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## 新法速递 NEW LAWS AND REGULATIONS WATCH

海关总署发布《通关作业无纸化报关单证电子扫描文件格式标准》及《通关作业无纸化企业存单准入标准》的公告

GAC Releases Announcement on Format Standards for Electronic Scanning Files of Customs Declaration Documents under Paperless Customs Declaration System and Market Access Standards for Enterprise Deposit Receipts under Paperless Customs Clearance System

为深入推进通关作业无纸化改革,规范通关作业无纸化企业上传报关单证电子扫描文件和开展企业存单的行为,海关总署制定了《通关作业无纸化报关单证电子扫描文件格式标准》和《通关作业无纸化企业存单准入标准》,自 2013 年 6 月 1 日起执行。

In order to extensively promote the paperless customs clearance reform, and regulate the upload of electronic scanning files of customs declaration documents and enterprise deposit receipts by enterprises under the paperless customs declaration system, the General Administration of Customs (GAC) formulated the Format Standards for Electronic Scanning Files of Customs Declaration Documents under the Paperless Customs Declaration System and the Market Access Standards for Enterprise Deposit Receipts under the Paperless Customs Clearance System, effective as of June 1, 2013.

(Source: [www.customs.gov.cn](http://www.customs.gov.cn))

## 海关总署发布《关于修改进出口货物报关单填制规范的公告》

### GAC Releases Announcement on Revising Specifications on Import/Export Customs Declaration Form

为有效落实“由企及物”管理理念，进一步深化企业风险分析工作，2013 年 5 月 28 日海关总署发布《关于修改进出口货物报关单填制规范的公告》（《公告》），对海关总署公告 2008 年第 52 号的附件《中华人民共和国海关进出口货物报关单填制规范》中“九、收货单位/发货单位”项下的第（三）项内容进行修改。

《公告》规定，使用《加工贸易手册》管理的货物，报关单的收、发货单位应与《加工贸易手册》的‘经营企业’或‘加工企业’一致；减免税货物报关单的收、发货单位应与《征免税证明》的‘申请单位’一致。

《公告》自 2013 年 7 月 1 日起实施。

In order to effectively implement the management principles of "Enterprise-based Regulation" and further deepen the risk analysis of enterprises, the General Administration of Customs (GAC) released the Announcement on Revising Specifications on Import/Export Customs Declaration Form (the "Announcement") on May 28, 2013, revising Item 3 under "Article 9 Consignee/Consignor" in the Specifications of the People's Republic of China on Import/Export Customs Declaration Form, as the Annex to the Announcement of the General Administration of Customs [2008] No. 52.

According to the Announcement, the consignee or consignor of the goods under the management of the Processing Trade Manual shall be consistent with the "Operation Enterprise" or the "Processing Enterprise" under the

Processing Trade Manual; the consignee or consignor of the goods under the tax reduction/exemption customs declaration form shall be consistent with the "Applicant" under the Tax Collection/Exemption Certificate.

(Source: [www.customs.gov.cn](http://www.customs.gov.cn))

国家税务总局发布《交通运输业和部分现代服务业营业税改征增值税试点增值税一般纳税人资格认定的公告》

SAT Releases Announcement on Qualification Recognition for General VAT Taxpayers under the Pilot Collection of Value Added Tax in Lieu of Business Tax in Transportation Industry and Certain Modern Service Industries

2013 年 5 月 31 日，国家税务总局发布《国家税务总局关于交通运输业和部分现代服务业营业税改征增值税试点增值税一般纳税人资格认定有关事项的公告》(《公告》)。

《公告》规定，纳入营改增试点范围的交通运输业和部分现代服务业试点纳税人，应按照本公告规定办理增值税一般纳税人资格认定。试点实施前应税服务年销售额不满 500 万元的试点纳税人，可以向主管税务机关申请增值税一般纳税人资格认定。

公告自 2013 年 8 月 1 日起施行。《国家税务总局关于北京等 8 省市营业税改征增值税试点增值税一般纳税人资格认定有关事项的公告》(国家税务总局公告 2012 年第 38 号)同时废止。

On May 31, 2013, the State Administration of Taxation (SAT) released the Announcement of the State Administration of Taxation on Qualification

Recognition for General VAT Taxpayers under the Pilot Collection of Value Added Tax in Lieu of Business Tax in the Transportation Industry and Certain Modern Service Industries (the "Announcement").

According to the Announcement, the pilot taxpayers of the transportation industry and some modern service industries which are included in the scope of pilot collection of value added tax (VAT) in lieu of business tax shall, as required by the Announcement, complete the qualification recognition formalities. The pilot taxpayers whose annual sale amount of taxable services before the launch of the pilot project is not more than CNY5 million may apply for the qualification recognition for general VAT taxpayers with the competent tax authorities.

The Announcement becomes effective as of August 1, 2013. The Announcement of the State Administration of Taxation on Issues Concerning the Determination of the Qualification of General VAT Taxpayers in the Pilot Collection of Value Added Tax in Lieu of Business Tax in Eight Provinces and Cities Including Beijing (Announcement of the State Administration of Taxation [2012] No. 38) shall be repealed simultaneously.

(Source: [www.chinatax.gov.cn](http://www.chinatax.gov.cn))

[最高院发布《最高人民法院关于适用〈中华人民共和国保险法〉若干问题的解释（二）》](#)

[SPC Releases Interpretations on Certain Issues Concerning the Application of the Insurance Law of the People's Republic of China \(II\)](#)

《最高人民法院关于适用〈中华人民共和国保险法〉若干问题的解释（二）》

(《解释》)已于2013年5月6日由最高人民法院审判委员会第1577次会议通过，自2013年6月8日起施行。

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

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

The Interpretations provide that the applicant's duty of disclosure is limited to the scope and content of enquiry by the insurer. If a party disagrees to the scope and content of enquiry, the burden of proof lays on the insurer. Where an insurer petitions for rescission of the contract on the ground that the applicant violates the duty of faithfully disclosing the general terms as listed in the questionnaire under the insurance slip, the people's court shall not uphold such petition, except where such general terms contain specific contents.

(Source: [www.court.gov.cn](http://www.court.gov.cn))

[国家税务总局发布《关于出口企业申报出口货物退（免）税提供收汇资料有关问题的公告》](#)

[SAT Releases Announcement on Issues Concerning Exchange Collection](#)



## Documents for Export Tax Rebate (Exemption) Declared by Export Enterprises

为了准确计算、审核办理出口退（免）税，国家税务总局发布《国家税务总局关于出口企业申报出口货物退（免）税提供收汇资料有关问题的公告》（《公告》）。

根据《公告》，出口企业申报退（免）税的出口货物，须在退（免）税申报期截止之日内收汇（跨境贸易人民币结算的为收取人民币，下同），并按本公告的规定提供收汇资料；未在退（免）税申报期截止之日内收汇的出口货物，除本公告第五条所列不能收汇或不能在出口货物退（免）税申报期的截止之日内收汇的出口货物外，适用增值税免税政策。

《公告》自 2013 年 8 月 1 日起执行。

In order to accurately calculate, review and handle export tax rebate (exemption), the State Administration of Taxation (SAT) released the Announcement on Issues Concerning Exchange Collection Documents for Export Tax Rebate (Exemption) Declared by Export Enterprises (the "Announcement").

According to the Announcement, foreign exchange for export goods for which export enterprises declare tax rebate (exemption) shall be collected (in CNY if CNY is used as the settlement currency for cross-border trade) before the deadline for declaration of tax rebate (exemption), and such enterprises shall provide exchange collection documents as required by the Announcement; with regard to export goods of which the foreign exchange fails to be collected before the deadline for declaration of tax rebate (exemption), the policies for exemption of value-added tax shall apply, except for export goods as listed in Article 5 of the Announcement, of which the foreign exchange fails to be collected or cannot be collected before the deadline for declaration of tax



rebate (exemption).

The Announcement becomes effective as of August 1, 2013.

(Source: [www.chinatax.gov.cn](http://www.chinatax.gov.cn))

### 最高人民法院发布《关于海事法院可否适用小额诉讼程序问题的批复》

#### The Supreme People's Court Promulgates Reply to Whether the Maritime Court can Apply Petty Lawsuit Procedure

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

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

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

It is identified in the Reply that the petty lawsuit procedure was provided in the Chapter of Summary Procedure in the Civil Procedure Law of the People's Republic of China amended in 2012 and Article 98 in the Special Maritime Procedure Law of the People's Republic of China provides that the maritime courts may apply summary procedure. Therefore the maritime courts may apply petty lawsuit procedure to judge simple maritime trade cases. The maximum amount of subject matter applicable to petty lawsuit procedure shall be 30% of average annual salary of employees in the previous year in the province, autonomous region, municipality directly under the Central Government where the maritime court or its detached tribunal locates.

(Source: [www.court.gov.cn](http://www.court.gov.cn))

## 实时资讯 REAL-TIME INFORMATION

交通运输部公布《“十二五”期第二批全国重点推广公路水路交通运输节能减排产品（技术）目录》

MOT Promulgates Promotion Catalogue of Second Batch of National Key Energy-Saving and Emission-Reduction Products (Technologies) for Highway and Waterway Transportation during Twelfth Five-Year Plan Period

根据交通运输部办公厅《关于组织开展“十二五”期第二批全国重点推广公路水路交通运输节能产品（技术）推选工作的通知》（厅政法字[2012]153号），经节能产品（技术）拥有单位自愿申请，省级交通运输主管部门、中国交通企业管理协会交通能源管理委员会、中国节能协会交通运输节能专业委员会推荐，并经交通运输节能产品（技术）检测承担机构检验、组织专家评审、公示，共有 26 项产品（技术）符合《“十二五”期第二批全国重点推广公路水路交通运输节能产品（技术）推选办法》的规定。

According to the Circular on Organizing and Launching the Recommendation and Election of Second Batch of National Key Energy-Saving and Emission-Reduction Products (Technologies) for Highway and Waterway Transportation during Twelfth Five-Year Plan Period (Ting Zheng Fa Zi [2012] No. 153) issued by the General Office of the Ministry of Transport (MOT), 26 products (technologies) which, upon voluntary application by the entities that own energy-saving and emission-reduction products (technologies), have been recommended by the provincial-level competent transportation departments, the Transportation and Energy Management Committee of China

Association of Communication Enterprise Management and the Transport Energy Conservation Committee of the China Energy Conservation Association and subject to the inspection, expert review and publicity by the institutions undertaking the testing of transportation energy conservation products (technologies) comply with the provisions of the Measures for the Recommendation and Election of Second Batch of National Key Energy-Saving and Emission-Reduction Products (Technologies) for Highway and Waterway Transportation during Twelfth Five-Year Plan Period.

(Source: [www.moc.gov.cn](http://www.moc.gov.cn))

### 国务院发布《关于促进海洋渔业持续健康发展的若干意见》

#### State Council Promulgates Several Opinions on Promoting the Sustainable and Healthy Development of Marine Fishery

为促进海洋渔业持续健康发展，国务院发布《国务院关于促进海洋渔业持续健康发展的若干意见》（《意见》）。

《意见》规定，确定发展目标，到 2015 年，海水产品产量稳定在 3000 万吨左右，海水养殖面积稳定在 220 万公顷左右，其中海上养殖面积控制在 115 万公顷以内；近海捕捞强度有效控制，外海和远洋渔业综合生产能力不断增强，海水产品精深加工规模不断扩大；渔业组织化程度明显提高，渔民收入稳步增长；渔船装备水平明显提高，安全生产能力进一步提升；现代渔业产业体系和支撑保障体系基本形成；水生生物资源养护和修复能力明显提升，渔业生态环境有所改善。

To promote the sustainable and healthy development of marine fishery, the

State Council has promulgated Several Opinions on Promoting the Sustainable and Healthy Development of Marine Fishery ("Opinions").

It is provided in the Opinions that the development target is confirmed as that by 2015, the output of marine aquatic products shall be around 30million tons and marine aquaculture area shall be around 2.2million ha, among which the area of offshore aquaculture shall be controlled below 1.15million ha; the intensity of offshore fishing shall be effectively controlled and the comprehensive production capability of off-sea and distant fishery shall be consistently strengthened, the scale of precision and deep processing of marine aquatic products shall be consistently expanded; the organization synthesis of fishery shall be obviously enhanced and fishermen's income shall be stably increased; the equipment level of fish boat shall be obviously enhanced and safety production capability shall be further enhanced; the industry system and support and safeguard system for modern fishery shall be initially established; the capability to conserve and restore aquatic organism resource shall be obviously enhanced and ecological environment of fishery shall be improved.

(Source: [www.gov.cn](http://www.gov.cn))

国家税务总局、海关总署联合发布《关于实行海关进口增值税专用缴款书“先比对后抵扣”管理办法有关问题的公告》

SAT and GAC Jointly Promulgate the Announcement Regarding Issues on Implementation of Management Measures of "Comparison before Deduction" of Customs Importation Special VAT Payment Certificate

为了进一步加强海关进口增值税专用缴款书的增值税抵扣管理，税务总局、

海关总署决定将前期在广东等地试行的海关缴款书“先比对后抵扣”管理办法，在全国范围推广实行，2013 年 6 月 14 日，国家税务总局、海关总署联合发布《关于实行海关进口增值税专用缴款书“先比对后抵扣”管理办法有关问题的公告》(《公告》)，自 2013 年 7 月 1 日起施行。

《公告》规定，自 2013 年 7 月 1 日起，增值税一般纳税人进口货物取得的属于增值税扣税范围的海关缴款书，需经税务机关稽核比对相符后，其增值税额方能作为进项税额在销项税额中抵扣。

To further strengthen the management on VAT deduction of Customs Importation Special VAT Payment Certificate, the State Tax Administration (SAT) and the General Administration of Customs (GAC) decided to popularize nationwide the implementation of management measures of "comparison before deduction" of Customs Tax Certificate that had been initially test run in Guangdong and on June 14, 2013, the SAT and the GAC jointly promulgated the Announcement Regarding Issues on Implementation of Management Measures of "Comparison before Deduction" of Customs Importation Special Value-Added Tax Payment Certificate ("Announcement"), which will be effective as of July 1, 2013.

It is provided in the Announcement as of July 1, 2013, unless the tax authority has verified and compared the VAT deductible Customs Tax Certificate obtained by general VAT payers upon importation of commodity, the VAT amount cannot be deducted from output VAT as input VAT.

(Source: [www.chinatax.gov.cn](http://www.chinatax.gov.cn))

## 交通运输部发布《道路运输车辆动态监督管理办法》(征求意见稿)

### Ministry of Transport Promulgates Road Transportation Vehicle Dynamic Monitoring Management Measures (Drafts for Opinion)

为了加强道路运输车辆动态监督管理,预防和减少道路交通事故,交通运输部道路运输司组织起草了《道路运输车辆动态监督管理办法》(征求意见稿)(《办法》),现公开征求意见。

《办法》规定,道路运输管理机构负责建设道路运输车辆动态信息公共服务平台,为跨区域、跨部门联合监管提供技术手段,并利用动态监控手段加强运输市场秩序管理;公安机关交通管理部门依据卫星定位装置采集的监控记录,依法查处超速行驶、疲劳驾驶等道路交通安全违法行为;安全监管部门利用动态监控手段,做好应急指挥及事故调查处理工作。

意见反馈截止时间 2013 年 7 月 12 日 17:00 时。

To strengthen the dynamic monitoring management on road transportation vehicles and prevent and reduce road traffic accident, the Ministry of Transport organized to draft the Road Transportation Vehicle Dynamic Monitoring Management Measures (Drafts for Opinions)("Measures")and is soliciting opinions publicly.

It is provided in the Measures that the road transportation management authority is responsible for construction of the road transportation vehicle dynamic information public service platform to provide technical means for cross-region and interdepartmental joint regulation and strengthen management of transportation market order through dynamic monitoring; the



traffic management organ under the public security department can investigate and prosecute speeding, fatigue driving and other offences against road transportation safety based on monitoring records collected by global positioning system; the security supervision authority may conduct emergency command and accident investigation and disposition through dynamic monitoring.

The feedback shall be submitted by July 12, 2013 1700 hr.

(Source: [www.moc.gov.cn](http://www.moc.gov.cn))

## 案例分析 CASE STUDY

### 烟台海事局诉延成海运公司等船舶油污污染损害赔偿（设立基金后）确权诉讼案

Yantai Maritime Safety Administration vs. Yun Sung Marine Corp., The Japan Ship Owners' Mutual Protection & Indemnity Association for Oil Pollution Damages

#### 【问题提示】

- 1.船舶油污污染损害赔偿案件中油污责任保险人是否应当同船舶所有人承担连带赔偿责任？
- 2.我国海事局在清污作业中的应急反应费用是否属于限制性债权？是否应当在基金中优先受偿？
- 3.在海事赔偿责任限制基金的分配前船舶所有人、保险人能否行使代位受偿权？

#### 【要点提示】 Points to note

依据我国现行法律规定，船舶油污污染损害赔偿案件中油污责任保险人不应同船舶所有人承担连带赔偿责任；我国海事局在清污作业中的应急反应费用不应在基金中优先受偿，而应依法按比例受偿；在海事赔偿责任限制基金的分配前，船舶所有人、保险人不能行使代位受偿权，该权利只能在油污损害赔偿限制基金分配前行使。

Under Chinese law, the insurer shall not take joint and several liability with the

shipowner in oil pollution damages from vessels. Marine oil spill emergency response fees of Maritime Safety Administration were expensed to clean up oil spill, which is not entitled to priority of repayment but proportional compensation in the fund in accordance with the law. The shipowner and the insurer cannot exercise subrogation before distribution of the Fund of Limitation of Liability for Maritime Claims. Such subrogation shall be exercised before distribution of the Fund of Limitation of Liability for Oil Pollution Damages.

一审：青岛海事法院（2008）青海法海事初字第 15 号（2011 年 11 月 18 日）。

**【案情】**

原告：中华人民共和国烟台海事局。

被告：延成海运公司（Yun Sung Marine Corp.）。

被告：日本船主责任相互保险协会（The Japan Ship Owners' Mutual Protection & Indemnity Association）。

“金盛”轮，英文名称“JIN SHENG”，国籍圣文森特，船籍港金斯敦，船长 113 米，型宽 19 米，型深 8.5 米，总吨 4822，净吨 2476，载重吨 6833 吨，船型集装箱船，建造日期 1996 年 3 月，该轮属金盛船务有限公司（以下简称“金盛船务”）所有。

“金玫瑰”轮，英文名称“GOLDEN ROSE”，国籍韩国，船籍港济州，船长 105.6 米，型宽 16.31 米，型深 8.4 米，总吨 3892，净吨 2394，载重吨 6542 吨，船型杂货船，建造日期 1982 年 1 月 1 日，该轮属被告延成海运公司（以下简称“延成海运”）所有。2007 年 2 月 20 日，延成海运为“金玫瑰”轮向被告日

本船主责任相互保险协会（以下简称“互保协会”）投保，保险期间自 2007 年 2 月 20 日 2100 时至 2008 年 2 月 20 日 2100 时，承保范围包括“与污染有关的责任”，包括由于入会船舶泄漏或排放燃料油、或由于该等泄漏或排放威胁而造成或引起的责任、费用和支出。

2007 年 5 月 12 日 0308 时许，金盛船务所有的“金盛”轮与被告延成海运所有的“金玫瑰”轮在大约 38°14′.405N/121°42′.05E 位置发生碰撞。0311 时许，“金玫瑰”轮在附近海域沉没。因“金玫瑰”轮发生溢油，事发附近海域遭受污染。

事故发生后，原告对该船舶溢油事故采取强制清污措施。并于事故当天向烟台碧海海上发展有限公司（以下简称“烟台碧海”）发出委托书，委托该公司组织实施海上溢油围控、清除与监视监测工作；向交通部北海救助局（以下简称“北海救助局”）发出委托书，委托该局立即组织力量参与应急清污行动，配合烟台碧海行动，费用按照烟台碧海标准收取。

2007 年 5 月 12 日至 6 月 21 日，原告、烟台碧海、北海救助局共同展开涉案应急反应作业。经过四十多天的清污作业，“金玫瑰”轮事故所泄漏的浮油得到清除，事故现场的污染基本得到解决。清污结束后，烟台碧海和北海救助局确认因参加上述溢油应急行动产生的所有费用由原告统一索赔。

原告提供的 2006 年溢油应急中心出具的《收费标准》和 2007 年烟台碧海《溢油、清污、应急抢险收费标准》载明了各项费用的收费标准。根据实际投入力量和前述收费标准计算，本次事故发生应急反应费用为：船舶费用 6824160 元、清污设备和器材费用 5512862 元、清污人员费用 1797435 元、车辆费用 181000 元、预测分析费 108460 元、废弃物处理费 30000 元、杂费 164000 元，合计人民币

14617917 元。

清污结束之后，2008 年 12 月 8 日，原告作为甲方与二被告及扶光航运有限公司作为乙方签订了《先期付款协议》，针对原告向青岛海事法院索赔的因本次碰撞事故引起的溢油应急反应费用，乙方向甲方预先支付人民币 200 万元。被告已履行了该付款行为。第一次庭审后二被告向青岛海事法院递交《“金玫瑰”轮海事赔偿责任限制基金代位受偿申请书》，要求二被告从其设立的基金中代位受偿该人民币 200 万元。青岛海事法院向二被告发出《通知》，告知其该人民币 200 万元预付款于“金玫瑰”轮海事赔偿责任限制基金分配时予以处理。

上述船舶碰撞事故发生后，因原告金盛船务有限公司诉被告延成海运公司、被告扶光航运有限公司船舶碰撞损害赔偿纠纷一案，青岛海事法院于 2010 年 5 月 12 日作出（2007）青海法海事初字第 405 号民事判决，认定“金盛”轮承担 55% 的碰撞责任，“金玫瑰”轮承担 45% 的碰撞责任，并且被告没有丧失责任限制的情形，可以享受责任限制。该判决已经发生法律效力。

原告认为，因“金盛”轮与“金玫瑰”轮发生碰撞，导致“金玫瑰”轮沉没并发生溢油污染，为了控制和减轻污染损害，原告立即组织安排专业力量前往事故现场进行清污应急抢险、实施溢油围控与清除，期间，实际发生溢油应急反应费用人民币 14617917 元；因本次清污行动系民事行为，所有参与本次清污行动的主体包括原告、烟台碧海、救助局，均可依据或参照烟台碧海的《收费标准》收取管理费，管理费数额为上述实际发生费用的 15%，即 2192688 元；依据《防止船舶污染海域管理条例》第 42 条，交通部和国家环保总局 2000 年发布的《中国海上船舶溢油应急计划》以及《北方海区溢油应急计划》的规定，原告有权就本次行动收取海事管理费，费用数额为上述实际发生总费用的 10%，即 1681060

元。所有溢油应急反应费用总额为人民币 18491665 元。二被告对本次事故负有责任,应对上述费用承担赔偿责任。请求法院:1、判令被告赔偿原告溢油应急反应费用人民币 18491665 元及利息;2、确认原告溢油应急反应费用享有优先受偿权,在被告所设海事赔偿责任限制基金及利息中优先受偿诉讼请求中的第 1、3 项全部款项及费用;3、被告承担本案全部诉讼费用。

第一次庭审时原告当庭明确,所主张利息自 2007 年 6 月 21 日清污结束开始,按照同期银行的贷款利率计算;第二次庭审时,原告以“金玫瑰”轮应承担的碰撞责任比例为 45%为由,变更诉讼请求第 1 项为“判令被告赔偿原告溢油应急反应费用人民币 8321249 元及利息”。

被告辩称:1、原告索赔的部分清污费缺乏依据、部分费用金额不合理。2、清污费用属于限制性债权,被告可以享受责任限制。根据《海商法》第二百零七条、《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》第 5 条、第 9 条、《第二次涉外商事海事审判纪要》第 142 条、第 150 条的规定,涉案债权性质应当为《海商法》第二百零七条第一款第(4)项规定的限制性债权,被告可以享受责任限制。3、被告与原告曾于 2008 年 12 月 8 日签署先期付款协议,被告预先支付原告清污费赔款人民币 200 万元,被告实际支付了该款项,因此,法院最终认定的清污费债权自被告设立的海事赔偿责任限制基金中受偿时,应扣除被告已支付的人民币 200 万元。4,两被告应按照碰撞责任比例承担 45%的清污费进行赔偿。5,海事局的清污费用索赔不具有优先受偿性,应与其他债权在基金中一起按比例受偿。

第一次庭审后,二被告提出就答辩意见第 3 条中的 200 万元,其有权依据《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》从“金玫瑰”

轮的海事赔偿责任限制基金中代位受偿。

### 【审判】

青岛海事法院经审理认为：本案为原告在被告设立海事赔偿责任限制基金后，经过债权登记，因船舶污染损害赔偿纠纷提起的确权诉讼案件。《中华人民共和国民事诉讼法》第一百一十六条规定：“债权人提供其他海事请求证据的，应当在办理债权登记以后，在受理债权登记的海事法院提起确权诉讼。……”。原告中华人民共和国烟台海事局在向青岛海事法院办理债权登记后，即按有关规定就上述纠纷在青岛海事法院提起确权诉讼，因此，青岛海事法院对本案依法拥有管辖权。

《中华人民共和国民法通则》第一百四十六条规定：“侵权行为的损害赔偿，适用侵权行为地法律”及《中华人民共和国海商法》第二百七十五条规定：“海事赔偿责任限制，适用受理案件的法院所在地法律。”本案的船舶污染损害事故发生在中国人民共和国海域；本案系原告在被告设立海事赔偿责任限制基金后，经过债权登记，依法提起的确权诉讼，被告提出了海事赔偿责任限制申请，故本案应适用中华人民共和国法律进行审理。

被告延成海运所属的“金玫瑰”轮与“金盛”轮发生碰撞后，“金玫瑰”轮沉没，并因此发生燃油泄漏，污染了事故海域。被告延成海运作为事故责任人，应当依法承担因清除油污而产生的应急反应费用。原告要求被告延成海运和被告互保协会对所诉损失承担连带责任，于法无据，青岛海事法院不予支持。

关于本案溢油清污作业产生的费用数额。实际发生的费用 14617917 元,相关证据充分，标准明确，数额准确，应予认定。本次清污行动系民事行为，参与本



次清污行动的主体包括原告、烟台碧海和北海救助局，可依据或参照烟台碧海的《收费标准》收取管理费，原告主张其应收取实际发生费用的 15%即 2192688 元的管理费的主张，青岛海事法院予以支持。因原告在清污行动中并非作为行政管理主体参与其中，而其也主张所采取的清污行为为民事行为，故原告主张就本次行动收取实际发生总费用的 10%的海事管理费，于法无据，青岛海事法院不予支持。因此，青岛海事法院认定原告的应急反应费用总额为人民币 16810605 元。

青岛海事法院（2007）青海法海事初字第 405 号民事判决书认定“金玫瑰”轮承担 45%的碰撞责任，因此，被告延成海运作为“金玫瑰”轮的船舶所有人应当承担本次溢油污染事故所造成的溢油应急反应费用中 45%即人民币 7564772.25 元的赔偿责任。就原告主张的利息损失，因双方未约定具体的付款日期，利息损失应自原告明确主张权利之日即向青岛海事法院提起诉讼之日的次日即 2008 年 2 月 29 日起按照银行同期贷款利率计算的利息。

关于原告的债权是否应当在基金中优先受偿。原告该项主张的法律依据是《防治船舶污染海洋环境管理条例》第五十五条“发生船舶油污事故，国家组织有关单位进行应急处置、清除污染所发生的必要费用，应当在船舶油污损害赔偿中优先受偿。”依据《海事诉讼特别程序法》第一百一十八条第三款的规定，海事法院据以裁定海事赔偿责任限制基金分配方案的法律依据为《中华人民共和国海商法》以及其他有关法律规定的受偿顺序。《海商法》第二百一十条第一款第（四）项的规定，就港口工程、港池、航道和助航设施的损害提出的赔偿请求，应当较第（二）项中的其他赔偿请求优先受偿，其中并没有提及海事局进行应急处置、清除污染所发生的必要费用优先受偿的规定；并且《防治船舶污染海洋环境管理条例》仅为国务院的行政法规，不属于《海事诉讼特别程序法》规定的“其

他有关法律规定”；加之原告没有提供其他可以优先受偿的法律依据，因此，原告所持的其债权在基金中优先受偿的主张没有充分的法律依据，青岛海事法院不予支持。

原告的上述债权属《海商法》第二百零七条规定的限制性债权，没有法律规定的转为非限制性债权的情形。被告延成海运作为“金玫瑰”轮的船舶所有人，已向青岛海事法院申请享受海事赔偿责任限制，并依法设立了海事赔偿责任限制基金。青岛海事法院（2007）青海法海事初字第 405 号民事判决书认定延成海运没有丧失海事赔偿责任限制权利的情形，可以享受责任限制。上述金额为人民币 7564772.25 元及相应利息的赔偿款项应自二被告设立的海事赔偿责任限制基金中受偿。被告在本判决之前先期支付给原告的 200 万元预付款在基金分配时一并处理。

青岛海事法院依照《中华人民共和国海洋环境保护法》第九十条、《中华人民共和国海商法》第一百六十九条及第二百零四条、《中华人民共和国民事诉讼法》第一百一十六条的规定，判决如下：

一、确认原告中华人民共和国烟台海事局对延成海运公司的债权为人民币 7564772.25 元，加自 2008 年 2 月 29 日起按照银行同期贷款利率计算的利息；

二、上述债权为限制性债权，依法自被告延成海运公司和被告日本船主责任相互保险协会设立的“金玫瑰”轮海事赔偿责任限制基金中分配；

三、驳回原告中华人民共和国烟台海事局的其他诉讼请求。

案件受理费 70049 元，由原告中华人民共和国烟台海事局承担 7000 元，被告延成海运公司承担 63049 元。

本判决为终审判决。

**【评析】**

本案作为船舶油污损害赔偿确权诉讼案件,是海事法院受理的典型的海事案件,其中涉及到此类案件审理过程中较难裁判的三个问题,而该三个问题在本案中得到了较好的解决:

一、船舶油污污染损害赔偿案件中油污责任保险人是否应当同船舶所有人承担连带责任?

对于船舶油污案件中,油污责任保险人是否应当同船舶所有人承担连带责任一直有不同观点。主张承担连带责任的,主要是依据我国《海事诉讼特别程序法》第九十七条“对船舶造成油污损害的赔偿请求,受损害人可以向造成油污损害的船舶所有人提出,也可以直接向承担船舶所有人油污损害责任的保险人或者提供财务保证的其他人提出。油污损害责任的保险人或者提供财务保证的其他人被起诉的,有权要求造成油污损害的船舶所有人参加诉讼”以及我国加入的《1992年国际油污损害民事责任公约》(92CLC)第7条第8款的类似规定,认为二者可以作为共同被告,则应可以承担连带责任。但从上述规定看,只是规定了“被告”的三种情形,即或者船舶所有人为被告、或者“承担船舶所有人油污损害责任的保险人或者提供财务保证的其他人”(以下简称“油污责任保险人”)为被告、或者在油污保险责任人为被告时经其要求追加船舶所有人为共同被告;其中并没有规定二者的责任承担形式即是单方责任、共同责任或连带责任。因此,按照“连带责任法定原则”,没有明文规定的,即不能裁判二者承担连带责任。故而依照现行法律规定,在船舶油污案件中,油污责任保险人和船舶所有人不应承担连带责任。因此,本案只认定船舶所有人为责任人承担油污损害赔偿赔偿责任。而油污责任保险人则应另行依照其与船舶所有人签订的保险合同履行赔付义务。

## 二、海事局在清污作业中的应急反应费用是否应当优先受偿？

在近年来的船舶油污案件中，海事局作为清污主体经常提出优先受偿的诉讼请求，在确权诉讼案件中也提出在海事赔偿责任限制基金中优先受偿。其依据的就是《防治船舶污染海洋环境管理条例》第五十五条“发生船舶油污事故，国家组织有关单位进行应急处置、清除污染所发生的必要费用，应当在船舶油污损害赔偿中优先受偿。”的规定。要解决这个问题，可以从两方面考虑：第一，法律依据方面。本案裁判部分依照我国《海事诉讼特别程序法》关于基金分配方案的法律依据为我国《海商法》和“其他法律”的规定，在《海商法》没有规定海事局清污费用优先受偿的情况下，认为该《条例》作为国务院颁布的条例不属于“其他法律”，因而不能依据该《条例》裁判应急反应费用优先受偿。裁判部分已叙述得较为详尽。第二、该条规定适用的条件。该条规定中限定了是“国家组织有关单位……”，则可见该条规定是针对国家行为、为了保护国家利益而定。而在《海洋环境保护法》于 2000 年实施后，清污费用并没有规定在行政责任范畴，而是作为民事责任规定下来。本案清污作业中，海事局系作为普通民事主体参与行动，其委托的清污公司更是如此，因此所产生的债权应当为普通的民事债权，而非国家组织实施的国家行为产生的国家利益。因此，作为普通民事债权，海事局的溢油应急反应费用应当同其他民事债权共同按比例受偿。

## 三、船舶所有人、保险人行使基金中代位受偿权的条件

《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》于 2011 年 7 月 1 日施行，正好介于本案两次开庭审理之间。被告依据该《规定》第二十九条“在油污损害赔偿赔偿责任限制基金分配以前，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。”的规定，在第一次庭审后向青岛海事法院提出“代位受偿”申请。该规定中对“代位受偿权”的行使限定了三个适用条件：第一，前提。“在油污损害赔偿赔偿责任限制基金分配以前”；第二，主体。“船舶所有人、船舶油污损害责任保险人或者财务保证人”；第三，条件。“已先行赔付油污损害的”。本案被告作为船舶所有人和油污责任保险人先行赔付了部分油污损害赔偿款，符合上述规定中第二和第三个条件，但却没有满足第一个条件。根据该《规定》第二十一条的规定，“油污损害赔偿赔偿责任限制基金”是对油轮装载持久性油类造成的油污损害所设的基金；而本案为普通的海事赔偿责任限制基金，因此被告不能适用该条规定行使代位受偿权。但对于其先行支付的款项应当做出处理，因此本案中通知被告在基金分配中一并解决。

这个问题正涉及到该《规定》的一个重要特点，即该《规定》同时兼顾了《1992 年国际油污损害民事责任公约》和《2001 年国际燃油污染损害民事责任公约》两大公约的调整范围：1.《油污公约》规定的油轮装载的持久性油类（包括持久性货油和持久性燃油）；2.《燃油公约》规定的油轮装载的非持久性燃油及非油轮装载的燃油（包括持久性燃油和非持久性燃油）；而针对不同的油类，所享受的责任限额和所设的基金名称也是不同的。根据《规定》第五条，第 1 种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；第 2 种油类造成油污损害的，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。根据《规定》第二十一条，针对第 1 种油类应当设立“油污损害赔偿基金”。而第 2 种油类则应当依照我国《海商法》和《海事诉讼特别程序法》的相关规定设立“海事赔偿责任限制基金”。因此在适用该《规定》相关条款时应当注意区分和把握。

另外,关于船舶碰撞导致燃油泄漏后产生的清污费用是否属于限制性债权有学者和法官提出不同意见,认为清污费用应当属于非限制性债权。本人认为按照现行法律和相关司法解释,清污费用应当属于限制性债权。首先,《海商法》第二百零七条规定了四项限制性债权,清污费用应当属于第四项“责任人以外的其他人,为避免或者减少责任人依照本章规定可以限制赔偿责任的损失而采取措施的赔偿请求,以及因此项措施造成进一步损失的赔偿请求。”其次,《最高人民法院关于审理海事赔偿责任限制相关纠纷案件的若干规定》第十七条第一款规定:“海商法第二百零七条规定的可以限制赔偿责任的海事赔偿请求不包括因沉没、遇难、搁浅或者被弃船舶的起浮、清除、拆毁或者使之无害提起的索赔,或者因船上货物的清除、拆毁或者使之无害提起的索赔”;《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》第二十条规定:“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”。上述规定中的“船舶”应当仅指船舶(船舶属具也包含在内,因为船舶属具从性质上即为附属于船舶的工具物品等),而不包含船用燃料。对燃料的清除或者使之无害措施发生的费用,不适用两司法解释的上述规定,船舶所有人应当可以限制赔偿责任。

来源: <http://www.ccmt.org.cn/shownews.php?id=13247>

## 资讯选编 INFORMATION SELECTION

### Initiatives to Boost Singapore's Maritime Industry

by Wendy Tan (Stamford Law Corporation)

The Maritime and Port Authority of Singapore (MPA) recently announced in April 2013 new initiatives targeted at strengthening Singapore's maritime industry. The initiatives fall into three broad categories: maritime research and development (R&D), productivity enhancement, and manpower development.

#### (a) Maritime R&D

The Maritime Innovation and Technology (MINT) Fund will be extended for five years, with a top-up of an additional S\$50 million. The MINT Fund was set up in 2003 with S\$100 million to fund R&D and test-bedding of maritime technologies by universities, research institutes and companies in Singapore over a period of ten years.

#### (b) Productivity Enhancement

A new S\$25 million Productivity Programme under the Maritime Cluster Fund (MCF) will be introduced. The Productivity Programme will provide co-funding for initiatives such as business process re-engineering, automation and adoption of other productivity tools or practices.

#### (c) Manpower development

S\$2 million will be utilised from the MCF's Manpower Development Programme for a Global Internship Award over the next five years. Potential awardees will be local graduates from the three local universities, who will undergo a fully-sponsored maritime-centred internship that will take place both



locally and overseas, with a large amount of exposure to international maritime companies.

In addition, education initiatives with local universities will be introduced. The Singapore Management University will introduce a new Maritime Economics Concentration within its School of Economics in August this year. This is a structured programme which comprises maritime-related modules, internship opportunities, overseas industry study missions, site visits, and talks by industry practitioners.

The MPA, together with the American Bureau of Shipping and the Singapore University of Technology and Design (SUTD), will also jointly establish the ABS-MPA Maritime Technology Professorship Programme at SUTD to build up SUTD's capabilities in maritime education and R&D, and fortify the local maritime education and R&D framework.

#### Changes to Port Dues Structure and Rates

In addition, the Minister for Transport, Mr. Lui Tuck Yew, announced on 11 April 2013 that the MPA has just completed a comprehensive review of Singapore's port dues structure and rates, and will be taking steps to simplify the port dues structure and streamline the various incentive schemes. The intended changes will save the industry an estimated additional S\$11 million a year. Furthermore, 83% of vessel calls can expect to pay lower port dues under the revised port dues structure.

#### Previous Initiatives

Previous government initiatives include tax incentives under the Maritime Sector Incentives (MSI) Scheme, which came into effect on 1 June 2011. The MSI Scheme consolidates and streamlines the tax incentives under the existing tax regime. Under the MSI Scheme, shipping companies will be

categorised into three broad categories: international shipping operations, maritime leasing arrangements and shipping support services. The incentives under the MSI Scheme include tax exemptions for vessel disposal gains derived by qualifying ship operators and ship lessors, and granting automatic withholding tax exemption for interest and related payments on foreign loans obtained to finance the acquisition of qualifying containers and intermodal equipment.

### Importance of the Maritime Industry

These initiatives underscore the importance of the maritime industry to Singapore's economy. Singapore has developed a strong reputation as a world-class international port and transport hub.

In fact, Singapore's maritime industry contributes approximately 7% of Singapore's GDP, and employs more than 150,000 people across 7,000 companies. In 2012, annual vessel arrival tonnage reached 2.25 billion gross tons, an increase of 6.1 per cent from the previous year. Tankers and container ships were the top contributors to total vessel arrival tonnage.

Singapore's ship registry is ranked among the world's top ten ship registries, with a gross tonnage of 65.0 million GT as of end December 2012.

### Challenges to the Maritime and Shipping Industry, and the Way Forward

The challenges faced by the maritime industry today are not unique to Singapore. The inherently unpredictable nature of the industry and its interconnectedness with the world economy mean that the industry continues to be challenged by fluctuating economic conditions which lead to a weak demand for goods and services. The industry faces falling freight rates, rising fuel costs, excess tonnage, lessening cash flow and inadequate access to liquidity.

Some may question if these new initiatives are worth implementing, given the volatile and uncertain future the shipping industry faces. The answer, certainly,

should be yes. Singapore's maritime industry is a cornerstone of the country's economy. There is an established tripartite relationship between the government, maritime stakeholders and maritime associations. Combined with a key geographical location, excellent resource skills and efficient, cutting-edge infrastructure, Singapore has a competitive advantage over many other countries, and should continue to capitalise on this strategically going forward. The new initiatives by the MPA, together with the existing schemes that are already in place, will be helpful in encouraging continued growth of the shipping industry to ensure that it continues to play a valuable role in the nation's economy.

来源: [http://www.forwarderlaw.com/library/view.php?article\\_id=895](http://www.forwarderlaw.com/library/view.php?article_id=895)

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