批准2010年1月10日由外交部部长杨洁篪代表中华人民共和国在阿尔及尔签署的《中华人民共和国和阿尔及利亚民主人民共和国关于民事和商事司法协助的条约》。

At its 21st session, the Standing Committee of the Eleventh National People's Republic of China decides: to ratify the Treaty on Judicial Assistance in Civil and Commercial between the People's Republic of China and the Democratic People's Republic of Algeria which was signed by Yang Jiechi, then Minister of Foreign Affairs, on behalf of the People's Republic of China in Algiers on January 10, 2010.  [Top](#)

- 行政强制法出台（来源：中国政府网，2011年7月1日）

The Administrative Compulsion Law issued (source: www.gov.cn, 1 July 2011)

全国人民代表大会常务委员会通过了《中华人民共和国行政强制法》，自2012年1月1日起施行。

The Administrative Compulsion Law of the P.R.C. has been adopted by the standing committee of the National People's Congress, and shall come into effect on January 1st, 2012.  [Top](#)

- 个税起征点调至3500元（来源：中新网，2011年7月1日）

China Raises Individual Income Tax Threshold to CNY3500 (source: www.chinanews.com, 1 July 2011)

十一届全国人大常委会第二十一次会议表决通过《关于修改〈中华人民共和国个人所得税法〉的决定》（《决定》）。根据《决定》，工资、薪金所得，以每月收入额减除费用3500元后的余额为应纳税所得额，工资、薪金所得，适用超额累进税率，税率为3%至45%，修改后的个税法将于9月1日起施行。

The Decisions on Revision of the Individual Income Tax Law of the P.R.C. (Decisions) were adopted at the 21th meeting of the Standing Committee of the Eleventh National People's Congress. In line with the Decisions, the balance of the monthly income after deducting CNY3500 shall be the taxable income. Wages and salaries earnings shall apply to

graduated tax rate from 3% to 45%. The revised individual income tax law shall come into effect on September 1st, 2011.



- 人社部明确领取失业保险金人员参加职工基本医疗保险有关问题（来源：人力资源社会保障部，2011年7月4日）

Ministry of Human Resources and Social Security Defines Relevant Issues concerning the Participation in the Basic Medical Insurance for Employees by Persons Who Draw Unemployment Insurance (source: Ministry of Human Resources and Social Security, 4 July 2011)

人力资源社会保障部发布《关于领取失业保险金人员参加职工基本医疗保险有关问题的通知》（《通知》），要求做好领取失业保险金期间的失业人员参加职工基本医疗保险工作，接续基本医疗保险关系。

The Ministry of Human Resources and Social Security has promulgated the Circular on Relevant Issues concerning the Participation in the Basic Medical Insurance for Employees by Persons Who Draw Unemployment Insurance (the Circular), urging the promotion of the participation in the basic medical insurance for employees by unemployed persons who draw unemployment insurance, and the linkage of the basic medical insurance relations.

《通知》规定，领取失业保险金人员应按规定参加其失业前失业保险参保地的职工医保，由参保地失业保险经办机构统一办理职工医保参保缴费手续。

The Circular provides, a person who draws unemployment insurance shall, in accordance with relevant regulations, participate in the basic medical insurance for employees in the place where he participated in insurance prior to his unemployment, and the unemployment insurance agency in the place where he participated in insurance shall go through the insurance premium payment formalities in a unified way.

根据《通知》，领取失业保险金人员参加职工医保应缴纳的基本医疗保险费从失业保险基金中支付，个人不缴费。

According to the Circular, the insurance premium of a person who draws unemployment insurance shall be deducted from his unemployment insurance, and he shall not pay it.



- 职业病防治法修正案（草案）公开征求意见（来源：中国人大网，2011年7月5日）
Feedback Sought on Amendments to Laws on Prevention and Control of Occupational Diseases (source: www.npc.gov.cn, 5 July 2011)

2011年7月5日，中国人大网公布了《中华人民共和国职业病防治法修正案（草案）》（《修正案（草案）》）及草案说明，向社会公开征集意见。《修正案》由十一届全国人大常委会第二十一次会议初次审议。

The Draft Amendments to Laws on Prevention and Control of Occupational Diseases (Draft Amendments) and their explanation were released on the website of the National People's Government on July 5, 2011 for solicitation of opinions from the community. The amendments were preliminarily deliberated at the 21st meeting of the 11th session of the Standing Committee of the National People's Congress.

《修正案(草案)》的主要内容包括：消除职业病诊断的受理门槛；简化劳动仲裁程序，使制度设置向保护劳动者权益倾斜；规定监管部门在特定情况下对有争议资料做出判定的职责；明确诊断机构在法定情形下应当参考劳动者的自述做出职业病诊断结论。

The Draft Amendments mainly include: eliminating the acceptance threshold for occupational diseases diagnosis; simplifying the procedure for labor arbitration; Inclining the system towards protection of rights and interests of laborers; specifying the accountability of supervisory authorities on verification of disputes materials under certain circumstances; clarifying that diagnosis institutions shall, under statutory conditions, refer to the self-statement of laborers to conclude the diagnosis of occupational diseases.  [Top](#)

- 中国银监会拟禁止融资类资产进入理财资产池（来源：中国外汇网，2011年7月11日）

CBRC to ban financing assets from access into wealth management assets pool (source: ChinaForex.com.cn, 11 July 2011)

2011年7月7日，中国银监会在内部会议上决定禁止融资类资产进银行理财资产池的做法。融资类资产包括委托贷款、信托贷款等。预计此举将对银行理财产品市场造成大冲击，目前国内主流银行大多采用资产池的理财产品运作模式。

China Banking Regulatory Commission (CBRC) has called an end for the financing assets going into the wealth management assets pool, a move widely expected to hit the domestic wealth management market hard. The decision was made at an internal meeting of the CBRC on July 7. Most of the major Chinese banks are currently operating their wealth management products using the assets of the pool.  [Top](#)

- 两部委加强房产中介管理 规范房地产交易秩序（来源：住房和城乡建设部，2011年7月12日）

Two Departments Strengthen Controls over Real Estate Intermediaries (source: Ministry of Housing and Urban-Rural Development, 12 July 2011)

2011年5月11日，国家住建部、发改委发布了《关于加强房地产经纪管理 进一步规范房地产交易秩序的通知》（《通知》），要求坚决制止和查处房地产经纪违法违规行为。

The Circular on Strengthening the Administration over Real Estate Intermediaries and Further Standardize the Order of Real Estate Transactions (Circular) was promulgated by

the Ministry of Housing and Urban-Rural Development and National Development and Reform Commission on May 11, 2011. This Circular urges to prohibit and investigate the irregularities in real estate transactions.

《通知》要求加强房地产经纪机构管理。依法严肃查处未经备案从事房地产经纪业务、提供或者代办虚假证明材料、协助当事人签订“阴阳合同”、不履行必要告知说明义务，以及不实行明码标价、违规分解收费项目、变相提高收费标准等违法违规行为。

The Circular calls for the stringent administration over real estate intermediaries and urge to seriously investigate and handle such irregularities as engaging in real estate intermediaries without filing, providing or acting for providing false credentials, assisting parties to sign "true-false contracts", failing to perform essential notification obligations, failing to carry out clearly-marked price, illegally breaking down charged items, and increasing charging standards in a disguised form etc..

《通知》还要求加强房地产经纪人员管理；加强商品房预（销）售行为监管；加强住房租赁市场监管；建立规范化的日常动态监督管理机制。各级房地产、价格主管部门今年5月至11月要集中开展一次专项整治，认真排查房地产经纪违法违规行为。

The Circular also calls for the strict administration over real estate agents and urge to enforce the supervision over preliminary sales of commodity houses and supervisions over house rent market, and to establish a standardized daily monitoring system. Each competent real estate or pricing authority shall concentrately carry out a specific campaign to investigate the real estate irregularities during May to November this year.  [Top](#)

- 北京市业主共有资金管理暂行办法征求意见（来源：北京市住房和城乡建设委员会，2011年7月20日）

Feedback Sought for Interim Measures of Beijing Municipality for the Administration on Proprietor Mutual Funds (source: Beijing Municipal Commission of Housing and Urban-Rural Development, 20 July 2011)

2011年7月19日，北京市住建委公布《北京市住宅区业主共有资金管理暂行办法（征求意见稿）》（《征求意见稿》），面向社会征求意见。

The Interim Measures of Beijing Municipality for the Administration on Proprietor Mutual Funds (Draft for Comments) were promulgated by the Beijing Municipal Commission of Housing and Urban-Rural Development and released for solicitation of public opinion on July 19, 2011.

根据《征求意见稿》，北京小区的物业费、住宅专项维修资金、共用部分经营收益等都将纳入一个整体的“业主共有资金”，由业主大会开设的账户来管理；业主们的物业费也不再交给物业公司，而是先交给业主大会，由业主大会来统一支付给物业公司，物业共用部分收益也将入账。关于小区内的二手房买卖，房屋买受人与出卖人可以在合同中约定相关费用的移转，房屋买受人在购买业主出卖的房屋时，可以向

业主大会索取相关费用已结清的书面确认文件。

As provided by this Draft for Comments, the property fees, special fund for property maintenance, business earnings from mutual part in blocks of Beijing shall be included in an integrated proprietor mutual fund and managed by the accounts opened by the general meeting of proprietors. All the property fees will not be submitted to property management companies, instead, will firstly be submitted to general meeting of proprietors, and then be paid by general meeting of proprietors unified to property management companies. The earnings from the mutual used parts shall be included in the account as well. With respect to the second-hand apartments transfer in certain blocks, the seller and buyer may conclude the terms on transfer of certain fees in the Contract; where a buyer purchases an apartment, he/she may claim confirmation letters in writing for settlement of relevant fees from general meeting of proprietors.  [Top](#)

- 国务院发布《国务院关于修改〈中华人民共和国个人所得税法实施条例〉的决定》(来源: 新华网, 2011年7月27日)

State Council released the Decision on Revising the "Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China" (source: Xinhuanet.com, 27 July 2011)

据新华网 2011 年 7 月 27 日消息, 国务院总理温家宝于 7 月 19 日签署第 600 号国务院令, 公布了《国务院关于修改〈中华人民共和国个人所得税法实施条例〉的决定》。该决定对《中华人民共和国个人所得税法实施条例》的第 18 条、第 27 条、第 29 条进行了修改, 将于 2011 年 9 月 1 日起施行。《中华人民共和国个人所得税法实施条例》将根据该决定作相应的修改, 并重新公布。

State Council premier Wen Jiabao signed Decree No. 600 of the State Council on July 19 to release the Decision of the State Council on Revising the "Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China", which will come into effect on September 1, 2011. According to the Decision, amendments are made to Articles 18, 27, and 29 of the Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China. Corresponding amendments will be made to the Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China, which will be promulgated anew.  [Top](#)

- 国家税务总局发布《关于个人终止投资经营收回款项征收个人所得税问题的公告》(来源: 上海市地方税务局, 2011年7月29日)

SAT releases the Announcement on Issues Related to Individual Income Tax for Funds Recovered after Termination of Investment (source: Shanghai Local Taxation Bureau, 29 July 2011)

2011 年 7 月 25 日, 国家税务总局发布了《关于个人终止投资经营收回款项征收个人所得税问题的公告》。该公告要求, 个人因各种原因终止投资、联营、经营合作等行为, 从被投资企业或合作项目、被投资企业的其他投资者以及合作项目的经营合

作人取得股权转让收入、违约金、补偿金、赔偿金及以其他名目收回的款项等，均属于个人所得税应税收入，应按照“财产转让所得”项目适用的规定计算缴纳个人所得税。同时，该公告还指出应纳税所得额的计算公式为：应纳税所得额=个人取得的股权转让收入、违约金、补偿金、赔偿金及以其他名目收回款项合计数-原实际出资额（投入额）及相关税费。该公告于2011年7月25日起实施。

On July 25, 2011, State Administration of Taxation (SAT) released the Announcement on Issues Related to Individual Income Tax for Funds Recovered after Termination of Investment. According to the Announcement, where an individual terminates an investment, a joint operation, or a cooperative operation, the equity transfer income, penalty for default, compensation, or other funds he obtains from the enterprise or cooperative project, other investors in the enterprise, or the partner in a cooperative project, should be deemed taxable individual income tax and should be subject to individual income tax according to the formula applicable to "property transfer income". It is also pointed out that the formula for calculating taxable income is: taxable income = equity transfer income, penalty for default, compensation, and other funds recovered by the individual – his original amount of capital contribution and related taxes and expenses. The Announcement became effective on July 25, 2011.

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司法动态

JUDICIAL DEVELOPMENTS

- 最高人民法院召开新闻发布会通报反规避执行专项活动进展情况（来源：人民法院报，2011年7月6日）

SPC announces updates on anti-enforcement avoidance special campaign (source: RMFYB.chinacourt.org, 6 July 2011)

2011年7月5日，据人民法院报消息，最高人民法院在其召开的新闻发布会上公布，截至2011年5月31日，全国法院执行案件的执结率为63.66%，实际执行率达到80.52%，与去年同期相比分别提高12.7%和7.1%。

At the press conference held on July 5, the Supreme People's Court (SPC) announced that up till May 31, 2011, the conclusion rate for enforcement cases throughout the nation reaches 63.66%, while the actual enforcement rate reaches 80.53%, up 12.7% and 7.1% respectively over the same period last year.

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- 北京市一中院一审判决确认微软公司《最终用户许可协议》四项条款无效（来源：北京法院网，2011年7月7日）

Beijing court voids four terms of Microsoft Office End-User License Agreement (source: BJGY.chinacourt.org, 7 July 2011)

2011年7月6日,北京市一中院对首例涉及拆封合同效力案件进行宣判。原告郭力花750元购买了正版Windows XP软件,却在安装时发现,如果不同意微软公司的《最终用户许可协议》(以下简称《许可协议》),就不能继续点击进行安装,为此郭力将微软公司诉至北京市一中院,请求法院确认《许可协议》中的28项条款无效,并要求微软公司公开赔礼道歉。法院最终确认,《许可协议》中,“微软公司对涉案软件、OS组件及支持服务可能给用户造成的任何损害均不承担赔偿责任(即使微软公司事先已知发生此类损害的可能性)”、“无论用户由于任何原因而可能招致任何损失为此所获得的唯一补偿不超过为软件实际支付的金额或5.00美元两者中较高之款额”等四项条款减轻或免除了微软公司应承担民事责任和法定义务,已构成《消费者权益保护法》、《合同法》规定的格式条款无效情形,应确认为无效。法院同时认定,原告基于协议部分条款无效主张被告微软公司承担赔礼道歉的民事责任没有法律依据,法院不予支持。

On July 6, 2011, Beijing First Intermediate Court made its ruling for the first case involving dispute over the force of shrink-wrap contract. The plaintiff Guo Li spent RMB 750 on legitimate Windows XP software, only to find that "if you do not agree to the Microsoft's End-User License Agreement (Agreement), the installation cannot continue". Guo Li then filed a lawsuit with Beijing First Intermediate Court against Microsoft, requesting the court find 28 terms in the Agreement void and requiring an open apology from Microsoft. According to the final ruling, the court believed that four terms from the Agreement, such as "Microsoft shall not be liable for any damages whatsoever arising out of the use or inability to use the Software, even if Microsoft has been advised of the possibility of such damages" and "notwithstanding any damages that you might incur for any reason whatsoever, your exclusive remedy shall be limited to the greater of the actual damages you incur in reasonable reliance on the Software up to the amount actually paid by you for the Software or US\$5.00", have exempted or reduced the civil liabilities and statutory obligations Microsoft should bear, which should be determined as invalid according to the Contract Law and the Law on the Protection of Consumer Rights and Interests. The court also determined that the plaintiff's request on an open apology from Microsoft lacked legal basis and will not be upheld by the court.  [Top](#)

- 最高人民法院副院长奚晓明就民诉法修改提出五点建议(来源:中国法院网,2011年7月11日)

SPC official offer suggestions on the amendments to the Civil Procedure Law (Source: Chinacourt.org, 11July 2011)

2011年7月9日至10日,最高人民法院副院长奚晓明出席民事诉讼法学2011年年会时,就民事诉讼法修改的几个重点问题提出了五点意见和建议。其中第一点是关于诉讼与非诉讼衔接机制程序问题。奚晓明指出,实践中存在的问题是:诉讼与非诉讼的衔接渠道不畅,诉外调解协议的效力确认程序尚未建立,诉外纠纷解决机制的作用尚未得到有效发挥。奚晓明建议:规定委托调解制度,畅通诉讼与非诉讼纠纷解决机制的衔接渠道;规定司法确认制度,保证诉外调解协议的执行。此外,奚晓明还就小额诉讼程序、完善再审程序、完善执行程序、完善证据制度等问题提出了意见和

建议。

At the Civil Procedure Law Annual Party (2011) held from July 9 to 10, Xi Xiaoming, vice-president of the Supreme People's Court (SPC), offered five suggestions on the amendments to the Civil Procedure Law. Regarding the combination of litigation and non-litigation strategies, Xi pointed out existing problems, such as the fact that litigation and non-litigation strategies have not been combined well, the procedures for determining the force of non-litigation mediation agreements have not been established, and the role of non-litigation dispute settlement mechanisms have not been effectively leveraged. Xi also suggested an entrustment mediation system, greasing the wheels to combining litigation and non-litigation dispute settlement mechanism, making rules on judicial confirmation, and ensuring the execution of non-litigation mediation agreement. Xi also opined on small claims, as well as on the improvement of retrial procedures, execution procedures, and evidence system.  [Top](#)

- 国务院新闻办召开新闻发布会介绍全国打击侵犯知识产权和制售假冒伪劣商品专项行动成果及成果网络展览情况（来源：中国政府网，2011年7月12日）

SCIO holds press conference to brief the special campaign of cracking down on violations of intellectual property rights and on the production and distribution of fake and shoddy products (source: Central People's Government, 12 July 2011)

2011年7月12日，国务院新闻办召开新闻发布会，由全国打击侵犯知识产权和制售假冒伪劣商品专项行动领导小组办公室副主任、商务部副部长姜增伟介绍了全国打击侵犯知识产权和制售假冒伪劣商品专项行动成果及成果网络展览情况。据统计，专项行动期间，各级行政执法部门共立案15.6万件，涉案金额34.3亿元，移送司法机关1702件，捣毁窝点9135个。全国公安机关破案15868起，打掉生产窝点12854个，摧毁批发销售犯罪团伙4904个，抓获犯罪嫌疑人29494人，涉案金额131.2亿元，逮捕9031人。各级检察机关共批捕涉嫌侵权假冒犯罪案件2895起，审查起诉案件2176起，批准逮捕5336人。法院系统受理相关刑事案件2492起，判决1985起，有力地打击了侵权假冒犯罪活动。

At the press release held by the State Council Information Office (SCIO) on July 12, Jiang Zengwei, Deputy Minister of the Ministry of Commerce (MOFCOM) and director of the Office of the National Leadership Group for the Special Campaign of Cracking Down on Violations of Intellectual Property Rights and on the Production and Distribution of Fake and Shoddy Products, gave an update on the progress of the special campaign and the online exhibition of the results. During the special campaign, administrative law enforcement departments at all levels have initiated 156,000 cases involving RMB 3.43 bn. 1,702 cases have been transferred to judicial authorities and 9,135 illegal manufacturing plants have been destroyed. Public security organs throughout the nation have solved 15,868 cases, destroyed 12,854 illegal manufacturing factors, knocked out 4,904 wholesale and retail criminal groups, seized 29,494 criminal suspects, and arrested 9,031 persons. RMB 13.12 bn was involved in these cases. Procuratorate organs at all levels have approved the arrest of 2,895 cases of such kind, reviewed 2,176 appeals, and approved the arrest of 5,336 persons.

The courts have accepted 2,492 criminal cases nationwide, 1,985 of which have been adjudicated and closed. The special campaign has delivered a heavy blow to IPR infringement, as well as to the production and sale of fake and shoddy products.

姜增伟还回答了记者提出的这次专项行动针对外国权利人诉求开展了哪些工作、中国知识产权保护未来的发展趋势、中国目前侵权盗版的问题是否依然非常严重等方面的问题。

Jiang also answered questions from reporters on the tasks launched concerning appeals made by foreigners, the future trend of IPR protection in China, and whether or not IPR infringement and piracy still remains a serious problem in China.  [Top](#)

- 港台七大音乐公司联名告迅雷侵权（来源：法制网，2011年7月20日）

Seven music studios sue Xunlei for infringement (Source: Legaldaily.com.cn, 20 July 2011)

据《广州日报》报道，包括索尼、华纳、新艺宝、环球在内的7家港台大唱片公司，将深圳市迅雷网络技术有限公司（以下简称迅雷公司）告上法庭，索赔2050万元，理由是“明知或应知未经他人许可上传侵权的录音制品，提供搜索、链接、榜单及下载服务”。台湾索尼等7家公司请求法院判令迅雷公司立即停止侵权，并公开赔礼道歉，赔偿其经济损失共计2050万元，同时支付公证费、律师费等维权合理费用。

According to Guangzhou Daily report, seven music studios from Hong Kong and Taiwan, including Sony, Warner and Cinepoly filed a lawsuit against Xunlei Networking Technology Co., Ltd. (Xunlei) for a compensation of RMB 20.50 mn, on the ground that "Xunlei provides inquiries, links, billboards, and download services to clients for infringing recording products while it is knowingly aware or should have been aware of the fact". The seven music studios requested the court to order Xunlei to immediately cease infringement, make an open apology and compensate RMB 20.5 mn thereto, and pay the reasonable expenses incurred for rights protection such as attorney's fees and notarization fees.

前日，此案在深圳中院第二次开庭，迅雷公司称其只提供搜索功能，之后用户下载的涉及侵权音乐文件均来自第三方服务器，和迅雷公司无关。目前该案仍在进一步审理中。

At the second court session held by Shenzhen Intermediate Court recently, Xunlei claimed that it only provides inquiry services, while the infringing music documents downloaded by users are all from others' servers, which are irrelevant to Xunlei. The case now awaits further proceedings.  [Top](#)

- 北京市高法与北京市知识产权局签署了知识产权纠纷委托调解合作协议（来源：国家知识产权局，2011年7月28日）

BHC signed IPR cooperation agreement with BIPO (Source: State Intellectual Property Office, 28 July 2011)

2011年7月25日,北京市高法与北京市知识产权局签署了知识产权纠纷委托调解合作协议。根据合作协议约定,全市各级法院在审理各类知识产权纠纷案件过程中,当事人可请市知识产权局协助进行纠纷调解,具体调解工作则由北京市知识产权举报投诉服务中心(北京12330)筛选的调解组织和调解员负责。该调解模式将于2011年9月起正式实施。

On July 25, 2011, Beijing High People's Court (BHC) and Beijing Municipal Intellectual Property Office (BIPO) signed a cooperative agreement on entrustment mediation for dispute over intellectual property right (IPR). According to the agreement, when courts at all levels of Beijing try IPR dispute cases, the parties concerned may request BIPO for assistant with the dispute mediation. The mediation organization and mediators selected by Beijing Intellectual Property Right Complaint Service Center (Beijing 12330) shall be responsible for the specific mediation work. The said mode of mediation will become effective from September 2011 onwards.

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- 国家工商总局将采取多项措施扼制恶意注册商标行为(来源:中国政府网,2011年7月29日)

SAIC to curb mala fide trademark registration (Source: Central People's Government, 29 July 2011)

2011年7月28日,新华网记者从在北京召开的全国工商行政管理系统知识产权保护与执法工作第三次电视电话会议上了解到,针对目前恶意注册商标行为日益泛滥的形势,国家工商行政管理总局决定把扼制恶意商标注册作为打击侵犯知识产权和制售假冒伪劣商品专项行动重要内容,采取一下七项措施,切实扼制恶意注册商标行为:积极配合修改商标法,增加诚实信用条款及有针对性地防止恶意注册的规制条款;继续加快商标注册申请审查,使审查周期由现在的12月缩短到10个月,异议和争议案件审理周期缩短到20个月;在商标注册申请受理、审查、异议、争议、转让、管理各个环节严格把关,对恶意商标注册申请及时驳回,对不符合条件的商标转让申请不予核准;对于连续3年不使用的注册商标及时予以撤销;依商标管理机关职权及时主动撤销发现的恶意注册商标,积极受理并认真审查当事人的申请或举报,一经查实,及时驳回恶意商标注册申请或撤销已经注册的商标;加强商标代理机构的监管,防止其成为恶意抢注的通道;加大宣传力度。

At the third television and telephone conference for launching the special campaign of cracking down on violations of intellectual property rights and on the production and distribution of fake and shoddy products in the nationwide commerce system held on July 28, 2011, reporters learnt that State Administration for Industry and Commerce (SAIC) has decided to adopt the following seven measures to effectively curb mala fide trademark registration: (1) amending the Trademark Law and adding clauses on good faith and preventing mala fide trademark registration; (2) speeding up the review of trademark registration applications, and shortening the review period from 12 months to 10 months, and shortening the period for trial of oppositions and disputes to 20 months; (3) strictly controlling the processes including acceptance of trademark registration application, review, opposition, dispute, transfer, and management, rejecting mala fide trademark registration

applications, and disapproving disqualified trademark transfer applications; (4) cancelling registered trademarks that have not been used for consecutively three years; (5) where any mala fide trademark registration is discovered, the relevant authority should accept the case and review the applications of the parties concerned or reports, and reject the applications or cancelled the already-registered trademarks once the violations are ascertained; (6) strengthening the supervision and administration of trademark agencies, and preventing them from becoming a channel of malicious trademark registration; and (7) making more efforts in publicity.



仲裁动态

ARBITRATION DEVELOPMENTS

- 上海市高级人民法院与中国海事仲裁委员会签署《关于建立海事纠纷委托调解工作机制协作纪要》(来源: 法制网, 2011年7月1日)

SHPC, CMAC sign cooperation minutes (source: Legaldaily.com.cn, 1 July 2011)

据法制网 2011 年 6 月 28 日消息,上海市高级人民法院与中国海事仲裁委员会于 6 月 28 日签署了《关于建立海事纠纷委托调解工作机制协作纪要》,这在中国海事纠纷解决领域尚属首创。该协作纪要指出,海上、通海水域货物运输合同纠纷等八类海事纠纷被纳入委托调解范围,上海市高级人民法院、上海海事法院将当事人诉至本院的上述海事纠纷案件,在征得各方当事人同意的前提下,委托中国海事仲裁委员会上海分会进行调解。法院在收到诉状、立案受理之前,或立案受理后、开庭审理之前,或开庭审理之后,均可委托调解。调解成功的,在征询当事人意愿,并经法院依法审查后可裁定准许撤诉或出具调解书;调解不成的案件,海事仲裁委员会上海分会需及时反馈法院,法院应及时做出审理判决。

On June 28, China Maritime Arbitration Commission (CMAC) and Shanghai High People's Court (SHPC) co-signed the Cooperation Minutes on Establishing a Working Mechanism for Entrusting Maritime Dispute Mediations, the first of its kind in the field of maritime dispute settlement in China. According to the Coordination Minutes, eight types of maritime disputes, including contractual maritime disputes arising from goods transportation at sea or in waterways connected with sea, may be entrusted for mediation, i.e., SHPC and Shanghai Maritime Court may entrust CMAC Shanghai Sub-Commission with the mediation of those maritime dispute cases they have received, upon consent of all parties concerned to the cases. Entrustment of such a case for mediation shall be allowed at any time after the court has received the complaint until after court hearing has been conducted. If mediation succeeds, upon consent by the parties concerned and after examination by the court in accordance with the law, a ruling may be made to allow withdrawal of action or a written mediation may be made. If mediation fails, CMAC Shanghai Sub-Commission shall report the same to the concerned court in a timely manner, and the latter shall conduct a trial

and make a judgment.



- 广州成立金融仲裁院（来源：中国商事仲裁网, 2011年7月14日）

Guangzhou establishes a court of financial arbitration (source: CCARB.org, 14 July 2011)

据中国商事仲裁网 2011 年 7 月 13 日消息，广州金融仲裁院于 7 月 11 日正式成立。该仲裁院采用行业共建、民主管理的模式，吸收一批金融监管机构、行业协会、高校及金融企业的金融法律专家共同参与金融仲裁院的建设。另据广州仲裁委领导介绍，广州金融仲裁院成立后，将建立专门的金融仲裁员名册，制定专门的金融仲裁规则，充分发挥商事仲裁专业、高效的作用。

Guangzhou Court of Financial Arbitration was officially established on July 11. A number of financial and legal experts from financial regulatory institutions, industry association, schools of higher-learning and financial enterprises to participate in the building of the financial arbitration court. Guangzhou Arbitration Commission officials revealed that after the financial arbitration court is launched, a dedicated financial arbitrator registrar will be established and special financial arbitration rules will be formulated in order to fully leverage the role of financial affair arbitration.



- 2010 年我国海事仲裁受案标的数量有所下降（来源：中国商事仲裁网, 2011 年 7 月 19 日）

Number of maritime arbitration cases in China slightly dropped in 2010 (source: CCARB.org, 19 July 2011)

据中国商事仲裁网 2011 年 7 月 15 日消息，近日，交通运输部发布了《2010 中国航运发展报告》。报告指出，2010 年，我国海事仲裁受案标的数量有所下降。中国海事仲裁委员会全年受理案件 54 件，比上年减少 32%，结案 58 件；争议金额 4.74 亿元人民币，不到上年的三分之一。据最高人民法院统计，2010 年全国一审海事海商案件 8541 件，比上年减少 17.44%。案件涉及类型包括海上货物运输合同、保险合同、海上碰撞、船公司追讨运费、码头堆存保管费、集装箱超期使用费、船员追索工资报酬以及船舶建造、买卖、租赁合同违约纠纷等。

Ministry of Transport (MOT) recently released the 2010 China Shipping Development Report. According to the Report, the number of maritime arbitration cases in China slightly dropped in 2010. China Maritime Arbitration Commission accepted 54 cases in 2010, down 32% from a year earlier. The number of cases closed was 58. A total amount of RMB 474 mn was involved in those cases, less than one third of that in the previous year. According to statistics released by the Supreme People's Court, the number of first-instance maritime cases throughout the nation decreased 17.44% from a year earlier to 8,541 in 2010. Those cases involved disputes over, among others, contract of carriage of goods by sea, insurance contracts, collision at sea, and collection of freight by shipping companies.



法规全文精选

FULL VERSION OF SELECTED LEGISLATION

最高人民法院关于人民法院办理海峡两岸送达文书和调查取证司法互助案件的规定

Provisions of the Supreme People's Court on Handling Cases of Mutual Judicial Assistance in Cross-Straits Service of Documents and Evidence Collection through Investigation by People's Courts

生效日期：2011年06月25日

Effective Date: 25-06-2011

为落实《海峡两岸共同打击犯罪及司法互助协议》（以下简称协议），进一步推动海峡两岸司法互助业务的开展，确保协议中涉及人民法院有关送达文书和调查取证司法互助工作事项的顺利实施，结合各级人民法院开展海峡两岸司法互助工作实践，制定本规定。

For the purpose of implementing the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits (hereinafter referred to as the Agreement), further pushing the development of cross-Straits mutual judicial assistance business, and ensuring the smooth implementation of mutual judicial assistance work of document service and evidence collection through investigation by people's courts that is referred to in the Agreement, these Provisions are formulated in light of the practice of people's courts at all levels in carrying out cross-Straits mutual judicial assistance work.

一、总则

Chapter I General Provisions

第一条 人民法院依照协议，办理海峡两岸民事、刑事、行政诉讼案件中的送达文书和调查取证司法互助业务，适用本规定。

Article 1 These Provisions shall apply when people's courts handle cross-Straits mutual judicial assistance business of document service and evidence collection through investigation in civil, criminal and administrative litigation cases.

第二条 人民法院应当在法定职权范围内办理海峡两岸司法互助业务。

Article 2 People's courts shall handle the cross-Straits mutual judicial assistance business within the scope of statutory functions and powers.

人民法院办理海峡两岸司法互助业务，应当遵循一个中国原则，遵守国家法律的基本原则，不得违反社会公共利益。

When handling the cross-Straits mutual judicial assistance business, people's courts shall follow the One-China principle, abide by basic principles of laws of the State, and shall not violate social public interests.

二、职责分工

Chapter II Division of Responsibilities

第三条 人民法院和台湾地区业务主管部门通过各自指定的协议联络人，建立办理海峡两岸司法互助业务的直接联络渠道。

Article 3 People's courts and the competent business department in Taiwan region shall establish a direct communication channel to handle the cross-Straits mutual judicial assistance business by designating their respective Agreement contact persons.

第四条 最高人民法院是与台湾地区业务主管部门就海峡两岸司法互助业务进行联络的一级窗口。最高人民法院台湾司法事务办公室主任是最高人民法院指定的协议联络人。

Article 4 The Supreme People's Court is the first-level window for contact with the competent business department in Taiwan region with respect to cross-Straits mutual judicial assistance business. The director of Taiwan Judicial Affairs Office under the Supreme People's Court is the agreement contact person designated by the Supreme People's Court.

最高人民法院负责：就协议中涉及人民法院的工作事项与台湾地区业务主管部门开展磋商、协调和交流；指导、监督、组织、协调地方各级人民法院办理海峡两岸司法互助业务；就海峡两岸调查取证司法互助业务与台湾地区业务主管部门直接联络，并在必要时具体办理调查取证司法互助案件；及时将本院和台湾地区业务主管部门指定的协议联络人的姓名、联络方式及变动情况等工作信息通报高级人民法院。

The Supreme People's Court is in charge of: carrying out consultation, coordination and communication with the competent business department of Taiwan region with respect to work items in the Agreement involving people's courts; guiding, supervising, organizing, and coordinating the handling of cross-Straits mutual judicial assistance business by local people's courts at various levels; directly communicating with the competent business department of Taiwan region regarding mutual judicial assistance business of cross-Straits evidence collection through investigation and, when necessary, handling specific cases of mutual judicial assistance cases of evidence collection through investigation; informing the higher people's courts of the name, contact information of the agreement contact persons designated by the Supreme People's Court and the competent business department of Taiwan region, the change therein and other work information.

第五条 最高人民法院授权高级人民法院就办理海峡两岸送达文书司法互助案件，建立与台湾地区业务主管部门联络的二级窗口。高级人民法院应当指定专人作为经最高人民法院授权的二级联络窗口联络人。

Article 5 The Supreme People's Court authorizes higher people's courts to establish the second-level contact windows with the competent business department of Taiwan region with respect to handling mutual judicial assistance cases of cross-Straits service of documents. A higher people's court shall designate a special person as the contact person of second-level contact window authorized by the Supreme People's Court.

高级人民法院负责：指导、监督、组织、协调本辖区人民法院办理海峡两岸送达文书和调查取证司法协助业务；就办理海峡两岸送达文书司法协助案件与台湾地区业务主管部门直接联络，并在必要时具体办理送达文书和调查取证司法协助案件；登记、统计本辖区人民法院办理的海峡两岸送达文书司法协助案件；定期向最高人民法院报告本辖区人民法院办理海峡两岸送达文书司法协助业务情况；及时将本院联络人的姓名、联络方式及变动情况报告最高人民法院，同时通报台湾地区联络人和下级人民法院。

A higher people's court is in charge of: guiding, supervising, organizing, and coordinating the handling of cross-Straits mutual judicial assistance business of document service and evidence collection through investigation by people's courts within its jurisdiction; directly communicating with the competent business department of Taiwan region with respect to cross-Straits mutual judicial assistance business of document service and, when necessary, handling specific mutual judicial assistance cases of document service and evidence collection through investigation; registering and taking statistics of cross-Straits mutual judicial assistance cases of document service handled by the people's courts within its jurisdiction; regularly reporting the cross-Straits mutual judicial assistance cases of document service handled by the people's courts within its jurisdiction to the Supreme People's Court; and timely reporting the name, contact information and change of its contact person to the Supreme People's Court and meanwhile notifying the contact person in Taiwan region and the people's courts at lower levels of the same.

第六条 中级人民法院和基层人民法院应当指定专人负责海峡两岸司法协助业务。

Article 6 Intermediate people's courts and basic people's courts shall designate special personnel to take charge of cross-Straits mutual judicial assistance business.

中级人民法院和基层人民法院负责：具体办理海峡两岸送达文书和调查取证司法协助案件；定期向高级人民法院层报本院办理海峡两岸送达文书司法协助业务情况；及时将本院海峡两岸司法协助业务负责人员的姓名、联络方式及变动情况层报高级人民法院。

Intermediate people's courts and basic people's courts are in charge of: handling specific cross-Straits mutual judicial assistance cases of document service and evidence collection through investigation; regularly reporting the cross-Straits mutual judicial assistance business of document service handled by them to higher people's courts level by level; timely reporting the name, contact information and change of their responsible persons for cross-Straits mutual judicial assistance business to higher people's courts level by level.

三、送达文书司法协助

Chapter III Mutual Judicial Assistance in Service of Documents

第七条 人民法院向住所地在台湾地区的当事人送达民事和行政诉讼司法文书，可以采用下列方式：

Article 7 A people's court may serve civil and administrative litigation judicial documents to litigants with the domicile in Taiwan through the following means:

(一) 受送达人居住在大陆的, 直接送达。受送达人是自然人, 本人不在的, 可以交其同住成年家属签收; 受送达人是法人或者其他组织的, 应当由法人的法定代表人、其他组织的主要负责人或者该法人、其他组织负责收件的人签收。

1. If the person to be served resides in the mainland, serve the document directly. If the person to be served is a natural person and is absent, the adult relative of the person living together therewith may be given the document and sign for it; if the person to be served is a legal person or any other organization, the legal representative of the legal person, principal responsible person of the other organization or the person in charge of receiving documents of the legal person or organization shall sign for it.

受送达人不在大陆居住, 但送达时在大陆的, 可以直接送达。

If the person to be served does not reside in the mainland but is in the mainland when the document is served, the document may be served directly.

(二) 受送达人在大陆有诉讼代理人的, 向诉讼代理人送达。但受送达人在授权委托书中明确表明其诉讼代理人无权代为接收的除外。

2. Where the person to be served has an agent ad litem in the mainland, the document shall be served on the agent ad litem, unless the person to be served expressly states in the power of attorney that the agent ad litem shall have no power to receive the document on behalf thereof.

(三) 受送达人有指定代收人的, 向代收人送达。

3. Where the person to be served has designated a recipient for the document, the document shall be served on such recipient.

(四) 受送达人在大陆有代表机构、分支机构、业务代办人的, 向其代表机构或者经受送达人明确授权接受送达的分支机构、业务代办人送达。

4. Where the person to be served has a representative office, branch or business agent in the mainland, the document shall be served on the representative office thereof or the branch or business agent which is explicitly authorized by the person to be served to receive the service.

(五) 通过协议确定的海峡两岸司法互助方式, 请求台湾地区送达。

5. Request Taiwan region to serve the document through a means of cross-Straits mutual judicial assistance determined in the Agreement.

(六) 受送达人在台湾地区的地址明确的, 可以邮寄送达。

6. Where the person to be served has a definite address in Taiwan region, the document may be served by mail. And

(七) 有明确的传真号码、电子信箱地址的, 可以通过传真、电子邮件方式向受送达人送达。

7. Where there is a definite fax number or e-mail address, the document may be served on the person to be served by fax or e-mail.

采用上述方式均不能送达或者台湾地区当事人下落不明的，可以公告送达。

Where it is impossible to serve the document by any of the above methods or the whereabouts of the litigant in Taiwan region is unknown, the document may be served by announcement.

人民法院需要向住所地在台湾地区的当事人送达刑事司法文书，可以通过协议确定的海峡两岸司法互助方式，请求台湾地区送达。

Where a people's court needs to serve a criminal judicial document to a litigant with the domicile in Taiwan region, it may request Taiwan region to serve the document through a means of cross-Straits mutual judicial assistance determined in the Agreement.

第八条 人民法院协助台湾地区法院送达司法文书，应当采用民事诉讼法、刑事诉讼法、行政诉讼法等法律和相关司法解释规定的送达方式，并应当尽可能采用直接送达方式，但不采用公告送达方式。

Article 8 When assisting a court of Taiwan region in serving judicial documents, a people's court shall adopt the service methods stipulated in the Civil Procedure Law, the Criminal Procedure Law, the Administrative Procedure Law and other laws and relevant judicial interpretations and shall adopt direct service methods to the largest extent possible, and may not take the method of service by announcement.

第九条 人民法院协助台湾地区送达司法文书，应当充分负责，及时努力送达。

Article 9 When assisting Taiwan region in serving judicial documents, a people's court shall be fully responsible and try to serve the documents in time.

第十条 审理案件的人民法院需要台湾地区协助送达司法文书的，应当填写《〈海峡两岸共同打击犯罪及司法互助协议〉送达文书请求书》附录部分，连同需要送达的司法文书，一式二份，及时送交高级人民法院。

Article 10 Where a people's court that tries cases needs Taiwan region to assist in serving judicial documents, it shall fill out the appendix to the Request for Service of Documents under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits, which shall be timely delivered in duplicate to a higher people's court together with the judicial documents to be served.

需要台湾地区协助送达的司法文书中有指定开庭日期等类似期限的，一般应当为协助送达程序预留不少于六个月的时间。

If the trial date or other similar dates have been designated in the judicial documents that need to be served with the assistance of Taiwan region, a period of not less than six months shall generally be reserved for the assistance service procedure.

第十一条 高级人民法院收到本院或者下级人民法院《〈海峡两岸共同打击犯罪及司法互助协议〉送达文书请求书》附录部分和需要送达的司法文书后，应当在七个工作日内完成审查。经审查认为可以请求台湾地区协助送达的，高级人民法院联络人应当填写《〈海

海峡两岸共同打击犯罪及司法互助协议》送达文书请求书》正文部分，连同附录部分和需要送达的司法文书，立即寄送台湾地区联络人；经审查认为欠缺相关材料、内容或者认为不需要请求台湾地区协助送达的，应当立即告知提出请求的人民法院补充相关材料、内容或者在说明理由后将材料退回。

Article 11 After receiving the appendix to the Request for Service of Documents under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits and the judicial documents to be served of itself or a people's court at lower levels, a higher people's court shall finish the examination within seven working days. If it deems upon examination that Taiwan region may be requested to assist in the service, the contact person of the higher people's court shall fill in the body part of the Request for Service of Documents under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits, which shall be mailed immediately to the contact person of Taiwan region together with the appendix and judicial documents to be served; if it deems upon examination that relevant materials or contents fall short or the request for assistance from Taiwan region is not necessary, it shall immediately notify the people's court making the request to supplement relevant materials or contents or return the materials to the said people's court after explaining the reasons therefor.

第十二条 台湾地区成功送达并将送达证明材料寄送高级人民法院联络人，或者未能成功送达并将相关材料送还，同时出具理由说明给高级人民法院联络人的，高级人民法院应当在收到之日起七个工作日内，完成审查并转送提出请求的人民法院。经审查认为欠缺相关材料或者内容的，高级人民法院联络人应当立即与台湾地区联络人联络并请求补充相关材料或者内容。

Article 12 If Taiwan region serves the documents successfully and sends the evidentiary material on service to the contact person of the higher people's court or returns relevant materials in case the service has not been successfully made and meanwhile explains reasons therefor to the contact person of the higher people's court, the higher people's court shall, within seven working days after the receipt, finish the examination and forward the same to the people's court that makes the request. If it deems that relevant materials or contents fall short, the contact person of the higher people's court shall immediately communicate with the contact person of Taiwan region and request supplementing relevant materials or contents.

自高级人民法院联络人向台湾地区寄送有关司法文书之日起满四个月，如果未能收到送达证明材料或者说明文件，且根据各种情况不足以认定已经送达的，视为不能按照协议确定的海峡两岸司法互助方式送达。

In case the contact person of the higher people's court has not received evidentiary material on service or the explanation document after four months since mailing relevant judicial documents to Taiwan region and it is not sufficient to deem that the documents have been served based on various circumstances, it shall be deemed that the documents cannot be served through the cross-Straits mutual judicial assistance methods determined in the Agreement.

第十三条 台湾地区请求人民法院协助送达台湾地区法院的司法文书并通过其联络人

将请求书和相关司法文书寄送高级人民法院联络人的，高级人民法院应当在七个工作日内完成审查。经审查认为可以协助送达的，应当立即转送有关下级人民法院送达或者由本院送达；经审查认为欠缺相关材料、内容或者认为不宜协助送达的，高级人民法院联络人应当立即向台湾地区联络人说明情况并告知其补充相关材料、内容或者将材料送还。

Article 13 Where Taiwan region requests a people's court to assist in serving the judicial documents of a court of Taiwan region and sends the request and relevant judicial documents through its contact person to the contact person of a higher people's court, the higher people's court shall finish the examination within seven working days. If it deems upon examination that it may assist in service of the documents, it shall immediately forward the documents to relevant people's court at a lower level or serve the documents itself; if it deems that relevant materials or contents fall short or that it is inappropriate to assist in the service, the contact person of the higher people's court shall immediately explain the situation to the contact person of Taiwan region and notify the same to supplement relevant materials or contents or return the materials.

具体办理送达文书司法互助案件的人民法院应当在收到高级人民法院转送的材料之日起五个工作日内，以“协助台湾地区送达民事（刑事、行政诉讼）司法文书”案由立案，指定专人办理，并应当自立案之日起十五日内完成协助送达，最迟不得超过两个月。

The people's court that handles specific mutual judicial assistance case of document service shall, within five working days after receiving the materials forwarded by the higher people's court, place the case on file based on the cause of "assisting Taiwan region in serving civil (criminal or administrative litigation) judicial documents", designate special personnel to handle the matter and shall serve the documents within 15 days after placing the case on file, which shall be finished within two months at the latest.

收到台湾地区送达文书请求时，司法文书中指定的开庭日期或者其他期限逾期的，人民法院亦应予以送达，同时高级人民法院联络人应当及时向台湾地区联络人说明情况。

When receiving the request for service of documents from Taiwan region, if it has gone past the trial date or other time limit specified in the judicial documents, the people's court shall also serve the documents and meanwhile the contact person of the higher people's court shall timely explain the situation to the contact person of Taiwan region.

第十四条 具体办理送达文书司法互助案件的人民法院成功送达的，应当由送达人在《〈海峡两岸共同打击犯罪及司法互助协议〉送达回证》上签名或者盖章，并在成功送达之日起七个工作日内将送达回证送交高级人民法院；未能成功送达的，应当由送达人在《〈海峡两岸共同打击犯罪及司法互助协议〉送达回证》上注明未能成功送达的原因并签名或者盖章，在确认不能送达之日起七个工作日内，将该送达回证和未能成功送达的司法文书送交高级人民法院。

Article 14 If the people's court that handles specific mutual judicial assistance case of document service successfully serves the documents, the server shall sign or affix a seal on the Proof of Service under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits and shall, within seven working days after the successful service, deliver the proof of service to the higher people's court; if the document has not been successfully served, the server shall indicate reasons for the failure to successfully serve the

documents and sign his name or affix a seal and shall, within seven working days since confirming the documents cannot be served, deliver such proof of service and the judicial documents that have not been successfully served to the higher people's court.

高级人民法院应当在收到前款所述送达回证之日起七个工作日内完成审查,由高级人民法院联络人在前述送达回证上签名或者盖章,同时出具《〈海峡两岸共同打击犯罪及司法互助协议〉送达文书回复书》,连同该送达回证和未能成功送达的司法文书,立即寄送台湾地区联络人。

The higher people's court shall complete the examination within seven working days after receiving the proof of service mentioned in the previous Paragraph, and the contact person of the higher people's court shall sign or affix a seal on the above-mentioned proof of service and meanwhile issue the Reply to the Service of Documents under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits, which shall be mailed to the contact person of Taiwan region together with the proof of service and the judicial documents that have not been successfully served.

四、调查取证司法互助

Chapter IV Mutual Judicial Assistance in Evidence Collection through Investigation

第十五条 人民法院办理海峡两岸调查取证司法互助业务,限于与台湾地区法院相互协助调取与诉讼有关的证据,包括取得证言及陈述;提供书证、物证及视听资料;确定关系人所在地或者确认其身份、前科等情况;进行勘验、检查、扣押、鉴定和查询等。

Article 15 The cross-Straits mutual judicial assistance business of evidence collection through investigation handled by people's courts are limited to obtaining evidence relevant to litigation through mutual assistance with courts of Taiwan region, including obtaining testimony and statement; providing written evidence, physical evidence and audio-visual materials; making clear of the location of persons concerned or confirming the identification or previous criminal records thereof; conducting survey, examination, seizure, appraisal, inquiry, etc.

第十六条 人民法院协助台湾地区法院调查取证,应当采用民事诉讼法、刑事诉讼法、行政诉讼法等法律和相关司法解释规定的方式。

Article 16 When assisting a court of Taiwan region in evidence collection through investigation, a people's court shall adopt the methods stipulated in by the Civil Procedure Law, the Criminal Procedure Law, the Administrative Procedure Law and other laws and relevant judicial interpretations.

在不违反法律和相关规定、不损害社会公共利益、不妨碍正在进行的诉讼程序的前提下,人民法院应当尽力协助调查取证,并尽可能依照台湾地区请求的内容和形式予以协助。

On the precondition that laws and relevant provisions are not violated, that public interests are not harmed and that ongoing court proceedings are not hindered, the people's court shall try its best to assist in evidence collection through investigation and shall provide assistance according to the contents and forms requested by Taiwan region to the largest extent possible.

台湾地区调查取证请求书所述的犯罪事实，依照大陆法律规定不认为涉嫌犯罪的，人民法院不予协助，但有重大社会危害并经双方业务主管部门同意予以个案协助的除外。台湾地区请求促使大陆居民至台湾地区作证，但未做出非经大陆主管部门同意不得追诉其进入台湾地区之前任何行为的书面声明的，人民法院可以不予协助。

If the criminal fact stated in the request of Taiwan region for evidence collection through investigation is not deemed to be suspected a crime according to the laws of the mainland, the people's court shall not provide assistance, except those with significant social harm that are approved by the competent business departments of the two parties to provide assistance in individual cases. If the Taiwan region requests and promotes a mainland resident to go to Taiwan region to testify but fails to make written statement that it shall not prosecute any acts of such person before entering Taiwan region without the consent of the competent department of the mainland, the people's court may not provide assistance.

第十七条 审理案件的人民法院需要台湾地区协助调查取证的，应当填写《〈海峡两岸共同打击犯罪及司法互助协议〉调查取证请求书》附录部分，连同相关材料，一式三份，及时送交高级人民法院。

Article 17 Where a people's court trying cases needs Taiwan region to assist in evidence collection through investigation, it shall fill out the appendix to the Request for Evidence Collection through Investigation under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits, which shall be delivered in triplicate in a timely manner to a higher people's court together with relevant materials.

高级人民法院应当在收到前款所述材料之日起七个工作日内完成初步审查，并将审查意见和《〈海峡两岸共同打击犯罪及司法互助协议〉调查取证请求书》附录部分及相关材料，一式二份，立即转送最高人民法院。

The higher people's court shall, within seven working days after receiving the materials mentioned in the previous Paragraph, finish the preliminary examination and shall immediately forward the examination opinions, the appendix to the Request for Evidence Collection through Investigation under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits as well as relevant materials in duplicate to the Supreme People's Court.

第十八条 最高人民法院收到高级人民法院转送的《〈海峡两岸共同打击犯罪及司法互助协议〉调查取证请求书》附录部分和相关材料以及高级人民法院审查意见后，应当在七个工作日内完成最终审查。经审查认为可以请求台湾地区协助调查取证的，最高人民法院联络人应当填写《〈海峡两岸共同打击犯罪及司法互助协议〉调查取证请求书》正文部分，连同附录部分和相关材料，立即寄送台湾地区联络人；经审查认为欠缺相关材料、内容或者认为不需要请求台湾地区协助调查取证的，应当立即通过高级人民法院告知提出请求的人民法院补充相关材料、内容或者在说明理由后将材料退回。

Article 18 After receiving the appendix to the Request for Evidence Collection through Investigation under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits and relevant materials forwarded by the higher people's court as well as the examination opinions of the higher people's court, the Supreme People's Court shall

finish the final examination within seven working days. If it deems upon examination that assistance may be requested of Taiwan region in evidence collection through investigation, the contact person of the Supreme People's Court shall fill in the body part of the Request for Evidence Collection through Examination under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits, which shall be mailed immediately to the contact person of Taiwan region together with the appendix and relevant materials; if it deems upon examination that relevant materials or contents fall short or the request for assistance from Taiwan region in evidence collection through collection is not necessary, it shall immediately notify the people's court making the request via the higher people's court to supplement relevant materials and contents or return the materials to such people's court after explaining the reasons therefor.

第十九条 台湾地区成功调查取证并将取得的证据材料寄送最高人民法院联络人，或者未能成功调查取证并将相关材料送还，同时出具理由说明给最高人民法院联络人的，最高人民法院应当在收到之日起七个工作日内完成审查并转送高级人民法院，高级人民法院应当在收到之日起七个工作日内转送提出请求的人民法院。经审查认为欠缺相关材料或者内容的，最高人民法院联络人应当立即与台湾地区联络人联络并请求补充相关材料或者内容。

Article 19 If Taiwan region collects evidence through investigation successfully and mails the obtained evidence material to the contact person of the Supreme People's Court or returns relevant materials in case the evidence has not been successfully collected through investigation and returns relevant materials and meanwhile explains reasons to the contact person of the Supreme People's Court, the Supreme People's Court shall, within seven working days after the receipt, finish the examination and forward the same to the higher people's court, which shall forward the same to the people's court making the request within seven working days after the receipt. If the Supreme People's Court deems upon examination that relevant materials or contents fall short, the contact person of the Supreme People's Court shall immediately communicate with the contact person of Taiwan region and request supplementing relevant materials or contents.

第二十条 台湾地区请求人民法院协助台湾地区法院调查取证并通过其联络人将请求书和相关材料寄送最高人民法院联络人的，最高人民法院应当在收到之日起七个工作日内完成审查。经审查认为可以协助调查取证的，应当立即转送有关高级人民法院或者由本院办理，高级人民法院应当在收到之日起七个工作日内转送有关下级人民法院办理或者由本院办理；经审查认为欠缺相关材料、内容或者认为不宜协助调查取证的，最高人民法院联络人应当立即向台湾地区联络人说明情况并告知其补充相关材料、内容或者将材料送还。

Article 20 Where Taiwan region requests a people's court to assist a court of Taiwan region in evidence collection through investigation and mails the request and relevant materials through its contact person to the contact person of the Supreme People's Court, the Supreme People's Court shall finish the examination within seven working days after the receipt. If it deems upon examination that assistance may be given in evidence collection through investigation, it shall immediately forward the same to the relevant higher people's court or handle the matter itself and the higher people's court shall forward the same to relevant people's court at a lower level or

handle the matter itself within seven working days after the receipt; if it deems upon examination that relevant materials or contents fall short or that it is inappropriate to assist in evidence collection through investigation, the contact person of the Supreme People's Court shall immediately explain the situation to the contact person of Taiwan region and notify the same to supplement relevant materials or contents or return the materials.

具体办理调查取证司法互助案件的人民法院应当在收到高级人民法院转送的材料之日起五个工作日内，以“协助台湾地区民事（刑事、行政诉讼）调查取证”案由立案，指定专人办理，并应当自立案之日起一个月内完成协助调查取证，最迟不得超过三个月。因故不能在期限届满前完成的，应当提前函告高级人民法院，并由高级人民法院转报最高人民法院。

The people's court that handles specific mutual judicial assistance cases of evidence collection through investigation shall, within five working days after receiving the materials forwarded by the higher people's court, place the case on file based on the cause of "assisting Taiwan region in evidence collection through civil (criminal or administrative litigation) investigation", designate special personnel to handle the matter and finish the assisted evidence collection through investigation within one month after placing the case on file, which shall be finished within three months at the latest. If the evidence cannot be collected before the time limit expires for some reason, it shall write to the higher people's court in advance and the higher people's court shall report the same to the Supreme People's Court.

第二十一条 具体办理调查取证司法互助案件的人民法院成功调查取证的，应当在完成调查取证之日起七个工作日内将取得的证据材料一式三份，连同台湾地区提供的材料，并在必要时附具情况说明，送交高级人民法院；未能成功调查取证的，应当出具说明函一式三份，连同台湾地区提供的材料，在确认不能成功调查取证之日起七个工作日内送交高级人民法院。

Article 21 If the people's court that handles specific mutual judicial assistance case of evidence collection through investigation successfully collects evidence through investigation, it shall, within seven working days after the evidence has been collected, deliver the obtained evidence materials in triplicate together with the materials provided by Taiwan region to the higher people's court and shall attach situation explanation when necessary; if the evidence cannot be successfully collected through investigation, it shall issue a cover letter in triplicate, which shall be delivered together with the materials provided by Taiwan region to the higher people's court within seven working days since confirming the evidence cannot be successfully collected through investigation.

高级人民法院应当在收到前款所述材料之日起七个工作日内完成初步审查，并将审查意见和前述取得的证据材料或者说明函等，一式二份，连同台湾地区提供的材料，立即转送最高人民法院。

The higher people's court shall finish the preliminary examination within seven working days after receiving the materials mentioned in the previous Paragraph, and shall immediately

forward the examination opinions, the above-mentioned evidence materials obtained or cover letter in duplicate to the Supreme People's Court together with the materials provided by Taiwan region.

最高人民法院应当在收到之日起七个工作日内完成最终审查,由最高人民法院联络人出具《〈海峡两岸共同打击犯罪及司法互助协议〉调查取证回复书》,必要时连同相关材料,立即寄送台湾地区联络人。

The Supreme People's Court shall finish the final examination within seven working days after the receipt and the contact person of the Supreme People's Court shall issue the Reply to the Service Collection through Investigation under the Agreement of Jointly Cracking down on Crime and Mutual Judicial Assistance across the Straits and immediately mail the same to the contact person of Taiwan region (if necessary) together with relevant materials.

证据材料不适宜复制或难以取得备份的,可不按本条第一款和第二款的规定提供备份材料。

Where the evidence materials are inappropriate to copy or it is difficult to obtain a backup, the backup materials may not be provided pursuant to the provisions of Paragraph 1 and Paragraph 2 of this Article.

五、附 则

Chapter V Supplementary Provisions

第二十二条 人民法院对于台湾地区请求协助所提供的和执行请求所取得的相关资料应当予以保密。但依据请求目的使用的除外。

Article 22 People's courts shall keep confidential relevant materials provided by Taiwan region when requesting assistance and relevant materials obtained in executing the request, except those used according to the request purposes.

第二十三条 人民法院应当依据请求书载明的目的使用台湾地区协助提供的资料。但最高人民法院和台湾地区业务主管部门另有商定的除外。

Article 23 The people's courts shall use the materials provided by Taiwan region in assistance as per the purposes stated in the request, unless otherwise agreed through consultation by the Supreme People's Court and the competent business department of Taiwan region.

第二十四条 对于依照协议和本规定从台湾地区获得的证据和司法文书等材料,不需要办理公证、认证等形式证明。

Article 24 No notarization, authentication or other formal proof needs to be handled for the evidence, judicial documents and other materials obtained from Taiwan region pursuant to the Agreement and these Provisions.

第二十五条 人民法院办理海峡两岸司法互助业务,应当使用统一、规范的文书样式。

Article 25 People's courts shall use a unified and standard document style when handling cross-Straits mutual judicial assistance business.

第二十六条 对于执行台湾地区的请求所发生的费用，由有关人民法院负担。但下列费用应当由台湾地区业务主管部门负责支付：

Article 26 The expenses incurred in executing the request of Taiwan region shall be borne by relevant people's courts. However, the following expenses shall be paid by competent business departments of Taiwan region:

(一) 鉴定费用；

1. Appraisal expenses;

(二) 翻译费用和誊写费用；

2. Translation expenses and transcription expenses;

(三) 为台湾地区提供协助的证人和鉴定人，因前往、停留、离开台湾地区所发生的费用；

3. Expenses incurred by witnesses and expert witnesses that provide assistance to Taiwan region due to going to, staying in and leaving Taiwan region; and

(四) 其他经最高人民法院和台湾地区业务主管部门商定的费用。

4. Other expenses determined through consultation by the Supreme People's Court and the competent business department of Taiwan region.

第二十七条 人民法院在办理海峡两岸司法互助案件中收到、取得、制作的各种文件和材料，应当以原件或者复制件形式，作为诉讼档案保存。

Article 27 Various types of documents and materials received, obtained and prepared by people's courts in handling cross-Straits mutual judicial assistance cases shall be preserved as lawsuit archives in original or copy form.

第二十八条 最高人民法院审理的案件需要请求台湾地区协助送达司法文书和调查取证的，参照本规定由本院自行办理。

Article 28 Where assistance is needed from Taiwan region in serving judicial documents and collecting evidence through investigation in cases tried by the Supreme People's Court, the Supreme People's court shall handle the matter itself by reference hereto.

专门人民法院办理海峡两岸送达文书和调查取证司法互助业务，参照本规定执行。

When handling cross-Straits mutual judicial assistance business of document service and evidence collection through investigation, special people's courts shall refer to these Provisions.

第二十九条 办理海峡两岸司法互助案件和执行本规定的情况，应当纳入对有关人民法院及相关工作人员的工作绩效考核和案件质量评查范围。

Article 29 The handling of cross-Straits mutual judicial assistance cases and implementation of these Provisions shall be included in the scope of work performance appraisal and case quality examination of relevant people's courts and pertinent working personnel.

第三十条 此前发布的司法解释与本规定不一致的，以本规定为准。

Article 30 Where there is any discrepancy between the judicial interpretations promulgated here before and these Provisions, these Provisions shall prevail.  [Top](#)

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 Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases involving Disputes over Compensation for Vessel Oil Pollution Damage

生效日期：2011年07月01日

Effective Date: 01-07-2011

为正确审理船舶油污损害赔偿纠纷案件，依照《中华人民共和国民事诉讼法通则》、《中华人民共和国侵权责任法》、《中华人民共和国海洋环境保护法》、《中华人民共和国海商法》、《中华人民共和国民事诉讼法》、《中华人民共和国海事诉讼特别程序法》等法律法规以及中华人民共和国缔结或者参加的有关国际条约，结合审判实践，制定本规定。

In accordance with the General Principles of Civil Law of the People's Republic of China, the Tort Liability Law of the People's Republic of China, the Marine Environmental Protection Law of the People's Republic of China, the Maritime Law of the People's Republic of China, the Civil Procedures Law of the People's Republic of China, the Special Maritime Procedures Law of the People's Republic of China and relevant international treaties and conventions concluded or acceded to by the People's Republic of China, these Provisions are formulated by taking into account actual judicial practice, with a view to ensure correct trial of cases involving disputes over compensation for vessel oil pollution damage.

第一条 船舶发生油污事故，对中华人民共和国领域和管辖的其他海域造成油污损害或者形成油污损害威胁，人民法院审理相关船舶油污损害赔偿纠纷案件，适用本规定。

Article 1 With regards to vessel oil pollution incidents which result in oil pollution damage or pose threats of oil pollution damage within the territory, or other waters under the jurisdiction, of the People's Republic of China, these Provisions shall be applicable when people's courts conduct trial of relevant cases involving compensation for vessel oil pollution damage.

第二条 当事人就油轮装载持久性油类造成的油污损害提起诉讼、申请设立油污损害赔偿限制基金，由船舶油污事故发生地海事法院管辖。

Article 2 Where the party concerned institutes an action concerning oil pollution damage caused by persistent oil substances carried by an oil tanker, or applies to set up a liability

limitation fund for compensation for oil pollution damage, such case shall be under the jurisdiction of the maritime court of the place of the occurrence of the vessel oil pollution incident.

油轮装载持久性油类引起的船舶油污事故,发生在中华人民共和国领域和管辖的其他海域外,对中华人民共和国领域和管辖的其他海域造成油污损害或者形成油污损害威胁,当事人就船舶油污事故造成的损害提起诉讼、申请设立油污损害赔偿限制基金,由油污损害结果地或者采取预防油污措施地海事法院管辖。

In the case of vessel oil pollution incidents caused by persistent oil carried by oil tankers, which occur outside the territory, or other waters under the jurisdiction, of the People's Republic of China but which cause oil pollution damage, or pose threats of oil pollution damage, within the territory, or other waters under the jurisdiction, of the People's Republic of China, if the party concerned institutes an action concerning the damage caused by the vessel oil pollution incidents, or apply to set up liability limitation funds for compensation for oil pollution damage, such case shall be under the jurisdiction of the maritime court of the place where the result of oil pollution damage occurs or where relevant oil pollution prevention measures are adopted.

第三条 两艘或者两艘以上船舶泄漏油类造成油污损害,受损害人请求各泄漏油船舶所有人承担赔偿责任,按照泄漏油数量及泄漏油类对环境的危害性等因素能够合理分开各自造成的损害,由各泄漏油船舶所有人分别承担责任;不能合理分开各自造成的损害,各泄漏油船舶所有人承担连带责任。但泄漏油船舶所有人依法免于承担责任的除外。

Article 3 In the case of oil pollution damage caused by leakage from two or more vessels, if the victim requests that the owners of all oil-leaking vessels be liable for compensation, said owners shall assume their respective liabilities where it is possible to reasonably differentiate between damages caused by them according to the amount of oil leakage, damages caused by different types of oil and other factors; where it is impossible to differentiate between damages caused by them respectively, said owners shall assume joint and several liabilities, except where a owner is exempt from liability according to law.

各泄漏油船舶所有人对受损害人承担连带责任的,相互之间根据各自责任大小确定相应的赔偿数额;难以确定责任大小的,平均承担赔偿责任。泄漏油船舶所有人支付超出自己应赔偿的数额,有权向其他泄漏油船舶所有人追偿。

Where the owners of all the oil-leaking vessels assume joint and several liabilities to the victim, the amount of compensation for which they are liable shall be determined according to their respective shares of relevant responsibility; where it is impossible to determine the share of responsibility, responsibility shall be shared equally between the owners. In the event that any of the owners makes payment of compensation in excess of the payable amount, it shall be entitled to recover the overpaid amount from other owners of oil leaking vessels.

第四条 船舶互有过失碰撞引起油类泄漏造成油污损害的,受损害人可以请求泄漏油船舶所有人承担全部赔偿责任。

Article 4 In the case of oil pollution damage caused by oil leakage resulting from collisions of vessels that are both at fault, the victim may request that the owners of oil-leaking

vessels bear full compensation liability.

第五条 油轮装载的持久性油类造成油污损害的,应依照《防治船舶污染海洋环境管理条例》、《1992年国际油污损害民事责任公约》的规定确定赔偿限额。

Article 5 In the case of oil pollution damage caused by persistent oil substances carried by oil tankers, the compensation upper limits shall be determined in accordance with the Administrative Regulations on the Prevention of Marine Pollution Caused by Vessels and the International Convention on Civil Liability for Oil Pollution Damage, 1992.

油轮装载的非持久性燃油或者非油轮装载的燃油造成油污损害的,应依照海商法关于海事赔偿责任限制的规定确定赔偿限额。

In the case of oil pollution damage caused by non-persistent fuel carried by oil tankers, or by fuel carried by vessels other than oil tankers, the compensation upper limits shall be determined in accordance with provisions concerning limitation of liability for maritime claim under the maritime law.

第六条 经证明油污损害是由于船舶所有人的故意或者明知可能造成此种损害而轻率地作为或者不作为造成的,船舶所有人主张限制赔偿责任,人民法院不予支持。

Article 6 Where the oil pollution damage is proved to be caused by the vessel owner's intentional act or reckless act or omission with the knowledge of possible occurrence of the damage, the people's court shall not uphold said vessel owner's assertion for compensation liability limitation.

第七条 油污损害是由于船舶所有人故意造成的,受损害人请求船舶油污损害责任保险人或者财务保证人赔偿,人民法院不予支持。

Article 7 Where oil pollution damage is caused by a vessel owner's intentional act, the people's court shall not uphold the victim's request for compensation by the insurer or financial guarantor of liability for vessel oil pollution damage.

第八条 受损害人直接向船舶油污损害责任保险人或者财务保证人提起诉讼,船舶油污损害责任保险人或者财务保证人可以对受损害人主张船舶所有人的抗辩。

Article 8 Where the victim institutes an action directly against the insurer or financial guarantor of liability for vessel oil pollution damage, the insurer or financial guarantor may assert the defense that may be raised by the vessel owner against the victim.

除船舶所有人故意造成油污损害外,船舶油污损害责任保险人或者财务保证人向受损害人主张其对船舶所有人的抗辩,人民法院不予支持。

Except for cases where oil pollution damage is caused by the intentional act of the vessel owners, the people's court shall not uphold the request of an insurer or financial guarantor of liability for vessel oil pollution damage for asserting defense that it has against the vessel owner against the victim.

第九条 船舶油污损害赔偿范围包括:

Article 9 Vessel oil pollution damage compensation shall cover:

(一) 为防止或者减轻船舶油污损害采取预防措施所发生的费用,以及预防措施造成的进一步灭失或者损害;

(1) expenses incurred in adopting preventive measures to prevent or reduce the damage caused by vessel oil pollution, and further loss or damage caused by such preventive measures;

(二) 船舶油污事故造成该船舶之外的财产损害以及由此引起的收入损失;

(2) damage caused by vessel oil pollution incidents to properties other than the vessel(s) involved, and the resulting loss of income;

(三) 因油污造成环境损害所引起的收入损失;

(3) loss of income arising from environmental damage caused by oil pollution; and

(四) 对受污染的环境已采取或将要采取合理恢复措施的费用。

(4) expenses incurred by reasonable restoration measures taken or to be taken for polluted environment.

第十条 对预防措施费用以及预防措施造成的进一步灭失或者损害,人民法院应当结合污染范围、污染程度、油类泄漏量、预防措施的合理性、参与清除油污人员及投入使用设备的费用等因素合理认定。

Article 10 The people's courts shall determine in reasonable manner the costs of preventive measures and further loss and damage caused by such preventive measures by taking into consideration all relevant factors such as pollution scale and degree, amount of oil leakage, rationality of preventive measures, and manpower and equipment costs involved in oil cleaning operations.

第十一条 对遇险船舶实施防污措施,作业开始时的主要目的仅是为防止、减轻油污损害的,所发生的费用应认定为预防措施费用。

Article 11 In the case of adoption of pollution prevention measures adopted for vessels involved in an accident, if the sole objective at the beginning of the operation is to prevent or reduce oil pollution damage, expenses so incurred shall be identified as the cost of preventive measures.

作业具有救助遇险船舶、其他财产和防止、减轻油污损害的双重目的,应根据目的的主次比例合理划分预防措施费用与救助措施费用;无合理依据区分主次目的的,相关费用应平均分摊。但污染危险消除后发生的费用不应列为预防措施费用。

Where an operation is intended both for rescuing the vessel in distress and other property and for reducing oil pollution damage, the cost of preventive measures and the cost of rescue measures shall be determined according to the priority given to the two objectives respectively; where there is no reasonable grounds on which primary and secondary objectives can be

identified, relevant costs shall be shared equally. However, costs incurred after the elimination of relevant pollution hazards shall not be included in the cost of preventive measures.

第十二条 船舶泄漏油类污染其他船舶、渔具、养殖设施等财产,受受害人请求油污责任人赔偿因清洗、修复受污染财产支付的合理费用,人民法院应予支持。

Article 12 In the case of pollution caused to other vessels, fishing gears, fishery facilities and other properties by oil leakage from vessels, where the victims claim compensation, by the parties liable for the oil pollution, for reasonable expenses paid for cleaning and/or repairing polluted properties, the people's court shall uphold the claim.

受污染财产无法清洗、修复,或者清洗、修复成本超过其价值的,受受害人请求油污责任人赔偿合理的更换费用,人民法院应予支持,但应参照受污染财产实际使用年限与预期使用年限的比例作合理扣除。

Where the polluted properties cannot be cleaned or repaired, or relevant cleaning or repairing costs exceed the value of such properties, the victim's request for compensation, by the parties liable for oil pollution, for reasonable replacement costs shall be upheld by the people's court, provided that reasonable deductions shall be made according to the difference between the actual in-service term and the expected service life of the polluted properties.

第十三条 受受害人因其财产遭受船舶油污,不能正常生产经营的,其收入损失应以财产清洗、修复或者更换所需合理期间为限进行计算。

Article 13 Where the victim is unable to carry out normal business operations due to influence of vessel oil pollution on its properties, its loss of income shall be calculated based on the reasonable length of time needed for cleaning, repairing or replacing such properties.

第十四条 海洋渔业、滨海旅游业及其他用海、临海经营单位或者个人请求因环境污染所遭受的收入损失,具备下列全部条件,由此证明收入损失与环境污染之间具有直接因果关系的,人民法院应予支持:

Article 14 People's courts shall support claims, by ocean fishing and coastal tourism industries and other organizations or individuals engaging in sea/offshore related businesses, for loss of income caused by environmental pollution, if they meet the all following conditions so that a causal relationship is established between such loss of income and environmental pollution:

(一) 请求人的生产经营活动位于或者接近污染区域;

(1) where the claimant's production and operating activities are conducted within or near the polluted area;

(二) 请求人的生产经营活动主要依赖受污染资源或者海岸线;

(2) where the claimant's production and operating activities mainly rely on the polluted resources or the coastal areas;

(三) 请求人难以找到其他替代资源或者商业机会;

(3) where the claimant is unable to find any alternative resources or business opportunities;
and

(四) 请求人的生产经营业务属于当地相对稳定的产业。

(4) where the claimant's production and operating businesses belong to relatively stable local industries.

第十五条 未经相关行政主管部门许可,受损害人从事海上养殖、海洋捕捞,主张收入损失的,人民法院不予支持;但请求赔偿清洗、修复、更换养殖或者捕捞设施的合理费用,人民法院应予支持。

Article 15 People's courts shall not uphold claims for loss of income by victims engaging in marine cultivation and/or ocean fishing without the permission of relevant competent administrative departments; however, people's courts shall uphold the claims for compensation for reasonable costs of cleaning, repairing or replacing cultivation or fishery facilities.

第十六条 受损害人主张因其财产受污染或者因环境污染造成的收入损失,应以其前三年同期平均净收入扣减受损期间的实际净收入计算,并适当考虑影响收入的其他相关因素予以合理确定。

Article 16 Where the victim files claim loss of income caused by polluted properties or environmental pollution, such loss shall be reasonably calculated by deducting the actual net income during the affected period of time from the average net income for the same period during the past three years, and taking into appropriate consideration other factors that have a bearing on income.

按照前款规定无法认定收入损失的,可以参考政府部门的相关统计数据和信息,或者同区域同类生产经营者的同期平均收入合理认定。

Where the loss of income cannot be determined following the provisions of the preceding paragraph, such loss shall be reasonably determined by making reference to relevant statistics and information released by government departments, or the average income of the producers and operators within the same area and engaging in the same businesses during the affected period of time.

受损害人采取合理措施避免收入损失,请求赔偿合理措施的费用,人民法院应予支持,但以其避免发生的收入损失数额为限。

Victims' claims for compensation for reasonable expenses incurred in taking reasonable measures to prevent loss of income shall be upheld by people's courts, but shall be limited to the amount of income loss prevented.

第十七条 船舶油污事故造成环境损害的,对环境损害的赔偿应限于已实际采取或者将要采取的合理恢复措施的费用。恢复措施的费用包括合理的监测、评估、研究费用。

Article 17 Where environmental damage is caused by a vessel oil pollution incident, compensation for such environmental damage shall be limited to the cost for reasonable restoration measures already taken or to be taken. The cost of restoration measures shall include the cost for reasonable monitoring, assessment and research.

第十八条 船舶取得有效的油污损害民事责任保险或者具有相应财务保证的,油污受损害人主张船舶优先权的,人民法院不予支持。

Article 18 Where valid oil pollution civil liability insurance or corresponding financial guarantee has been obtained for the vessel, the people's court shall not uphold the victim's claim for maritime liens.

第十九条 对油轮装载的非持久性燃油、非油轮装载的燃油造成油污损害的赔偿请求,适用海商法关于海事赔偿责任限制的规定。

Article 19 The provisions of the maritime law on limitation of liability for maritime claim shall be applicable to the claims of compensation for oil pollution damage caused by non-persistent fuel carried by oil tankers, or by fuel carried by vessels other than oil tankers.

同一海事事故造成前款规定的油污损害和海商法第二百零七条规定的可以限制赔偿责任的其他损害,船舶所有人依照海商法第十一章的规定主张在同一赔偿限额内限制赔偿责任的,人民法院应予支持。

Where the same maritime incident causes oil pollution damage specified in the preceding paragraph and other damage eligible for limitation of liability for compensation stated in Article 207 of the maritime law, and the relevant vessel owner claims limitation of liability for compensation within the same compensation upper limit pursuant to Chapter 11 of the maritime law, the people's court shall uphold such claim.

第二十条 为避免油轮装载的非持久性燃油、非油轮装载的燃油造成油污损害,对沉没、搁浅、遇难船舶采取起浮、清除或者使之无害措施,船舶所有人对由此发生的费用主张依照海商法第十一章的规定限制赔偿责任的,人民法院不予支持。

Article 20 Where measures are taken to uplift, remove or make harmless the sunken, aground and wrecked vessels in an effort to prevent non-persistent fuel carried by oil tankers and fuel carried by vessels other than oil tanker from causing oil pollution damage, and the relevant vessel owner claims limitation of liability for compensation concerning costs so incurred pursuant to Chapter 11 of the maritime law, the people's court shall uphold such claim.

第二十一条 对油轮装载持久性油类造成的油污损害,船舶所有人,或者船舶油污责任保险人、财务保证人主张责任限制的,应当设立油污损害赔偿限制基金。

Article 21 Regarding oil pollution damage caused by persistent oil substances carried by oil tankers, where the vessel owners, or the vessel oil pollution liability insurers, or the financial guarantors, claim liability limitation, the fund for limitation of liability for compensation for oil pollution damage shall be set up.

油污损害赔偿责任限制基金以现金方式设立的,基金数额为《防治船舶污染海洋环境管理条例》、《1992年国际油污损害民事责任公约》规定的赔偿限额。以担保方式设立基金的,担保数额为基金数额及其在基金设立期间的利息。

Where the fund for limitation of liability for oil pollution damage is established with cash, the amount of the fund shall comply with the compensation upper limit set out under the Administrative Regulations on the Prevention of Marine Pollution Caused by Vessels and the International Convention on Civil Liability for Oil Pollution Damage, 1992. Where the fund is set up in the form of financial guarantee, the amount covered by the guarantee shall be that of the fund plus the interest accrued during the fund establishment period.

第二十二条 船舶所有人、船舶油污损害责任保险人或者财务保证人申请设立油污损害赔偿责任限制基金,利害关系人对船舶所有人主张限制赔偿责任有异议的,应当在海事诉讼特别程序法第一百零六条第一款规定的异议期内以书面形式提出,但提出该异议不影响基金的设立。

Article 22 Where a vessel owner, or the vessel oil pollution damage liability insurer or the financial guarantor applies to set up a fund for limitation of liability for compensation for oil pollution damage, and an interested party has objection to the vessel owner's claim for limitation of liability for compensation, such objection shall be raised in writing within the objection period prescribed in Paragraph 1, Article 106 of the special maritime procedure law. Nonetheless, such objection shall not affect the establishment of the fund.

第二十三条 对油轮装载持久性油类造成的油污损害,利害关系人没有在异议期内对船舶所有人主张限制赔偿责任提出异议,油污损害赔偿责任限制基金设立后,海事法院应当解除对船舶所有人的财产采取的保全措施或者发还为解除保全措施而提供的担保。

Article 23 Regarding oil pollution damage caused by persistent oil substances carried by oil tankers, if, within the objection period, no interested party raises any objection against the vessel owner's claim for liability limitation, the maritime court shall, after the establishment of the fund for limitation of liability for compensation for oil pollution damage, lift preservation measures imposed on the properties of the vessel owner, or refund the guarantee paid to lift the preservation measures.

第二十四条 对油轮装载持久性油类造成的油污损害,利害关系人在异议期内对船舶所有人主张限制赔偿责任提出异议的,人民法院在认定船舶所有人有权限制赔偿责任的裁决生效后,应当解除对船舶所有人的财产采取的保全措施或者发还为解除保全措施而提供的担保。

Article 24 Regarding oil pollution damage caused by persistent oil substances carried by oil tankers, if, within the objection period, no interested party raises any objection against the vessel owner's claim for liability limitation, the maritime court shall, after the ruling for determining that the vessel owner is entitled to liability limitation for compensation, lift preservation measures imposed on the properties of the vessel owner, or refund the guarantee paid to lift the preservation measures.

第二十五条 对油轮装载持久性油类造成的油污损害,受损害人提起诉讼时主张船

船所有人无权限制赔偿责任的,海事法院对船舶所有人是否有权限制赔偿责任的争议,可以先行审理并做出判决。

Article 25 Regarding oil pollution damage caused by persistent oil substances carried by oil tankers, if the victim, while instituting the action, claims that the vessel owner is not entitled to liability limitation for compensation, the maritime court may first make a ruling as to whether or not the vessel owner is entitled to liability limitation for compensation.

第二十六条 对油轮装载持久性油类造成的油污损害,受损害人没有在规定的债权登记期间申请债权登记的,视为放弃在油污损害赔偿限制基金中受偿的权利。

Article 26 Regarding oil pollution damage caused by persistent oil substances carried by oil tankers, the victim, if failing to apply for creditor's right registration within the prescribed time limit therefor, shall be deemed to have waived the right to compensation from the fund for limitation of liability for compensation for oil pollution damage.

第二十七条 油污损害赔偿限制基金不足以清偿有关油污损害的,应根据确认的赔偿数额依法按比例分配。

Article 27 Where the fund for limitation of liability for compensation for oil pollution damage is insufficient to cover related oil pollution damages, the compensation amount specified shall be proportioned according to law.

第二十八条 对油轮装载持久性油类造成的油污损害,船舶所有人、船舶油污损害责任保险人或者财务保证人申请设立油污损害赔偿限制基金、受损害人申请债权登记与受偿,本规定没有规定的,适用海事诉讼特别程序法及相关司法解释的规定。

Article 28 Regarding oil pollution damage caused by persistent oil substances carried by oil tankers, if the vessel owner, vessel oil pollution damage liability insurer or financial guarantor applies for the establishment of the fund for limitation of liability for compensation for oil pollution damage, and the victim applies for creditor's right registration and compensation, the special maritime procedures law and related judicial interpretations shall be applicable to relevant issues which are not covered by these Provisions.

第二十九条 在油污损害赔偿限制基金分配以前,船舶所有人、船舶油污损害责任保险人或者财务保证人,已先行赔付油污损害的,可以书面申请从基金中代位受偿。代位受偿应限于赔付的范围,并不超过接受赔付的人依法可获得的赔偿数额。

Article 29 Where the vessel owner, vessel oil pollution damage liability insurer or financial guarantor has already paid for relevant oil pollution damage prior to the allocation of the fund for limitation of liability for compensation for oil pollution damage, it may apply, in writing, for subrogation compensation from the fund.

海事法院受理代位受偿申请后,应书面通知所有对油污损害赔偿限制基金提出主张的利害关系人。利害关系人对申请人主张代位受偿的权利有异议的,应在收到通知之日起十五日内书面提出。

Upon acceptance of a subrogation compensation application, the maritime court shall notify,

in writing, all interested parties who have made claims regarding the fund for limitation of liability for compensation for oil pollution damage. Where any interested party raises objection against the entitlement of the applicant to subrogation compensation, such objection shall be raised, in writing, within 15 days after receipt of the notification.

海事法院经审查认定申请人代位受偿权利成立,应裁定予以确认;申请人主张代位受偿的权利缺乏事实或者法律依据的,裁定驳回其申请。当事人对裁定不服的,可以在收到裁定书之日起十日内提起上诉。

Where the maritime court determines, after examination, that the applicant is entitled to subrogation compensation, it shall render a ruling for confirmation thereof; where the applicant's claim for subrogation compensation has no factual or legal basis, the maritime court shall render a ruling to reject the application. The party concerned, if dissatisfied with the ruling, may lodge an appeal within ten days after receipt of the written ruling.

第三十条 船舶所有人为主动防止、减轻油污损害而支出的合理费用或者所作的合理牺牲,请求参与油污损害赔偿限制基金分配的,人民法院应予支持,比照本规定第二十九条第二款、第三款的规定处理。

Article 30 Request by the vessel owner for participating in allocation of the fund for limitation of liability for compensation for oil pollution damage regarding the reasonable costs it has incurred or the reasonable sacrifice it has made in taking initiative to prevent or reduce damage caused by oil pollution shall be upheld by the people's court and be handled in reference to Paragraphs 2 and 3 of Article 29 herein.

第三十一条 本规定中下列用语的含义是:

Article 31 For the purposes of these Provisions, the definition of the following terms is as follows:

(一) 船舶,是指非用于军事或者政府公务的海船和其他海上移动式装置,包括航行于国际航线和国内航线的油轮和非油轮。其中,油轮是指为运输散装持久性货油而建造或者改建的船舶,以及实际装载散装持久性货油的其他船舶。

(1) "Vessels" refers to seagoing ships and other vehicles used for travelling in the sea for non-military and non-governmental purposes, including oil tankers and other vessels operating on international and domestic routes, of which "oil tankers" refers to vessels built or reconstructed for persistent cargo oil bulk transportation, and other vessels actually used for persistent cargo oil bulk transportation.

(二) 油类,是指烃类矿物油及其残余物,限于装载于船上作为货物运输的持久性货油、装载用于本船运行的持久性和非持久性燃油,不包括装载于船上作为货物运输的非持久性货油。

(2) "Oil" refers to hydrocarbon mineral oil and its residues, and is limited to persistent cargo oil carried as goods by vessels and persistent and non-persistent fuel used for propelling the carrier ship itself, but exclude non-persistent cargo oil carried as goods by vessels.

(三) 船舶油污事故,是指船舶泄漏油类造成油污损害,或者虽未泄漏油类但形成严重和紧迫油污损害威胁的一个或者一系列事件。一系列事件因同一原因而发生的,视为同一事故。

(3) "Vessel oil pollution incidents" refers to an incident or a series of incidents where oil pollution damage is caused by oil leakage from vessels, or where serious or imminent oil pollution threats are caused despite that no oil leakage has occurred. A series of incidents with the same cause shall be considered to be the same incident.

(四) 船舶油污损害责任保险人或者财务保证人,是指海事事故中泄漏油类或者直接形成油污损害威胁的船舶一方的油污责任保险人或者财务保证人。

(4) "Vessel oil pollution damage liability insurer or financial guarantor" refers to the oil pollution liability insurer or financial guarantor for the vessel which is involved in oil leakage or which poses direct threat of oil pollution damage in a maritime accident.

(五) 油污损害赔偿责任限制基金,是指船舶所有人、船舶油污损害责任保险人或者财务保证人,对油轮装载持久性油类造成的油污损害申请设立的赔偿责任限制基金。

(5) The "fund for limitation of liability for compensation for oil pollution damage" refers to compensation liability limitation fund set up upon application by vessel owners, vessel oil pollution liability insurers or financial guarantors regarding oil pollution damage caused by persistent oil carried by oil tankers.

第三十二条 本规定实施前本院发布的司法解释与本规定不一致的,以本规定为准。

Article 32 In the event of any discrepancy between these Provisions and the judicial interpretations promulgated by the Supreme People's Court prior to the implementation hereof, these Provisions shall prevail.

本规定施行前已经终审的案件,人民法院进行再审时,不适用本规定。

These Provisions shall not apply to the retrial of cases for which final judgment had been rendered by people's courts before the implementation hereof.



专利实施许可合同备案办法

Measures for Record-filing of Patent License Contracts

生效日期: 2011年08月01日

Effective Date: 01-08-2011

第一条 为了切实保护专利权,规范专利实施许可行为,促进专利权的运用,根据《中华人民共和国专利法》、《中华人民共和国合同法》和相关法律法规,制定本办法。

Article 1 These Measures are formulated in accordance with the Patent Law of the People's Republic of China, the Contract Law of the People's Republic of China as well as the relevant laws and regulations, with a view to effectively protecting patent rights, standardizing

the patent license acts and promoting the application of patent rights.

第二条 国家知识产权局负责全国专利实施许可合同的备案工作。

Article 2 The State Intellectual Property Office shall be responsible for the record-filing of patent license contracts throughout the country.

第三条 专利实施许可的许可人应当是合法的专利权人或者其他权利人。

Article 3 A patent licensor shall be a legitimate patentee or any other right holder.

以共有的专利权订立专利实施许可合同的,除全体共有人另有约定或者《中华人民共和国专利法》另有规定的外,应当取得其他共有人的同意。

Where a patent license contract is concluded based on a co-owned patent right, unless otherwise agreed upon among all co-owners or specified in the Patent Law of the People's Republic of China, the conclusion shall be approved by other co-owners.

第四条 申请备案的专利实施许可合同应当以书面形式订立。

Article 4 A patent license contract under application for record-filing shall be concluded in writing.

订立专利实施许可合同可以使用国家知识产权局统一制订的合同范本;采用其他合同文本的,应当符合《中华人民共和国合同法》的规定。

A patent license contract may be concluded using the uniform model contract made by the State Intellectual Property Office; where any other contract version is used, it shall conform to the provisions of the Contract Law of the People's Republic of China.

第五条 当事人应当自专利实施许可合同生效之日起3个月内办理备案手续。

Article 5 A party concerned shall, within three months from the date on which a patent license contract comes into effect, go through the formalities for record-filing.

第六条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织办理备案相关手续的,应当委托依法设立的专利代理机构办理。

Article 6 Where a foreigner, a foreign enterprise or any other foreign organization without habitual residence or business premises in China goes through the relevant formalities for record-filing, he/she or it shall authorize a legally established patent agency to go through the formalities.

中国单位或者个人办理备案相关手续的,可以委托依法设立的专利代理机构办理。

Where a Chinese entity or individual goes through the relevant formalities for record-filing, it or he/she may authorize a legally established patent agency to go through the formalities.

第七条 当事人可以通过邮寄、直接送交或者国家知识产权局规定的其他方式办理专利实施许可合同备案相关手续。

Article 7 A party concerned may, by mail, personal delivery or any other means prescribed by the State Intellectual Property Office, submit the relevant documents to go through the relevant formalities for the record-filing of a patent license contract.

第八条 申请专利实施许可合同备案的,应当提交下列文件:

Article 8 The following documents shall be submitted to apply for the record-filing of a patent license contract:

(一)许可人或者其委托的专利代理机构签字或者盖章的专利实施许可合同备案申请表;

(1) The application form for the record-filing of a patent license contract signed or stamped by the licensor or a patent agency authorized by it;

(二)专利实施许可合同;

(2) The patent license contract;

(三)双方当事人的身份证明;

(3) The ID certificates of both parties concerned;

(四)委托专利代理机构的,注明委托权限的委托书;

(4) The power of attorney specifying the scope of authority where a patent agency is authorized; and

(五)其他需要提供的材料。

(5) Other materials that are required to be provided.

第九条 当事人提交的专利实施许可合同应当包括以下内容:

Article 9 A patent license contract submitted by the party concerned shall include the following contents:

(一)当事人的姓名或者名称、地址;

(1) Name and address of the party concerned;

(二)专利权项数以及每项专利权的名称、专利号、申请日、授权公告日;

(2) Number of patent rights, as well as the name, patent number, application date and issue date of each patent right; and

(三)实施许可的种类和期限。

(3) Type and term of the patent license.

第十条 除身份证明外,当事人提交的其他各种文件应当使用中文。身份证明是外文的,当事人应当附送中文译文;未附送的,视为未提交。

Article 10 Except the ID certificate, other documents submitted by the party concerned shall be in Chinese. Where the ID certificate is in a foreign language, the party concerned shall submit a Chinese translation thereof; where the party fails to do so, the ID certificate shall be deemed as having not been submitted.

第十一条 国家知识产权局自收到备案申请之日起 7 个工作日内进行审查并决定是否予以备案。

Article 11 The State Intellectual Property Office shall, within 7 working days after receiving a record-filing application, examine the application and decide whether to approve the record-filing.

第十二条 备案申请经审查合格的,国家知识产权局应当向当事人出具《专利实施许可合同备案证明》。

Article 12 Where a record-filing application is qualified through examination, the State Intellectual Property Office shall issue the Record-filing Certificate of Patent License Contract to the party concerned.

备案申请有下列情形之一的,不予备案,并向当事人发送《专利实施许可合同不予备案通知书》:

In case of any of the following circumstances, a record-filing application shall not be approved, and the Notice on Disapproving Record-filing of Patent License Contract shall be issued to the party concerned:

(一)专利权已经终止或者被宣告无效的;

(1) The patent right has been terminated or declared invalid;

(二)许可人不是专利登记簿记载的专利权人或者有权授予许可的其他权利人的;

(2) The licensor is not the patentee mentioned in the patent register or any other right holder entitled to grant a license;

(三)专利实施许可合同不符合本办法第九条规定的;

(3) The patent license contract does not conform to the provisions of Article 9 of these Measures;

(四)实施许可的期限超过专利权有效期的;

(4) The expiration date of the license contract exceeds the validity period of the patent right;

(五)共有专利权人违反法律规定或者约定订立专利实施许可合同的;

(5) A co-owner concludes a patent license contract in violation of the relevant laws or agreements;

(六)专利权处于年费缴纳滞纳期的;

(6) The patent right is in the overdue payment period of patent annual fee;

(七)因专利权的归属发生纠纷或者人民法院裁定对专利权采取保全措施,专利权的有关程序被中止的;

(7) Due to a dispute over the ownership of the patent right or adoption of the preservation measures for the patent right based on the ruling of the people's court, the relevant procedures of the patent right are suspended;

(八)同一专利实施许可合同重复申请备案的;

(8) Repeated record-filing applications are filed for the same patent license contract;

(九)专利权被质押的,但经质权人同意的除外;

(9) The patent right has been pledged, except the pledgee consents to do so;

(十)与已经备案的专利实施许可合同冲突的;

(10) The record-filing conflicts with another filed patent license contract; and

(十一)其他不应当予以备案的情形。

(11) Other circumstances in which record-filing shall not be approved.

第十三条 专利实施许可合同备案后,国家知识产权局发现备案申请存在本办法第十二条第二款所列情形并且尚未消除的,应当撤销专利实施许可合同备案,并向当事人发出《撤销专利实施许可合同备案通知书》。

Article 13 Where the State Intellectual Property Office finds any record-filing application is involved in the circumstance as mentioned in Item (2) of Article 12 of these Measures and the circumstance has not been eliminated after the record-filing of a patent license contract, it shall cancel the record-filing and issue the Notice on Cancelling Record-filing of Patent License Contract to the party concerned.

第十四条 专利实施许可合同备案的有关内容由国家知识产权局在专利登记簿上登记,并在专利公报上公告以下内容:许可人、被许可人、主分类号、专利号、申请日、授权公告日、实施许可的种类和期限、备案日期。

Article 14 The relevant contents for filing a patent license contract for the record shall be registered by the State Intellectual Property Office in the patent register, and the following content shall be announced in the patent gazette: licensor, licensee, main classification number, patent number, application date, issue date, type and term of the license, and record-filing date.

专利实施许可合同备案后变更、注销以及撤销的,国家知识产权局予以相应登记和公告。

Where a patent license contract is changed, deregistered, or cancelled after it is filed for the record, the State Intellectual Property Office shall register and announce the change,

deregistration or cancellation accordingly.

第十五条 国家知识产权局建立专利实施许可合同备案数据库。公众可以查询专利实施许可合同备案的法律状态。

Article 15 The State Intellectual Property Office shall establish a database for the record-filing of patent license contracts. The public may inquire about the legal status of record-filing of patent license contracts.

第十六条 当事人延长实施许可的期限的,应当在原实施许可的期限届满前 2 个月内,持变更协议、备案证明和其他有关文件向国家知识产权局办理备案变更手续。

Article 16 Where a party concerned extends the term of the license, it shall, within two months prior to the expiration of the original license contract, by presenting the change agreement, record-filing certificate and other relevant documents, go through the formalities for changing the record-filing with the State Intellectual Property Office.

变更专利实施许可合同其他内容的,参照前款规定办理。

If there is any change in the other contents of a patent license contract, it shall be handled by reference of the previous paragraph.

第十七条 实施许可的期限届满或者提前解除专利实施许可合同的,当事人应当在期限届满或者订立解除协议后 30 日内持备案证明、解除协议和其他有关文件向国家知识产权局办理备案注销手续。

Article 17 Where the term of the license has expired or a patent license contract is terminated in advance, the party concerned shall, within 30 days after the expiration of the term or the conclusion of the termination agreement, by presenting the record-filing certificate, termination agreement and other relevant documents, go through the formalities for cancelling the record-filing with the State Intellectual Property Office.

第十八条 经备案的专利实施许可合同涉及的专利权被宣告无效或者在期限届满前终止的,当事人应当及时办理备案注销手续。

Article 18 Where the patent right involved in a field patent license contract is declared invalid or terminated prior to the expiration of the term, the party concerned shall go through the formalities for cancelling the record-filing in a timely manner.

第十九条 经备案的专利实施许可合同的种类、期限、许可使用费计算方法或者数额等,可以作为管理专利工作的部门对侵权赔偿数额进行调解的参照。

Article 19 The type and term of a filed patent license contract, and the calculation method and amount of the royalty may be used as references by the patent administration department for mediating the amount of compensation for patent infringement.

第二十条 当事人以专利申请实施许可合同申请备案的,参照本办法执行。

Article 20 Where a party concerned applies for the record-filing of the patent license

contract on the strength of a patent application, these Measures shall apply.

申请备案时,专利申请被驳回、撤回或者视为撤回的,不予备案。

Where the patent application is rejected, withdrawn or deemed as having been withdrawn during a record-filing application, the contract shall not be filed.

第二十一条 当事人以专利申请实施许可合同申请备案的,专利申请被批准授予专利权后,当事人应当及时将专利申请实施许可合同名称及有关条款作相应变更;专利申请被驳回、撤回或者视为撤回的,当事人应当及时办理备案注销手续。

Article 21 Where a party concerned applies for the record-filing of the patent license contract on the strength of a patent application, after the patent application is approved, the party concerned shall change the name and relevant clauses in the patent license contract in a timely manner; where the patent application is rejected, withdrawn or deemed as having been withdrawn during a record-filing application, the party concerned shall duly go through the formalities for cancelling the record-filing.

第二十二条 本办法自2011年8月1日起施行。2001年12月17日国家知识产权局令第十八号发布的《专利实施许可合同备案管理办法》同时废止。

Article 22 These Measures shall come into effect on August 1, 2011. The Administrative Measures for the Filing of Patent Implementation Licensing Contracts (Order No. 18 of the State Intellectual Property Office) promulgated on December 17, 2001 shall be simultaneously repealed.



全国人民代表大会常务委员会关于修改《中华人民共和国个人所得税法》的决定

The Decision of the Standing Committee of the National People's Congress on Amending the "Law of the People's Republic of China on Individual Income Tax"

生效日期: 2011年09月01日

Effective Date: 01-09-2011

第十一届全国人民代表大会常务委员会第二十一次会议决定对《中华人民共和国个人所得税法》作如下修改:

The Standing Committee of the 11th National People's Congress adopted the decision on amending the Law of the People's Republic of China on Individual Income Tax at the 21st Session. The amendments are as follows:

一、第三条第一项修改为:“工资、薪金所得,适用超额累进税率,税率为百分之三至百分之四十五(税率表附后)。”

1. After the amendment, Item (1) of Article 3 shall read, "With respect to income from

wages and salaries, the progressive tax in excess of the specified amounts shall apply, and with the tax rates ranging from 3 percent to 45 percent (see Schedule 1)."

二、第六条第一款第一项修改为：“工资、薪金所得，以每月收入额减除费用三千五百元后的余额，为应纳税所得额。”

2. After the amendment, Item (1) of Paragraph 6 of Article 6 shall read, "With respect to income from wages and salaries, the amount of taxable income shall be the part remaining after the deduction of RMB 3,500 for expenses from the monthly income."

三、第九条中的“七日内”修改为“十五日内”。

3. After the amendment, the time limit of "seven days" stipulated in Article 9 shall be changed to "15 days".

四、个人所得税税率表一（工资、薪金所得适用）修改为：

4. After the amendment, Schedule 1: Individual Income Tax Rates (Applicable to Income from Wages and Salaries) shall be:

级数	全月应纳税所得额	税率 (%)
1	不超过1500元的	3
2	超过1500元至4500元的部分	10
3	4500元至9000元的部分	20
4	9000元至35000元的部分	25
5	35000元至55000元的部分	30
6	55000元至80000元的部分	35
7	超过80000元的部分	45

(注:本表所称全月应纳税所得额是指依照本法第六条的规定，以每月收入额减除费用三千五百元以及附加减除费用后的余额。)

Grade	Monthly taxable income	Tax rate (%)
1	Income of RMB 1,500 or less	3

2	The part of income between RMB 1,500 and 4,500	10
3	The part of income between RMB 4,500 and 9,000	20
4	The part of income between RMB 9,000 and 35,000	25
5	The part of income between RMB 35,000 and 55,000	30
6	The part of income between RMB 55,000 to 80,000	35
7	The part of income in excess of RMB 80,000	45

(Note: "Monthly taxable income" mentioned in this schedule means the amount remaining after the deduction of RMB 3,500 for expenses and an additional deduction for expenses from the monthly income in accordance with provisions of Article 6 of this Law.)

五、个人所得税税率表二（个体工商户的生产、经营所得和对企事业单位的承包经营、承租经营所得适用）修改为：

5. Schedule 2: Individual Income Tax Rates (Applicable to income gained by self-employed industrial and commercial households from production or business operation, and income gained by enterprises and institutions from contracted or leased operation) shall be amended to:

级数	全年应纳税所得额	税率(%)
1	不超过15000元的	5
2	超过15000元至30000元的部分	10
3	超过30000元至60000元的部分	20
4	超过60000元至100000元的部分	30
5	超过100000元的部分	35

(注：本表所称全年应纳税所得额是指依照本法第六条的规定，以每一纳税年度的收入总额减除成本、费用以及损失后的余额。)

Grade	Annual Taxable Income	Tax rate (%)
1	Income of RMB 15,000 or less	5
2	The part of income between RMB 15,000 and 30,000	10
3	The part of income between RMB 30,000 and 60,000	20
4	The part of income between RMB 60,000 and 100,000	30
5	The part of income in excess of RMB 100,000	35

(Note: "Annual taxable income" mentioned in this schedule means the amount remaining after the costs, expenses and losses are deducted from the gross income in a tax year in accordance with provisions of Article 6 of this Law.)

本决定自 2011 年 9 月 1 日起施行。

This Decision shall take effect from September 1, 2011.

《中华人民共和国个人所得税法》根据本决定作相应修改，重新公布。

Law of the People's Republic of China on Individual Income Tax shall be amended accordingly based on this Decision and be promulgated anew.



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大成律师事务所成立于 1992 年，是亚洲最大的综合性律师事务所之一。大成总部设在北京，拥有中国最大的全球化法律服务网络，在上海、武汉、成都、济南、重庆、天津、哈尔滨、郑州、银川、西宁、厦门、杭州、海口、深圳、南通、广州、长春、西安、沈阳、呼和浩特、南京、常州、无锡、青岛、兰州、福州、南宁、太原、大连、长沙、吉林、舟山、香港、台北、莫斯科、新加坡、巴黎、首尔、华盛顿、东京、纽约、旧金山、多伦多、墨西哥、圣保罗、利马、伦敦、布鲁塞尔、柏林、阿姆斯特丹、马德里、斯德哥尔摩、迪拜、开罗、开普敦、阿布贾、特拉维夫、悉尼等城市设有分支机构或联盟机构。

Founded in 1992, Dacheng Law Offices is one of the largest law firms of full services in Asia. Headquartered in Beijing, Dacheng has the largest global legal services network of any law firm in China, with branch offices or alliance partners in Shanghai Wuhan Chengdu Jinan Chongqing Tianjin Ha'erbin Zhengzhou Yinchuan Xining Xiamen Hangzhou Haikou Shenzhen Nantong Guangzhou Changchun Xi'an Shenyang Hohhot Nanjing Changzhou Wuxi Qingdao Lanzhou Fuzhou Nanning Taiyuan Dalian Changsha Jilin Zhoushan Hong Kong Taipei Moscow Singapore Paris Seoul London Washington Tokyo New York San Francisco Toronto Mexico St. Paul Lima London Brussels Berlin Amsterdam Madrid Stockholm Dubai Cairo Cape Town Abuja Tel Aviv Sydney.

争议解决与强制执行是大成的传统优势业务，大成曾获得《亚洲法律事务》(ALB) 2009 年度“纠纷解决律师事务所大奖”。大成可以通过其全球化法律服务网络，帮助客户高效、经济地处理发生在中国各地及其法律服务网络内其他国家和地区的争议。大成在争议解决领域与强制执行可以提供如下法律服务：

Dacheng traditional strength is in the field of dispute resolution and enforcement, and was awarded the Dispute Resolution Law Firm of Year 2009 by Asian Legal Business (ALB). Drawing upon its global legal services network, Dacheng is able to assist clients in resolving, in a highly efficient and economical manner, disputes arising in any location throughout China, as well as all other countries and regions forming part of its global legal services network. Dacheng offers the following legal services in the field of dispute resolution and enforcement:

- (1) 争议解决谈判与争议和解；
negotiations in the course of dispute resolution and settlement of disputes;
- (2) 诉前法律咨询；
pre-action legal consultancy;
- (3) 诉前调查取证；
pre-action investigation and evidence-gathering;
- (4) 证据保全；
preservation of evidence;
- (5) 财产保全；
preservation of assets;
- (6) 诉讼仲裁代理；
representation in litigation and arbitration proceedings;

- (7) 中国法院生效法律文书的强制执行；
enforcement of effective legal instruments of the PRC courts;
- (8) 中国仲裁机构（如中国国际经济贸易仲裁委员会）生效裁决的强制执行；
enforcement of the effective awards of Chinese arbitration institutions (such as the China International Economic and Trade Arbitration Commission);
- (9) 香港、澳门及台湾法院生效法律文书在中国的承认与执行；
recognition and enforcement of the effective legal instruments of the courts of Hong Kong, Macau and Taiwan in mainland China;
- (10) 外国仲裁裁决在中国的承认和执行；及
recognition and enforcement of foreign arbitral awards in China; and
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