

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

## MOTION INFORMATION STATEMENT

Docket Number(s): 22-1810

Caption [use short title]

Motion for: Leave to File Amicus Brief

Set forth below precise, complete statement of relief sought:

Leave to File Amicus Brief on behalf of Richard K. Wagner

Smart Study Co., Ltd. v. Acuteye-US, et al.

MOVING PARTY: Non-Party Amicus Curiae

OPPOSING PARTY: N/A

☐ Plaintiff☐ Defendant☐ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY: Justin R. Gaudio

OPPOSING ATTORNEY: N/A

[name of attorney, with firm, address, phone number and e-mail]

Justin R. Gaudio; Greer, Burns &amp; Crain, LTD.

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Court- Judge/ Agency appealed from: Hon. Gregory H. Woods; U.S. District Court for the Southern District of New York

## Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☐ Yes ☒ No (explain): No opposing counsel has filed an appearance in this matter.

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☒ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

## FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ Justin R. Gaudio

Date: April 21, 2023

Service by: ☒ CM/ECF ☒ Other [Attach proof of service]

## **MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), proposed amicus curiae Richard K. Wagner (“Amicus”) respectfully moves for leave to file a brief as amicus curiae in support of reversing the District Court’s Order in this case.

Amicus was the plaintiff-appellant’s Chinese law expert in the underlying case before the District Court. In light of the recent filing by Amici Dodge and Gardner, Amicus offers the following to assist the Court in understanding the intricate issues of Chinese law and transnational litigation present in this case.

Pursuant to Local Rule 27.1(b), Amicus has consulted with counsel for the respective parties regarding this motion. Counsel for plaintiff-appellant consents to this motion. No counsel has appeared to date for defendants-appellees.

Amicus seeks the Court’s leave to file its proposed amicus brief after the deadline intended by F.R.A.P. 29(a)(6). *See* F.R.A.P. 29(a)(6) (“An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed.”). Plaintiff-appellant filed their brief on December 1, 2022. Under F.R.A.P. 29(a)(6), the Court “may grant leave for later filing.” Amicus is well-equipped to assist the Court with the international legal issues implicated by this appeal and offers to assist the Court by providing proper context and interpretation of Chinese law as it may relate to the issues on appeal.

Amicus respectfully submits that he has good cause for a late filing, and there is no prejudice to any party from this motion. Participation as amicus curiae by Amicus will not unnecessarily delay the briefing or argument in this case. On February 28, 2023, the Court issued a notification that the matter will be submitted on April 24, 2023. The matter has therefore not yet been submitted and no argument has been set or unilaterally requested by plaintiff-appellant. On April 18, 2023, the Court permitted Amici Dodge and Gardner to file a brief despite that the deadline for doing so had passed. *See* Dkt. 83. Although the matter is set for final submission to the Court in a short time, the information and perspective provided by Amicus is of significant value and will assist in addressing the Amici Dodge and Gardner filing. The proposed amicus brief is therefore desirable and relevant to the issues in the case. *See* F.R.A.P. 29(a)(3)(B) (“The motion must be accompanied by the proposed brief and state . . . the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.”).

Appellants have argued service was effective under FRCP Rule 4(f)(2)(A) and Rule 4(f)(3)<sup>1</sup> and there are three issues raised by Amici Dodge and Gardner that Amicus would like to briefly address from the perspective of Chinese law and practice.

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<sup>1</sup> Service under FRCP Rule 4(f)(2)(C), which unlike Rule 4(f)(2)(A) and Rule 4(f)(3), requires an analysis of whether the foreign internal law at issue prohibits the service method employed, was not invoked by the Appellants in the underlying case before the District Court. However, the District Court was interested in this issue and the Chinese law experts for the Court and Appellants addressed this issue in their submissions.

The first is whether, for purposes of a Rule 4(f)(3) analysis, China views the Hague Service Convention as prohibiting email service and consequently Chinese law would not allow for service by email in cases before its courts involving parties who are from Contracting States to the Hague Service Convention. Chinese civil procedure has been designed to allow the Chinese courts a great deal of flexibility and discretion in pursuing service on parties, including on parties from Contracting States to the Hague Service Convention. China does not view the Hague Service Convention as prohibiting email service if its domestic law is any indication. China allows for email service on parties from Contracting States to the Hague Service Convention. While there are Supreme People's Court (SPC) guiding minutes suggesting China's courts should not serve by email if the party to be served is from a Contracting State that has objected to Article 10(a) of the Hague Service Convention because such would indicate a presumption that the foreign country's law did not permit service by email, these guiding minutes themselves suggest China's highest court does not view the Hague Service Convention as generally prohibiting service by email. Moreover, under the doctrine of deemed service in Chinese litigation, a party from a Contracting State to the Hague Service Convention that had been sent an email for service can be deemed served just by challenging the service.



The second is whether China has itself objected to email service under Article 10(a) of the Hague Service Convention. The short answer is no. The Hague Service Convention's Article 10(a) did not contemplate email at the time it was enacted. Additionally, there has been no binding interpretation issued on the meaning of Article 10(a) (and whether "postal channels" should include email) from China's treaty making and interpreting organs of government.

The third is whether Chinese law prohibits service by email from abroad. Although not specifically relevant to either a FRCP Rule 4(f)(2)(A) or Rule 4(f)(3) analysis, this issue was raised by the District Court, and Amici Dodge and Gardner appear to endorse the District Court's finding on this question. The short answer to this question in Amicus's view is no, China does not, as a general matter, prohibit service by email from abroad. The provision of Chinese civil procedure raised by the Chinese law amici for the District Court (now enumerated as Article 284) was enacted in April 1991 and the text has not changed since it was first enacted. Article 284 does not contemplate email service.

Accordingly, Amicus respectfully requests that the Court grant its motion for leave to file a brief as amicus curiae in support of reversing the District Court's Order in this case, and that the Court accept for filing the brief submitted contemporaneously with this motion.

Dated this 21<sup>st</sup> day of April 2023.

Respectfully submitted,

/s/ Justin R. Gaudio

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 21, 2023, an electronic copy of the foregoing Motion for Leave to File Brief as Amicus Curiae and the associated proposed Amicus Brief was filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Amicus Curiae emailed Defaulting Defendants a link to a website with a copy of Amicus Curiae's Motion and Brief on this 21<sup>st</sup> day of April 2023.

Respectfully submitted,

/s/ Justin R. Gaudio

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*Counsel for Amicus Curiae*

*Richard K. Wagner*

# 22-1810

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IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

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SMART STUDY Co., LTD.,

*Plaintiff-Appellant,*

ABC,

*Plaintiff,*

—against—

HAPPY PARTY-001, SALIMHIB-US, GeGeONLY, NA-AMZ001, LICHE  
CUPCAKE STAND, BEIJINGKANGXINTANGSHANGMAOYOUXIANGONGSI,  
QINGSHU, CKYPEE, WCH-US, THEGUARD, SUJIUMAISUSU, MARY GOOD SHOP,  
HEARTLAND GO, BLUE VIVI, SMSCHHX, NAGIWART, XUANNINGSHANGWU,

*(Caption continued on inside cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**PROPOSED AMICUS BRIEF OF RICHARD K. WAGNER  
IN SUPPORT OF REVERSING THE DISTRICT COURT'S ORDER**

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JUSTIN R. GAUDIO  
AMY C. ZIEGLER  
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YAMMO202, SHENZHENSHIXINDAJIXIEYOUXIANGONGSI, UNE PETITE  
MOUETTE, JOYSAIL, XUIYUI71, ZINGON US, HAITING\$,  
YONGCHUNCHENGQINGMAOYIYOUXIANGONGSI, HUIBI-US, FAMING,  
BONUSWEN, APZNOE-US, DAZZPARTY, DAFA INTERNATIONAL, YICHENY US,  
WOW GIFT, JYOKER-US1, SAM CLAYTONDDG, CITIHOMY, WEN MIKE,  
YOOFLY, CHANGGESHANGMAOYOUXIANGONGSI, SENSIAMZ BACKDROP,  
VETERANS CLUB,

*Defendants-Appellees,*

DEF, TUOYI TOYS, TOPIVOT, LVYUN, SUNNYLIFYAU, XUEHUA INC.,  
SMASSY US, YLILILY, GAI FEI TRADE CO LTD.,

*Defendants.*

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## **INTEREST OF AMICUS**

Amicus was the Appellant's Chinese law expert in the underlying case before the District Court.<sup>1</sup> In light of the recent filing by Amici Dodge and Gardner, Amicus offers the following to assist the Court in understanding the intricate issues of Chinese law and transnational litigation present in this case.<sup>2</sup>

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Appellants have argued service was effective under FRCP Rule 4(f)(2)(A) and Rule 4(f)(3)<sup>3</sup> and there are three issues raised by Amici Dodge and Gardner that Amicus would like to briefly address from the perspective of Chinese law and practice.

The first is whether, for purposes of a Rule 4(f)(3) analysis, China views the Hague Service Convention as prohibiting email service and consequently Chinese law would not allow for service by email in cases before its courts involving parties who

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<sup>1</sup> Amicus was compensated by Appellant in the underlying action before the District Court, but is not being compensated for work on this appeal. Appellant's counsel did not author the instant Amicus brief, in whole or in part.

<sup>2</sup> An earlier, and, in some respects, fuller treatment of these issues has been set out in Richard K. Wagner Declaration of June 24, 2022 (the "6/24 Declaration") and in a supplemental declaration of Richard K. Wagner filed on August 9, 2022 (the "8/9 Declaration"). The 8/9 Declaration considered various Chinese law points addressed by the District Court in its Opinion of July 21, 2022 (the subject of this appeal) and by amici Liebman and Sant in their letter of July 1, 2022. The 8/9 Declaration is included as Exhibit A, and the 6/24 Declaration is included in the Appendix (A-744 to A-933).

<sup>3</sup> Service under FRCP Rule 4(f)(2)(C), which unlike Rule 4(f)(2)(A) and Rule 4(f)(3), requires an analysis of whether the foreign internal law at issue prohibits the service method employed, was not invoked by the Appellants in the underlying case before the District Court. However, the District Court was interested in this issue and the Chinese law experts for the Court and Appellants addressed this issue in their submissions.

are from Contracting States to the Hague Service Convention. Chinese civil procedure has been designed to allow the Chinese courts a great deal of flexibility and discretion in pursuing service on parties, including on parties from Contracting States to the Hague Service Convention. China does not view the Hague Service Convention as prohibiting email service if its domestic law is any indication. China allows for email service on parties from Contracting States to the Hague Service Convention. While there are Supreme People's Court (SPC) guiding minutes suggesting China's courts should not serve by email if the party to be served is from a Contracting State that has objected to Article 10(a) of the Hague Service Convention because such would indicate a presumption that the foreign country's law did not permit service by email, these guiding minutes themselves suggests China's highest court does not view the Hague Service Convention as generally prohibiting service by email. Moreover, under the doctrine of deemed service in Chinese litigation, a party from a Contracting State to the Hague Service Convention that had been sent an email for service can be deemed served just by challenging the service.

The second is whether China has itself objected to email service under Article 10(a) of the Hague Service Convention. The short answer is no. The Hague Service Convention's Article 10(a) did not contemplate email at the time it was enacted. Additionally, there has been no binding interpretation issued on the meaning of

Article 10(a) (and whether “postal channels” should include email) from China’s treaty making and interpreting organs of government.

The third is whether Chinese law prohibits service by email from abroad. Although not specifically relevant to either a FRCP Rule 4(f)(2)(A) or Rule 4(f)(3) analysis, this issue was raised by the District Court and Amici Dodge and Gardner appear to endorse the District Court’s finding on this question. The short answer to this question in Amicus’s view is no, China does not, as a general matter, prohibit service by email from abroad. The provision of Chinese civil procedure raised by the Chinese law amici for the District Court (now enumerated as Article 284) was enacted in April 1991 and the text has not changed since it was first enacted. Article 284 does not contemplate email service.

## **ARGUMENT**

### **I. Chinese Law Allows for Email Service on Parties in Cases Involving Contracting States to the Hague Service Convention**

China’s courts of general jurisdiction are its People’s Courts, under the supervision of China’s Supreme People’s Court in Beijing.

Chinese civil procedure service rules are designed to facilitate service of process and promote judicial efficiency. Electronic service is routine in Chinese court practice. For cases under the domestic service rules, under Article 90 (formerly Article 87) of the PRC Civil Procedure Law service may be effected electronically if consent is obtained.

Moreover, for parties from different countries, such as parties from Contracting States to the Hague Service Convention, Article 274 of the PRC Civil Procedure Law (China's comparable provision to FRCP Rule 4(f) is the applicable provision. Even if both parties in a Chinese lawsuit are from Contracting States, service can be effected in numerous ways. Article 274 enumerates a number of different avenues that the Chinese court may pursue to effect service.

Article 274 provides, in translation:

*Service of litigation documents by People's Courts on litigants without a domicile in the People's Republic of China **may adopt** the following methods:*

- (1) Service pursuant to the methods stipulated in an international treaty between the country of the party being served and the People's Republic of China or an international treaty for which the country of the party being served and the People's Republic of China are both participants;*
- (2) Service through diplomatic channels;*
- (3) Where the party being served is of Chinese nationality, the People's Court may entrust the embassy or consulate of the People's Republic of China based in the country where the party being served resides to serve on behalf;*
- (4) Serving the documents on the agent ad litem entrusted by the party being served who has the right to receive service of documents on its behalf;*
- (5) Serving the documents on the representative organisation established in the People's Republic of China by the party being served or the branch or business agent of the party being served which has the right to receive service of documents;*
- (6) Where the laws of the country where the party being served resides permit service of documents by mail, the documents may be served by*

*mail; upon expiry of a three- month period from the date of mailing and the acknowledgement of service is not being returned, but the documents may be deemed served based on the circumstances, the documents shall be deemed served on the date of expiry of the period;*

*(7) Service via a method for which receipt by the party being served can be confirmed such as facsimile, email, etc. and*

*(8) Where the documents cannot be served via the aforesaid methods, the documents shall be served by way of a public announcement and shall be deemed served upon expiry of a three-month period from the date of public announcement.*

(emphasis added).

Article 274 states the court “may adopt” one of several methods to effect service. Among the methods allowed is service by email with return receipt. No consent is required to effect electronic service under Article 274(7). Further, there is no required order in which the Chinese court must attempt to effect service under Article 274. Amongst the various methods identified under Article 274, and with the exception of service by publication, which is viewed as a last resort, all other methods of service provided by Article 274 are permitted in any order in the Chinese court’s discretion.<sup>4</sup>

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<sup>4</sup> Article 6 and Article 11 of the *Certain Provisions of the Supreme People’s Court on Issues Concerning Service of Judicial Documents in Civil or Commercial Cases Involving Foreign Elements*, promulgated by Supreme People’s Court on August 10, 2006, *Fa Shi* [2006] No. 5; revised in 2020 and effective from January 1, 2021, *Fa Shi* [2020] No. 20. Article 6 provides, in translation: “[i]n the event that the people’s court serves a judicial document on a party having no domicile in the territory of the People’s Republic of China, if the country of the party has concluded any judicial assistance agreement with the People’s Republic of China, the judicial document may be served in accordance with the provisions of the judicial assistance agreement; if the country of the party is a member state of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the judicial document may be served by the means specified therein [Emphasis added].” Article 11 provides that “[e]xcept for the way of public

In ordinary cases, if there is an applicable treaty, and the Chinese court has been provided with a valid business address, the court will typically first attempt service of process by an applicable treaty. Nevertheless, with the flexibility provided within Article 274, if a Chinese court were faced with special circumstances (such as the need for expedited notice) in a case with parties from Contracting States to the Hague Service Convention, the Chinese court would not need to pursue service via the Hague Service Convention; the court could effect service via email.<sup>5</sup> Put another way, if a Chinese court were faced with a situation similar to that raised by the Appellant in the underlying action before the District Court, the Chinese court might very well utilize email as provided under Article 274(7) to effect service on the foreign party.

However, recently, the SPC issued guiding minutes to courts on the issue of electronic service in international cases.<sup>6</sup> The guiding minutes instruct the courts not to serve by electronic means if such would violate the foreign country's law of the foreign party to be served. And to promote judicial efficiency, Item 11 of these

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notice, a people's court may serve the judicial documents on the person to be served in several ways simultaneously, while the date of receipt shall be determined by the way that first achieves the service". Ex. 6.

<sup>5</sup> In international intellectual property cases involving preliminary injunctions (行为保全, in Chinese), the Chinese courts also serve process through Article 274, which allows the court flexibility to effect service under circumstances appropriate for the case, including email service with return receipt under Article 274(7).

<sup>6</sup> *Minutes of the National Symposium on Foreign-related Commercial and Maritime Trial Work of Courts*, published on January 24, 2022 ("Meeting Minutes"). 8/9 Declaration, Ex. 8.

guiding minutes provides that courts should take the view that if the party to be served is from a Contracting State that has made a reservation to Article 10(a) of the Hague Service Convention, the Chinese court effecting service should presume that the internal law of the Contracting State does now allow for service by electronic means. Item 11 of the Meeting Minutes provides in English translation, emphasis added:

*11. [Electronic Service]*

*When a people's court serves a judicial document on a person to be served who has no domicile within the territory of the People's Republic of China, **if the law of the country where the person to be served is located does not prohibit electronic service, the people's court may adopt electronic service** in accordance with Article 274 of the Civil Procedure Law, unless the electronic service is against an international treaty concluded or acceded to by China.*

*In the event that the **country where the person to be served is located is a member state of the Hague Service Convention and objects to the service by mail under the Convention, it shall be presumed that the country does not allow electronic service,** and the people's court shall not adopt electronic service.*

Consistent with promoting judicial efficiency, the guidance directs the People's Courts to adopt a simplistic approach—instead of trying to assess the internal law of each country and that country's approach to electronic service, the People's Court should simply look to see whether the country is a Contracting State to the Hague Service Convention and determine whether that country had made a reservation to Article 10(a)-- if so, then the serving court should presume that the

country did not allow electronic service, and thus, not serve the documents by electronic means. Under such circumstances, the People's Court should then adopt one of the other methods articulated in Article 274, ultimately by public announcement under Article 274(8) as a last resort.<sup>7</sup> While the guidance reflected in Item 11 of the Meeting Minutes assists the People's Court with having to make difficult determinations of foreign law, it is not designed to require the People's Court to effect service pursuant to the Hague Service Convention's Central Authority mechanism or one of the other methods specifically enumerated in the Hague Service Convention if the party to be served is from a Contracting State. The Chinese court could still employ one of the other methods contained in Article 274 of the PRC Civil Procedure Law. In addition, service that had not conformed to Item's 11 guidance would not necessarily result in defective service. Under the doctrine of "deemed service," the party could still be deemed served if the service was challenged in the Chinese court.

Moreover, although these guiding minutes are new (January 2022) and were issued before the FRCP Rule 4(f)(3) alternative service took place in the underlying action before the District Court, the minutes appear to confirm that at least from the

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<sup>7</sup> Article 274(8) of the *Civil Procedure Law of the People's Republic of China* provides, in translation: "(8) Where the documents cannot be served via the aforesaid methods, the documents shall be served by way of a public announcement and shall be deemed served upon expiry of a three-month period from the date of public announcement." 6/24 Declaration, 8/9 Declaration, Ex. 7.



perspective of China's highest court, the SPC, China does not view the Hague Service Convention as generally prohibiting email service. If the party to be served was from a Contracting State that had not made a reservation to Article 10(a), there would be no presumption that the internal law of that Contracting State prohibited electronic service. Service could be made on that party via email or through any of the other methods enumerated in Article 274 of the PRC Civil Procedure Law, even methods that were not specifically enumerated in the Hague Service Convention.

**II. Under the Chinese Civil Procedure Doctrine of “Deemed Service,” a Party from a Contracting State to the Hague Service Convention may be Deemed Served if the Party were to Challenge the Service in Chinese Court even if the Service was otherwise Improper**

China has also developed a doctrine of “deemed service” (视为送达, in Chinese) to allow for flexibility when the courts are faced with special circumstances. Under Article 13 of the *Certain Provisions of the Supreme People's Court on Issues Concerning Service of Judicial Documents in Civil or Commercial Cases Involving Foreign Elements*, *Fa Shi* [2020] No. 20, a Chinese court may find that a party has been served even if no service receipt has been provided by the defendant in an international case if the circumstances suggest that the defendant is aware of the litigation.<sup>8</sup> This is illustrative of the doctrine of “deemed service.”

Article 13 provides in translation:

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<sup>8</sup> Promulgated by Supreme People's Court on August 10, 2006, revised in 2020 and effective from January 1, 2021.

*Where the person to be served fails to perform the procedure for signing the receipt of the judicial documents served by a people's court, the service shall still be deemed as having been achieved under any of the following circumstances:*

- (1) The person to be served has mentioned to the people's court the content of the judicial documents which have been served in writing;*
- (2) The person to be served has made performance pursuant to the content of the judicial documents which have been served; or*
- (3) Other circumstances in which the service can be deemed as having been achieved.*

Under the logic of Article 13, if a party from a Contracting State to the Hague Service Convention had been served through a technically improper means, but that party raised a service objection in the Chinese court, the Chinese court could find that the foreign defendant had been served anyway— deeming the service as having been achieved. This doctrine developed in Chinese courts to caution foreign defendants in international cases from making overly technical procedural challenges.

### **III. China Has Not Objected to Email Service Under Article 10(a)**

In terms of sources of law, Chinese People's Court judgments do not provide primary source authority in the PRC. Further, even though it is China's highest court, the SPC is not the final arbiter on Chinese law; nor does it generally have the power to interpret treaties. The SPC has over 200 judges, and operates in some respects like an administrative agency. In addition to formal judicial interpretation work, the SPC also issues various forms of administrative guidance to the lower courts, some

of which are designed to make handling cases easier, such as with handling complex international cases—such as the provision from the Meeting Minutes discussed above (Item 11). But the final arbiter of the law in China is reserved to the National People’s Congress (“NPC”) (in Chinese, 全国人民代表大会) and its Standing Committee of the People’s Congress (in Chinese, 全国人大常委会), under the policy direction of the Communist Party of China (“CPC”).

While China has made a reservation to the Hague Service Convention’s Article 10(a)’s “freedom to send by postal channels,” it has provided no official interpretation as to whether such reservation should apply to email. In Amicus’s view, such would be necessary for a finding that the international agreement between the U.S. and China prohibited email service for purposes of a FRCP Rule 4(f)(3) analysis. Moreover, at the time the Hague Service Convention was enacted (1965) and China acceded to it (1991), electronic service was not contemplated. Consequently, Article 10(a) of the Hague Service Convention does not contemplate electronic service. Article 10(a) concerns sending judicial documents by postal channels, a means of transmission that is often under the control of the sovereign country in question – e.g., the United States Postal Service, an agency of the executive branch of the United States federal government, one of several federal agencies explicitly authorized by the U.S. Constitution. This is perhaps one reason to explain why a country might object to service by postal channels, but not object to service by email; the foreign sovereign

would not necessarily be involved in transmitting the judicial documents if the judicial documents were transmitted by email.

China ratified the Hague Service Convention by way of the NPC Standing Committee's Decision on Ratifying the Accession to the Hague Service Convention on March 2, 1991 (the "Decision"). Pursuant to Item 3 of the introductory section of the Decision, China opposed effecting service within the territory of the PRC by a method proscribed in Article 10 of the Hague Service Convention. Following the Decision, the 1991 PRC Civil Procedure Law was enacted by the NPC on April 9, 1991. The PRC government deposited its accession document on May 3, 1991. In China's official translation of the Hague Service Convention, the term used for postal channels in Article 10(a) is "邮寄," not "邮件." Using the term "邮件" might be more conducive to an interpretation of postal channels that included email (which is "电子邮件" in Chinese), but that is not the term that was used.<sup>9</sup> In Chinese, "邮寄" is commonly used when referring to traditional postal channels and people are unlikely to associate this word with email.<sup>10</sup>

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<sup>9</sup> Article 10(a) provides in the official Chinese translation – "如送达目的地国不表异议, 本公约不妨碍: (一) 通过邮寄途径直接向身在国外的人送交司法文书的自由". In Chinese, this provision does not appear to contemplate service on companies or other organizations. A literal reading of China's official translation suggests Article 10(a) only concerns natural persons. 8/9 Declaration, Ex. 10.

<sup>10</sup> In Chinese dictionaries, the term "邮寄" is defined as "delivered by post office (通过邮局寄递)" See, e.g., Mo, H., 2001. *The Contemporary Chinese Dictionary*. 8/9 Declaration Ex. 11.

Strictly speaking, in the Chinese legal system, the power to interpret laws resides with the NPC and the Standing Committee of the People's Congress.<sup>11</sup> The SPC has the power to issue judicial interpretations concerning issues falling under the specific application of laws in judicial work. Article 18, *Organic Law of the People's Court*. However, the Legislative Affairs Committee of the Standing Committee of the NPC (in Chinese, 全国人大常委会法制工作委员会) is responsible for reviewing the legality of judicial interpretations that have been submitted for the record.<sup>12</sup> In terms of legal hierarchy, judicial interpretations of the

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<sup>11</sup> Article 62 and 67 of the *Constitution of the People's Republic of China*, promulgated by the National People's Congress on December 4, 1982; last amended on and effective from March 11, 2018, Announcement No. 1 of the National People's Congress of the People's Republic of China. Article 62 provides, in translation: "[t]he National People's Congress exercises the following functions and powers: ... (3) to enact and amend basic laws governing criminal offences, civil affairs, the State organs and other matters;". Article 67 provides, in translation: "[t]he Standing Committee of the National People's Congress exercises the following functions and powers: ... (4) to interpret laws;" 8/9 Declaration, Ex.12.

Article 45 of the *Legislation Law of the People's Republic of China*, promulgated by the National People's Congress on March 15, 2000, Order No.31 of the President of the People's Republic of China, amended on and effective from March 15, 2015, Order No.20 of the President of the People's Republic of China. Article 45 provides, in translation: "The power of legal interpretation belongs to the Standing Committee of the National People's Congress. A law shall be interpreted by the Standing Committee of the National People's Congress if: (1) the specific meaning of a provision needs to be further defined; or (2) after its enactment, new developments make it necessary to define the basis on which to apply the law." 6/24 Declaration, Ex. 3

<sup>12</sup> Article 99 of the *Legislation Law of the People's Republic of China* provides, in translation: "[t]he relevant special committees and the working bodies of the Standing Committee may take the initiative to review the normative documents submitted for record-filing." 6/24 Declaration, Ex. 3. See also *Introduction to the Legislative Affairs Committee of the Standing Committee of the National People's Congress* on the website of National People's Congress, available at <http://www.npc.gov.cn/npc/fgw001/202009/37a38fef089e499bb63b9d58ceda9ba4.shtml>. 8/9 Declaration, Ex.14.

SPC are subject to NPC interpretations. For example, the Meeting Minutes, discussed above, should not be considered an SPC judicial interpretation.

As a general matter, neither the SPC nor China's People's Courts have the power to interpret treaties. The power to interpret treaties resides with the NPC and the Standing Committee of the NPC. *See* PRC Constitution, Article 67, 8/9 Declaration, Ex.12; Legislation Law, Article 45, 6/24 Declaration, Ex. 3. The Chinese Ministry of Foreign Affairs also plays an important role in treaty formation. *See, e.g.,* Article 5 of the *Law of the People's Republic of China on the Procedure of the Conclusion of Treaties*. 8/9 Declaration, Ex. 15.

Neither the NPC nor the Standing Committee of the NPC have made any interpretation as to whether the reservation to Article 10(a) of the Hague Service Convention includes email. As such, strictly speaking, Chinese law is silent on this question. Put another way, from the perspective of the Hague Service Convention, as it relates to the U.S. and China, email service is not prohibited.

#### **IV. Chinese Civil Procedure Law Article 284 Does Not Prohibit Service by Email from Abroad**

While not on its face specifically relevant to those provisions of the FRCP Rule 4(f) implicated in the underlying action (namely, FRCP Rule 4(f)(2)(A) and Rule 4(f)(3)), the District Court looked to the question of email service from abroad from the perspective of the PRC Civil Procedure Law. In the underlying District Court case, Chinese law amici relied on Article 284 (formerly Article 277) of the

PRC Civil Procedure Law as support for their conclusion that Chinese law did not permit service by email from abroad and the District Court adopted this conclusion (pp. 20-24 Opinion of July 21, 2022). However, Amicus respectfully contends that Article 284 does not address the situation presented by the fact pattern in the underlying action before the District Court.

Article 284 provides in English translation:

*Any request for judicial assistance shall be made through channels prescribed by [relevant] international treaties concluded or acceded to by the People's Republic of China; or in the absence of such a treaty, any request for judicial assistance shall be made through diplomatic channels.*

*A foreign embassy or consulate in the People's Republic of China may serve process on and investigate and collect evidence from its citizens but shall not violate the laws of the People's Republic of China and shall not take compulsory measures.*

*Except for the circumstances in the preceding paragraph, **no foreign authority or individual shall**, without permission from the competent authorities of the People's Republic of China, **serve process** or investigate and collect evidence **within the territory of the People's Republic of China** (在中华人民共和国领域内, in Chinese).*

(emphasis added).

The language used in Article 284 has remained the same since it was promulgated in 1991 as Article 263.<sup>13</sup> Put another way, while the PRC Civil Procedure Law has been revised four times since 1991 (including provisions for electronic service in 2012), the text of Article 284 has not changed since it was first promulgated. At the

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<sup>13</sup> See generally Richard K. Wagner, Critiquing the Article 277 Cases.

time Article 284 was first promulgated as Article 263, email was not contemplated for service.

Moreover, Article 284's prohibition in Article 284(3) uses the phrase "within the territory of the PRC" where the service is performed by a foreigner. As such, while Article 284 would arguably prohibit a foreign process server from serving process within the territory of the PRC, by its plain terms it does not prohibit a PRC defendant from 1) waiving service, 2) being served from an offshore electronic platform, or 3) being served via email from overseas.

Finally, since it was first promulgated in 1991 as Article 263, the provision has been contained in those sections of the PRC Civil Procedure Law concerning judicial assistance. There is no express penalty for violating Article 284 itself.<sup>14</sup> Moreover, unlike many other areas of civil procedure, including those concerning the law of evidence and service of process, there are no judicial interpretations that interpret the text. Additionally, Amicus is aware of only two Chinese cases which have cited the provision, neither of which are particularly relevant to the situation here.<sup>15</sup>

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<sup>14</sup> See Richard K. Wagner, Critiquing the Article 277 Cases and the discussion at pages 206-207 regarding the need for a "plus" factor in the cross-border evidence collection context.

<sup>15</sup> *Xuzhou Sentife Fragrance Technology Co., Ltd. and American Velex Products Company v. Beijing Qizhihaotian Technology Co., Ltd, Hangzhou Alibaba Advertising Co., Ltd. and Zhejiang Taobao Network Co., Ltd.* ((2019) Zhejiang 01 Min Zhong No. 10636) and *Dongguan Yixin Disk Co., Ltd v. Zhejiang Jinma Industrial Co., Ltd.* ((2018) Yue Min Zhong No. 726), provided upon request. In the first case, a Chinese law firm was entrusted by an overseas company to collect evidence in the PRC. The court refused to exclude the evidence as having violated Article 277.



Article 284 does not specifically address or prohibit the electronic mail or electronic platform service contemplated by the factual situation here in the view of Amicus.

## CONCLUSION

Amicus respectfully requests the Court take into account the above discussion in evaluating the Opinion of the District Court and the brief submitted by Amici Dodge and Gardner.

Dated this 21st day of April 2023.

Respectfully submitted,

/s/ Justin R. Gaudio

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In the second case, it was a Chinese entity which assigned its employee (a Japanese citizen) to apply for notarization within the PRC. The court ruled that Article 277 should not apply to this situation.

**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 4,766 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times Roman 14-point font.

Dated this 21st day of April 2023.

Respectfully submitted,

/s/ Justin R. Gaudio

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## **EXHIBIT A**

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*Spin Master Toys UK Limited*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SPIN MASTER LTD. and SPIN MASTER TOYS UK  
LIMITED,

*Plaintiffs*

v.

CHAKARUNA4169, CHAMITLASITH-0, DILSHS-  
32, DUBAN33, GANUMADU0, KORELEC-49,  
KVIN\_PARAMART, LIJANDSA11, LININGX1195,  
LIYALNAGE, NKBUSINESS,  
QUEENSONLINESTORE, RAJITHALAKRUWAN,  
RAN\_EXPORTS21, SHESI\_55, SITHUM\_MALLK,  
SMARTHUB\_STORE, SUISFENGX77,  
SUMRATHN-19, YASHITH\_45 and ZHOU9982,

*Defendants*

**CIVIL ACTION No. 22-cv-553 (JPC)**

**DECLARATION OF DANIELLE S.  
FUTTERMAN AND  
ACCOMPANYING EXHIBITS IN  
FURTHER SUPPORT OF  
PLAINTIFFS' MOTION FOR  
DEFAULT JUDGMENT**

**DECLARATION OF DANIELLE S. FUTTERMAN<sup>1</sup>**

I, Danielle S. Futterman, hereby declare as follows:

1. I am an attorney with the law firm of Epstein Drangel LLP, located at 60 East 42<sup>nd</sup> Street, Suite 1250, New York, New York 10165 and represent Plaintiffs Spin Master Ltd. and Spin Master Toys UK Limited in the above-referenced action. I make and submit this declaration in response to the Court's July 27, 2022 Order, directing Plaintiffs to file a supplemental brief explaining whether Plaintiffs properly served Defendants under Federal Rule of Civil Procedure 4(f). ("July 27, 2022 Order") (Dkt. 40).
2. As articulated in the Ioannou Dec., prior to filing this action, Epstein Drangel reviewed each of Defendants' User Accounts and Merchant Storefronts and confirmed that all Defendants failed to disclose any physical address whatsoever or any other contact information on their respective User Accounts or Merchant Storefronts on eBay.
3. Epstein Drangel conducted a search, using Defendants' usernames (i.e. Defendants' names in this action) and were unable to locate addresses for any of the Defendants.
4. Epstein Drangel was unable to take any further steps to attempt to locate Defendants' physical addresses as none of Defendants' User Accounts displayed their individual or company names.
5. In *Smart Study Co. v. Acuteye-Us*, No. 21 Civ. 5860 (GHW), 2022 WL 2872297 (S.D.N.Y. July 21, 2022) ("*Smart Study*"), the Honorable Gregory H. Woods wrote Professor Benjamin L. Liebman, the Director of the Hong Yen Chang Center for Chinese Legal Studies at Columbia Law School, seeking his assistance to obtain disinterested legal advice regarding whether a foreign plaintiff may, under relevant Chinese law, properly serve via email a

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<sup>1</sup> Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Glossary in the Complaint or Application.

defendant located in the People's Republic of China. *Smart Study*, Dkt. 81. Thereafter, on June 7, 2022, Professor Liebman, together with Geoffrey Sant filed a brief of *Amici Curiae* (“Amici Brief”). *Smart Study*, Dkt. 94.

6. On June 24, 2022, in response to the Amici Brief, the plaintiff in *Smart Study* filed the Declaration of Richard K. Wagner (“6/24 Wagner Dec.”). *Smart Study*, Dkt. 98.
7. Richard K. Wagner is Of Counsel to Allen & Overy in Hong Kong, and, as detailed in the 6/24 Wagner Dec., has had a China-facing law practice since the beginning of his legal career in 2002. Mr. Wagner has also had extensive experience with international service issues in both Chinese and U.S. courts and have written a fair amount on Chinese civil procedure, most recently on Article 284 (formerly Article 277) of the PRC Civil Procedure Law in China-related cases in the U.S. courts. Mr. Wagner has also served as an Article 277/284 expert in previous cases and regularly advise on issues related to Article 277/284 in China-related U.S. cases. 6/24 Wagner Dec., ¶¶ 5-6.
8. Mr. Wagner has also drafted a supplemental declaration for purposes of the Court’s inquiry herein (“Supplemental Wagner Dec.”). A true and correct copy of the Supplemental Wagner Dec. is attached hereto as **Exhibit A**.
9. A true and correct copy of the transcript from the July 14, 2022 Telephone Conference in *FoxMind Canada Enterprises Ltd. v. Abctec, et al.*, 21-cv-5146 (KPF) (S.D.N.Y. July 14, 2022) is attached hereto as **Exhibit B**.

I declare under the penalty of perjury under the laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed on this 11<sup>th</sup> day of August 2022 in New York, New York.

By: Danielle Futterman  
Danielle S. Futterman

# EXHIBIT A



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SPIN MASTER LTD. and SPIN MASTER TOYS UK  
LIMITED,

*Plaintiffs*

v.

CHAKARUNA4169, CHAMITLASITH-0, DILSHS-  
32, DUBAN33, GANUMADU0, KORELEC-49,  
KVIN\_PARAMART, LIJIANDSA11, LININGX1195,  
LIYALNAGE, NKBUISNESS,  
QUEENSONLINESTORE, RAJITHALAKRUWAN,  
RAN\_EXPORTS21, SHESI\_55, SITHUM\_MALLLK,  
SMARTHUB\_STORE, SUISFENGX77,  
SUMRATHN-19, YASHITH\_45 and ZHOU9982,

*Defendants*

**CIVIL ACTION No. 22-cv-553 (JPC)**

**SUPPLEMENTAL DECLARATION  
OF RICHARD K. WAGNER**

1. I make this declaration further to my Declaration of June 24, 2022 (the “6/24 Declaration”) and pursuant to FRCP Rule 44.1 to supplement various Chinese law points addressed by the Court in its Opinion of July 21, 2022 in *Smart Study v. Acuteye-US, et al.* (1:21-cv-5860-GHW) (the “Opinion of July 21”) and amici’s letter of July 1, 2022.

# **I. CHINA HAS NOT OBJECTED TO EMAIL SERVICE UNDER ARTICLE 10(A) OF THE HAGUE SERVICE CONVENTION**

2. As to FRCP Rule 4(f)(3) and the underlying questions of Chinese law, the Court concluded in its Opinion of July 21 that email service was not allowed because it was prohibited by international agreement; namely, the Hague Service Convention as applied to the United States and the People’s Republic of China (“PRC” or “China”). Opinion of July 21, pages 13-20.
3. I respectfully submit several additional Chinese law points, in particular, a discussion of a certain “meeting minutes” published by China’s Supreme People’s Court on or about January 24, 2022 (abbreviated herein as the “Meeting Minutes”), and raised by amici in their letter to the Court of July 1, 2022, to assist the Court in its analysis of these issues.<sup>1</sup>
4. Unlike in the United States, in China, the People’s Courts and the Supreme People’s Court (“SPC”), China’s highest court, play a much different role in the legal system. In terms of legal taxonomy, China is a civil law jurisdiction, albeit one with Chinese characteristics and an extensive bureaucratic overlay (i.e., China’s civil service system and the CPC apparatus).
5. In terms of sources of law, Chinese People’s Court judgments do not provide primary source authority in the PRC. Further, even though it is China’s highest court, the SPC is

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<sup>1</sup> *Minutes of the National Symposium on Foreign-related Commercial and Maritime Trial Work of Courts*, published on January 24, 2022 (“Meeting Minutes”). Ex. 8.

not the final arbiter on Chinese law. The SPC has over 200 judges, and operates in some respects like an administrative agency. In addition to formal judicial interpretation work, the SPC also issues various forms of administrative guidance to the lower courts, some of which are designed to make handling cases easier, such as with handling complex international cases—e.g., the provision from the Meeting Minutes that was cited by amici (Item 11). But the final arbiter of the law in China is reserved to the National People’s Congress (“NPC”) (in Chinese, 全国人民代表大会) and its Standing Committee (in Chinese, 全国人大常委会), under the policy direction of the Communist Party of China (“CPC”).

6. While China has made a reservation to the Hague Service Convention’s Article 10(a)’s “freedom to send by postal channels,” it has provided no official explanation as to whether such objection should apply to email.
7. China ratified the Hague Service Convention by way of the NPC Standing Committee’s Decision on Ratifying the Accession to the Hague Service Convention on March 2, 1991 (the “Decision”). Ex.9. Pursuant to Item 3 of the introductory section of the Decision, China opposed effecting service within the territory of the PRC by a method proscribed in Article 10 of the Hague Service Convention. Following the Decision, the 1991 PRC Civil Procedure Law was enacted by the NPC on April 9, 1991. The PRC government deposited its accession document on May 3, 1991. In China’s official translation of the Hague Service Convention, the term used for postal channels in Article 10(a) is “邮寄,” not “邮件.” Using the term “邮件” might be more conducive to an interpretation of postal channels that included email (which is “电子邮件” in Chinese), but that is not the term that was

used.<sup>2</sup> In Chinese, “邮寄” is commonly used when referring to traditional postal channels and people are unlikely to associate this word with email.<sup>3</sup>

8. Strictly speaking, in the Chinese legal system, the power to interpret laws resides with the NPC and the Standing Committee of the NPC.<sup>4</sup> The SPC has the power to issue judicial interpretations concerning issues falling under the specific application of laws in adjudication work in the People’s Courts. Article 18, *Organic Law of the People’s Court*. Ex.13. However, the Legislative Affairs Committee of the Standing Committee of the NPC (in Chinese, 全国人大常委会法制工作委员会) is responsible for reviewing the legality of judicial interpretations that have been submitted for the record.<sup>5</sup> In terms of legal hierarchy, judicial interpretations of the SPC are subject to NPC interpretations. As

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<sup>2</sup> Article 10(a) provides in the official Chinese translation – “如送达目的地国不表异议，本公约不妨碍：（一）通过邮寄途径直接向身在国外的人送交司法文书的自由”。In Chinese, this provision does not appear to contemplate service on companies or other organizations. A literal reading of China’s official translation suggests Article 10(a) only concerns natural persons. Ex. 10.

<sup>3</sup> In Chinese dictionaries, the term “邮寄” is defined as “delivered by post office (通过邮局寄递)” See, e.g., Mo, H., 2001. *The Contemporary Chinese Dictionary*. Ex. 11.

<sup>4</sup> Article 62 and 67 of the *Constitution of the People’s Republic of China*, promulgated by the National People’s Congress on December 4, 1982; last amended on and effective from March 11, 2018, Announcement No. 1 of the National People’s Congress of the People’s Republic of China. Article 62 provides, in translation: “[t]he National People’s Congress exercises the following functions and powers: ... (3) to enact and amend basic laws governing criminal offences, civil affairs, the State organs and other matters;”. Article 67 provides, in translation: “[t]he Standing Committee of the National People’s Congress exercises the following functions and powers: ... (4) to interpret laws;” Ex.12.

Article 45 of the *Legislation Law of the People’s Republic of China*, promulgated by the National People’s Congress on March 15, 2000, Order No.31 of the President of the People’s Republic of China, amended on and effective from March 15, 2015, Order No.20 of the President of the People’s Republic of China. Article 45 provides, in translation: “The power of legal interpretation belongs to the Standing Committee of the National People’s Congress. A law shall be interpreted by the Standing Committee of the National People’s Congress if: (1) the specific meaning of a provision needs to be further defined; or (2) after its enactment, new developments make it necessary to define the basis on which to apply the law.” 6/24 Declaration, Ex. 3

<sup>5</sup> Article 99 of the *Legislation Law of the People’s Republic of China* provides, in translation: “[t]he relevant special committees and the working bodies of the Standing Committee may take the initiative to review the normative documents submitted for record-filing.” 6/24 Declaration, Ex. 3. See also *Introduction to the Legislative Affairs Committee of the Standing Committee of the National People’s Congress* on the website of National People’s Congress, available at <http://www.npc.gov.cn/npc/fgw001/202009/37a38fef089e499bb63b9d58ceda9ba4.shtml>. Ex.14.

referenced below, the Meeting Minutes should not be considered an SPC judicial interpretation.

9. As a general matter, neither the SPC nor China's People's Courts have the power to interpret treaties. The power to interpret treaties resides with the NPC and the Standing Committee of the NPC. *See* PRC Constitution, Article 67, Ex.12; Legislation Law, Article 45, 6/24 Declaration, Ex. 3. The Chinese Ministry of Foreign Affairs also plays an important role in treaty formation. *See, e.g.,* Article 5 of the *Law of the People's Republic of China on the Procedure of the Conclusion of Treaties*. Ex. 15.
10. To the best of my knowledge, neither the NPC nor the Standing Committee of the NPC have made any interpretation as to whether the reservation to Article 10(a) of the Hague Service Convention includes email. As such, strictly speaking, Chinese law is silent on this question. Put another way, from the perspective of the Hague Service Convention, as it relates to the U.S. and China, email service is not prohibited.
11. In their letter of July 1, amici direct the Court's attention to the Meeting Minutes referenced above, and the Court addresses this document in its Opinion of July 21 on page 17.
12. I agree with the Court and amici that these Meeting Minutes should not be viewed as formal law in China. Opinion of July 21, page 17, footnote 8; Amici Letter of July 1, 2022, page 2. Moreover, even though the document was issued by the SPC, it should not be considered a judicial interpretation, which would be binding on the People's Courts.
13. However, I disagree that Item 11 of the Meeting Minutes indicates that China is preparing to take a more restrictive view on service. Given the nature of the document, its issuing authority, and the full text of the provision, I believe it is more accurate to view Item 11 of the Meeting Minutes as a form of administrative guidance directed to the People's Courts

from the SPC to promote judicial efficiency. In my opinion, Item 11 of the Meeting Minutes does not present an interpretation of the Hague Service Convention's Article 10(a) as it relates to the PRC. I believe such a view of Item 11 of the Meeting Minutes would run counter to the express design of the PRC's legal system. In my opinion, given China's hierarchy of laws and treaty making, an interpretation concerning the meaning of Article 10(a) and whether its scope included email would more properly come from the NPC or the Standing Committee of the NPC, and not from the SPC.

14. In my opinion, Item 11 of the Meeting Minutes provides administrative guidance to People's Courts that are faced with the complicated issue of having to decide what foreign law means in a service context. I believe such a view is further supported by reviewing the second paragraph of Item 11 through the lens of the first paragraph. Item 11 of the Meeting Minutes provides in English translation, emphasis added:

*11. [Electronic Service]*

*When a people's court serves a judicial document on a person to be served who has no domicile within the territory of the People's Republic of China, **if the law of the country where the person to be served is located does not prohibit electronic service, the people's court may adopt electronic service** in accordance with Article 274 of the Civil Procedure Law, unless the electronic service is against an international treaty concluded or acceded to by China.*

*In the event that the **country where the person to be served is located is a member state of the Hague Service Convention** and **objects to the service by mail under the Convention, it shall be presumed that the country does not allow electronic service**, and the people's court shall not adopt electronic service.*

15. Consistent with promoting judicial efficiency, the guidance directs the People's Court to adopt a simplistic approach-- they should look to see whether the country had made a reservation to Article 10(a), and if so, then they should presume that the country does not

allow email service and thus, should not serve the person by email. Under such circumstances, the People's Court should then adopt one of the other methods articulated in Article 274, ultimately by public announcement under Article 274(8) as a last resort.<sup>6</sup> While the guidance reflected in Item 11 of the Meeting Minutes assists the People's Court with having to make difficult determinations of foreign law, it is not designed to require the People's Court to effect service pursuant to the Hague Service Convention.

16. Additionally, from the perspective of Chinese procedure, even if a People's Court were to serve by email anyway, Item 11 of the Meeting Minutes would not provide a legal basis for challenging the service in my view. As set out in my 6/24 Declaration, Chinese procedure is designed to facilitate service of process, not to promote or facilitate technical challenges to service. China's courts do not have an established practice for challenging service of process. As also discussed in my 6/24 Declaration, challenging service could lead to a determination by the People's Court that the party should be deemed served, under the doctrine of "deemed service" (视为送达, in Chinese). 6/24 Declaration at pages 11-12.
17. Finally, even if the Meeting Minutes could be viewed as taking a position on the broader question of email service and Article 10(a) of the Hague Service Convention, they were not published until January 24, 2022, and thus, should not be applicable to email service that had taken place prior to that date.
18. I should also like to briefly provide an update to the Court's discussion on pages 21-22 of its Opinion of July 21. Since approximately September 2019, service requests to China's

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<sup>6</sup> Article 274(8) of the *Civil Procedure Law of the People's Republic of China* provides, in translation: "(8) Where the documents cannot be served via the aforesaid methods, the documents shall be served by way of a public announcement and shall be deemed served upon expiry of a three-month period from the date of public announcement." 6/24 Declaration, Ex. 7.

Central Authority have been made electronically. Requests for Hague service are now made by uploading documents to the Ministry of Justice's Judicial Assistance Center online platform at <http://www.ilcc.online/index/Login/index>.<sup>7</sup> This has not yet been reflected in the FAQs section on the website cited by amici, but indicates China is moving in the direction of greater efficiency in matters related to judicial assistance.

## II. CHINA'S COURTS OF GENERAL JURISDICTION ALLOW FOR ELECTRONIC SERVICE

19. China's courts of general jurisdiction are its People's Courts. Chinese civil procedure service rules are designed to facilitate service of process and promote judicial efficiency. Electronic service is routine in Chinese court practice. Moving towards electronic service also reflects a key trend in Chinese court practice.<sup>8</sup> Moreover, challenging service is not a regular part of Chinese court practice.
20. For cases before China's courts of general jurisdiction that are under the domestic service rules, under Article 90 (formerly Article 87) of the PRC Civil Procedure Law service may be effected electronically if consent is obtained. As discussed on page 5 of my 6/24 Declaration (para. 13), Chinese laws and regulations do not address what constitutes consent under Article 90. China is a civil law jurisdiction and statutes, administrative

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<sup>7</sup> See *An Overview of China's Development of Judicial Assistance in International Civil and Commercial Matters* on the website of the Ministry of Justice of the People's Republic of China, available at [http://www.moj.gov.cn/pub/sfbgw/jgsz/jgszzsdw/zsdwsfxzjlzx/sfxzjlzxxwdt/202110/t20211020\\_439659.html](http://www.moj.gov.cn/pub/sfbgw/jgsz/jgszzsdw/zsdwsfxzjlzx/sfxzjlzxxwdt/202110/t20211020_439659.html).

According to the Ministry of Justice, this online platform is designed to promote the online submission of requests under judicial assistance treaties and improve the efficiency of file transmission. Ex.16.

<sup>8</sup> Chinese courts have promulgated local rules and notices to promote electronic service, reflecting a trend towards electronic service. For example, the *Provisions of the Higher People's Court of Jiangsu Province on Electronic Service of Judicial Documents (for Trial Implementation)*, promulgated on and effective from July 8, 2015, Su Gao Fa [2015] No.155; the *Notice of the Higher People's Court of Sichuan Province on Launching the Province-wide Electronic Service (Submission) Platform*, promulgated on and effective from April 18, 2018, Chuan Gao Fa Ming Dian [2018] No. 28; the *Several Provisions of the Intermediate People's Court of Guangzhou Municipality on Electronic Service (for Trial Implementation)*, promulgated on and effective from February 27, 2019, Sui Zhong Fa [2020] No.36; the *Several Provisions of the Higher People's Court of Shanghai Municipality on Further Promoting the Application of Electronic Service (for Trial Implementation)*, promulgated on and effective from March 28, 2022. Ex.17.



regulations, local regulations, and ministry rules provide the primary sources of law in China. 6/24 Declaration, pp. 6, para 16. In my opinion, a U.S. court looking at Article 90 of the PRC Civil Procedure Law for purposes of a Rule 4(f)(2)(A) analysis would thus have a free hand at determining what would constitute consent in the specific situation that was presented in the case before it.

21. In my 6/24 Declaration, I had included an extensive discussion of the PRC Civil Procedure Law Article 274 and the PRC civil procedure doctrine of “deemed service” to provide the Court an organic analysis of how these issues might be addressed in the People’s Court if faced with a similar situation as that presented before this Court. I do not, however, disagree with Plaintiff on the applicability of PRC Civil Procedure Law Article 90 (formerly, Article 87) to the Rule 4(f)(2)(A) analysis (*Cf.* Opinion of July 21 at page 7 and page 23).

22. For cases before China’s courts of general jurisdiction under the international/foreign-related service rules, consent is not required for electronic service pursuant to Article 274 of the PRC Civil Procedure Law. Moreover, under the doctrine of “deemed service,” a party challenging service in an international case could be deemed served if the circumstances suggest that the party knows of the litigation.

23. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 9, 2022 in Hong Kong SAR.

A handwritten signature in black ink, appearing to read "Richard K. Wagner", with a long horizontal flourish extending to the right.

Richard K. Wagner

## EXHIBIT 8



**全国法院涉外商事海事审判工作座谈会会议纪要**  
**Minutes of the National Symposium on Foreign-related Commercial and Maritime Trial Work of Courts**

发文机关：	最高人民法院	Promulgation Authorities:	Supreme People's Court
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全国法院涉外商事海事审判工作座谈会会议纪要      Minutes of the National Symposium on Foreign-related Commercial and Maritime Trial Work of Courts

涉外商事部分

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#### Foreign-related Commercial Cases

##### 一、关于案件管辖

##### I. Jurisdiction over Cases

1. 【排他性管辖协议的推定】 1. [Presumption of An Exclusive Jurisdiction Agreement] Where 涉外合同或者其他财产权益纠纷的当事人签订的管辖协议明确约定由 a jurisdiction agreement entered into by and between the 当事人签订的管辖协议明确约定由 litigants to a foreign-related contract or a dispute over other 一国法院管辖，但未约定该管辖协 property rights and interests explicitly stipulates that the court 议为非排他性管辖协议的，应推定 of one country shall exercise jurisdiction but does not stipulate 该管辖协议为排他性管辖协议。 that the jurisdiction agreement is a non- exclusive jurisdiction agreement, the jurisdiction agreement shall be presumed to be an exclusive jurisdiction agreement.
2. 【非对称管辖协议的效力认 2. [Determination of Validity of Asymmetric Jurisdiction 定】 涉外合同或者其他财产权益纠 Agreement] Where a jurisdiction agreement entered into by 纷的当事人签订的管辖协议明确约 and between the litigants to a foreign-related contract or a 定一方当事人可以从一个以上国家 dispute over other property rights and interests explicitly 的法院中选择某国法院提起诉讼， stipulates that one party may select a court of a country from 而另一方当事人仅能向一个特定国 courts of more than one countries to initiate a lawsuit, and the 家的法院提起诉讼，当事人以显失 other party may initiate a lawsuit in the court of only one 公平为由主张该管辖协议无效的， particular country only, if the party claims that the jurisdiction



人民法院不予支持；但管辖协议涉及消费者、劳动者权益或者违反民事诉讼法专属管辖规定的除外。

agreement is invalid on the ground of obvious unfairness, the people's court shall not uphold such claim, except that the jurisdiction agreement involves the rights and interests of consumers or laborers or violates the exclusive jurisdiction provisions of the Civil Procedure Law.

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

3. [Validity of Jurisdiction Agreement on Cross-border Consumer Online Shopping Contracts] Where an e-commerce platform enters into a cross-border online shopping contract with a consumer with standard clauses but fails to prompt the consumer to pay attention to the jurisdiction clause contained in the contract in a reasonable manner, and the consumer claims that such jurisdiction clause shall not form part of the contract in accordance with Article 496 of the Civil Code, the people's court shall uphold the claim.

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

Where the e-commerce platform has performed the obligation of reasonably prompting the consumer to pay attention, but the jurisdiction clause stipulates that such lawsuit shall be filed in a court in a country other than the country where the consumer is domiciled, which will increase the consumer's costs of seeking remedies unreasonably, if the consumer claims that the jurisdiction clause is invalid according to Article 497 of the Civil Code, the people's court shall uphold the claim.

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

4. [Handling of Cases in Which the Master Contract and the Subordinate Contract Agree on Different Competent Courts] Where the master contract and the subordinate contract agree on competent courts in different countries or regions respectively, and such agreement does not violate the exclusive jurisdiction provisions of the Civil Procedure Law, the competent court shall be determined respectively under the jurisdiction agreement. Where the litigants claim that the competent court shall be determined under the master agreement in accordance with Paragraph 2 of Article 21 of the Interpretation of the Supreme People's Court on the Application of the Related Security System in the Civil Code of the People's Republic of China, the people's court shall not uphold such claim.

## 二、关于诉讼当事人

## II. Litigants



5. 【“有明确被告”的认定】 5. [Determination of “Having a Specific Defendant”] Where a plaintiff files a lawsuit against the defendant whose domicile is outside the territory of the People's Republic of China and can provide proof of the existence of such defendant, the circumstance falls within the scope of “having a specific defendant” as provided in Item 2 of Article 122 of the Civil Procedure Law. The proof of the existence of the defendant may be the valid business registration certificate, identity proof, contract and other documents of the defendant, and the plaintiff shall not be forced to go through the notarization or authentication procedures with regard to the above proofs.

6. 【境外公司的诉讼代表人资格认定】 6. [Recognition of Qualification of Litigation Representative of An Overseas Company] For a company registered and established outside the territory of the People's Republic of China, if the court of the country of registration has designated a judicial administrator, liquidation administrator or bankruptcy administrator by due to the corporate deadlock, dissolution, reorganization, bankruptcy or other reasons, such administrator may participate in the litigation on behalf of the company.

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

The administrator shall submit the judgment or ruling made by the court of the country of registration as well as the relevant documents such as the notarization and authentication thereof to prove his/her litigation representative qualification. The people's court shall organize cross-examination of the above evidence. Where the other party denies the qualification of the administrator as a litigation representative on the grounds that the judgment or ruling made by the court of the country of registration is not recognized by the court in our country, the people's court shall not uphold such denial.

7. 【外籍当事人委托公民代理的手续审查】 7. [Examination of Formalities for Citizen Agent Entrusted by a Foreign Litigant] Pursuant to the provisions of Article 528 and Article 529 of the Judicial Interpretation of the Civil Procedure Law, where a foreign litigant in a foreign-related civil lawsuit entrusts a local as his/her agent ad litem or entrusts a lawyer of his/her country to act as his/her agent ad litem in a non-lawyer capacity, or where an official of a foreign embassy or consulate



员受本国公民委托担任诉讼代理人 in China is entrusted by a citizen of his/her country to act as his/her agent ad litem, the provisions of item (3) of the second paragraph of Article 61 of the Civil Procedure Law shall not apply, and it is not required to provide a letter of recommendation by the community, employer of the litigant or the relevant social organisation.

8. 【外国当事人一次性授权的 8. [Examination of Formalities for One-off Authorization by a 手续审查】外国当事人一次性授权 Foreign Litigant] Where a foreign litigant authorizes an agent 诉讼代理人代理多个案件或者一个 ad litem on a one-time basis for several cases or several 案件的多个程序, 该授权办理了公 procedures in a case, and the authorization has gone through 证认证或者司法协助协定规定的相 relevant notarization or certification or other supporting 关证明手续, 诉讼代理人有权在授 formalities stipulated by a judicial assistance agreement, the 权委托书的授权范围和有效期内从 agent ad litem is entitled to act as agent ad litem within the 事诉讼代理行为。对方当事人以该 scope of authorization and within the term of validity of the 诉讼代理人的授权未就单个案件或 power of attorney. Where the counterparty raises objection on 者程序办理公证认证或者证明手续 the ground that the authorization of the agent ad litem is not 为由提出异议的, 人民法院不予支持 notarized or certified for a single case or procedure, the 人。 people's court shall not uphold the objection.

9. 【境外寄交管辖权异议申请 9. [Examination of an Application for Objection to Jurisdiction 的审查】当事人从中华人民共和国 by Post Abroad] Where a litigant mails or entrusts others to 领域外寄交或者托交管辖权异议申 submit an application for objection to jurisdiction from outside 请的, 应当提交其主体资格证明以 the territory of the People's Republic of China, he/she shall 及有效联系方式; 未提交的, 人民 submit the proof of subject status and valid contact 法院对其提出的管辖权异议不予审 information; if he/she fails to submit such information, the 查。 people's court shall not examine the objection to jurisdiction raised thereby.

### 三、关于涉外送达

### III Foreign-related Service of Documents

10. 【邮寄送达退件的处理】 10. [Handling of Returned Documents Served by Mail] When a 人民法院向在中华人民共和国领域 people's court serves a judicial document on a person to be 内没有住所的受送达人邮寄送达司 served who has no domicile within the territory of the People's 法文书, 如邮件被退回, 且注明原 Republic of China by mail, if the mail is returned, with the 因为“该地址查无此人”“该地址 reasons stated as “this person does not exist at the address”, 无人居住”等情形的, 视为不能用 “no one lives at the address”, among others, it shall be deemed 邮寄方式送达。 that the document cannot be served by mail.

11. 【电子送达】人民法院向 11. [Electronic Service] When a people's court serves a judicial 在中华人民共和国领域内没有住所 document on a person to be served who has no domicile 的受送达人送达司法文书, 如受送 within the territory of the People's Republic of China, if the law 达人所在国法律未禁止电子送达方 of the country where the person to be served is located does 式的, 人民法院可以依据民事诉讼 not prohibit electronic service, the people's court may adopt



法第二百七十四条的规定采用电子送达方式，但违反我国缔结或参加的国际条约规定的除外。

electronic service in accordance with Article 274 of the Civil Procedure Law, unless the electronic service is against an international treaty concluded or acceded to by China.

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

In the event that the country where the person to be served is located is a member state of the Hague Service Convention and objects to the service by mail under the Convention, it shall be presumed that the country does not allow electronic service, and the people's court shall not adopt electronic service.

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

12. [Service within the Territory of China on Foreign Natural Persons] If a people's court adopts the following methods to serve documents on a foreign natural person, it shall be deemed as effective if the receipt by the person to be served can be confirmed:

（一）向其境内设立的外商独资企业转交送达；

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

（二）向其境内担任法定代表人、公司董事、监事和高级管理人员的企业转交送达；

(2) Forwarding the service to the enterprise of which the foreign natural person acts as legal representative, director, supervisor or senior executive within the territory of China;

（三）向其同住成年家属转交送达；

(3) Forwarding the service to the adult family members living with the foreign natural person; and

（四）通过能够确认受送达人收悉的其他方式送达。

(4) Serving by any other means by which the receipt by the person to be served can be confirmed.

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

13. [Identification of Address for Service] Where a litigant who has no domicile within the territory of the People's Republic of China has not filled in the Confirmation of Address for Service, but the written materials submitted during the litigation process clearly state the address, such address may be deemed as the address for service.

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

14. [Service of Documents on Objection to Jurisdiction] A people's court may serve application forms for objection to jurisdiction, statements of defense and other judicial documents under the procedures for objection to jurisdiction over a foreign-related commercial case only between the opposite parties, provided that the ruling on objection to jurisdiction lists and is served on all litigants.



## 四、关于涉外诉讼证据

## IV. Evidence for Foreign-related Lawsuits

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

15. [Identification of Judgments or Arbitration Awards Rendered by Foreign Courts as Evidence] Where a litigant submits a legally effective judgment or ruling rendered by a foreign court or an arbitral award rendered by a foreign arbitration agency as evidence, the people's court shall examine and identify such evidence after cross-examination by both litigants. However, the facts ascertained in the judgment, ruling or arbitral award are not facts for which the litigants are not required to bear the burden of proof as stipulated in the first paragraph of Article 93 of the Judicial Interpretation of the Civil Procedure Law. Where a litigant claims that the judgment, ruling or arbitral award shall not be used as evidence only on the grounds that the judgment, ruling or arbitral award has not been recognized by the people's court, the people's court shall not uphold the claim.

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

16. [Documentary Evidence Abroad] Documentary evidence stipulated in Article 16 of the Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings shall include judgments and rulings rendered by foreign courts, documents issued by foreign administrative organs, and documents issued by foreign public agencies for commercial registration, birth and death certificates, marital status certificates and other documents, but shall exclude documents issued by foreign appraisal agencies and other private agencies.

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

Documentary evidence formed outside the territory of the People's Republic of China shall be notarized by a notary organ in the country where the documentary evidence is formed, or the corresponding certification formalities shall be performed, except where the authenticity of documentary evidence can be verified on the Internet or where both litigants have no objection to the authenticity of documentary evidence.

17. 【庭审中翻译费用的承担】诉讼过程中翻译人员出庭产生的翻译费用，根据《诉讼费用交纳办法》第十二条第一款的规定，由主张翻译或者负有翻译义务的一方

17. [Bearing of Translation Fees during Court Hearing] With regard to the translation fees incurred for the appearance of a translator in court during a litigation process, such fees shall be directly prepaid to the translation agency by the party that claims translation or has the obligation to translate pursuant to



当事人直接预付给翻译机构，人民法院不得代收代付。

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

#### 五、关于涉外民事关系的法律适用

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

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

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

the first paragraph of Article 12 of the Measures for the Payment of Litigation Fees, and the people's court shall not collect or pay such fees on behalf of the corresponding party.

The people's court shall state the translation fees in the ruling and determine the fees to be borne by the losing party in accordance with Article 29 of the Measures for the Payment of Litigation Fees. Where the party partially wins or loses the action, the people's court may determine the amount to be borne by the litigants as the case may be.

#### V. Application of Law to Foreign-related Civil Relations

18. [Application of Law to Matters Not Covered by International Treaties and Reservations] Where an international treaty concluded or acceded to by the People's Republic of China contains no provisions on specific disputes in foreign-related civil or commercial cases, or the specific disputes of such cases involve reservations, the people's court shall determine the applicable laws in accordance with the Law on the Application of Law to Foreign-related Civil Relations and other laws.

19. [Application of the United Nations Convention on Contracts for the International Sale of Goods] Contracts for the International Sale of Goods concluded by litigants whose places of business are in different contracting states to the United Nations Convention on Contracts for the International Sale of Goods shall automatically apply the provisions of the said Convention, unless the litigants have expressly agreed to exclude the application of the Convention. The people's court shall ask the litigants for their specific opinions on the application of the Convention before the end of court debate.

20. [Consistent Interpretation for Laws and International Treaties] Where there are two or more reasonable interpretations for the provisions of the laws or administrative regulations of the People's Republic of China applicable to a foreign-related commercial case heard by a people's court, the people's court shall choose the interpretation in line with the international treaty concluded or acceded to by the People's Republic of China, except for the clauses for which the People's

六、关于域外法查明	Republic of China has announced reservations. VI. Ascertainment of Foreign Laws
21. 【查明域外法的途径】人 民法院审理案件应当适用域外法律 时，可以通过下列途径查明：	21. [Channels for Ascertaining Foreign Laws] When a people's court shall apply foreign laws in hearing a case, it may ascertain such laws through the following channels:
(1) 由当事人提供；	(1) Provided by the litigant;
(2) 由中外法律专家提供；	(2) Provided by Chinese and foreign legal experts;
(3) 由法律查明服务机构提 供；	(3) Provided by legal ascertainment service agencies;
(4) 由最高人民法院国际商 事专家委员提供；	(4) Provided by the International Commercial Expert Committee of the Supreme People's Court;
(5) 由与我国订立司法协助 协定的缔约相对方的中央机关提 供；	(5) Provided by the central authority of the counterparty which has concluded a judicial assistance agreement with China;
(6) 由我国驻该国使领馆提 供；	(6) Provided by Chinese embassy or consulate in that country;
(7) 由该国驻我国使领馆提 供；	(7) Provided by the embassy or consulate of that country in China; and
(8) 其他合理途径。	(8) Other reasonable channels.

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

Extraterritorial legal materials and expert opinions provided  
through the aforesaid channels shall be presented in court, and  
the opinions of all litigants shall be fully heard.

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

22. [Entrusting International Commercial Expert Committee to  
Provide Advisory Opinions] Where a people's court entrusts the  
International Commercial Expert Committee of the Supreme  
People's Court to provide advisory opinions on legal issues  
such as international treaties, international commercial rules,  
and ascertainment and application of foreign laws involved in  
trial of a case, it shall, through a high people's court, mail a  
written letter of entrustment to the Office of Coordination and  
Guidance of International Commercial Tribunal of the Supreme  
People's Court, specifying the country the law belongs to, the  
legal department and the legal dispute, among others, for  
which advice is required, with the relevant materials attached.

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

23. [Appearance in Court by Experts on a Foreign Law] A  
litigant may apply for an expert on a foreign law to appear in  
court pursuant to the provisions of Article 82 of the Civil



## Procedure Law.

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

The people's court may question the expert appearing in court on the understanding of the foreign law involved in the expert opinion. Upon approval by the court, the litigants may question the expert in court. Experts shall not participate in court trial activities other than the matters for which the foreign law is ascertained. Where an expert cannot appear in court, the people's court may adopt video method for questioning based on trial needs.

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

24. [Determination of Contents of a Foreign Law] Where the contents of a foreign law submitted by both litigants are identical, or the litigants have no objection to the contents of a foreign Law submitted by the counterparty, the people's court may determine such foreign law as the basis of foreign law. Where a litigant objects to the contents of a foreign law submitted by the counterparty, the people's court shall examine and identify such contents in light of the cross-examination and authentication. The people's court shall not rule that a foreign law cannot be ascertained solely on the grounds that the litigants have dispute over the contents of the foreign law.

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

25. [Determination of Inability to Ascertain a Foreign Law] Where a litigant shall provide a foreign law, the people's court may specify the time limit for ascertaining the foreign law in light of the specific circumstances of the case, and may appropriately extend the time limit upon application by the litigant. Where the litigant is still unable to provide within the extended time limit, the foreign law shall be deemed unable to be ascertained.

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

26. [Expenses for Ascertaining Foreign Laws] For an applicable foreign law, if the litigants provide such foreign law in accordance with the first paragraph of Article 10 of the Law on the Application of Laws to Foreign-Related Civil Relations, the expenses for ascertaining such foreign law shall be directly paid by the litigants to the party ascertaining the law, and the people's court shall not charge or pay on behalf of the litigants. The people's court may, based on the litigant's claims and the



费用予以支持。	details of the case, support the reasonable expenses incurred by the litigant for ascertaining the foreign law.
七、关于涉公司纠纷案件的审理	VII. Trial of Cases Involving Corporate Disputes
27. 【境外公司内部决议效力 的法律适用】在中华人民共和国领 域外登记设立的公司作出的内部决 议的效力，人民法院应当适用登记 地国的法律并结合公司章程的相关 规定予以审查认定。	27. [Application of Law Concerning the Validity of Internal Resolutions of Overseas Companies] The validity of any internal resolution made by a company registered and incorporated outside the territory of the People's Republic of China shall be examined and determined by a people's court according to the laws of the country of registration and in light of the relevant provisions of the company's articles of association.
28. 【境外公司意思表示的认 定】在中华人民共和国领域外登记 设立的公司的董事代表公司在合同 书、信件、数据电文等载体上签字 订立合同的行为，可以视为该公司 作出的意思表示，未加盖该公司的 印章不影响代表行为的效力，但当 事人另有约定或者登记地国法律另 有规定的除外。	28. [Identification of the Expression of Intent of an Overseas Company] The acts of the directors of a company registered and incorporated outside the territory of the People's Republic of China of signing and concluding a contract on behalf of the company on such carriers as contracts, letters, and data messages may be deemed as an expression of intent made by the company, and the absence of the seal of the company does not affect the validity of the representative's act, unless otherwise agreed upon by the litigants or otherwise stipulated by the laws of the country of registration.
公司章程或者公司权力机构对 董事代表权的限制，不得对抗善意 相对人，但登记地国法律另有规定 的除外。	The restriction on the power of representation of directors imposed by the articles of association of the company or the authority organ of the company shall not challenge bona fide counterparties, unless otherwise stipulated by the laws of the country of registration.
29. 【外商投资企业隐名投资 协议纠纷】因外商投资企业隐名投 资协议产生的纠纷，实际投资者请 求确认其在外商投资企业中的股东 身份或者请求变更股东身份，并提 供证据证明其已实际投资且名义股 东以外的其他股东认可实际投资者 的股东身份的，对其诉讼请求按照 以下方式处理：	29. [Disputes over Dormant Investment Agreements of Foreign-invested Enterprises] In the case of a dispute arising from the dormant investment agreement of a foreign-invested enterprise, if the actual investor claims the confirmation of its shareholder status in the foreign-invested enterprise or change of its shareholder status, and provides evidence to prove that it has actually invested and the other shareholders other than the nominal shareholder recognize the shareholder status of the actual investor, the claims of the actual investor shall be handled in the following ways:
(1) 外商投资企业属于外商 投资准入负面清单禁止投资领域	(1) If the foreign-invested enterprise falls within the fields prohibited by the negative list for foreign investment access,



的，人民法院不予支持；

the people's court shall not uphold the claim;

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

(2) If the foreign-invested enterprise falls within the investment fields not included in the negative list for foreign investment access, the people's court shall rule that the nominal shareholder shall perform the obligation of transferring and registering the equity it holds under the name of the actual investor, and the foreign-invested enterprise shall be obliged to assist in going through the equity transfer registration formalities; and

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

(3) If the foreign-invested enterprise falls within the fields restricted by the negative list for foreign investment access, the people's court shall rule that the nominal shareholder shall perform the obligation of transferring and registering the equity it holds under the name of the actual investor, and assist the foreign-invested enterprise in going through the formalities for approval. The judgment may specify simultaneously that where approval formalities are not performed, the actual investor may submit the application for approval on its own.

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

Where the counterparty has obtained the equity of the foreign-invested enterprise from the nominal shareholder in good faith, or the change of equity is not approved by the competent authority of the foreign-invested enterprise after the actual investor has submitted the application for approval pursuant to item (3) of the preceding paragraph, resulting in the fact that it is impossible to achieve, the actual investor may file a lawsuit separately for contractual damages in respect of the dormant investment agreement.

#### 八、关于涉金融纠纷案件的审理

#### VIII - Trial of Cases Involving Financial Disputes

30. 【独立保函止付申请的初步实体审查】人民法院审理独立保函欺诈纠纷案件时，对当事人提出的独立保函止付申请，应当根据《最高人民法院关于审理独立保函纠纷案件若干问题的规定》第十四条的规定进行审查，并根据第十二条的规定就是否存在欺诈的止付事

30. [Preliminary Substantive Examination of Application for Cessation of Payment under Independent Guarantee] When trying a dispute case involving an independent guarantee-related fraud, the people's court shall examine the application for cessation of payment under independent guarantee filed by the litigant pursuant to the provisions of Article 14 the of the Provisions of the Supreme People's Court on Several Issues concerning Trial of Disputes over Independent Guarantees, and



由进行初步实体审查；应当根据第十六条的规定在裁定中列明初步查明的事实和是否准许止付申请的理由。

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

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

九、关于申请承认和执行外国法院判决案件的审理

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

conduct preliminary substantive examination on whether there is cause for cessation of payment under an independent guarantee in accordance with the provisions of Article 12; the facts ascertained preliminarily and the reasons on whether to approve the application for cessation of payment shall be stated in the ruling pursuant to the provisions of Article 16.

31. [Identification of Faults and Liability of the Advising Bank for a L/C] The obligation of an advising bank under a L/C is to examine and confirm the facial authenticity of the L/C and to provide accurate notification. Where the advising bank is at fault in performing the obligation of notification and causes losses to the beneficiary, it shall bear the corresponding tort liability, provided that the amount of compensation shall not exceed the unpaid amount and interest under the L/C. Where the beneficiary claims the advising bank to compensate for the losses it/he suffers under the basic contract, the people's court shall not uphold such claim.

32. [Interest on Overdue Payment in a Foreign Currency] In the case of overdue payment in a foreign currency, where the litigant claims the losses of interest for the overdue payment, such agreement shall prevail if the litigants have agreed; if the litigants fail to agree, the losses of interest may be calculated with reference to the interest rate of the same type of foreign currency loans in the same period offered by the Bank of China.

IX Trial of Cases Regarding Applications for the Recognition and Enforcement of Judgments of Foreign Courts

33. [Review Standards and Scope of Application] In trying a case regarding application for the recognition and enforcement of a judgment or ruling rendered by a foreign court, the people's court shall, in accordance with Article 289 of the Civil Procedure Law and Paragraph 1 of Article 544 of the Judicial Interpretation of the Civil Procedure Law, first review whether the foreign country and China have concluded or jointly acceded to an international treaty. Where there is an international treaty, the international treaty shall prevail; in the absence of an international treaty, or where there is an international treaty but the international treaty does not stipulate the relevant matters, the specific review standards

破产案件、知识产权案件、不正当竞争案件以及垄断案件因具有较强的地域性、特殊性，相关判决的承认和执行不适用本纪要。	may be subject to this Minutes.  This Minutes is not applicable to the recognition and enforcement of relevant judgments in bankruptcy cases, intellectual property cases, unfair competition cases and monopoly cases due to their regional characteristics and particularity.
34. 【申请人住所地法院管辖的情形】 申请人申请承认外国法院判决、裁定，但被申请人在我国境内没有住所地，且其财产也不在我国境内的，可以由申请人住所地的中级人民法院管辖。	34. [Circumstances under the Jurisdiction of the Court at the Domicile of the Applicant] Where an applicant applies for the recognition of a judgment or ruling rendered by a foreign court, but the respondent does not have a domicile and its properties are not within the territory of China, the case may be governed by the intermediate people's court at the domicile of the applicant.
35. 【申请材料】 申请人申请承认和执行外国法院判决、裁定，应当提交申请书并附下列文件：	35. [Application Materials] An applicant applying for the recognition and enforcement of a judgment or ruling rendered by a foreign court shall submit a written application, with the following documents attached:
（1）判决书正本或者经证明无误的副本；	(1) The original judgment or a certified copy thereof;
（2）证明判决已经发生法律效力；	(2) Document proving that the judgment has come into legal effect; and
（3）缺席判决的，证明外国法院合法传唤缺席方的文件。	(3) Document proving that the foreign court has legally summoned the absent party if the judgment is made by default.
判决、裁定对前款第2项、第3项的情形已经予以说明的，无需提交其他证明文件。	Where the judgment or ruling has explained the circumstances prescribed in Item (2) or (3) of the preceding paragraph, other supporting documents are not required to be submitted.
申请人提交的判决及其他文件为外文的，应当附有加盖翻译机构印章的中文译本。	Where the judgment and other documents submitted by the applicant are written in a foreign language, a Chinese translation affixed with the seal of the translation agency shall be attached.
申请人提交的文件如果是在我国领域外形成的，应当办理公证认证手续，或者履行中华人民共和国与该所在国订立的有关国际条约规定的证明手续。	If the documents submitted by an applicant are formed outside the territory of China, the applicant shall go through the notarization and authentication formalities, or go through the certification formalities specified in the relevant international treaties concluded between the People's Republic of China and



	the country.
36. 【申请书】申请书应当载明下列事项：	36. [Application Form] An application form shall specify the following particulars:
（1）申请人、被申请人。申请人或者被申请人为自然人的，应当载明其姓名、性别、出生年月、国籍、住所及身份证件号码；为法人或者非法人组织的，应当载明其名称、住所地，以及法定代表人或者代表人的姓名和职务；	(1) Applicant and respondent. If the applicant or the respondent is a natural person, the name, gender, date of birth, nationality, domicile and identity card number shall be specified; if the applicant or the respondent is a legal person or an unincorporated organization, the name and domicile as well as the name and title of the legal representative or the representative shall be specified;
（2）作出判决的外国法院名称、裁判文书案号、诉讼程序开始日期和判决日期；	(2) Name of the foreign court making the judgment, case number of the judgment, date of commencement of legal proceedings and date of judgment;
（3）具体的请求和理由；	(3) Specific requests and reasons;
（4）申请执行判决的，应当提供被申请人的财产状况和财产所在地，并说明该判决在我国领域外的执行情况；	(4) In the case of an application for enforcement of a judgment, the property status and the location of the property of the respondent shall be provided, and the enforcement of the judgment outside the territory of China shall be explained; and
（5）其他需要说明的情况。	(5) Other circumstances to be explained.
37. 【送达被申请人】当事人申请承认和执行外国法院判决、裁定，人民法院应当在裁判文书中将对方当事人列为被申请人。双方当事人提出申请的，均列为申请人。	37. [Service on Respondent] Where a litigant applies for recognition and enforcement of a judgment or ruling rendered by a foreign court, the people's court shall list the counterparty as the respondent in the judgment or ruling. Where both litigants submit an application, both litigants shall be listed as the applicants.
人民法院应当将申请书副本送达被申请人。被申请人应当在收到申请书副本之日起十五日内提交意见；被申请人在中华人民共和国领域内没有住所的，应当在收到申请书副本之日起三十日内提交意见。被申请人在上述期限内不提交意见的，不影响人民法院审查。	The people's court shall serve the duplicate of the written application on the respondent. The respondent shall submit its/his opinions within 15 days from receipt of the duplicate copy of the written application; if the respondent does not have a domicile within the territory of the People's Republic of China, it/he shall submit its opinions within 30 days from receipt of the duplicate copy of the written application. Failure by the respondent to submit its/his opinions within the aforesaid period shall not affect the examination by the people's court.
38. 【管辖权异议的处理】人	38. [Handling of Objection to Jurisdiction] Where the
民法院受理申请承认和执行外国法	respondent has objection to the jurisdiction after the people's



院判决、裁定案件后，被申请人对管辖权有异议的，应当自收到申请书副本之日起十五日内提出；被申请人在中华人民共和国领域内没有住所的，应当自收到申请书副本之日起三十日内提出。

court accepts an application for recognition and enforcement of a judgment or ruling rendered by a foreign court, it/he shall raise the objection within 15 days from receipt of the duplicate copy of the application; if the respondent does not have a domicile within the territory of the People's Republic of China, it/he shall raise the objection within 30 days from receipt of the duplicate copy of the application.

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

The people's court shall examine and rule on the objection to jurisdiction raised by the respondent. The litigant may file an appeal if it/he disagrees with the ruling on objection to jurisdiction.

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

39. 【Preservation Measures】 Where a litigant applies to a people's court for recognition and enforcement of a judgment or ruling rendered by a foreign court, and the people's court accepts the application, if the litigant applies for property preservation, the people's court may implement with reference to the provisions of the Civil Procedural Law and the relevant judicial interpretations. The applicant shall provide security, failing which, the application shall be rejected by ruling.

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

40. 【Case Filing Examination】 Where an applicant's application does not meet the conditions for case filing, a people's court shall rule not to accept the application, with the reasons therefor stated. If the application has been accepted, the court shall rule to reject the application. The litigant who disagrees with the ruling may file an appeal. After the people's court rules not to accept or rejects the application, where the applicant re-applies and the application satisfies the acceptance criteria, the people's court shall accept the application.

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

41. 【Standards for Identification of Judgments of Foreign Courts】 A people's court shall, based on the substance of a judgment or ruling rendered by a foreign court, examine and identify whether the judgment or ruling is a "judgment or ruling" stipulated in Article 289 of the Civil Procedural Law.

Judgments, rulings, decisions, orders and other legal documents issued by foreign courts on substantive disputes of civil and commercial cases, as well as legal documents made in



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

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

42. 【Identification of Validity of a Judgment】 A people's court shall, under the laws of the country in which the judgment is made, examine whether a judgment or ruling has come into legal effect. A judgment or ruling pending appeal or in the process of appeal shall not fall under the scope of "legally effective judgments or rulings" stipulated in Article 289 of the Civil Procedural Law.

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

43. 【Circumstances in which the Authenticity and Finality of Judgments cannot be Confirmed】 When a people's court hears a case of application for the recognition and enforcement of a judgment or ruling rendered by a foreign court, if it cannot confirm the authenticity of such judgment or ruling or such judgment or ruling has not come into legal effect after examination, the application shall be rejected. After the application is rejected, if the applicant applies anew and the criteria for acceptance are met, the people's court shall accept the application.

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

44. 【Identification of Reciprocity】 When a people's court hears a case of application for the recognition and enforcement of a judgment or ruling rendered by a foreign court, it may determine the existence of reciprocity under any of the following circumstances:

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

(1) A civil or commercial judgment made by a people's court can be recognized and enforced by a court in that country in accordance with the laws of the country where the court is located;

(2) 我国与该法院所在国达成了互惠的谅解或者共识；

(2) China reached an understanding or consensus of reciprocity with the country where the court is located; and

(3) 该法院所在国通过外交途径对我国作出互惠承诺或者我国通过外交途径对该法院所在国作出互惠承诺，且没有证据证明该法院

(3) The country where the court is located has made reciprocity commitments to China through diplomatic channels, or China has made reciprocity commitments to the country where the court is located through diplomatic channels, and there is no

所在国曾以不存在互惠关系为由拒绝承认和执行人民法院作出的判决、裁定。

人民法院对于是否存在互惠关系应当逐案审查确定。

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

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

（一）根据中华人民共和国法律，判决作出国法院对案件无管辖权；

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

（三）判决通过欺诈方式取得；

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

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

47.【违反仲裁协议作出的外国判决的承认】外国法院作出缺席

evidence to prove that the country where the court is located has refused to recognize and enforce the judgment or ruling made by a people's court on the ground that there is no reciprocity.

The people's court shall examine and determine whether there is reciprocity on a case-by-case basis.

45.【Punitive Damages Judgments】Where the judgment rendered by a foreign court is damages which obviously exceed the actual losses, the people's court may rule not to recognize and enforce the excessive part.

46.【Causes of Non-recognition and Enforcement】For a legally effective judgment or ruling made by a foreign court, if a people's court determines that the judgment or ruling falls under any of the following circumstances after examining it in accordance with the principle of reciprocity, the court shall rule not to recognize and enforce the judgment or ruling:

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

(2) The respondent has not been lawfully summoned or has been lawfully summoned but has not been given a reasonable opportunity to make a statement or debate, or the litigant without litigation capacity has not been properly represented;

(3) The judgment is obtained by fraud; or

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

Where a legally effective judgment or ruling made by a foreign court violates the basic principles of the laws of the People's Republic of China or violates State sovereignty, security and public interest, the judgment or ruling shall not be recognized and enforced.

47.【Recognition of a Foreign Judgment in Breach of an Arbitration Agreement】In the event that a foreign court



判决后，当事人向人民法院申请承认和执行该判决，人民法院经审查发现纠纷当事人存在有效仲裁协议，且缺席当事人未明示放弃仲裁协议的，应当裁定不予承认和执行该外国法院判决。

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

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

申请人无正当理由拒不参加询问程序的，按申请人自动撤回申请处理。

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

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

renders a default judgment, of which a litigant applies to a people's court for recognition and enforcement, if the people's court finds upon examination that the litigants to the dispute have a valid arbitration agreement, and the absent party has not expressly waived the arbitration agreement, the people's court shall rule not to recognize and enforce the judgment rendered by the foreign court.

48. 【Handling of Withdrawal of Application】 Where, after a people's court accepts an application for recognition and enforcement of a judgment or ruling rendered by a foreign court, the applicant requests to withdraw the application before a ruling is rendered, the people's court may rule to allow the withdrawal.

After a people's court rules to allow the withdrawal of application, if the applicant reapplies and the application meets the conditions for acceptance, the people's court shall accept the application.

If the applicant refuses to participate in the inquiry procedure without justified reasons, it/he shall be deemed as having voluntarily withdrawn the application.

49. 【Filing and Reporting Mechanism for the Recognition and Enforcement of a Judgment Rendered by a Foreign Court】 When a people's court at any level concludes a case involving the application for the recognition and enforcement of a judgment rendered by a foreign court, it shall file the case level by level with the Supreme People's Court for the record within 15 days after rendering the ruling. The filing materials shall include the written application submitted by the applicant, the judgment rendered by the foreign court and its Chinese translation, and the ruling rendered by the people's court. Prior to rendering a ruling, the people's court that examines a case in accordance with the principle of reciprocity shall report the proposed handling opinions to the competent high people's court under the jurisdiction for review; if the high people's court agrees with the proposed handling opinions, it shall report its review opinions to the Supreme People's Court



<p>十、关于限制出境</p>	<p>for review. A ruling may be made only after the Supreme People's Court gives a reply. X , Restrictions on Exit</p>
<p>50.【限制出境的适用条件】《第二次全国涉外商事海事审判工作会议纪要》第93条规定的“逃避诉讼或者逃避履行法定义务的可能”是指申请人提起的民事诉讼有较高的胜诉可能性，而被申请人存在利用出境逃避诉讼、逃避履行法定义务的可能。申请人提出限制出境申请的，人民法院可以要求申请人提供担保，担保数额一般应当相当于诉讼请求的数额。</p>	<p>50.【Applicable Conditions for Restrictions on Exit】The "possibility of avoiding litigation or the performance of statutory obligations" as stipulated in Article 93 of the Minutes of the Second National Trial Work Conference for Foreign-related Commercial and Maritime Cases refers to that there is a relatively high possibility of winning a civil lawsuit filed by an applicant, while there is a possibility of the respondent escaping litigation or the performance of statutory obligations by leaving the country. Where an applicant applies for restricting the respondent from leaving the country, the people's court may require the applicant to provide a security, and the amount of the security shall generally be equivalent to the amount claimed.</p>
<p>被申请人在中华人民共和国领域内有足额可供扣押的财产的，不得对其采取限制出境措施。被限制出境的被申请人或其法定代表人、负责人提供有效担保或者履行法定义务的，人民法院应当立即作出解除限制的决定并通知公安机关。</p>	<p>Where the respondent has sufficient property within the territory of the People's Republic of China that can be distrained, measures shall not be taken to restrict him/her from leaving the country. If the respondent who is restricted from leaving the country or its legal representative or person-in-charge provides effective security or performs legal obligations, the people's court shall immediately make a decision on lifting the restrictions and notify the public security organ.</p>
<p>海事部分</p>	<p>Maritime</p>
<p>十一、关于运输合同纠纷案件的审理</p>	<p>XI . Trial of Cases Involving Transportation Contract Disputes</p>
<p>(一) 海上货物运输合同</p>	<p>(I) Contracts of Carriage of Goods by Sea</p>
<p>51.【托运人的识别】提单或者者其他运输单证记载的托运人与向承运人或其代理人订舱的人不一致的，提单或者其他运输单证的记载对于承托双方仅具有初步的证明效力，人民法院应当结合运输合同的订立及履行情况准确认定托运人；有证据证明订舱人系接受他人委托并以他人名义或者为他人订舱的，</p>	<p>51. [Identification of the Consignor] Where the name of the consignor indicated in the bill of lading or any other transportation document is inconsistent with the person who booked the space from the carrier or the agent thereof, the contents of the bill of lading or any other transportation document are only prima facie probative effect for both the consignor and carrier, the people's court shall accurately identify the consignor in light of the conclusion and performance of the transportation contract; where there is</p>



人民法院应当根据海商法第四十二条第三项第1点的规定，认定该“他人”为托运人。

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

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

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

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

55. 【货损发生期间的举证】

evidence to prove that the person who booked the space is entrusted by another person and books the space in the name of another person or for another person, the people's court shall identify such "another person" as the consignor according to the provisions of Sub-item 1, Item 3 of Article 42 of the Maritime Law.

52. [Application of Law to Liabilities of Actual Carrier] The Maritime Law is a special provision of law that regulates maritime transportation relations and shall prevail over provisions of general laws in application. Where the holder of the bill of lading chooses to claim compensation against the actual carrier only for loss of or damage to cargo under a contract of carriage of cargo by sea, the people's court shall give priority to the provisions of the Maritime Law on the actual carrier; in the absence of such provisions in the Maritime Law, the provisions of other laws shall apply.

53. [Carrier's Obligation for Cargo Worthiness of Containers] Pursuant to the provisions of Article 47 of the Maritime Law on the obligation for cargo worthiness, the containers provided by the carrier shall meet the requirements for safe receipt, carriage and storage of the cargo carried.

Where the cargo inside the containers are lost or damaged due to the defects of the containers, the carrier shall bear the corresponding liability for compensation. The said obligations of the carrier shall not be exempted due to any different provision in the contract of carriage of cargo by sea.

54. [Determination of "Natural Characteristics or Inherent Defects of the Goods"] The "natural characteristics or inherent defects of the cargo" as prescribed in Item 9 of Paragraph 1 of Article 51 of the Maritime Law shall refer to the essential and inherent characteristics or defects of the goods, which is manifested in that the occurrence of damage cannot be prevented by like goods under the same conditions of normal transportation even though the carrier has performed the obligation of taking care of the goods as prescribed in Article 48 of the Maritime Law and taken reasonable due measures.

55. [Proof of the Period of Damage] According to Article 46 of



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

the Maritime Law, the carrier shall be liable for the loss of or damage to the cargo occurred within the period of its responsibility. Where the claimant fails to file any objection at the time of delivery of the cargo and thereafter claims against the carrier for compensation for the damage of the cargo, if there are several reasons for or ranges of possible damage to the cargo, and the claimant only produces evidence to prove that the damage may have occurred within the period of the carrier's responsibilities, but is unable to exclude the possibility that the damage occurred within the period of non-carrier's responsibilities, the people's court shall not uphold such claim.

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

56. [Undertaking by the Carrier of Liabilities for Shortage of Bulk Cargo] According to the shipping practices and conventions, reasonable shortage often occurs in the course of transportation of bulk cargo due to such reasons as natural wear and tear, spillage and leakage in the course of loading and unloading, and tolerance of measurement such as draft survey, etc. Where the goods are short after unloading, and the carrier claims exemption from liability and presents evidence to prove that such shortage falls within the scope of reasonable wear and tear, tolerance of measurement, and relevant industry standards or practices, the people's court shall uphold the claim in principle, unless there is evidence to prove that the carrier's fault for which the liability for the shortage of the goods is not exempted; where the shortage of the goods after unloading exceeds the relevant industry standards or practices, and the carrier is unable to prove the losses caused by reasonable factors and unreasonable factors respectively, if the claimant claims that the carrier shall bear the liability for compensation for all the shortage of the goods, the people's court shall uphold the claim in principle.

57. 【“不知条款”的适用规则】提单是承运人保证据以交付货物的单证，承运人应当在提单上如实记载货物状况，并按照记载向提单持有人交付货物。根据海商法第七十五条的规定，承运人或者代其签发提单的人，在签发已装船提单

57. [Rules applicable to "Unknown Clause"] A bill of lading is a document by which the carrier undertakes to deliver the cargo. The carrier shall truthfully state the status of the cargo in the bill of lading and deliver the cargo to the holder of the bill of lading as stated. Pursuant to the provisions of Article 75 of the Maritime Code, if a carrier or any other person who issues a bill of lading on its behalf, in the case of issuance of a shipped bill



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

of lading, has no appropriate means to check the contents of the bill of lading, it may annotate on the bill of lading stating that checking is impossible. For the damage to the goods under carriage, if the carrier claims exemption from liability for compensation on the basis of the "unknown clause" contained in the bill of lading, the carrier shall bear the burden of proof for the circumstances under which annotations on the bill of lading comply with Article 75 of the Maritime Law; if there is evidence to prove that the damage to the goods is due to the carrier's breach of its obligations set forth in Articles 47 and 48 of the Maritime Law, and the carrier cites the "unknown clause" to claim exemption from liability for compensation, the people's court shall not uphold such claim.

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

58. [Basis on Carrier's Delivery of Goods] Where the carrier has not issued an original bill of lading, or has issued an original bill of lading but has taken back the original bill of lading and it is agreed that the goods shall be delivered by telex release, the carrier shall deliver the goods in accordance with the agreements in the carriage contract or the telex release instructions of the consignor or the instructions given by the consignor by any other means. Where the consignee requests the carrier to deliver the goods on the strength of the draft of bill of lading or duplicate of bill of lading only, the people's court shall not uphold such request.

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

59. [Carrier shall Examine Documents with Reasonable Care When Delivering Against an Order Bill of Lading] Where the holder of an original order bill of lading requests the carrier to deliver the goods to it, the carrier shall examine the bill of lading with reasonable care. In the case that the carrier delivers the goods against an original order bill of lading with discontinuous endorsement, the people's court shall uphold such claim that the carrier shall bear the losses arising therefrom, except where the carrier provides evidence to prove that the holder of the bill of lading has obtained the right to the bill of lading by any legal means other than endorsement.

60. 【承运人对货物留置权的行使】提单或者运输合同载明“运费预付”或者类似性质说明，承运

60. [Exercise of Lien by Carrier over the Goods] Where a bill of lading or a carriage contract contains the wording "freight prepaid" or a statement of a similar nature, if the carrier claims



人以运费尚未支付为由，根据海商法第八十七条对提单持有人的货物主张留置权的，人民法院不予支持，提单持有人与托运人相同的除外。

a lien against the goods of the holder of the bill of lading according to Article 87 of the Maritime Law, on the ground that the freight has not been paid yet, the people's court shall not uphold such claim, unless the holder of the bill of lading is the consignor.

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

61. [Bearing of Expenses in Case No One Takes Delivery of the Goods at the Port of Destination] If the holder of the bill of lading fails to claim delivery of the goods or exercise any other rights against the carrier at the port of destination, the expenses and risks arising from non-delivery of the goods shall be borne by the consignor. Where the carrier, based on the transportation contract, claims against the consignor for freight, storage fee, container overdue fee or other expenses incurred due to non-delivery of the goods, the people's court shall uphold such claim.

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

62. [Burden of Proof in Dispute over Delivery of Goods without Original Bill of Lading] Where the consignor or holder of the bill of lading claims against the carrier compensation for the losses arising from delivery of goods without original bill of lading, it shall provide prima facie evidence to prove that it is the lawful holder of the original bill of lading, the carrier failed to deliver the goods against the original bill of lading and the losses arose therefrom. Where the carrier raises that the goods have not been delivered, the carrier shall provide evidence to prove that the goods are still under its control.

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

63. [Proof for the Carrier's Exoneration from the Liability for Releasing of Goods without Original Bill of Lading] Where the carrier invokes Article 7 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Delivery of Goods without Original Bills of Lading, claiming that it does not assume the civil liability for releasing of goods without original bill of lading, it shall provide the laws in the place where the port of discharge is located as prescribed in the said laws, and provide evidence to prove that it has lost the right of control over the goods after having delivered the goods arrived at the port to the local customs or port authority in accordance with the provisions of such laws.



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

65. 【集装箱超期使用费标准的认定】承运人依据海上货物运输合同主张集装箱超期使用费，运输合同对集装箱超期使用费有约定标准的，人民法院可以按照该约定确定费用；没有约定标准，但承运人举证证明集装箱提供者网站公布的标准或者同类集装箱经营者网站公布的同期同地的市场标准的，人民法院可以予以采信。

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

66. 【请求集装箱超期使用费

64. [Commencement of Limitation of Action for Releasing of Goods without Original Bill of Lading] According to Paragraph 1 of Article 14 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Delivery of Goods without Original Bill of Lading, the limitation of action for the holder of an original bill of lading to bring a lawsuit against the carrier on the ground of releasing of goods without original bill of lading is one year, commencing from the date on which the carrier should deliver the goods to the holder of the bill of lading, i.e., commencing from a reasonable date on which the goods arrive at the port of destination by the voyage and the conditions for delivery have been met.

65. [Determination of the Criteria for the Overdue Fees for the Use of Containers] Where the carrier claims the Overdue Fees for the Use of Containers based on the contract of carriage of goods by sea, and there are agreed criteria for the Overdue Fees for the Use of Containers in the carriage contract, the people's court may determine the fees under such agreement; if there are no agreed criteria, but the carrier provides evidence to prove that the criteria published on the website of the container provider or the market criteria for the same period and in the same place published on the website of the operator of containers of the same kind, the people's court may accept such criteria.

In accordance with the rule of reasonable foreseeability provided for in Article 584 of the Civil Code and the rule of impairment provided for in Article 591 of the Civil Code, the carrier shall timely take measures to reduce the losses caused to it due to the overdue use of the containers, so the amount of compensation for the overdue use of the containers shall be within a reasonable limit. In principle, the people's court shall determine the amount of compensation on the basis of one time the market price of new containers of the same type and may make appropriate adjustment or fluctuation in consideration of the specific case.

66. [Limitation of Action for Claiming Overdue Use of



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

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

#### (二) 多式联运合同

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

当事人就多式联运合同协议选择适用或者根据最密切联系原则适用中华人民共和国法律，但货物灭失或者损坏发生在国外某一运输区段的，人民法院应当根据海商法第

Containers] Where the carrier provides the containers to the merchants for use as means of transport in the process of performing the contract of carriage of goods by sea, the limitation of action shall be determined on the basis of the legal relationship under the contract of carriage of goods by sea; and the limitation of action for the carrier to claim the overdue use of the containers shall be one year, commencing from the day following the expiration of the period for free use of the containers.

67. [No Port Operator May Defense against Carrier's Exemption from Liability or Limitation on Liability] In an action brought with respect to the loss of or damage to the goods or the delay in delivery under the contract of carriage of goods by sea according to Articles 58 and 61 of the Maritime Code, the litigants entitled to the provisions on carrier's defense and limitation of liability shall be the carrier, the actual carrier, the carrier and the actual carrier's employee or agent. Under the provisions of the existing laws, port operators do not fall within the above scope. Where a consignor or consignee directly brings a lawsuit against a port operator for tort for the loss of goods caused by the port operator during its port operation, and the port operator claims for exemption from liability or limitation of liability for compensation by citing Articles 58 and 61 of the Maritime Code, the people's court shall not uphold such claim.

#### (II) Multimodal Transport Contracts

68. [Network Liability System for Foreign-related Multimodal Transport Contract Operators] For a multimodal transport contract involving foreign elements, the litigants may select the law applicable to the multimodal transport contract by agreement; if the litigants do not so select, the applicable law shall be determined by applying the principle of the closest connection.

Where the litigants have selected to apply or apply the law of the People's Republic of China according to the principle of the closest connection to the multimodal transport contract by agreement, but where the loss of or damage to the goods has



一百零五条的规定，适用该国调整该区段运输方式的有关法律规定，确定多式联运经营人的赔偿责任和责任限额，不能直接根据中华人民共和国有关调整该区段运输方式的法律予以确定；有关诉讼时效的认定，仍应当适用中华人民共和国相关法律规定。

occurred in a certain section in a foreign country, the people's court shall, in accordance with Article 105 of the Maritime Code, apply the relevant law of the country on adjusting the mode of transport on the said section, and determine the multimodal transport operator's liability for compensation and the limitation thereof, which cannot be determined directly in accordance with the relevant law of the People's Republic of China on adjusting the mode of transport on the said section. The determination of the limitation of action shall still be subject to the relevant laws of the People's Republic of China.

(三) 国内水路货物运输合同 (III) Contract for Domestic Waterway Carriage of Goods

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

69. [Consignee's Right of Action] Where the parties to a transport contract agree that the consignee may directly request delivery of the goods from the carrier, but the carrier fails to deliver the goods to the consignee or the delivery of goods fails to conform to the agreement of the contract, if the consignee requests the carrier to assume liability for compensation, the people's court shall accept the case; and the carrier's defense against the consignor may be claimed against the consignee.

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

70. [Consequence of Invalidity of Contract] A domestic waterway cargo transportation contract signed by a carrier that has not obtained the operation qualification for domestic waterway transportation is invalid, if the carrier requests the consignor or the consignee to pay liquidated damages as agreed on in the contract, the people's court shall not uphold such request.

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

A voyage charter party signed by a lessor that has not obtained the operation qualification for domestic waterway transportation is invalid, if the lessor requests the charterer or the consignee to pay the demurrage fee as agreed on in the contract, the people's court shall not uphold such request.

71. 【内河船舶不得享受海事赔偿责任限制】海商法第十一章关于海事赔偿责任限制规定适用的船舶应当为海商法第三条规定的海船，不适用于内河船舶。海船的认

71. [Inland Waterways Ships Are Not Entitled to Limitation of Liability for Maritime Claims] The ships to which the provisions of Chapter XI of the Maritime Code regarding the limitation of liability for maritime claims are applicable shall be the seagoing ships prescribed in Article 3 of the Maritime Code, and shall



定应当根据船舶检验书记载的航行能力和准予航行航区予以确认，内河船舶的船舶性质及其准予航行航区不因船舶实际航行区域而改变。

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not be applicable to inland waterways. The determination of a seagoing ship shall be confirmed according to the navigational capacity and the permitted navigation areas as indicated in the ship inspection certificate. The nature of inland waterways ships and the permitted navigation areas thereof shall not be changed due to the actual navigation areas of the ships.

XII Trial of Cases Involving Disputes over Insurance Contracts

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

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

72. [Determination of Unvalued Insurance and Burden of Proof for Insurable Value] In a marine insurance contract, if only the insured amount is stipulated without the insurable value, the insurance is unvalued. After the occurrence of an insurance accident, the insurable value shall be determined in accordance with the provisions in Paragraph 2 of Article 219 of the Maritime Code.

Where no insurable value is stipulated in a marine insurance contract, and the insured requests the insurer to bear the liability for insurance compensation according to the amount of losses or the insured amount, if the insurer asserts to bear the liability for proportional compensation in accordance with Article 238 of the Maritime Law on the ground that the insurable value is higher than the insured amount stipulated in the insurance contract, the insurer shall bear the burden of proof for the insurable value. If the insurer is unable to provide evidence, the people's court may determine that the insured amount is consistent with the insurable value.

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

73. [Determination of Excess Insurance and Burden of Proof] Where the insurable value is clearly stipulated in a marine insurance contract, after the occurrence of an insurance accident, if the insurer claims to determine the insurable value in accordance with Paragraph 2 of Article 219 of the Maritime Law and exempts the compensation liability for the portion exceeding the insurable value on the ground that the insured amount stipulated in the insurance contract is obviously higher than the actual value of the subject matter insured, the people's court shall not uphold such claim, except where the insurer provides evidence to prove that the insured intentionally conceals or falsely reports the insurable value



when signing the insurance contract.

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

Where no insurable value is stipulated in a marine insurance contract, if the insurer claims to determine the insurable value in accordance with Paragraph 2 of Article 219 of the Maritime Law after the occurrence of an insurance accident, and claims to exempt the insurance compensation liability for the portion exceeding the insurable value on the ground that the insured amount stipulated in the insurance contract is obviously higher than the insurable value, the people's court shall uphold such claim. However, an exception shall be made where the insured provides evidence to prove that the insurer, when signing the insurance contract, knows that the insured amount obviously exceeds the insurable value determined in accordance with Paragraph 2 of Article 219 of the Maritime Law.

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

74. [Limitation of Action for the Right to Claim Compensation in Marine Insurance Related to Contribution to General Average] The limitation of action for the insured to claim compensation against the insurer according to the insurance contract for any loss arising from contribution to general average shall be subject to the provisions of Article 264 of the Maritime Law. The starting point for reckoning the limitation of action shall be the date when the insurance accident (general average accident) occurs.

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

With respect to the contribution to general average in a marine insurance contract, if the insured has applied for general average adjustment but the insured is unable to claim rights against the insurer due to the fact that the adjustment report has not been made within the last six months of the limitation of action, which is an objective circumstance beyond the control of the subjective will of the insured, it may be determined that the limitation of action is suspended. The calculation of limitation period shall continue from the date when the cause for suspension of limitation period is eliminated, that is, the date when the adjustment report is made.

75. 【沿海、内河保险合同保险人代位求偿权诉讼时效起算点】

75. [Starting Point for Reckoning of the Limitation of Action for Subrogation Rights of Insurers of Coastal and Inland Water



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

Insurance Contracts] The starting point for reckoning of the limitation of action for subrogation rights of the insurer of a coastal and inland water insurance contract shall be determined according to the starting point for reckoning of the limitation of action as provided for in the Official Reply of the Supreme People's Court on Issues Relating to the Determination of the Limitation Period of Action for Compensation for Freight Transport in Coastal and Inland Rivers (Fa Shi [2001] No. 18).

十三、关于船舶物权纠纷案件的审理

XIII Trial of Cases Involving Disputes over Real Rights of Ship

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

76. [Application of Law to Claims of Maritime Liens in Respect of Property Loss Arising from the Contract of Carriage of Goods by Sea] If the cargoes are lost or damaged in the course of the carrier's performance of a contract of carriage of goods by sea, the right holder of ship cargoes shall not have maritime lien with respect to property compensation filed against the ship. If the ship cargoes are lost or damaged due to mutual faults of the colliding ships, the right holder of ship cargoes may, in accordance with Item 5, Paragraph 1 of Article 22 of the Maritime Code, claim the maritime lien against the other ship.

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

77. [Application of Law to Claims of Maritime Lien in Respect of Property Loss Arising from the Contract of Carriage of Passengers by Sea] Where a passenger's luggage is lost or damaged in the course of the carrier's performance of the contract of carriage of passengers by sea, the passenger shall not have maritime lien with respect to property compensation filed against the ship. If the passenger's luggage is lost or damaged due to mutual faults of the colliding ships, the passenger may, in accordance with Item 5, Paragraph 1 of Article 22 of the Maritime Code, claim the maritime lien against the other ship.

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

78. [Arrest of Nominally Affiliated Ships] A general creditor of the registered owner of a nominally affiliated ship is not a "bona fide third party" stipulated in Article 225 of the Civil Code, and its right of claim cannot be asserted against the real right of the actual owner of the nominally affiliated ship. After a general creditor applies for the arrest of a nominally affiliated



后，挂靠船舶实际所有人主张解除扣押的，人民法院应予支持。 ship, if the actual owner of the nominally affiliated ship claims to release the arrest, the people's court shall uphold such claim.

对挂靠船舶享有抵押权、留置权和船舶优先权等担保物权的债权人申请扣押挂靠船舶，挂靠船舶实际所有人主张解除扣押的，人民法院不予支持，有证据证明债权人非善意第三人的除外。 Where a creditor who has mortgage right, lien, maritime lien and other rights granted by way of security over a nominally affiliated ship applies for the arrest of such ship, and the actual owner of the nominally affiliated ship claims to release the arrest, the people's court shall not uphold such claim, unless there is evidence proving that the creditor is not a bona fide third party.

十四 关于海事侵权纠纷案 XIV Trial of Maritime Tort Disputes

79. 【同一事故中当事船舶适用同一赔偿限额】同一事故中的当事船舶的海事赔偿限额，有适用海商法第二百一十条第一款规定的，无论其是否申请设立海事赔偿责任限制基金或者主张海事赔偿责任限制，其他从事中华人民共和国港口之间货物运输或者沿海作业的当事船舶的海事赔偿责任限额也应适用该条规定。 79. [Application of the Same Limitation of Compensation to the Relevant Ships in the Same Accident] Where Paragraph 1 of Article 210 of the Maritime Code applies to the limitation of maritime claim of the relevant ships in the same accident, regardless of whether they apply for the establishment of a limitation fund for maritime claims or claim limitation of liability for maritime claims, the limitation of liability for maritime claims of other relevant ships that are engaged in the transportation of goods between ports or coastal operations in the People's Republic of China shall also be subject to the provisions of the said Article.

80. 【单一责任限制制度的适用规则】海商法第二百一十五条关于“先抵销，后限制”的规定适用于同类海事请求。若双方存在非人身伤亡和人身伤亡的两类赔偿请求，不同性质的赔偿请求应当分别抵销，分别限制。 80. [Rules for Application of a Single Limitation of Liability System] The provisions of Article 215 of the Maritime Code on the "setoff first, restriction second" shall apply to maritime claims of the same kind. If there are two categories of claims for compensation, namely, non-personal injury and personal injury, between both parties, claims for compensation of different nature shall be offset and restricted respectively.

81. 【养殖损害赔偿的责任承担】因船舶碰撞或者触碰、环境污染造成海上及通海可航水域养殖设施、养殖物受到损害的，被侵权人可以请求侵权人赔偿其由此造成的养殖设施损失、养殖物损失、恢复生产期间减少的收入损失，以及为排除妨害、消除危险、确定损失支 81. [Liability for Aquaculture Damage] Where any damage is caused to the aquaculture facilities or aquaculture in the sea or sea route navigable waters due to ship collision or contact or environmental pollution, the infringed party may request the infringing party to compensate for the resulting loss of the aquaculture facilities and aquaculture, loss of income during the production resumption period, as well as reasonable expenses paid for eliminating the harm, eliminating the danger



出的合理费用。养殖设施损失和收入损失的计算标准可以依照或者参照《最高人民法院关于审理船舶油污损害赔偿纠纷案件若干问题的规定》的相关规定。

被侵权人就养殖损害主张赔偿时，应当提交证据证明其在事故发生时已经依法取得海域使用权证和养殖许可证；养殖未经相关行政主管部门许可的，人民法院对收入损失请求不予支持，但被侵权人举证证明其无需取得使用权及养殖许可的除外。

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

#### 十五、关于其他海事案件的审理

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

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

and determining the loss. The relevant provisions of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases Involving Disputes over Compensation for Vessel-induced Oil Pollution Damage may apply or apply mutatis mutandis to the standards for the calculation of the loss of aquaculture facilities and loss of income.

When claiming compensation for the aquaculture damage, the infringed party shall submit evidence to prove that it has obtained the certificate of right to use sea areas and the aquaculture license according to the law at the time of occurrence of the accident; if the aquaculture is not permitted by the relevant administrative departments, the people's court shall not uphold the claim for loss of income, unless the infringed party presents evidence to prove that it is not necessary to obtain the right to use and the aquaculture license.

If the infringed party conducts aquaculture in the port area or waterway without authorization or fails to take safety measures in accordance with the law and has fault for the occurrence of aquaculture damage, the compensation liability of the infringer may be mitigated or exempted.

#### XV. Trial of Other Maritime Cases

82. [Litigation Right of Pollution Clean-Up Entities to Bring Civil Proceedings for Pollution Clean-Up Expenses] Where, after completing the pollution clean-up operation under the designation of the maritime administrative organ, the pollution clean-up entity brings a civil lawsuit directly against the person liable for pollution in respect of clean-up expenses, the people's court shall accept the case.

83. [Statutory Obligations of Employers to Purchase Work-related Injury Insurance for Seafarers] An employer which has an employment contract relationship with a seafarer and purchases commercial insurance for the seafarer shall not be exempted from its statutory obligation to purchase work-related injury insurance for the seafarer. The seafarer may still claim for work-related injury insurance benefits pursuant to the



险待遇。

law after obtaining the compensation from the commercial insurance purchased by the employer for him/her.

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

84. [Right to Claim for Salvage Payment in Case of Mutual Salvage by Ships of the Same Owner] Where salvage is carried out between the ships of the same owner, the salvage payment payable to the salvor shall not be cancelled or reduced, unless it is under the circumstances provided for in Article 187 of the Maritime Code.

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

85. [Burden of Proof in Seafarer Labor Disputes] Where a seafarer suffers damage in the course of labor service and claims against the ship owner for compensation liability, and the ship owner is unable to provide evidence to prove that the seafarer is at fault, the people's court shall uphold the seafarer's claim for damage; where the ship owner provides evidence to prove that the seafarer is at fault and requests the court to order the seafarer to bear corresponding liability, the people's court shall uphold the ship owner's defense.

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

86. [Objection to the Jurisdiction in the Procedures for Fund Establishment] Where an interested party objects to the jurisdiction of the court accepting the application for establishment of a limitation fund for maritime claims, the provisions of Article 106 of the Special Maritime Procedure Law on time limit shall apply.

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

87. [Payment of Debts Incurred by a Bareboat Charterer for the Operation of a Bareboat Chartered Vessel in the Event of Bankruptcy of the Bareboat Charterer or the Owner of the Vessel] Where a bareboat charterer applies for arrest or auction of a bareboat chartered vessel due to a maritime claim for which the bareboat charterer rather than the ship owner is responsible, and the bareboat charterer enters into the bankruptcy procedure, although the maritime claim is a bankruptcy creditor's right, as the bareboat chartered vessel is not the property of the bareboat charterer and thus not the bankruptcy property, the creditor may can settle their debts through maritime proceedings rather than bankruptcy proceedings.

因光船承租人应负责任的海事请求而对光租船舶申请扣押、拍



卖，且该海事请求具有船舶优先权、抵押权、留置权时，如果船舶所有人进入破产程序，请求人在破产程序开始后可直接向破产管理人请求从船舶价款中行使优先受偿权，并在无担保的破产债权人按照破产财产方案受偿之前进行清偿。

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

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

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

For the application for arrest and auction of a bareboat chartered vessel due to a maritime claim for which the bareboat charterer is responsible and the maritime claim has maritime lien, mortgage or lien, if the vessel owner enters into the bankruptcy proceedings, the claimant may, after the commencement of the bankruptcy proceedings, directly request to bankruptcy administrator to exercise the priority to be repaid from the proceeds of the vessel, and settle debts before the unsecured creditors of the bankruptcy are repaid according to the bankruptcy property scheme.

88. [Impact of Bankruptcy Procedures of Ship Owner on Arrest or Auction of Ship] A maritime court which arrests or auctions a ship based on reasons such as preservation of maritime claim or execution of an effective judgment document shall, after knowing that the application for bankruptcy against the ship owner has been accepted, lift the arrest and suspend the auction procedure in time.

Where the litigant has applied for the arrest of the ship prior to the bankruptcy procedures, and the arrest is later released on the basis of the bankruptcy procedures, the legal effect of the relevant maritime liens that have been exercised will not be affected. After the ship owner enters into bankruptcy procedures, if the litigant cannot apply for the arrest of the ship and it is a circumstance under which the maritime lien cannot be legally exercised by arrest, such period may not be counted into the statutory period of one year for exercise of the maritime lien. Where the holder of maritime lien directly files an application for preferential repayment from the auction proceeds of the ship which gives rise to the maritime lien after the ship owner enters into bankruptcy procedures, and such application does not beyond the statutory period of one year for exercise of the maritime lien, the creditor's rights secured by the maritime lien shall be repaid in priority prior to the general bankruptcy creditor's rights.

Expenses for evaluation and custody, among others, arising from the arrest or auction of a ship may be repaid out of the property of the debtor at any time, according to Article 15 of



债务人财产中随时清偿。

the Guiding Opinions of the Supreme People's Court on Several Issues concerning the Transfer from Enforcement to Bankruptcy Examination (Fa Fa [2017] No.2).

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

89. [Non-Actionable Nature of the Liability Identification Document for a Maritime Traffic Accident] In accordance with Paragraph 2 of Article 85 of the Maritime Traffic Safety Law of the People's Republic of China, "The maritime safety authority shall, within 15 working days from the date of receiving the investigation report on a maritime traffic accident, prepare an accident liability identification document as the evidence for handling the maritime traffic accident", the identification of liability for a maritime traffic accident is not an administrative act, thus it is inappropriate to include the identification document for a maritime traffic accident in the scope of accepting administrative litigation cases. The liability identification document for a maritime traffic accident may be used as evidence for a ship collision dispute or any other maritime cases, and the people's court shall determine the probative force of a liability identification document under the procedures of evidence submission and cross-examination.

#### 仲裁司法审查部分

十六、关于申请确认仲裁协议效力案件的审查

#### Judicial Review of Arbitration

XVI. Review of Cases of Application for Determination of the Validity of an Arbitration Agreement

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

90. [Scope of Litigations Involving Applications Filed for Determining the Validity of an Arbitration Agreement] In the event that a dispute arises between the litigants over whether an arbitration agreement is tenable, effective or invalid or whether it has bound the specific litigants, and the litigants apply to the people's court for determining the validity of the arbitration agreement, the people's court shall accept the case as an application for determining the validity of an arbitration agreement, and make a ruling on the request of the litigants.

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

91. [Conflict between a Lawsuit Involving Application for Determining the Validity of an Arbitration Agreement and the Decision on Arbitral Jurisdiction] According to Article 3 of the Reply of the Supreme People's Court to Several Issues concerning the Determination of the Validity of an Arbitration Agreement, where an arbitration agency has accepted a



请并已经作出决定，当事人向人民法院提出申请确认仲裁协议效力之诉的，人民法院不予受理。

#### 92. 【放弃仲裁协议的认定】

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

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

#### 93. 【仲裁协议效力的认定】

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

94. 【“先裁后诉”争议解决条款的效力认定】当事人在仲裁协议中约定争议发生后“先仲裁、后诉讼”的，不属于仲裁法司法解释第七条规定的仲裁协议无效的情形。根据仲裁法第九条第一款关于仲裁裁决作出后当事人不得就同一纠纷向人民法院起诉的规定，“先仲裁、后诉讼”关于诉讼的约定无效，但不影响仲裁协议的效力。

litigant's application for determining the validity of an arbitration agreement prior to a people's court and has made a decision, and the litigant files a lawsuit later with a people's court to apply for determining the validity of an arbitration agreement, the people's court shall not accept the lawsuit.

#### 92. [Determination of Waiver of an Arbitration Agreement]

Where the plaintiff does not declare the existence of an arbitration agreement when filing the lawsuit with the people's court, and the defendant fails to raise objections on the grounds of the existence of the arbitration agreement before the first hearing, the defendant shall be deemed to have waived the arbitration agreement. If the plaintiff withdraws the lawsuit later, the people's court's ruling that the litigants have waived the arbitration agreement through litigation will not be affected.

The defendant who fails to respond to the lawsuit and is absent from the hearing shall not be deemed to have waived the arbitration agreement. Where the people's court discovers the existence of a valid arbitration agreement in the trial process, it shall dismiss the plaintiff's lawsuit.

#### 93. [Determination of the Validity of an Arbitration Agreement]

According to Article 3 of the Judicial Interpretation of the Arbitration Law, a people's court shall, when reviewing whether an arbitration agreement has agreed on a definite arbitration agency, make a determination under the principle conducive to the validity of the arbitration agreement.

#### 94. [Determination of the Validity of the Dispute Resolution Clause of "Arbitration First, then Litigation"]

If the litigants agree in the arbitration agreement on "arbitration first, then litigation" after the occurrence of a dispute, this shall not fall under the circumstances of invalidity of an arbitration agreement as specified in Article 7 of the Judicial Interpretation of the Arbitration Law. According to the provision of Paragraph 1 of Article 9 of the Arbitration Law that the litigants shall not file a lawsuit to a people's court over the same dispute after an arbitration award is made, the agreement on "arbitration first, then litigation" on litigation shall be invalid, but this will not



affect the validity of the arbitration agreement.

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

95. [Determination of the Validity of an Arbitration Agreement when Only Arbitration Rules Are Agreed] Where the litigants do not agree on an arbitration agency in the arbitration agreement but agree on the arbitration rules of an arbitration agency, it shall be deemed that the litigants have agreed to arbitrate by the said arbitration agency, unless the arbitration rules have contrary provisions.

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

96. [Determination of the Validity of an Arbitration Agreement when the Agreed Arbitration Agency and the Arbitration Rules Are Inconsistent] Where the litigants agree in the arbitration agreement that the Arbitration Rules of the United Nations Commission on International Trade Law shall apply to an arbitration agency in the Mainland, and one party claims that the arbitration agreement is invalid on the ground that the agreement is an agreement on ad hoc arbitration, the people's court shall not uphold such claim.

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

97. [Determination of the Dispute Resolution Methods under the Master Contract and the Subordinate Contract] Where the litigants agree on two different dispute resolution methods, namely litigation and arbitration, in the master contract and the subordinate contract respectively, the dispute resolution method shall be determined according to the respective provisions in the master contract and the subordinate contract.

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

Where the litigants agree in the master contract that the dispute resolution method is arbitration, but the subordinate contract does not agree on the dispute resolution method, the arbitration agreement in the master contract shall not bind the parties to the subordinate contract, unless the parties to the master and the subordinate contracts are the same.

十七、关于申请撤销或不予执行仲裁裁决案件的审查

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

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

98. [Basis for Review of a Case of Application for Enforcement of an Arbitral Award] The provisions of Article 244 of the Civil Procedure Law shall apply to the review by a people's court of a case in which an application is filed to enforce a non-foreign-related arbitral award issued by a domestic arbitration agency. The provisions of Article 281 of the Civil Procedure Law shall



出的涉外仲裁裁决案件的审查，适用民事诉讼法第二百八十一条的规定。

apply to the review by a people's court of a case in which an application is filed to enforce a foreign-related arbitral award issued by a domestic arbitration agency.

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

The people's court shall, in accordance with the provisions of the preceding paragraph, review the reasons claimed by the respondent for non-enforcement of the arbitral award. The people's court shall not review the facts not claimed by the respondent or the causes claimed by the respondent that are beyond the scope of the statutory facts stipulated in the second paragraph of Article 244 and the first paragraph of Article 281 of the Civil Procedure Law.

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

The people's court shall, in accordance with the provisions of the third paragraph of Article 244 and the second paragraph of Article 281 of the Civil Procedure Law, review ex officio whether the enforcement of an award goes against the public interest.

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

99. [Application for Revocation of an Arbitral Mediation Document] An arbitral mediation document shall have the same legal effect as an arbitral award. An application by a litigant for revocation of an arbitral conciliation document shall be accepted by a people's court. The people's court shall, pursuant to the provisions of Article 58 of the Arbitration Law, review the application for revocation of an arbitral mediation document filed by a litigant. An application by a litigant for revocation of a foreign-related arbitral mediation document shall be reviewed pursuant to the provisions of Article 70 of the Arbitration Law.

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

100. [Enforcement of an Award Made in the Mainland by an Overseas Arbitration Agency] An arbitral award made by an overseas arbitration agency with the seat of arbitration in the Mainland shall be deemed as a foreign-related arbitral award in the Mainland. Where a litigant applies to an Intermediate People's Court at the seat of arbitration for revocation of the arbitral award, the people's court shall review the application pursuant to the provisions of Article 70 of the Arbitration Law; where the litigant applies for enforcement, the people's court shall review the application pursuant to the provisions of Article 281 of the Civil Procedure Law.



101. 【违反法定程序的认定】 101. [Identification of Violation of Legal Procedures] In the case of violation of the arbitration procedures provided in the Arbitration Law, if the arbitration rules chosen by the litigants or the special agreement by the litigants on arbitration procedures may affect the fair judgment of the case, such violation, upon being verified to be true by the people's court, shall be identified as falling under the circumstance specified in the third item of the first paragraph of Article 58 of the Arbitration Law.

102. 【超裁的认定】 仲裁裁决 102. [Identification of Arbitral Award Beyond the Jurisdiction] If the matters under an arbitral award are beyond the scope as requested by the litigants or agreed upon in the arbitration agreement, and such matter is verified to be true by a people's court, it shall be identified as falling under the circumstance that "the matters under the award do not fall within the scope of the arbitration agreement" as specified in the second item of the first paragraph of Article 58 of the Arbitration Law and the second item of the second paragraph of Article 244 of the Civil Procedure Law.

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

Where the fact finding and reasoning in an arbitral award involve contents beyond the scope of matters subject to arbitration as requested or agreed upon in the arbitration agreement, but the matters decided do not exceed the scope of matters subject to arbitration as requested or agreed upon in the arbitration agreement, the people's court shall not uphold the litigant's request for revocation or non-enforcement of the arbitral award on the ground that the case constitutes a circumstance stipulated in the second item of the first paragraph of Article 58 of the Arbitration Law or the second item of the second paragraph of Article 244 of the Civil Procedure Law.

103. 【无权仲裁的认定】 作出 103. [Identification of No Authority to Arbitrate] Where the arbitration agency that has issued an arbitral award is not an arbitration agency as agreed upon in the arbitration agreement, or the matters under arbitration are not arbitrable matters stipulated by the law or the arbitration rules chosen by the litigants, which is verified to be true by the people's court,



十八条第一款第二项、民事诉讼法第二百四十四条第二款第二项规定的“仲裁机构无权仲裁”的情形。 it shall be identified as falling under the circumstance that “the arbitration agency has no authority to arbitrate” as specified in the second item of the first paragraph of Article 58 of the Arbitration Law or the second item of the second paragraph of Article 244 of the Civil Procedure Law.

104.【重新仲裁的适用】申请人申请撤销仲裁裁决，人民法院经审查认为存在应予撤销的情形，但可以通过重新仲裁予以弥补的，人民法院可以通知仲裁庭重新仲裁。 104. [Application of Re-arbitration] Where an applicant applies for revocation of an arbitral award, and the people's court believes upon examination that the arbitral award shall be revoked, but the deficiencies can be made up through re-arbitration, the people's court may notify the arbitration tribunal to re-arbitrate.

人民法院决定由仲裁庭重新仲裁的，通知仲裁庭在一定期限内重新仲裁并在通知中说明要求重新仲裁的具体理由，同时裁定中止撤销程序。仲裁庭在人民法院指定的期限内开始重新仲裁的，人民法院应当裁定终结撤销程序。 If the people's court decides to re-arbitrate, it shall notify the arbitration tribunal to re-arbitrate within a certain time limit, state in the notice the specific reasons for re-arbitration, and meanwhile rule to suspend the revocation procedures. If the arbitration tribunal starts re-arbitration within the time limit specified by the people's court, the people's court shall rule to terminate the revocation procedures.

仲裁庭拒绝重新仲裁或者在人民法院指定期限内未开始重新仲裁的，人民法院应当裁定恢复撤销程序。 If the arbitration tribunal refuses to re-arbitrate or does not start re-arbitration within the time limit specified by the people's court, the people's court shall rule to resume the revocation procedures.

十八、关于申请承认和执行外国仲裁裁决案件的审查 XVIII. Review of Cases of Application for Recognition and Enforcement of a Foreign Arbitral Award

105.【《纽约公约》第四条的理解】申请人向人民法院申请承认和执行外国仲裁裁决，应当根据《纽约公约》第四条的规定提交相应的材料，提交的材料不符合《纽约公约》第四条规定的，人民法院应当认定其申请不符合受理条件，裁定不予受理。已经受理的，裁定驳回申请。 105. [Understanding of Article 4 of the New York Convention] An applicant who applies to a people's court for recognition and enforcement of a foreign arbitral award shall submit corresponding materials in accordance with the provisions of Article 4 of the New York Convention. If the materials submitted do not meet the provisions of Article 4 of the New York Convention, the people's court shall determine that the application does not meet the conditions for acceptance and make a ruling not to accept the application. If the application has been accepted, it shall be rejected by ruling.

106.【《纽约公约》第五条的理解】人民法院适用《纽约公约》审理申请承认和执行外国仲裁裁决 trial of a case of application for the recognition and



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

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

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

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

enforcement of a foreign arbitral award, the people's court shall, in accordance with Article 5 of the New York Convention, review the causes claimed by the respondent for non-recognition and non-enforcement of the arbitral award. The people's court shall not review the facts that the respondent does not claim or that the facts claimed by the respondent are beyond the scope of statutory facts provided for in Paragraph 1 of Article 5 of the New York Convention.

The people's court shall, in accordance with the provisions of Paragraph 2 of Article 5 of the New York Convention, review, ex officio, the arbitral award on whether or not any matter arbitrated is not arbitrable under the laws of China, and whether or not the recognition and enforcement of the arbitral award would violate the public policy of China.

107. 【Failure to Perform Negotiation Pre-procedures Is Not Violation of the Agreed Procedures】 When a people's court applies the New York Convention to hear a case of application for the recognition and enforcement of a foreign arbitral award, if the litigants agree in the arbitration agreement to "resolve the dispute through negotiation first, and if the negotiation fails, then apply for arbitration", and one litigant applies for arbitration without negotiation, and the other litigant claims not to recognize and enforce the arbitral award on the ground that the counterparty's violation of the negotiation pre-procedures constitutes that the arbitration procedures provided for in Item d, Paragraph 1 of Article 5 of the New York Convention are inconsistent with the agreement between the parties, the people's court shall not uphold the claim.

108. 【Violation of Public Policies】 When a people's court hears a case for the recognition and enforcement of a foreign arbitral award in accordance with the New York Convention, if an effective ruling rendered by a people's court has ruled that the arbitration agreement made by the litigants is not tenable, invalid, has expired or cannot be enforced, and the recognition and enforcement of such award will conflict with the effective ruling rendered by the people's court, the violation of China's



五条第二款乙项规定的违反我国公共政策的情形。 public policies shall be deemed to be constituted as stipulated in Item B, Paragraph 2 of Article 5 of the New York Convention.

109. 【承认和执行程序中的仲裁保全】当事人向人民法院申请承认和执行外国仲裁裁决，人民法院受理申请后，当事人申请财产保全的，人民法院可以参照民事诉讼法及相关司法解释的规定执行。申请人应当提供担保，不提供担保的，裁定驳回申请。 109. 【Arbitration Preservation in Recognition and Enforcement Procedures】 Where a litigant applies to a people's court for recognition and enforcement of a foreign arbitral award, and the people's court accepts the application, if the litigant applies for property preservation, the people's court may enforce the property preservation according mutatis mutandis to the Civil Procedure Law and relevant judicial interpretations. The applicant shall provide a security; otherwise the application will be rejected.

十九、仲裁司法审查程序的其他问题 XIX . Other Issues Concerning Procedures for Judicial Review of Arbitration

110. 【仲裁司法审查裁定的上诉和再审申请】人民法院根据《最高人民法院关于仲裁司法审查若干问题的规定》第七条、第八条、第十条的规定，因申请人的申请不符合受理条件作出的不予受理裁定、立案后发现不符合受理条件作出的驳回申请裁定、对管辖权异议作出的裁定，当事人不服的，可以提出上诉。对不予受理、驳回起诉的裁定，当事人可以依法申请再审。 110. 【Appeal of and Application for Retrial of a Ruling on Judicial Review of Arbitration】 Where a people's court, in accordance with Articles 7, 8 and 10 of the Provisions of the Supreme People's Court on Several Issues Relating to Judicial Review of Arbitration, renders a ruling to reject an application due to the failure of the applicant to meet the acceptance conditions, or to dismiss an application due to the discovery that the application does not meet the acceptance conditions after the case is filed, or on jurisdiction objection, if the litigant is dissatisfied with the ruling, it may institute an appeal and may lawfully apply for a retrial against a ruling to reject its application or dismiss its claim.

除上述三类裁定外，人民法院在审理仲裁司法审查案件中作出的其他裁定，一经送达即发生法律效力。当事人申请复议、提出上诉或者申请再审的，人民法院不予受理，但法律、司法解释另有规定的除外。 Rulings made by a people's court in the trial of a case involving judicial review of arbitration other than the aforesaid three types of rulings shall become legally effective immediately upon being served. Where a litigant applies for a reconsideration, lodges an appeal, or applies for a retrial, the people's court shall not accept the application, unless

otherwise provided by laws or judicial interpretations. XX . Application Mutatis Mutandis to Commercial and Maritime Cases Involving Hong Kong, Macao and Taiwan

二十、关于涉港澳台商事海事案件的参照适用 111. 【Application of this Minutes Mutatis Mutandis to Cases Involving Hong Kong, Macao and Taiwan】 Commercial and maritime dispute cases involving the Hong Kong Special Administrative Region, the Macao Special Administrative Region or Taiwan region, for which there are no provisions in



事纠纷案件的规定处理。

凡例：

the relevant judicial interpretations, shall be dealt with according mutatis mutandis to the provisions of this Minutes on foreign-related commercial and maritime dispute cases.

Explanatory notes:

1. 法律文件名称中的“中华人民共和国”省略，如《中华人民共和国民法典》简称民法典；
  2. 《中华人民共和国仲裁法》，简称仲裁法；
  3. 《中华人民共和国海商法》，简称海商法；
  4. 《中华人民共和国涉外民事关系法律适用法》，简称涉外民事关系法律适用法；
  5. 《关于向国外送达民事或商事诉讼文书和非诉讼文书海牙公约》，简称《海牙送达公约》；
  6. 《承认及执行外国仲裁裁决公约》，简称《纽约公约》；
  7. 《中华人民共和国民事诉讼法》（2021修正），简称民事诉讼法；
  8. 《中华人民共和国民事诉讼法特别程序法》，简称海事诉讼特别程序法；
  9. 《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》，简称民事诉讼法司法解释；
  10. 《最高人民法院关于适用〈中华人民共和国民事诉讼法〉若干问题的解释》，简称仲裁法司法解释。
1. The word "People's Republic of China" in the name of a legal document is omitted, for example, the Civil Code of the People's Republic of China is referred to as the Civil Code in short;
  2. Arbitration Law of the People's Republic of China is referred to as the Arbitration Law in short;
  3. Maritime Law of the People's Republic of China is referred to as the Maritime Law in short;
  4. Law of the People's Republic of China on the Application of Law to Foreign-related Civil Relations is referred to as the Law on the Application of Law to Foreign-related Civil Relations in short;
  5. Hague Convention on the Service Abroad of Litigation and Non-litigation Documents in Civil or Commercial Matters is referred to as the Hague Service Convention in short;
  6. Convention on the Recognition and Enforcement of Foreign Arbitral Awards is referred to as the New York Convention in short;
  7. Civil Procedure Law of the People's Republic of China (Amended in 2021) is referred to as the Civil Procedure Law in short;
  8. Special Maritime Procedure Law of the People's Republic of China is referred to as the Special Maritime Procedure Law in short;
  9. Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China is referred to as the Judicial Interpretation of the Civil Procedure Law in short; and
  10. Interpretation of the Supreme People's Court on Several Issues Relating to Application of the Arbitration Law of the People's Republic of China is referred to as the Judicial Interpretation of the Arbitration Law in short.







扫一扫，手机阅读更方便

# EXHIBIT 9

## 全国人民代表大会常务委员会关于批准加入《关于向国外送达民事或商事司法文书和司法外文书公约》的决定

### Decision of the Standing Committee of the National People's Congress on Ratification of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

颁布机关: 全国人民代表大会常务委员会  
Promulgating Institution: Standing Committee of the National People's Congress

颁布时间: 03/02/1991  
Promulgating Date: 03/02/1991  
实施时间: 03/02/1991  
Effective Date: 03/02/1991  
效力状态: 有效  
Validity Status: Valid

(1991年3月2日通过)

(Adopted on March 2, 1991)

第七届全国人民代表大会常务委员会第十八次会议决定：批准加入1965年11月15日订于海牙的《关于向国外送达民事或商事司法文书和司法外文书公约》，同时：

The 18th Session of the Standing Committee of the Seventh National People's Congress decided to ratify the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters which was concluded on November 15, 1965 in Hague. In the meanwhile:

一、根据公约第二条和第九条规定，指定中华人民共和国司法部为中央机关和有权接收外国通过领事途径转递的文书的机关。

1. In accordance with the Article 2 and Article 9 of the said convention, the Ministry of Justice of the People's Republic of China should be designated as the central authority entitled to receive the document served by diplomatic channel.

二、根据公约第八条第二款声明，只在文书须送达给文书发出国国民时，才能采用该条第一款所规定的方式在中华人民共和国境内进行送达。

2. In accordance with the Paragraph 2 of the Article 8, such service specified in the Paragraph 1 of the same article could not be adopted within the territory of the People's Republic of China, unless the document was to be served upon a national of the State in which the documents originate.

三、反对采用公约第十条所规定的方式在中华人民共和国境内进行送达。

The service approach specified in the Article 10 of the said convention was not allowed with the territory of the People's Republic of China.

四、根据公约第十五条第二款声明，在符合该款规定的各项条件的情况下，即使未收到任何送达或交付的证明书，法官仍可不顾该条第一款的规定，作出判决。





4. According to the statement of the Paragraph 2 of the Article 15 of the said convention, the judge could enter a judgment without considering the Paragraph of that article, even if no service or delivery certificate was received as long as all the conditions specified in the Article 15 had been satisfied.

五、根据第十六条第三款声明，被告要求免除丧失上诉权效果的申请只能在自判决之日起的一年内提出，否则不予受理。

5. According to the Statement of the Paragraph 3 of the Article 16, a defendant's application for relief should be filed only within one year from the date of effectiveness of the judgment; or no application would be accepted thereafter.

# EXHIBIT 10

# 关于向国外送达民事或商事司法 文书和司法外文书公约\*

(1965 年 11 月 15 日订于海牙)

本公约缔约国，

希望创立适当方法，以确保须予送达到国外的司法文书和司法  
外文书在足够的时间为收件人所知悉，

希望通过简化并加快有关程序，改进为此目的而进行相互司法  
协助的体制，

为此目的，兹决定缔结一项公约，并议定下列各条：

## 第 一 条

在所有民事或商事案件中，如有须递送司法文书或司法外文书  
以便向国外送达的情形，均应适用本公约。

在文书的受送达人地址不明的情况下，本公约不予适用。

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\* 本公约于 1970 年 3 月 18 日生效。中华人民共和国政府于 1991 年 5 月 3 日交存加入书，同日本公约对我生效。我加入书中载明：一、根据公约第二条和第九条规定，指定中华人民共和国司法部为中央机关和有权接收外国通过领事途径转递的文书的机关。二、根据公约第八条第二款声明，只在文书须送达给文书发出国国民时，才能采用该条第一款所规定的方式在中华人民共和国境内进行送达。三、反对采用公约第十条所规定的方式在中华人民共和国境内进行送达。四、根据公约第十五条第二款声明，在符合该款规定的各项条件的情况下，即使未收到任何送达或交付的证明书，法官仍可不顾该条第一款的规定，作出判决。五、根据第十六条第三款声明，被告要求免除丧失上诉权效果的申请只能在自判决之日起的 1 年内提出，否则不予受理。——编者注



## 第一章 司法文书

### 第 二 条

每一缔约国应指定一个中央机关，负责根据第三条至第六条的规定，接收来自其它缔约国的送达请求书，并予以转递。

每一缔约国应依其本国法律组建中央机关。

### 第 三 条

依文书发出国法律有权主管的当局或司法助理人员应将符合本公约所附范本的请求书送交文书发往国中央机关，无须认证或其它类似手续。

请求书应附有须予送达的文书或其副本。请求书和文书均须一式两份。

### 第 四 条

如中央机关认为该请求书不符合本公约的规定，应及时通知申请者，并说明其对请求书的异议。

### 第 五 条

文书发往国中央机关应按照下列方法之一，自行送达该文书，或安排经由一适当机构使之得以送达：

（一）按照其国内法规定的在国内诉讼中对在其境内的人员送达文书的方法，或

（二）按照申请者所请求采用的特定方法，除非这一方法与文书发往国法律相抵触，除本条第一款第（二）项规定外，均可通过将文书交付自愿接受的收件人的方法进行送达。

如依上述第一款送达文书，则中央机关可要求该文书以文书发往国的官方文字或其中之一写成，或译为该种文字。

依本公约所附格式填写的请求书中包括被送达文书概要的部分应连同文书一并送达。

### 第 六 条

文书发往国中央机关或该国为此目的可能指定的任何机关应依本公约所附范本格式出具证明书。

证明书应说明文书已经送达，并应包括送达的方法、地点和日期，以及文书被交付人。如文书并未送达，则证明书中应载明妨碍送达的原因。

申请者可要求非中央机关或司法机关出具的证明书由上述一个机关副署。

证明书应直接送交申请者。

### **第 七 条**

本公约所附范本的标准栏目均应用法文或英文写成，亦可用文书发出国的官方文字或其中之一写成。

相应空格应用文书发往国文字或法文或英文填写。

### **第 八 条**

每一缔约国均有权直接通过其外交或领事代表机构向身在国外的人完成司法文书的送达，但不得采用任何强制措施。

任何国家均可声明其对在其境内进行此种送达的异议，除非该文书须送达给文书发出国国民。

### **第 九 条**

此外，每一缔约国有权利利用领事途径将文书送交另一缔约国为此目的指定的机关，以便送达。

如有特殊情况需要，每一缔约国可为同一目的使用外交途径。

### **第 十 条**

如送达目的地国不表异议，本公约不妨碍：

- (一) 通过邮寄途径直接向身在国外的人送交司法文书的自由；
- (二) 文书发出国的司法助理人员、官员或其他主管人员直接通过送达目的地国的司法助理人员、官员或其他主管人员完成司法文书的送达的自由；

(三) 任何在司法程序中有利害关系的人直接通过送达目的地国的司法助理人员、官员或其他主管人员完成司法文书的送达的自由。

## 第十一条

本公约不妨碍两个或更多缔约国达成协议，允许采用上述各条所规定的递送途径以外的途径，特别是通过其各自机关直接联系的途径，以便送达司法文书。

## 第十二条

发自缔约一国的司法文书的送达不应产生因文书发往国提供服务所引起的税款或费用的支付或补偿。

申请者应支付或补偿下列情况产生的费用：

- (一) 有司法助理人员或依送达目的地国法律主管人员的参与；
- (二) 特定送达方法的使用。

## 第十三条

如果送达请求书符合本公约的规定，则文书发往国只在其认为执行请求将损害其主权或安全时才可拒绝执行。

一国不得仅根据下列理由拒绝执行，即：依其国内法，该国主张对该项诉讼标的专属管辖权，或其国内法不允许进行该项申请所依据的诉讼。

在拒绝执行的情况下，中央机关应迅速通知申请者，并说明拒绝的理由。

## 第十四条

在为了送达而递送司法文书的过程中可能产生的困难，应通过外交途径解决。

## 第十五条

如须根据本公约向国外递送传票或类似文书，以便送达，而被告没有出庭，则在确定以下情况之前，不得作出判决：

(一) 该文书已依文书发往国的国内法所规定的在国内诉讼中对在其境内的人送达文书的方法予以送达；或

(二) 该文书已依本公约规定的其它方法被实际交付被告或其居所。

并且，在上述任何一种情况下，送达或交付均应在能保证被告



进行答辩的足够时间内完成。

每一缔约国均可声明，只要满足下述条件，即使未收到送达或交付的证明书，法官仍可不顾本条第一款的规定，作出判决：

（一）已依本公约所规定的一种方法递送该文书；

（二）法官根据具体案件认为自递送文书之日起不少于 6 个月的适当期间已满；

（三）尽管为获取证明书已通过文书发往国的主管机关尽了一切合理的努力，但仍未收到任何种类的证明书。

虽有上述各款规定，法官仍可在紧急情况下决定采取任何临时性或保护性的措施。

## **第 十 六 条**

如须根据本公约向国外递送传票或类似文书，以便送达，且已对未出庭的被告作出败诉判决，则在满足下述条件的情况下，法官有权使被告免于该判决因上诉期间届满所产生的丧失上诉权的效果：

（一）被告非因自己的过失，未能在足够期间内知悉该文书，以便提出答辩，或未能在足够期间内知悉该判决，以便提起上诉，并

（二）被告对该案的实质问题提出了表面可以成立的答辩理由。

被告只能在其知悉该判决后的合理期间内提出免除丧失上诉权效果的申请。

每一缔约国均可声明对在该声明中所指明的期间届满后提出的申请不予受理，但这一期间在任何情况下均不得少于自判决之日起的 1 年。

本条不适用于有关人的身份或能力的判决。

## **第二章 司法外文书**

### **第 十 七 条**

缔约一国的机关和司法助理人员发出的司法外文书可依本公约

的方法并按照本公约各条规定递送到缔约另一国，以便送达。

### **第三章 一般条款**

#### **第十八条**

每一缔约国除指定中央机关外，还可指定其它机关，并应确定这些机关的主管范围。

但在任何情况下，申请者均有权将请求书直接送交中央机关。  
联邦制国家有权指定一个以上的中央机关。

#### **第十九条**

只要缔约国的国内法允许使用上述各条规定之外的其它方法递送来自国外的文书，以便在其境内送达，本公约不影响此类规定。

#### **第二十条**

本公约不妨碍两个或更多的缔约国达成协议，以免除下列规定的适用：

- （一）第三条第二款关于须予递送的文书必须一式两份的要求；
- （二）第五条第三款和第七条关于文字的要求；
- （三）第五条第四款的规定；
- （四）第十二条第二款的规定。

#### **第二十一条**

每一缔约国均应在其交存批准书或加入书时或在此之后，就下述事项通知荷兰外交部：

- （一）根据第二条和第十八条指定的机关；
- （二）根据第六条指定的有权出具证明书的机关；
- （三）根据第九条指定的有权接收通过领事途径递送的文书的机关。

适当时，每一缔约国还应通知荷兰外交部：

- （一）对使用第八条和第十条所规定的递送方法所提出的异议；
- （二）根据第十五条第二款和第十六条第三款所作出的声明；

(三) 对上述指定、异议和声明的任何修改。

## **第二十二条**

如本公约当事国亦为 1905 年 7 月 17 日和 1954 年 3 月 1 日订于海牙的两个《民事诉讼程序公约》或其中之一的缔约国，则本公约应在这些国家之间取代上述两公约第一条至第七条的规定。

## **第二十三条**

本公约不应影响 1905 年 7 月 17 日订于海牙的《民事诉讼程序公约》第二十三条和 1954 年 3 月 1 日订于海牙的《民事诉讼程序公约》第二十四条的适用。

但只在使用与上述公约规定一致的联系方法时才应适用这些条款。

## **第二十四条**

1905 年和 1954 年公约当事国之间缔结的补充协定应被认为同样适用于本公约，除非上述当事国另有协议。

## **第二十五条**

在不损害第二十二条和第二十四条规定的情况下，本公约不损及缔约国已经或将要成为当事国并含有本公约所规定事项的条款的其它公约。

## **第二十六条**

本公约应开放供出席海牙国际私法会议第十届会议的国家签署。

本公约须经批准，批准书应交存荷兰外交部。

## **第二十七条**

本公约自第二十六条第二款所指的第 3 份批准书交存后的第 60 天起生效。

对于此后批准本公约的签署国，本公约自其交存批准书后的第 60 天起对其生效。

## **第二十八条**

在本公约依第二十七条第一款规定生效后，任何未出席海牙国



际私法会议第十届会议的国家均可加入本公约。加入书应交存荷兰外交部。

如该加入书交存前已批准本公约的国家在荷兰外交部将这一加入行为通知该国之日后 6 个月期间内并未通知荷兰外交部表示异议，则本公约对该加入国生效。

如未提出任何异议，则本公约自前款所指的最后期间届满后下个月的第 1 天起对该加入国生效。

### **第二十九条**

任何国家均可在签署、批准或加入时声明，本公约应扩展适用于其为之负责国际关系的全部领土，或其中一个或几个部分。这类声明自本公约对有关国家生效之日起发生效力。

在其后任何时候，此类扩展适用事项均应通知荷兰外交部。

本公约自前款所指的通知发出后第 60 天起对扩展适用通知中所提及的领土生效。

### **第三十条**

本公约自依第二十七条第一款规定生效之日起 5 年有效，即使对后来批准或加入本公约的国家亦如此。

如未经通知退出，本公约应每 5 年自动展期 1 次。

任何退出通知均须在 5 年期满的至少 6 个月前通知荷兰外交部。

这类退出通知可仅限于适用本公约的某些领土。

此项退出通知只对通知退出的国家有效。本公约对其它缔约国应继续有效。

### **第三十一条**

荷兰外交部应将下述事项通知第二十六条所指的国家以及已依第二十八条加入本公约的国家：

- (一) 第二十六条所指的签署和批准；
- (二) 本公约依第二十七条第一款生效的日期；
- (三) 第二十八条所指的加入及其生效日期；

- (四) 第二十九条所指的扩展适用及其生效日期；
- (五) 第二十一条所指的指定、异议和声明；
- (六) 第三十条第三款所指的退出通知。

下列签署人经正式授权，签署本公约，以昭信守。

1965 年 11 月 15 日订于海牙，用英文和法文写成，两种文本同一作准。正本 1 份，存于荷兰政府档案库。经证明无误的副本应通过外交途径送交出席海牙国际私法会议第 10 届会议的各国。

附件：

(表 格)

向国外送达司法文书或司法外文书的

## 请 求 书

关于向国外送达民事或商事司法文书和司法外文书公约

1965 年 11 月 15 日订于海牙

申请者身份及地址

接收机关的地址

签署本请求书的申请者荣幸地转去下面开列的文书一式两份，  
并依上述公约第五条规定请求迅速将其中一份送达给收件人，即：

(身份和地址)：\_\_\_\_\_

1. 请依公约第五条第一款第（一）项的规定进行送达。 \*
2. 请依下述特定方法送达（第五条第一款第（二）项） \*

3. 如收件人自愿接受，请予以交付（第五条第二款）。 \*

请贵机关将该文书（及其附件 \*）的副本连同背后所附的证明



书一并退还或使之退还给申请者。

文件清单：

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制于\_\_\_\_\_（日期）\_\_\_\_\_（地点）

签名和（或）盖章

\* 如不适用，则请删去

(请求书背面)

## 证 明 书

根据公约第六条，签署本证明书的机关荣幸地证明：

1. 文书已予送达

\_\_日期：\_\_

\_\_地点（城镇、街、号）：\_\_

\_\_采用的第五条所规定的送达方法为：

(1) 依公约第五条第一款第（一）项的规定。\*

(2) 依下述特定方法 \* \_\_

(3) 交付给自愿接受的收件人。\*

请求书中所列文书已交付给：

\_\_（收件人身份和说明）：\_\_

\_\_与受送达人的关系（家庭、业务及其它）：\_\_

2. 由于下列事实文书未能送达 \* \_\_

---

按照公约第十二条第二款，请申请者支付或补偿后附说明中开列的费用。

附：

退还的文书：\_\_

---

适当时，确认送达的文书：\_\_

制于\_\_（日期）\_\_地点

签名和（或）盖章

\* 如不适用，则请删去

## 被送达文书概要

关于向国外送达民事或商事司法文书和司法外文书公约

1965 年 11 月 15 日订于海牙

(第五条第四款)

请求机关的名称和地址：\_\_\_\_\_

当事人详情 \*：\_\_\_\_\_

## 司法文书

文书的性质和目的：\_\_\_\_\_

诉讼的性质和目的，适当时，争讼金额：\_\_\_\_\_

出庭的日期和地点：\* \* \_\_\_\_\_

作出判决的法院：\* \* \_\_\_\_\_

判决日期：\* \* \_\_\_\_\_

文书中所指明的期限：\* \* \_\_\_\_\_

## 司法外文书

文书的性质和目的：\_\_\_\_\_

文书中所指明的期限：\_\_\_\_\_

\* 适当时，应填写与递送文书有利害关系的人的身份和地址。

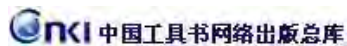
\* \* 如不适用，则请删去



# EXHIBIT 11

09/08/2022, 13:05

邮寄 - 当代汉语词典 - 中国工具书网络出版总库



当代汉语词典 > J > jì > 寄 > 邮寄

## 邮寄

通过邮局寄递：～包裹。 13 字

知识来源：莫衡等 主编,当代汉语词典,上海：上海辞书出版社,2001.

# EXHIBIT 12



## 中华人民共和国宪法

### Constitution of the People's Republic of China

颁布机关: 全国人民代表大会  
Promulgating Institution: National People's Congress

文 号: 全国人民代表大会公告第一号  
Document Number: Announcement No. 1 of the National People's Congress of the People's Republic of China

颁布时间: 03/11/2018  
Promulgating Date: 03/11/2018  
实施时间: 03/11/2018  
Effective Date: 03/11/2018  
效力状态: 有效  
Validity Status: Valid

中华人民共和国全国人民代表大会公告  
第一号

中华人民共和国宪法修正案已由中华人民共和国第十三届全国人民代表大会第一次会议于2018年3月11日通过，现予公布施行。

中华人民共和国第十三届全国人民代表大会第一次会议主席团  
2018年3月11日于北京

**Announcement No. 1 of the National People's Congress of the People's Republic of China**  
The Amendment to the Constitution of the People's Republic of China, which was adopted at the First Session of the 13th National People's Congress of the People's Republic of China on March 11, 2018, is hereby promulgated.

Presidium of the First Session of the 13th National People's Congress of the People's Republic of China  
March 11, 2018 in Beijing

中华人民共和国宪法

### Constitution of the People's Republic of China

(1982年12月4日第五届全国人民代表大会第五次会议通过1982年12月4日全国人民代表大会公告公布施行 根据1988年4月12日第七届全国人民代表大会第一次会议通过的《中华人民共和国宪法修正案》、1993年3月29日第八届全国人民代表大会第一次会议通过的《中华人民共和国宪法修正案》、1999年3月15日第九届全国人民代表大会第二次会议通过的《中华人民共和国宪法修正案》、2004年3月14日第十届全国人民代表大会第二次会议通过的《中华人民共和国宪法修正案》和2018年3月11日第十三届全国人民代表大会第一次会议通过的《中华人民共和国宪法修正案》修正)

(Adopted at the Fifth Session of the Fifth National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on December 4, 1982. Amended in accordance with the Amendments to the Constitution of the People's Republic of China adopted respectively at the First Session of the Seventh National People's Congress on April 12, 1988, the First Session of the Eighth National People's Congress on March 29, 1993, the Second Session of the Ninth National People's Congress on March 15, 1999, the Second Session of the Tenth National People's



Congress on March 14, 2004 and the First Session of the 13th National People's Congress on March 11, 2018 )

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第三节 国务院

第四节 中央军事委员会

第五节 地方各级人民代表大会和地方各级人民政府

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序言

中国是世界上历史最悠久的国家之一。中国各族人民共同创造了光辉灿烂的文化，具有光荣的革命传统。

一八四〇年以后，封建的中国逐渐变成半殖民地、半封建的国家。中国人民为国家独立、民族解放和民主自由进行了前仆后继的英勇奋斗。

二十世纪，中国发生了翻天覆地的伟大历史变革。

一九一一年孙中山先生领导的辛亥革命，废除了封建帝制，创立了中华民国。但是，中国人民反对帝国主义和封建主义的历史任务还没有完成。

一九四九年，以毛泽东主席为领袖的中国共产党领导中国各族人民，在经历了长期的艰难曲折的武装斗争和其他形式的斗争以后，终于推翻了帝国主义、封建主义和官僚资本主义的统治，取得了新民主主义革命的伟大胜利，建立了中华人民共和国。从此，中国人民掌握了国家的权力，成为国家的主人。

中华人民共和国成立以后，我国社会逐步实现了由新民主主义到社会主义的过渡。生产资料私有制的社会主义改造已经完成，人剥削人的制度已经消灭，社会主义制度已经确立。工人阶级领导的、以工农联盟为基础的人民民主专政，实质上即无产阶级专政，得到巩固和发展。中国人民和中国人民解放军战胜了帝国主义、霸权主义的侵略、破坏和武装挑衅，维护了国家的独立和安全，增强了国防。经济建设取得了重大的成就，独立的、比较完整的社会主义工业体系已经基本形成，农业生产显著提高。教育、科学、文化等事业有了很大的发展，社会主义思想教育取得了明显的成效。广大人民的生活有了较大的改善。

中国新民主主义革命的胜利和社会主义事业的成就，是中国共产党领导中国各族人民，在马克思列宁主义、毛泽东思想的指引下，坚持真理，修正错误，战胜许多艰难险阻而取得的。我国将长期处于社会主义初级阶段。国家的根本任务是，沿着中国特色社会主义道路，集中力量进行社会主义现代化建设。中国各族人民将继续在中国共产党领导下，在马克思列宁主义、毛泽东思想、邓小平理论、“三个代表”重要思想、科学发展观、习近平新时代中国特色社会主义思想指引下，坚持人民民主专政，坚持社会主义道路，坚持改革开放，不断完善社会主义的各项制度，发展社会主义市场经济，发展社会主义民主，健全社会主义法治，贯彻新发展理念，自力更生，艰苦奋斗，逐步实现工业、农业、国防和科学技术的现代化，推动物质文明、政治文明、精神文明、社会文明、生态文明协调发展，把我国建设成为富强民主文明和谐美丽的社会主义现代化强国，实现中华民族伟大复兴。

在我国，剥削阶级作为阶级已经消灭，但是阶级斗争还将在一定范围内长期存在。中国人民对敌视和破坏我国社会主义制度的国内外的敌对势力和敌对分子，必须进行斗争。

台湾是中华人民共和国的神圣领土的一部分。完成统一祖国的大业是包括台湾同胞在内的全中国人民的神圣职责。

社会主义的建设事业必须依靠工人、农民和知识分子，团结一切可以团结的力量。在长期的革命、建设、改革过程中，已经结成由中国共产党领导的，有各民主党派和各人民团体参加的，包括全体社会主义劳动者、社会主义事业的建设者、拥护社会主义的爱国者、拥护祖国统一和致力于中华民族伟大复兴的爱国者的广泛的爱国统一战线，这个统一战线将继续巩固和发展。中国人民政治协商会议是有广泛代表性的统一战线组织，过去发挥了重要的历史作用，今后在国家政治生活、社会生活和对外友好活动中，在进行社会主义现代化建设、维护国家的统一和团结的斗争中，将进一步发挥它的重要作用。中国共产党领导的多党合作和政治协商制度将长期存在和发展。

中华人民共和国是全国各族人民共同缔造的统一的多民族国家。平等团结互助和谐的社会主义民族关系已经确立，并将继续加强。在维护民族团结的斗争中，要反对大民族主义，主要是大汉族主义，也要反对地方民族主义。国家尽一切努力，促进全国各民族的共同繁荣。

中国革命、建设、改革的成就是同世界人民的支持分不开的。中国的前途是同世界的前途紧密地联系在一起的。中国坚持独立自主的对外政策，坚持互相尊重主权和领土完整、互不侵犯、互不干涉内政、平等互利、和平共处的五项原则，坚持和平发展道路，坚持互利共赢开放战略，发展同各国的外交关系和经济、文化交流，推动构建人类命运共同体；坚持反对帝国主义、霸权主义、殖民主义，加强同世界各国人民的团结，支持被压迫民族和发展中国家争取和维护民族独立、发展民族经济的正义斗争，为维护世界和平和促进人类进步事业而努力。

本宪法以法律的形式确认了中国各族人民奋斗的成果，规定了国家的根本制度和根本任务，是国家的根本法，具有最高的法律效力。全国各族人民、一切国家机关和武装力量、各政党和各社会团体、各企业事业组织，都必须以宪法为根本的活动准则，并且负有维护宪法尊严、保证宪法实施的职责。

### Preamble

China is a country with one of the longest histories in the world. The people of all of China's nationalities have jointly created a culture of grandeur and have a glorious revolutionary tradition.

After 1840, feudal China was gradually turned into a semi-colonial and semi-feudal country. The Chinese people waged many successive heroic struggles for national independence and liberation and for democracy and freedom.

Great and earthshaking historical changes have taken place in China in the 20th century.



The Revolution of 1911, led by Dr. Sun Yat-sen, abolished the feudal monarchy and gave birth to the Republic of China. But the historic mission of the Chinese people to overthrow imperialism and feudalism remained unaccomplished.

After waging protracted and arduous struggles, armed and otherwise, along a zigzag course, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucrat-capitalism, won a great victory in the New-Democratic Revolution and founded the People's Republic of China. Since then the Chinese people have taken control of state power and become masters of the country.

After the founding of the People's Republic, China gradually achieved its transition from a New-Democratic to a socialist society. The socialist transformation of the private ownership of the means of production has been completed, the system of exploitation of man by man abolished and the socialist system established. The people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed. The Chinese people and the Chinese People's Liberation Army have defeated imperialist and hegemonist aggression, sabotage and armed provocations and have thereby safeguarded China's national independence and security and strengthened its national defence. Major successes have been achieved in economic development. An independent and relatively comprehensive socialist system of industry has basically been established. There has been a marked increase in agricultural production. Significant advances have been made in educational, scientific and cultural undertakings, while education in socialist ideology has produced noteworthy results. The life of the people has improved considerably.

The victory of China's New-Democratic Revolution and the successes in its socialist cause have been achieved by Chinese people of all ethnicities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought by upholding truth, correcting errors and surmounting numerous difficulties and hardships. China will remain in the primary stage of socialism for a long time to come. The fundamental task of the nation is to concentrate efforts on socialist modernization along the path of socialism with Chinese characteristics. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important ideology of 'Three Represents', Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics in a New Era, Chinese people of all ethnicities will continue to adhere to the people's democratic dictatorship and the socialist path, persevere in reform and opening up to the outside world, continuously improve various socialist institutions, develop the socialist market economy, develop socialist democracy, improve socialist rule of law, thoroughly practice new ideas of development, and work hard and self-reliantly to modernize the country's industry, agriculture, national defense and science and technology step by step and promote the coordinated development of material, political, spiritual, social and ecological civilization to build China into a prosperous, democratic, civilized, harmonious and beautiful modern socialist power, and realize the great rejuvenation of the Chinese nation.

The exploiting classes as such have been abolished in our country. However, class struggle will continue to exist within certain bounds for a long time to come. The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.

Taiwan is part of the sacred territory of the People's Republic of China. It is the inviolable duty of all Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland.

In building socialism, it is imperative to rely on workers, peasants and intellectuals and to unite all forces that can be united. During the long-term course of revolution, construction and reform, there has formed, under the leadership of the Communist Party of China, a broad patriotic united front which is composed of all democratic parties and people's organizations and which embraces all socialist working people, all builders of the socialist cause, all patriots who support socialism and all patriots who stand for the reunification of the motherland and are committed to the great rejuvenation of the Chinese nation. This united front will continue to be consolidated and developed. The Chinese People's Political Consultative Conference, a united front organization of broad-based representation, has played a significant historical role in the past, and will play an even more important role in the future in the country's political and social life, in promoting friendship with other countries and in the struggle for socialist modernization and the reunification and unity of the country. The system of multi-party cooperation and political consultation led by the Communist Party of China will exist and develop for a long time to come.

The People's Republic of China is a unitary multi-national State created jointly by the people of all its nationalities. Socialist relations of equality, unity, mutual assistance and harmony have been established among the nationalities and will continue to be strengthened. In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and to combat local national chauvinism. The State will do its utmost to promote the common prosperity of all the nationalities.

The achievements made by China during revolution, construction and reform are inseparable from the support of the people of the world. China's future is closely linked to the future of the world. China upholds an independent foreign policy, adheres to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence, sticks to the path of peaceful development, and upholds the strategies of mutual benefit, win-win and opening up in developing diplomatic relations and economic and cultural exchanges with other countries, and promoting the establishment of a community with a shared future for humanity; China consistently opposes imperialism, hegemonism and colonialism, works to strengthen solidarity with the people of other countries, supports the oppressed nations and developing countries in their just struggle to win and preserve national independence and develop national economies, and strives to safeguard global peace and promote the cause of human progress.

This Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the State; it is the fundamental law of the State and has supreme legal authority. The people of all nationalities, all State organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.

## 第一章 总纲

### Chapter I General Principles

**第一条** 中华人民共和国是工人阶级领导的、以工农联盟为基础的人民民主专政的社会主义国家。社会主义制度是中华人民共和国的根本制度。中国共产党领导是中国特色社会主义最本质的特征。禁止任何组织或者个人破坏社会主义制度。

**Article 1** The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.

The socialist system is the basic system of the People's Republic of China. The leadership of the Communist Party of China is the most essential feature of socialism with Chinese characteristics. Disruption of the socialist system by any organization or individual is prohibited.

**第二条** 中华人民共和国的一切权力属于人民。

人民行使国家权力的机关是全国人民代表大会和地方各级人民代表大会。

人民依照法律规定,通过各种途径和形式,管理国家事务,管理经济和文化事业,管理社会事务。

**Article 2** All power in the People's Republic of China belongs to the people.

The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.

The people administer State affairs and manage economic and cultural undertakings and social affairs through various channels and in various ways in accordance with the provisions of law.

**第三条** 中华人民共和国的国家机构实行民主集中制的原则。

全国人民代表大会和地方各级人民代表大会都由民主选举产生,对人民负责,受人民监督。

国家行政机关、监察机关、审判机关、检察机关都由人民代表大会产生,对它负责,受它监督。

中央和地方的国家机构职权的划分,遵循在中央的统一领导下,充分发挥地方的主动性、积极性的原则。

**Article 3** The State organs of the People's Republic of China apply the principle of democratic centralism.

The National People's Congress and the local people's congresses at various levels are constituted through democratic elections. They are responsible to the people and subject to their supervision.

All administrative, supervisory, judicial and procuratorial organs of the State are created by the people's congresses to which they are responsible and by which they are supervised.

The division of functions and powers between the central and local State organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

**第四条** 中华人民共和国各民族一律平等。国家保障各少数民族的合法的权利和利益,维护和发展各民族的平等团结互助和谐关系。禁止对任何民族的歧视和压迫,禁止破坏民族团结和制造民族分裂的行为。

国家根据各少数民族的特点和需要,帮助各少数民族地区加速经济和文化的发展。

各少数民族聚居的地方实行区域自治,设立自治机关,行使自治权。各民族自治地方都是中华人民共和国不可分离的部分。

各民族都有使用和发展自己的语言文字的自由,都有保持或者改革自己的风俗习惯的自由。

**Article 4** All nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity, mutual assistance and harmony among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited.

The State assists areas inhabited by minority nationalities in accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities.

Regional autonomy is practised in areas where people of minority nationalities live in concentrated communities; in these areas organs of self-government are established to exercise the power of autonomy. All national autonomous areas are integral parts of the People's Republic of China.



All nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs.

**第五条** 中华人民共和国实行依法治国,建设社会主义法治国家。

国家维护社会主义法制的统一和尊严。

一切法律、行政法规和地方性法规都不得同宪法相抵触。

一切国家机关和武装力量、各政党和各社会团体、各企业事业组织都必须遵守宪法和法律。一切违反宪法和法律的行为,必须予以追究。

任何组织或者个人都不得有超越宪法和法律的特权。

**Article 5** The People's Republic of China governs the country according to law and makes it a socialist country under rule of law.

The State upholds the uniformity and dignity of the socialist legal system.

No laws or administrative or local regulations may contravene the Constitution.

All State organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and other laws. All acts in violation of the Constitution or other laws must be investigated.

No organization or individual is privileged to be beyond the Constitution or other laws.

**第六条** 中华人民共和国的社会主义经济制度的基础是生产资料的社会主义公有制,即全民所有制和劳动群众集体所有制。社会主义公有制消灭人剥削人的制度,实行各尽所能、按劳分配的原则。

国家在社会主义初级阶段,坚持公有制为主体、多种所有制经济共同发展的基本经济制度,坚持按劳分配为主体、多种分配方式并存的分配制度。

**Article 6** The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of "from each according to his ability, to each according to his work".

In the primary stage of socialism, the State upholds the basic economic system in which the public ownership is dominant and diverse forms of ownership develop side by side and keeps to the distribution system in which distribution according to work is dominant and diverse modes of distribution coexist.

**第七条** 国有经济,即社会主义全民所有制经济,是国民经济中的主导力量。国家保障国有经济的巩固和发展。

**Article 7** The State-owned economy, namely, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned economy.

**第八条** 农村集体经济组织实行家庭承包经营为基础、统分结合的双层经营体制。农村中的生产、供销、信用、消费等各种形式的合作经济,是社会主义劳动群众集体所有制经济。参加农村集体经济组织的劳动者,有权在法律规定的范围内经营自留地、自留山、家庭副业和饲养自留畜。

城镇中的手工业、工业、建筑业、运输业、商业、服务业等行业的各种形式的合作经济,都是社会主义劳动群众集体所有制经济。

国家保护城乡集体经济组织的合法的权利和利益,鼓励、指导和帮助集体经济的发展。

**Article 8** The rural collective economic organizations apply the dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of operation by households under a contract. In rural areas, all forms of cooperative economy, such as producers', supply

and marketing, credit and consumers' cooperatives, belong to the sector of socialist economy under collective ownership by the working people. Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for their private use, engage in household sideline production and raise privately owned livestock.

The various forms of cooperative economy in cities and towns, such as those in the handicraft, industrial, building, transport, commercial and service trades, all belong to the sector of socialist economy under collective ownership by the working people.

The State protects the lawful rights and interests of the urban and rural economic collectives and encourages, guides and helps the growth of the collective economy.

**第九条** 矿藏、水流、森林、山岭、草原、荒地、滩涂等自然资源,都属于国家所有,即全民所有;由法律规定属于集体所有的森林和山岭、草原、荒地、滩涂除外。

国家保障自然资源的合理利用,保护珍贵的动物和植物。禁止任何组织或者个人用任何手段侵占或者破坏自然资源。

**Article 9** All mineral resources, waters, forests, mountains, grasslands, unreclaimed land, beaches and other natural resources are owned by the State, that is, by the whole people, with the exception of the forests, mountains, grasslands, unreclaimed land and beaches that are owned by collectives as prescribed by law.

The State ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging of natural resources by any organization or individual by whatever means is prohibited.

**第十条** 城市的土地属于国家所有。

农村和城市郊区的土地,除由法律规定属于国家所有的以外,属于集体所有;宅基地和自留地、自留山,也属于集体所有。

国家为了公共利益的需要,可以依照法律规定对土地实行征收或者征用并给予补偿。

任何组织或者个人不得侵占、买卖或者以其他形式非法转让土地。土地的使用权可以依照法律的规定转让。

一切使用土地的组织和个人必须合理地利用土地。

**Article 10** Land in the cities is owned by the State.

Land in the rural and suburban areas is owned by collectives except for those portions which belong to the State as prescribed by law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives.

The State may, in the public interest and in accordance with law, expropriate or requisition land for its use and make compensation for the land expropriated or requisitioned.

No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.

All organizations and individuals using land must ensure its rational use.

**第十一条** 在法律规定范围内的个体经济、私营经济等非公有制经济,是社会主义市场经济的重要组成部分。

国家保护个体经济、私营经济等非公有制经济的合法的权利和利益。国家鼓励、支持和引导非公有制经济的发展,并对非公有制经济依法实行监督和管理。

**Article 11** The non-public sectors of the economy such as the individual and private sectors of the

economy, operating within the limits prescribed by law, constitute an important component of the socialist market economy.

The State protects the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors of the economy. The State encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with law, exercises supervision and control over the non-public sectors of the economy.

**第十二条** 社会主义的公共财产神圣不可侵犯。

国家保护社会主义的公共财产。禁止任何组织或者个人用任何手段侵占或者破坏国家的和集体的财产。

**Article 12** Socialist public property is inviolable.

The State protects socialist public property. Appropriation or damaging of State or collective property by any organization or individual by whatever means is prohibited.

**第十三条** 公民的合法的私有财产不受侵犯。

国家依照法律规定保护公民的私有财产权和继承权。

国家为了公共利益的需要,可以依照法律规定对公民的私有财产实行征收或者征用并给予补偿。

**Article 13** Citizens' lawful private property is inviolable.

The State, in accordance with law, protects the rights of citizens to private property and to its inheritance.

The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and make compensation for the private property expropriated or requisitioned.

**第十四条** 国家通过提高劳动者的积极性和技术水平,推广先进的科学技术,完善经济管理体制和企业经营管理制度,实行各种形式的社会主义责任制,改进劳动组织,以不断提高劳动生产率和经济效益,发展社会生产力。

国家厉行节约,反对浪费。

国家合理安排积累和消费,兼顾国家、集体和个人的利益,在发展生产的基础上,逐步改善人民的物质生活和文化生活。

国家建立健全同经济发展水平相适应的社会保障制度。

**Article 14** The State continuously raises labour productivity, improves economic results and develops the productive forces by enhancing the enthusiasm of the working people, raising the level of their technical skill, disseminating advanced science and technology, improving the systems of economic administration and enterprise operation and management, instituting the socialist system of responsibility in various forms and improving the organization of work.

The State practises strict economy and combats waste.

The State properly apportions accumulation and consumption, concerns itself with the interests of the collective and the individual as well as of the State and, on the basis of expanded production, gradually improves the material and cultural life of the people.

The State establishes a sound social security system compatible with the level of economic development.

**第十五条** 国家实行社会主义市场经济。

国家加强经济立法,完善宏观调控。

国家依法禁止任何组织或者个人扰乱社会经济秩序。



**Article 15** The State practises socialist market economy.

The State strengthens economic legislation, improves macro-regulation and control.

The State prohibits in accordance with law any organization or individual from disturbing the socio-economic order.

**第十六条** 国有企业在法律规定的范围内有权自主经营。

国有企业依照法律规定,通过职工代表大会和其他形式,实行民主管理。

**Article 16** State-owned enterprises have decision-making power with regard to their operation within the limits prescribed by law.

State-owned enterprises practise democratic management through congresses of workers and staff and in other ways in accordance with law.

**第十七条** 集体经济组织在遵守有关法律的前提下,有独立进行经济活动的自主权。

集体经济组织实行民主管理,依照法律规定选举和罢免管理人员,决定经营管理的重大问题。

**Article 17** Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they abide by the relevant laws.

Collective economic organizations practise democratic management and, in accordance with law, elect or remove their managerial personnel and decide on major issues concerning operation and management.

**第十八条** 中华人民共和国允许外国的企业和其他经济组织或者个人依照中华人民共和国法律的规定在中国投资,同中国的企业或者其他经济组织进行各种形式的经济合作。

在中国境内的外国企业和其他外国经济组织以及中外合资经营的企业,都必须遵守中华人民共和国的法律。它们的合法的权利和利益受中华人民共和国法律的保护。

**Article 18** The People's Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic cooperation with Chinese enterprises and other Chinese economic organizations in accordance with the provisions of the laws of the People's Republic of China.

All foreign enterprises, other foreign economic organizations as well as Chinese-foreign joint ventures within Chinese territory shall abide by the laws of the People's Republic of China. Their lawful rights and interests are protected by the laws of the People's Republic of China.

**第十九条** 国家发展社会主义的教育事业,提高全国人民的科学文化水平。

国家举办各种学校,普及初等义务教育,发展中等教育、职业教育和高等教育,并且发展学前教育。

国家发展各种教育设施,扫除文盲,对工人、农民、国家工作人员和其他劳动者进行政治、文化、科学、技术、业务的教育,鼓励自学成才。

国家鼓励集体经济组织、国家企业事业组织和其他社会力量依照法律规定举办各种教育事业。

国家推广全国通用的普通话。

**Article 19** The State undertakes the development of socialist education and works to raise the scientific and cultural level of the whole nation.

The State establishes and administers schools of various types, universalizes compulsory primary education and promotes secondary, vocational and higher education as well as pre-school education.

The State develops educational facilities in order to eliminate illiteracy and provide political, scientific, technical and professional education for workers, peasants, State functionaries and other working people. It encourages people to become educated through independent study.

The State encourages the collective economic organizations, State enterprises and institutions and other

sectors of society to establish educational institutions of various types in accordance with law.

The State promotes the nationwide use of Putonghua [common speech based on Beijing pronunciation--Tr.].

**第二十条** 国家发展自然科学和社会科学事业,普及科学和技术知识,奖励科学研究成果和技术发明创造。

**Article 20** The State promotes the development of the natural and social sciences, disseminates knowledge of science and technology, and commends and rewards achievements in scientific research as well as technological innovations and inventions.

**第二十一条** 国家发展医疗卫生事业,发展现代医药和我国传统医药,鼓励和支持农村集体经济组织、国家企业事业组织和街道组织举办各种医疗卫生设施,开展群众性的卫生活动,保护人民健康。

国家发展体育事业,开展群众性的体育活动,增强人民体质。

**Article 21** The State develops medical and health services, promotes modern medicine and traditional Chinese medicine, encourages and supports the setting up of various medical and health facilities by the rural economic collectives, State enterprises and institutions and neighbourhood organizations, and promotes health and sanitation activities of a mass character, all for the protection of the people's health.

The State develops physical culture and promotes mass sports activities to improve the people's physical fitness.

**第二十二条** 国家发展为人民服务、为社会主义服务的文学艺术事业、新闻广播电视事业、出版发行事业、图书馆博物馆文化馆和其他文化事业,开展群众性的文化活动。

国家保护名胜古迹、珍贵文物和其他重要历史文化遗产。

**Article 22** The State promotes the development of art and literature, the press, radio and television broadcasting, publishing and distribution services, libraries, museums, cultural centres and other cultural undertakings that serve the people and socialism, and it sponsors mass cultural activities.

The State protects sites of scenic and historical interest, valuable cultural monuments and relics and other significant items of China's historical and cultural heritage.

**第二十三条** 国家培养为社会主义服务的各种专业人才,扩大知识分子的队伍,创造条件,充分发挥他们在社会主义现代化建设中的作用。

**Article 23** The State trains specialized personnel in all fields who serve socialism, expands the ranks of intellectuals and creates conditions to give full scope to their role in socialist modernization.

**第二十四条** 国家通过普及理想教育、道德教育、文化教育、纪律和法制教育,通过在城乡不同范围的群众中制定和执行各种守则、公约,加强社会主义精神文明的建设。

国家倡导社会主义核心价值观,提倡爱祖国、爱人民、爱劳动、爱科学、爱社会主义的公德,在人民中进行爱国主义、集体主义和国际主义、共产主义的教育,进行辩证唯物主义和历史唯物主义的教育,反对资本主义的、封建主义的和其他的腐朽思想。

**Article 24** The State promotes socialist core values, advocates the civic virtues of love of the motherland, of the people, of labor, of science and of socialism, and conducts education of patriotism, collectivism, internationalism and communism and education of dialectical and historical materialism among the people, to combat capitalist, feudal and other decadent ideas.

The State advocates the civic virtues of love of the motherland, of the people, of labour, of science and of socialism. It conducts education among the people in patriotism and collectivism, in internationalism

and communism and in dialectical and historical materialism, to combat capitalist, feudal and other decadent ideas.

**第二十五条** 国家推行计划生育,使人口的增长同经济和社会发展计划相适应。

**Article 25** The State promotes family planning so that population growth may fit the plans for economic and social development.

**第二十六条** 国家保护和改善生活环境和生态环境,防治污染和其他公害。  
国家组织和鼓励植树造林,保护林木。

**Article 26** The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards.

The State organizes and encourages afforestation and the protection of forests.

**第二十七条** 一切国家机关实行精简的原则,实行工作责任制,实行工作人员的培训和考核制度,不断提高工作质量和工作效率,反对官僚主义。

一切国家机关和国家工作人员必须依靠人民的支持,经常保持同人民的密切联系,倾听人民的意见和建议,接受人民的监督,努力为人民服务。

国家工作人员就职时应当依照法律规定公开进行宪法宣誓。

**Article 27** All State organs carry out the principle of simple and efficient administration, the system of responsibility for work and the system of training functionaries and appraising their performance in order constantly to improve the quality of work and efficiency and combat bureaucracy.

All State organs and functionaries must rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision and do their best to serve them.

When taking office, a State functionary shall publicly take constitutional oath in accordance with the law.

**第二十八条** 国家维护社会秩序,镇压叛国和其他危害国家安全的犯罪活动,制裁危害社会治安、破坏社会主义经济和其他犯罪的活动,惩办和改造犯罪分子。

**Article 28** The State maintains public order and suppresses treasonable and other criminal activities that endanger State security; it penalizes criminal activities that endanger public security and disrupt the socialist economy as well as other criminal activities; and it punishes and reforms criminals.

**第二十九条** 中华人民共和国的武装力量属于人民。它的任务是巩固国防,抵抗侵略,保卫祖国,保卫人民的和平劳动,参加国家建设事业,努力为人民服务。

国家加强武装力量的革命化、现代化、正规化的建设,增强国防力量。

**Article 29** The armed forces of the People's Republic of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction and do their best to serve the people.

The State strengthens the revolutionization, modernization and regularization of the armed forces in order to increase national defence capability.

**第三十条** 中华人民共和国的行政区划划分如下:

(一)全国分为省、自治区、直辖市;

(二)省、自治区分为自治州、县、自治县、市;

(三)县、自治县分为乡、民族乡、镇。

直辖市和较大的市分为区、县。自治州分为县、自治县、市。

自治区、自治州、自治县都是民族自治地方。



**Article 30** The administrative division of the People's Republic of China is as follows:

(1) The country is divided into provinces, autonomous regions, and municipalities directly under the Central Government;

(2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities; and

(3) Counties and autonomous counties are divided into townships, nationality townships, and towns.

Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities.

All autonomous regions, autonomous prefectures and autonomous counties are national autonomous areas.

**第三十一条** 国家在必要时得设立特别行政区。在特别行政区内实行的制度按照具体情况由全国人民代表大会以法律规定。

**Article 31** The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of specific conditions.

**第三十二条** 中华人民共和国保护在中国境内的外国人的合法权利和利益，在中国境内的外国人必须遵守中华人民共和国的法律。

中华人民共和国对于因为政治原因要求避难的外国人，可以给予受庇护的权利。

**Article 32** The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory; foreigners on Chinese territory must abide by the laws of the People's Republic of China.

The People's Republic of China may grant asylum to foreigners who request it for political reasons.

## 第二章 公民的基本权利和义务

### Chapter II The Fundamental Rights and Duties of Citizens

**第三十三条** 凡具有中华人民共和国国籍的人都是中华人民共和国公民。

中华人民共和国公民在法律面前一律平等。

国家尊重和保障人权。

任何公民享有宪法和法律规定的权利,同时必须履行宪法和法律规定的义务。

**Article 33** All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

All citizens of the People's Republic of China are equal before the law.

The State respects and preserves human rights.

Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and other laws.

**第三十四条** 中华人民共和国年满十八周岁的公民,不分民族、种族、性别、职业、家庭出身、宗教信仰、教育程度、财产状况、居住期限,都有选举权和被选举权;但是依照法律被剥夺政治权利的人除外。

**Article 34** All citizens of the People's Republic of China who have reached the age of 18 have the

right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence, except persons deprived of political rights according to law.

**第三十五条** 中华人民共和国公民有言论、出版、集会、结社、游行、示威的自由。

**Article 35** Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

**第三十六条** 中华人民共和国公民有宗教信仰自由。

任何国家机关、社会团体和个人不得强制公民信仰宗教或者不信仰宗教,不得歧视信仰宗教的公民和不信仰宗教的公民。

国家保护正常的宗教活动。任何人不得利用宗教进行破坏社会秩序、损害公民身体健康、妨碍国家教育制度的活动。

宗教团体和宗教事务不受外国势力的支配。

**Article 36** Citizens of the People's Republic of China enjoy freedom of religious belief.

No State organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State.

Religious bodies and religious affairs are not subject to any foreign domination.

**第三十七条** 中华人民共和国公民的人身自由不受侵犯。

任何公民,非经人民检察院批准或者决定或者人民法院决定,并由公安机关执行,不受逮捕。

禁止非法拘禁和以其他方法非法剥夺或者限制公民的人身自由,禁止非法搜查公民的身体。

**Article 37** Freedom of the person of citizens of the People's Republic of China is inviolable.

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

Unlawful detention or deprivation or restriction of citizens' freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited.

**第三十八条** 中华人民共和国公民的人格尊严不受侵犯。禁止用任何方法对公民进行侮辱、诽谤和诬告陷害。

**Article 38** The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited.

**第三十九条** 中华人民共和国公民的住宅不受侵犯。禁止非法搜查或者非法侵入公民的住宅。

**Article 39** The residences of citizens of the People's Republic of China are inviolable. Unlawful search of, or intrusion into, a citizen's residence is prohibited.

**第四十条** 中华人民共和国公民的通信自由和通信秘密受法律的保护。除因国家安全或者追查刑事犯罪的需要,由公安机关或者检察机关依照法律规定的程序对通信进行检查外,任何组织或者个人不得以任何理由侵犯公民的通信自由和通信秘密。

**Article 40** Freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon citizens' freedom and

privacy of correspondence, except in cases where, to meet the needs of State security or of criminal investigation, public security or procuratorial organs are permitted to censor correspondence in accordance with the procedures prescribed by law.

**第四十一条** 中华人民共和国公民对于任何国家机关和国家工作人员,有提出批评和建议的权利;对于任何国家机关和国家工作人员的违法失职行为,有向有关国家机关提出申诉、控告或者检举的权利,但是不得捏造或者歪曲事实进行诬告陷害。

对于公民的申诉、控告或者检举,有关国家机关必须查清事实,负责处理。任何人不得压制和打击报复。

由于国家机关和国家工作人员侵犯公民权利而受到损失的人,有依照法律规定取得赔偿的权利。

**Article 41** Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any State organ or functionary. Citizens have the right to make to relevant State organs complaints or charges against, or exposures of, any State organ or functionary for violation of law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited.

The State organ concerned must, in a responsible manner and by ascertaining the facts, deal with the complaints, charges or exposures made by citizens. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them.

Citizens who have suffered losses as a result of infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the provisions of law.

**第四十二条** 中华人民共和国公民有劳动的权利和义务。

国家通过各种途径,创造劳动就业条件,加强劳动保护,改善劳动条件,并在发展生产的基础上,提高劳动报酬和福利待遇。

劳动是一切有劳动能力的公民的光荣职责。国有企业和城乡集体经济组织的劳动者都应当以国家主人翁的态度对待自己的劳动。国家提倡社会主义劳动竞赛,奖励劳动模范和先进工作者。国家提倡公民从事义务劳动。

国家对就业前的公民进行必要的劳动就业训练。

**Article 42** Citizens of the People's Republic of China have the right as well as the duty to work.

Through various channels, the State creates conditions for employment, enhances occupational safety and health, improves working conditions and, on the basis of expanded production, increases remuneration for work and welfare benefits. Work is a matter of honour for every citizen who is able to work.

All working people in State-owned enterprises and in urban and rural economic collectives should approach their work as the masters of the country that they are. The State promotes socialist labour emulation, and commends and rewards model and advanced workers. The State encourages citizens to take part in voluntary labour.

The State provides necessary vocational training for citizens before they are employed.

**第四十三条** 中华人民共和国劳动者有休息的权利。

国家发展劳动者休息和休养的设施,规定职工的工作时间和休假制度。

**Article 43** Working people in the People's Republic of China have the right to rest.

The State expands facilities for the rest and recuperation of the working people and prescribes working hours and vacations for workers and staff.

**第四十四条** 国家依照法律规定实行企业事业组织的职工和国家机关工作人员的退休制度。退休人



员的生活受到国家和社会的保障。

**Article 44** The State applies the system of retirement for workers and staff members of enterprises and institutions and for functionaries of organs of State according to law. The livelihood of retired persons is ensured by the State and society.

**第四十五条** 中华人民共和国公民在年老、疾病或者丧失劳动能力的情况下,有从国家和社会获得物质帮助的权利。国家发展为公民享受这些权利所需要的社会保险、社会救济和医疗卫生事业。

国家和社会保障残废军人的生活,抚恤烈士家属,优待军人家属。

国家和社会帮助安排盲、聋、哑和其他有残疾的公民的劳动、生活和教育。

**Article 45** Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old, ill or disabled. The State develops social insurance, social relief and medical and health services that are required for citizens to enjoy this right.

The State and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel.

The State and society help make arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens.

**第四十六条** 中华人民共和国公民有受教育的权利和义务。

国家培养青年、少年、儿童在品德、智力、体质等方面全面发展。

**Article 46** Citizens of the People's Republic of China have the duty as well as the right to receive education.

The State promotes the all-round development of children and young people, morally, intellectually and physically.

**第四十七条** 中华人民共和国公民有进行科学研究、文学艺术创作和其他文化活动的自由。国家对于从事教育、科学、技术、文学、艺术和其他文化事业的公民的有益于人民的创造性工作,给以鼓励和帮助。

**Article 47** Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits. The State encourages and assists creative endeavours conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art and other cultural work.

**第四十八条** 中华人民共和国妇女在政治的、经济的、文化的、社会的和家庭的生活等各方面享有同男子平等的权利。

国家保护妇女的权利和利益,实行男女同工同酬,培养和选拔妇女干部。

**Article 48** Women in the People's Republic of China enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life.

The State protects the rights and interests of women, applies the principle of equal pay for equal work to men and women alike and trains and selects cadres from among women.

**第四十九条** 婚姻、家庭、母亲和儿童受国家的保护。

夫妻双方有实行计划生育的义务。

父母有抚养教育未成年子女的义务,成年子女有赡养扶助父母的义务。

禁止破坏婚姻自由,禁止虐待老人、妇女和儿童。

**Article 49** Marriage, the family and mother and child are protected by the State.

Both husband and wife have the duty to practise family planning.

Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents.

Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.

**第五十条** 中华人民共和国保护华侨的正当的权利和利益,保护归侨和侨眷的合法的权利和利益。

**Article 50** The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.

**第五十一条** 中华人民共和国公民在行使自由和权利的时候,不得损害国家的、社会的、集体的利益和其他公民的合法的自由和权利。

**Article 51** Citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the State, of society or of the collective, or upon the lawful freedoms and rights of other citizens.

**第五十二条** 中华人民共和国公民有维护国家统一和全国民族团结的义务。

**Article 52** It is the duty of citizens of the People's Republic of China to safeguard the unification of the country and the unity of all its nationalities.

**第五十三条** 中华人民共和国公民必须遵守宪法和法律,保守国家秘密,爱护公共财产,遵守劳动纪律,遵守公共秩序,尊重社会公德。

**Article 53** Citizens of the People's Republic of China must abide by the Constitution and other laws, keep State secrets, protect public property, observe labour discipline and public order and respect social ethics.

**第五十四条** 中华人民共和国公民有维护祖国的安全、荣誉和利益的义务,不得有危害祖国的安全、荣誉和利益的行为。

**Article 54** It is the duty of citizens of the People's Republic of China to safeguard the security, honour and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.

**第五十五条** 保卫祖国、抵抗侵略是中华人民共和国每一个公民的神圣职责。  
依照法律服兵役和参加民兵组织是中华人民共和国公民的光荣义务。

**Article 55** It is the sacred duty of every citizen of the People's Republic of China to defend the motherland and resist aggression.

It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with law.

**第五十六条** 中华人民共和国公民有依照法律纳税的义务。

**Article 56** It is the duty of citizens of the People's Republic of China to pay taxes in accordance with law.

### 第三章 国家机构

#### 第一节 全国人民代表大会

### Chapter III The Structure of the State

#### Section 1 The National People's Congress

**第五十七条** 中华人民共和国全国人民代表大会是最高国家权力机关。它的常设机关是全国人民代表大会常务委员会。

**Article 57** The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

**第五十八条** 全国人民代表大会和全国人民代表大会常务委员会行使国家立法权。

**Article 58** The National People's Congress and its Standing Committee exercise the legislative power of the State.

**第五十九条** 全国人民代表大会由省、自治区、直辖市、特别行政区和军队选出的代表组成。各少数民族都应当有适当名额的代表。

全国人民代表大会代表的选举由全国人民代表大会常务委员会主持。

全国人民代表大会代表名额和代表产生办法由法律规定。

**Article 59** The National People's Congress is composed of deputies elected from the provinces, autonomous regions, municipalities directly under the Central Government, and special administrative regions, and of deputies elected from the armed forces. All the minority nationalities are entitled to appropriate representation.

Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress.

The number of deputies to the National People's Congress and the procedure of their election are prescribed by law.

**第六十条** 全国人民代表大会每届任期五年。

全国人民代表大会任期届满的两个月以前,全国人民代表大会常务委员会必须完成下届全国人民代表大会代表的选举。如果遇到不能进行选举的非常情况,由全国人民代表大会常务委员会以全体组成人员的三分之二以上的多数通过,可以推迟选举,延长本届全国人民代表大会的任期。在非常情况结束后一年内,必须完成下届全国人民代表大会代表的选举。

**Article 60** The National People's Congress is elected for a term of five years.

The Standing Committee of the National People's Congress must ensure the completion of election of deputies to the succeeding National People's Congress two months prior to the expiration of the term of office of the current National People's Congress. Should extraordinary circumstances prevent such an election, it may be postponed and the term of office of the current National People's Congress extended by the decision of a vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such extraordinary circumstances.

**第六十一条** 全国人民代表大会会议每年举行一次,由全国人民代表大会常务委员会召集。如果全国人民代表大会常务委员会认为必要,或者有五分之一以上的全国人民代表大会代表提议,可以临时召集全国人民代表大会会议。

全国人民代表大会举行会议的时候,选举主席团主持会议。

**Article 61** The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the



Standing Committee deems it necessary or when more than one-fifth of the deputies to the National People's Congress so propose.

When the National People's Congress meets, it elects a Presidium to conduct its session.

**第六十二条** 全国人民代表大会行使下列职权:

- (一)修改宪法;
- (二)监督宪法的实施;
- (三)制定和修改刑事、民事、国家机构的和其他的基本法律;
- (四)选举中华人民共和国主席、副主席;
- (五)根据中华人民共和国主席的提名,决定国务院总理的人选;根据国务院总理的提名,决定国务院副总理、国务委员、各部部长、各委员会主任、审计长、秘书长的人选;
- (六)选举中央军事委员会主席;根据中央军事委员会主席的提名,决定中央军事委员会其他组成人员的人选;
- (七)选举国家监察委员会主任;
- (八)选举最高人民法院院长;
- (九)选举最高人民检察院检察长;
- (十)审查和批准国民经济和社会发展规划和计划执行情况的报告;
- (十一)审查和批准国家的预算和预算执行情况的报告;
- (十二)改变或者撤销全国人民代表大会常务委员会不适当的决定;
- (十三)批准省、自治区和直辖市的建置;
- (十四)决定特别行政区的设立及其制度;
- (十五)决定战争和和平的问题;
- (十六)应当由最高国家权力机关行使的其他职权。

**Article 62** The National People's Congress exercises the following functions and powers:

- (1)to amend the Constitution;
- (2)to supervise the enforcement of the Constitution;
- (3)to enact and amend basic laws governing criminal offences, civil affairs, the State organs and other matters;
- (4)to elect the President and the Vice-President of the People's Republic of China;
- (5)to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier;
- (6)to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all other members of the Central Military Commission;
- (7) to elect the Director of the National Supervision Commission;
- (8)to elect the President of the Supreme People's Court;
- (9)to elect the Procurator-General of the Supreme People's Procuratorate;
- (10)to examine and approve the plan for national economic and social development and the report on its implementation;
- (11)to examine and approve the State budget and the report on its implementation;
- (12)to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;

(13)to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;

(14)to decide on the establishment of special administrative regions and the systems to be instituted there;

(15)to decide on questions of war and peace; and

(16)to exercise such other functions and powers as the highest organ of state power should exercise.

**第六十三条** 全国人民代表大会有权罢免下列人员:

(一)中华人民共和国主席、副主席;

(二)国务院总理、副总理、国务委员、各部部长、各委员会主任、审计长、秘书长;

(三)中央军事委员会主席和中央军事委员会其他组成人员;

(四)国家监察委员会主任;

(五)最高人民法院院长;

(六)最高人民检察院检察长。

**Article 63** The National People's Congress has the power to remove from office the following persons:

(1) the President and the Vice-President of the People's Republic of China;

(2) the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council;

(3) the Director of the National Supervision Commission;

(4) the Chairman of the Central Military Commission and other members of the Commission;

(5) the President of the Supreme People's Court; and

(6) the Procurator-General of the Supreme People's Procuratorate.

**第六十四条** 宪法的修改,由全国人民代表大会常务委员会或者五分之一以上的全国人民代表大会代表提议,并由全国人民代表大会以全体代表的三分之二以上的多数通过。

法律和其他议案由全国人民代表大会以全体代表的过半数通过。

**Article 64** Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a vote of more than two-thirds of all the deputies to the Congress.

Laws and resolutions are to be adopted by a majority vote of all the deputies to the National People's Congress.

**第六十五条** 全国人民代表大会常务委员会由下列人员组成:

委员长,

副委员长若干人,

秘书长,

委员若干人。

全国人民代表大会常务委员会组成人员中,应当有适当名额的少数民族代表。

全国人民代表大会选举并有权罢免全国人民代表大会常务委员会的组成人员。

全国人民代表大会常务委员会的组成人员不得担任国家行政机关、监察机关、审判机关和检察机关的职务。

**Article 65** The Standing Committee of the National People's Congress is composed of the following: the Chairman;

the Vice-Chairmen;  
the Secretary-General; and  
the members.

Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress.

The National People's Congress elects, and has the power to recall, members of its Standing Committee.

No member of the Standing Committee of the National People's Congress shall hold office in any administrative, supervisory, judicial or procuratorial organ of the State.

**第六十六条** 全国人民代表大会常务委员会每届任期同全国人民代表大会每届任期相同,它行使职权到下届全国人民代表大会选出新的常务委员会为止。

委员长、副委员长连续任职不得超过两届。

**Article 66** The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it shall exercise its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms.

**第六十七条** 全国人民代表大会常务委员会行使下列职权:

- (一)解释宪法,监督宪法的实施;
- (二)制定和修改除应当由全国人民代表大会制定的法律以外的其他法律;
- (三)在全国人民代表大会闭会期间,对全国人民代表大会制定的法律进行部分补充和修改,但是不得同该法律的基本原则相抵触;
- (四)解释法律;
- (五)在全国人民代表大会闭会期间,审查和批准国民经济和社会发展规划、国家预算在执行过程中所必须作的部分调整方案;
- (六)监督国务院、中央军事委员会、国家监察委员会、最高人民法院和最高人民检察院的工作;
- (七)撤销国务院制定的同宪法、法律相抵触的行政法规、决定和命令;
- (八)撤销省、自治区、直辖市国家权力机关制定的同宪法、法律和行政法规相抵触的地方性法规和决议;
- (九)在全国人民代表大会闭会期间,根据国务院总理的提名,决定部长、委员会主任、审计长、秘书长的人选;
- (十)在全国人民代表大会闭会期间,根据中央军事委员会主席的提名,决定中央军事委员会其他组成人员的人选;
- (十一)根据国家监察委员会主任的提请,任免国家监察委员会副主任、委员;
- (十二)根据最高人民法院院长的提请,任免最高人民法院副院长、审判员、审判委员会委员和军事法院院长;
- (十三)根据最高人民检察院检察长的提请,任免最高人民检察院副检察长、检察员、检察委员会委员和军事检察院检察长,并且批准省、自治区、直辖市的人民检察院检察长的任免;
- (十四)决定驻外全权代表的任免;
- (十五)决定同外国缔结的条约和重要协定的批准和废除;
- (十六)规定军人和外交人员的衔级制度和其他专门衔级制度;
- (十七)规定和决定授予国家的勋章和荣誉称号;
- (十八)决定特赦;
- (十九)在全国人民代表大会闭会期间,如果遇到国家遭受武装侵犯或者必须履行国际间共同防止侵略的条约的情况,决定战争状态的宣布;
- (二十)决定全国总动员或者局部动员;
- (二十一)决定全国或者个别省、自治区、直辖市进入紧急状态;

(二十二)全国人民代表大会授予的其他职权。

**Article 67** The Standing Committee of the National People's Congress exercises the following functions and powers:

(1) to interpret the Constitution and supervise its enforcement;

(2) to enact and amend laws, with the exception of those which should be enacted by the National People's Congress;

(3) to partially supplement and amend, when the National People's Congress is not in session, laws enacted by the National People's Congress, provided that the basic principles of these laws are not contravened;

(4) to interpret laws;

(5) to review and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development or to the State budget that prove necessary in the course of their implementation;

(6) to supervise the work of the State Council, the Central Military Commission, the National Supervision Commission, the Supreme People's Court and the Supreme People's Procuratorate;

(7) to annul those administrative regulations, decisions or orders of the State Council that contravene the Constitution or other laws;

(8) to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, other laws or administrative regulations;

(9) to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions, the Auditor-General or the Secretary-General of the State Council upon nomination by the Premier of the State Council;

(10) to decide, when the National People's Congress is not in session, on the choice of other members of the Central Military Commission upon nomination by the Chairman of the Commission;

(11) to appoint and remove, at the request of the Director of the National Supervision Commission, the deputy directors and members of the National Supervision Commission;

(12) to appoint or remove, at the recommendation of the President of the Supreme People's Court, the Vice-Presidents and Judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court;

(13) to appoint or remove, at the recommendation of the Procurator-General of the Supreme People's Procuratorate, the Deputy Procurators-General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee and the Chief Procurator of the Military Procuratorate, and to approve the appointment or removal of the chief procurators of the people's procuratorates of provinces, autonomous regions, and municipalities directly under the Central Government;

(14) to decide on the appointment or recall of plenipotentiary representatives abroad;

(15) to decide on the ratification or abrogation of treaties and important agreements concluded with foreign states;

(16) to institute systems of titles and ranks for military and diplomatic personnel and of other specific titles and ranks;



(17) to institute State medals and titles of honour and decide on their conferment;

(18) to decide on the granting of special pardons;

(19) to decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defence against aggression;

(20) to decide on general or partial mobilization;

(21) to decide on entering into the state of emergency throughout the country or in particular provinces, autonomous regions, or municipalities directly under the Central Government; and

(22) to exercise such other functions and powers as the National People's Congress may assign to it.

**第六十八条** 全国人民代表大会常务委员会委员长主持全国人民代表大会常务委员会的工作,召集全国人民代表大会常务委员会会议。副委员长、秘书长协助委员长工作。

委员长、副委员长、秘书长组成委员长会议,处理全国人民代表大会常务委员会的重要日常工作。

**Article 68** The Chairman of the Standing Committee of the National People's Congress directs the work of the Standing Committee and convenes its meetings. The Vice-Chairmen and the Secretary-General assist the Chairman in his work.

The Chairman, the Vice-Chairmen and the Secretary-General constitute the Council of Chairmen which handles the important day-to-day work of the Standing Committee of the National People's Congress.

**第六十九条** 全国人民代表大会常务委员会对全国人民代表大会负责并报告工作。

**Article 69** The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on its work to the Congress.

**第七十条** 全国人民代表大会设立民族委员会、宪法和法律委员会、财政经济委员会、教育科学文化卫生委员会、外事委员会、华侨委员会和其他需要设立的专门委员会。在全国人民代表大会闭会期间,各专门委员会受全国人民代表大会常务委员会的领导。

各专门委员会在全国人民代表大会和全国人民代表大会常务委员会领导下,研究、审议和拟订有关议案。

**Article 70** The National People's Congress shall establish an Ethnicity Committee, a Constitution and Law Committee, a Finance and Economic Committee, an Education, Science, Culture and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and such other special committees as may be necessary.

The special committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the National People's Congress and its Standing Committee.

**第七十一条** 全国人民代表大会和全国人民代表大会常务委员会认为必要的时候,可以组织关于特定问题的调查委员会,并且根据调查委员会的报告,作出相应的决议。

调查委员会进行调查的时候,一切有关的国家机关、社会团体和公民都有义务向它提供必要的材料。

**Article 71** The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports.

All organs of State, public organizations and citizens concerned are obliged to furnish the necessary information to the committees of inquiry when they conduct investigations.

**第七十二条** 全国人民代表大会代表和全国人民代表大会常务委员会组成人员,有权依照法律规定的程序分别提出属于全国人民代表大会和全国人民代表大会常务委员会职权范围内的议案。

**Article 72** Deputies to the National People's Congress and members of its Standing Committee have the right, in accordance with procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee.

**第七十三条** 全国人民代表大会代表在全国人民代表大会开会期间,全国人民代表大会常务委员会组成人员在常务委员会开会期间,有权依照法律规定的程序提出对国务院或者国务院各部、各委员会的质询案。受质询的机关必须负责答复。

**Article 73** Deputies to the National People's Congress and members of the Standing Committee have the right, during the sessions of the Congress and the meetings of the Committee, to address questions, in accordance with procedures prescribed by law, to the State Council or the ministries and commissions under the State Council, which must answer the questions in a responsible manner.

**第七十四条** 全国人民代表大会代表,非经全国人民代表大会会议主席团许可,在全国人民代表大会闭会期间非经全国人民代表大会常务委员会许可,不受逮捕或者刑事审判。

**Article 74** No deputy to the National People's Congress may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the National People's Congress is not in session, without the consent of its Standing Committee.

**第七十五条** 全国人民代表大会代表在全国人民代表大会各种会议上的发言和表决,不受法律追究。

**Article 75** Deputies to the National People's Congress may not be held legally liable for their speeches or votes at its meetings.

**第七十六条** 全国人民代表大会代表必须模范地遵守宪法和法律,保守国家秘密,并且在自己参加的生产、工作和社会活动中,协助宪法和法律的实施。

全国人民代表大会代表应当同原选举单位和人民保持密切的联系,听取和反映人民的意见和要求,努力为人民服务。

**Article 76** Deputies to the National People's Congress must play an exemplary role in abiding by the Constitution and other laws and keeping State secrets and, in public activities, production and other work, assist in the enforcement of the Constitution and other laws.

Deputies to the National People's Congress should maintain close contact with the units which elected them and with the people, heed and convey the opinions and demands of the people and work hard to serve them.

**第七十七条** 全国人民代表大会代表受原选举单位的监督。原选举单位有权依照法律规定的程序罢免本单位选出的代表。

**Article 77** Deputies to the National People's Congress are subject to supervision by the units which elected them. The electoral units have the power, through procedures prescribed by law, to recall deputies they elected.

**第七十八条** 全国人民代表大会和全国人民代表大会常务委员会的组织和工作程序由法律规定。

**Article 78** The organization and working procedures of the National People's Congress and its Standing Committee are prescribed by law.

## 第二节 中华人民共和国主席

## Section 2 The President of the People's Republic of China

**第七十九条** 中华人民共和国主席、副主席由全国人民代表大会选举。

有选举权和被选举权的年满四十五周岁的中华人民共和国公民可以被选为中华人民共和国主席、副主席。

中华人民共和国主席、副主席每届任期同全国人民代表大会每届任期相同。

**Article 79** The President and Vice-President of the People's Republic of China are elected by the National People's Congress.

Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice-President of the People's Republic of China.

The term of office of the President and Vice-President of the People's Republic of China is the same as that of the National People's Congress.

**第八十条** 中华人民共和国主席根据全国人民代表大会的决定和全国人民代表大会常务委员会的决定,公布法律,任免国务院总理、副总理、国务委员、各部部长、各委员会主任、审计长、秘书长,授予国家的勋章和荣誉称号,发布特赦令,宣布进入紧急状态,宣布战争状态,发布动员令。

**Article 80** The President of the People's Republic of China, in pursuance of the decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints or removes the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council; confers State medals and titles of honour; issues orders of special pardons; proclaims entering of the state of emergency; proclaims a state of war; and issues mobilization orders.

**第八十一条** 中华人民共和国主席代表中华人民共和国,进行国事活动,接受外国使节;根据全国人民代表大会常务委员会的决定,派遣和召回驻外全权代表,批准和废除同外国缔结的条约和重要协定。

**Article 81** The President of the People's Republic of China, on behalf of the People's Republic of China, engages in activities involving State affairs and receives foreign diplomatic representatives and, in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states.

**第八十二条** 中华人民共和国副主席协助主席工作。

中华人民共和国副主席受主席的委托,可以代行主席的部分职权。

**Article 82** The Vice-President of the People's Republic of China assists the President in his work.

The Vice-President of the People's Republic of China may exercise such functions and powers of the President as the President may entrust to him.

**第八十三条** 中华人民共和国主席、副主席行使职权到下届全国人民代表大会选出的主席、副主席就职为止。

**Article 83** The President and Vice-President of the People's Republic of China exercise their functions and powers until the new President and Vice-President elected by the succeeding National People's Congress assume office.

**第八十四条** 中华人民共和国主席缺位的时候,由副主席继任主席的职位。

中华人民共和国副主席缺位的时候,由全国人民代表大会补选。

中华人民共和国主席、副主席都缺位的时候,由全国人民代表大会补选;在补选以前,由全国人民代表大会常务委员会委员长暂时代理主席职位。

**Article 84** In the event that the office of the President of the People's Republic of China falls vacant, the Vice-President succeeds to the office of the President.

In the event that the office of the Vice-President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice-President to fill the vacancy.

In the event that the offices of both the President and the Vice-President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice-President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China.

### 第三节 国务院

### Section 3 The State Council

**第八十五条** 中华人民共和国国务院,即中央人民政府,是最高国家权力机关的执行机关,是最高国家行政机关。

**Article 85** The State Council, that is, the Central People's Government, of the People's Republic of China is the executive body of the highest organ of state power; it is the highest organ of State administration.

**第八十六条** 国务院由下列人员组成:

总理,

副总理若干人,

国务委员若干人,

各部部长,

各委员会主任,

审计长,

秘书长。

国务院实行总理负责制。各部、各委员会实行部长、主任负责制。

国务院的组织由法律规定。

**Article 86** The State Council is composed of the following:

the Premier;

the Vice-Premiers;

the State Councillors;

the Ministers in charge of ministries;

the Ministers in charge of commissions;

the Auditor-General; and

the Secretary-General.

The Premier assumes overall responsibility for the work of the State Council. The ministers assume overall responsibility for the work of the ministries and commissions.

The organization of the State Council is prescribed by law.

**第八十七条** 国务院每届任期同全国人民代表大会每届任期相同。

总理、副总理、国务委员连续任职不得超过两届。



**Article 87** The term of office of the State Council is the same as that of the National People's Congress.

The Premier, Vice-Premiers and State Councillors shall serve no more than two consecutive terms.

**第八十八条** 总理领导国务院的工作。副总理、国务委员协助总理工作。  
总理、副总理、国务委员、秘书长组成国务院常务会议。  
总理召集和主持国务院常务会议和国务院全体会议。

**Article 88** The Premier directs the work of the State Council. The Vice-Premiers and State Councillors assist the Premier in his work.

Executive meetings of the State Council are to be attended by the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council.

The Premier convenes and presides over the executive meetings and plenary meetings of the State Council.

**第八十九条** 国务院行使下列职权:

- (一)根据宪法和法律,规定行政措施,制定行政法规,发布决定和命令;
- (二)向全国人民代表大会或者全国人民代表大会常务委员会提出议案;
- (三)规定各部和各委员会的任务和职责,统一领导各部和各委员会的工作,并且领导不属于各部和各委员会的全国性的行政工作;
- (四)统一领导全国地方各级国家行政机关的工作,规定中央和省、自治区、直辖市的国家行政机关的职权的具体划分;
- (五)编制和执行国民经济和社会发展规划和国家预算;
- (六)领导和管理经济工作和城乡建设、生态文明建设;
- (七)领导和管理教育、科学、文化、卫生、体育和计划生育工作;
- (八)领导和管理民政、公安、司法行政等工作;
- (九)管理对外事务,同外国缔结条约和协定;
- (十)领导和管理国防建设事业;
- (十一)领导和管理民族事务,保障少数民族的平等权利和民族自治地方的自治权利;
- (十二)保护华侨的正当的权利和利益,保护归侨和侨眷的合法的权利和利益;
- (十三)改变或者撤销各部、各委员会发布的不适当的命令、指示和规章;
- (十四)改变或者撤销地方各级国家行政机关的不适当的决定和命令;
- (十五)批准省、自治区、直辖市的区域划分,批准自治州、县、自治县、市的建置和区域划分;
- (十六)依照法律规定决定省、自治区、直辖市的范围内部分地区进入紧急状态;
- (十七)审定行政机构的编制,依照法律规定任免、培训、考核和奖惩行政人员;
- (十八)全国人民代表大会和全国人民代表大会常务委员会授予的其他职权。

**Article 89** The State Council exercises the following functions and powers:

- (1)to adopt administrative measures, enact administrative regulations and issue decisions and orders in accordance with the Constitution and other laws;
- (2)to submit proposals to the National People's Congress or its Standing Committee;
- (3)to formulate the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions;
- (4)to exercise unified leadership over the work of local organs of State administration at various levels throughout the country, and to formulate the detailed division of functions and powers between the

Central Government and the organs of State administration of provinces, autonomous regions, and municipalities directly under the Central Government;

(5)to draw up and implement the plan for national economic and social development and the State budget;

(6)to direct and administer economic work, urban-rural construction and the development of ecological civilization;

(7)to direct and administer the affairs of education, science, culture, public health, physical culture and family planning;

(8)to direct and administer civil affairs, public security, judicial administration, and other related matters;

(9)to conduct foreign affairs and conclude treaties and agreements with foreign states;

(10)to direct and administer the building of national defence;

(11)to direct and administer affairs concerning the nationalities and to safeguard the equal rights of minority nationalities and the right to autonomy of the national autonomous areas;

(12)to protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;

(13)to alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions;

(14)to alter or annul inappropriate decisions and orders issued by local organs of State administration at various levels;

(15)to approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;

(16)in accordance with the provisions of law, to decide on entering into the state of emergency in parts of provinces, autonomous regions, and municipalities directly under the Central Government;

(17)to examine and decide on the size of administrative organs and, in accordance with the provisions of law, to appoint or remove administrative officials, train them, appraise their performance and reward or punish them; and

(18)to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign to it.

**第九十条** 国务院各部部长、各委员会主任负责本部门的工作;召集和主持部务会议或者委员会会议、委务会议,讨论决定本部门工作的重大问题。

各部、各委员会根据法律和国务院的行政法规、决定、命令,在本部门的权限内,发布命令、指示和规章。

**Article 90** Ministers in charge of the ministries or commissions of the State Council are responsible for the work of their respective departments and they convene and preside over ministerial meetings or general and executive meetings of the commissions to discuss and decide on major issues in the work of their respective departments.

The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with law and the administrative regulations, decisions and

orders issued by the State Council.

**第九十一条** 国务院设立审计机关,对国务院各部门和地方各级政府的财政收支,对国家的财政金融机构和企业事业组织的财务收支,进行审计监督。

审计机关在国务院总理领导下,依照法律规定独立行使审计监督权,不受其他行政机关、社会团体和个人的干涉。

**Article 91** The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at various levels, and the revenue and expenditure of all financial and monetary organizations, enterprises and institutions of the State.

Under the direction of the Premier of the State Council and in accordance with the provisions of law, the auditing body independently exercises its power of supervision through auditing, subject to no interference by any other administrative organ or any public organization or individual.

**第九十二条** 国务院对全国人民代表大会负责并报告工作;在全国人民代表大会闭会期间,对全国人民代表大会常务委员会负责并报告工作。

**Article 92** The State Council is responsible and reports on its work to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee.

#### 第四节 中央军事委员会

#### Section 4 The Central Military Commission

**第九十三条** 中华人民共和国中央军事委员会领导全国武装力量。

中央军事委员会由下列人员组成:

主席,

副主席若干人,

委员若干人。

中央军事委员会实行主席负责制。

中央军事委员会每届任期同全国人民代表大会每届任期相同。

**Article 93** The Central Military Commission of the People's Republic of China directs the armed forces of the country.

The Central Military Commission is composed of the following:

the Chairman;

the Vice-Chairmen; and

the members.

The Chairman assumes overall responsibility for the work of the Central Military Commission.

The term of office of the Central Military Commission is the same as that of the National People's Congress.

**第九十四条** 中央军事委员会主席对全国人民代表大会和全国人民代表大会常务委员会负责。

第五节 地方各级人民代表大会和地方各级人民政府

**Article 94** The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee.

#### Section 5 The Local People's Congresses and Local People's Governments at Various Levels

**第九十五条** 省、直辖市、县、市、市辖区、乡、民族乡、镇设立人民代表大会和人民政府。

地方各级人民代表大会和地方各级人民政府的组织由法律规定。

自治区、自治州、自治县设立自治机关。自治机关的组织和工作根据宪法第三章第五节、第六节规定的基本原则由法律规定。

**Article 95** People's congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns.

The organization of local people's congresses and local people's governments at various levels is prescribed by law.

Organs of self-government are established in autonomous regions, autonomous prefectures and autonomous counties. The organization and working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections 5 and 6 of Chapter III of the Constitution.

**第九十六条** 地方各级人民代表大会是地方国家权力机关。

县级以上的地方各级人民代表大会设立常务委员会。

**Article 96** Local people's congresses at various levels are local organs of state power.

Local people's congresses at or above the county level establish standing committees.

**第九十七条** 省、直辖市、设区的市的人民代表大会代表由下一级的人民代表大会选举;县、不设区的市、市辖区、乡、民族乡、镇的人民代表大会代表由选民直接选举。

地方各级人民代表大会代表名额和代表产生办法由法律规定。

**Article 97** Deputies to the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts are elected by the people's congresses at the next lower level; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are elected directly by their constituencies.

The number of deputies to local people's congresses at various levels and the manner of their election are prescribed by law.

**第九十八条** 地方各级人民代表大会每届任期五年。

**Article 98** The term of office of the local people's congresses at various levels is five years.

**第九十九条** 地方各级人民代表大会在本行政区域内,保证宪法、法律、行政法规的遵守和执行;依照法律规定的权限,通过和发布决议,审查和决定地方的经济建设、文化建设和公共事业建设的计划。

县级以上的地方各级人民代表大会审查和批准本行政区域内的国民经济和社会发展计划、预算以及它们的执行情况的报告;有权改变或者撤销本级人民代表大会常务委员会不适当的决定。

民族乡的人民代表大会可以依照法律规定的权限采取适合民族特点的具体措施。

**Article 99** Local people's congresses at various levels ensure the observance and implementation of the Constitution and other laws and the administrative regulations in their respective administrative areas. Within the limits of their authority as prescribed by law, they adopt and issue resolutions and examine and decide on plans for local economic and cultural development and for the development of public services.

Local people's congresses at or above the county level shall examine and approve the plans for economic and social development and the budgets of their respective administrative areas and examine and approve the reports on their implementation. They have the power to alter or annul inappropriate



decisions of their own standing committees.

The people's congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the characteristics of the nationalities concerned.

**第一百条** 省、直辖市的人民代表大会和它们的常务委员会,在不同宪法、法律、行政法规相抵触的前提下,可以制定地方性法规,报全国人民代表大会常务委员会备案。

设区的市的人民代表大会和它们的常务委员会,在不同宪法、法律、行政法规和本省、自治区的地方性法规相抵触的前提下,可以依照法律规定制定地方性法规,报本省、自治区人民代表大会常务委员会批准后施行。

**Article 100** The people's congresses of provinces, and municipalities directly under the Central Government, and their standing committees may adopt local regulations, which must not contravene the Constitution and other laws and administrative regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.

The people's congress of a city with districts and its standing committee may formulate local regulations pursuant to the law under the premise that such local regulations are not in conflict with the Constitution, laws, administrative regulations and the local regulations of its local province or autonomous region. The local regulations so formulated shall come into effect after being submitted to the standing committee of the people's congress of the local province or autonomous region for approval.

**第一百零一条** 地方各级人民代表大会分别选举并且有权罢免本级人民政府的省长和副省长、市长和副市长、县长和副县长、区长和副区长、乡长和副乡长、镇长和副镇长。

县级以上的地方各级人民代表大会选举并且有权罢免本级监察委员会主任、本级人民法院院长和本级人民检察院检察长。选出或者罢免人民检察院检察长,须报上级人民检察院检察长提请该级人民代表大会常务委员会批准。

**Article 101** Local people's congresses at their respective levels elect and have the power to recall governors and deputy governors, or mayors and deputy mayors, or heads and deputy heads of counties, districts, townships and towns.

Local people's congresses at and above the county level shall elect, and be empowered to dismiss, directors of supervision commissions, presidents of the people's courts and chief procurators of the people's procuratorates at the corresponding level. The election or recall of chief procurators of people's procuratorates shall be reported to the chief procurators of the people's procuratorates at the next higher level for submission to the standing committees of the people's congresses at the corresponding level for approval.

**第一百零二条** 省、直辖市、设区的市的人民代表大会代表受原选举单位的监督;县、不设区的市、市辖区、乡、民族乡、镇的人民代表大会代表受选民的监督。

地方各级人民代表大会代表的选举单位和选民有权依照法律规定的程序罢免由他们选出的代表。

**Article 102** Deputies to the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts are subject to supervision by the units which elected them; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are subject to supervision by their constituencies.

The units and constituencies which elect deputies to local people's congresses at various levels have the power to recall the deputies according to procedures prescribed by law.

**第一百零三条** 县级以上的地方各级人民代表大会常务委员会由主任、副主任若干人和委员若干人组成,对本级人民代表大会负责并报告工作。

县级以上的地方各级人民代表大会选举并有权罢免本级人民代表大会常务委员会的组成人员。

县级以上地方各级人民代表大会常务委员会的组成人员不得担任国家行政机关、监察机关、审判机关和检察机关的职务。

**Article 103** The standing committee of a local people's congress at or above the county level is composed of a chairman, vice-chairmen and members, and is responsible and reports on its work to the people's congress at the corresponding level.

A local people's congress at or above the county level elects, and has the power to recall, members of its standing committee.

No member of the standing committee of a local people's congress at or above the county level may hold office in any administrative, supervisory, judicial or procuratorial organ of the State.

**第一百零四条** 县级以上地方各级人民代表大会常务委员会讨论、决定本行政区域内各方面工作的重大事项;监督本级人民政府、监察委员会、人民法院和人民检察院的工作;撤销本级人民政府的不适当的决定和命令;撤销下一级人民代表大会的不适当的决议;依照法律规定的权限决定国家机关工作人员的任免;在本级人民代表大会闭会期间,罢免和补选上一级人民代表大会的个别代表。

**Article 104** The standing committee of a local people's congress at or above the county level shall discuss and decide on major issues in all fields of work in its administrative regions; supervise the work of the people's government, the supervision commission, the people's court and the people's procuratorate at the corresponding level; repeal the inappropriate decisions and orders of the people's government at the corresponding level; repeal the inappropriate resolutions of the people's congress at the next lower level; decide on the appointment and removal of State functionaries within the scope of authority prescribed by law; and, dismiss individual delegates to, and elect individual delegates to fill vacancies of, the people's congress at the next higher level when the people's congress at the corresponding level is not in session.

**第一百零五条** 地方各级人民政府是地方各级国家权力机关的执行机关,是地方各级国家行政机关。地方各级人民政府实行省长、市长、县长、区长、乡长、镇长负责制。

**Article 105** Local people's governments at various levels are the executive bodies of local organs of state power as well as the local organs of State administration at the corresponding levels.

Governors, mayors and heads of counties, districts, townships and towns assume overall responsibility for local people's governments at various levels.

**第一百零六条** 地方各级人民政府每届任期同本级人民代表大会每届任期相同。

**Article 106** The term of office of local people's governments at various levels is the same as that of the people's congresses at the corresponding levels.

**第一百零七条** 县级以上地方各级人民政府依照法律规定的权限,管理本行政区域内的经济、教育、科学、文化、卫生、体育事业、城乡建设事业和财政、民政、公安、民族事务、司法行政、计划生育等行政工作,发布决定和命令,任免、培训、考核和奖惩行政工作人员。

乡、民族乡、镇的人民政府执行本级人民代表大会的决议和上级国家行政机关的决定和命令,管理本行政区域内的行政工作。

省、直辖市的人民政府决定乡、民族乡、镇的建置和区域划分。

**Article 107** Local people's governments at or above the county level, within the limits of their authority as prescribed by law, conduct administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, nationalities affairs, judicial administration, and family planning in their respective

administrative areas; issue decisions and orders; appoint or remove administrative functionaries, train them, appraise their performance and reward or punish them.

People's governments of townships, nationality townships, and towns execute the resolutions of the people's congresses at the corresponding levels as well as the decisions and orders of the State administrative organs at the next higher level and conduct administrative work in their respective administrative areas.

People's governments of provinces, and of municipalities directly under the Central Government decide on the establishment and geographic division of townships, nationality townships, and towns.

**第一百零八条** 县级以上的地方各级人民政府领导所属各工作部门和下级人民政府的工作,有权改变或者撤销所属各工作部门和下级人民政府的不适当的决定。

**Article 108** Local people's governments at or above the county level direct the work of their subordinate departments and of people's governments at lower levels, and have the power to alter or annul inappropriate decisions of their subordinate departments and of the people's governments at lower levels.

**第一百零九条** 县级以上的地方各级人民政府设立审计机关。地方各级审计机关依照法律规定独立行使审计监督权,对本级人民政府和上一级审计机关负责。

**Article 109** Auditing bodies are established by local people's governments at or above the county level. Local auditing bodies at various levels, independently and in accordance with the provisions of law, exercise their power of supervision through auditing and are responsible to the people's government at the corresponding level and to the auditing body at the next higher level.

**第一百一十条** 地方各级人民政府对本级人民代表大会负责并报告工作。县级以上的地方各级人民政府在本级人民代表大会闭会期间,对本级人民代表大会常务委员会负责并报告工作。

地方各级人民政府对上一级国家行政机关负责并报告工作。全国地方各级人民政府都是国务院统一领导下的国家行政机关,都服从国务院。

**Article 110** Local people's governments at various levels are responsible and report on their work to people's congresses at the corresponding levels. Local people's governments at or above the county level are responsible and report on their work to the standing committees of the people's congresses at the corresponding levels when the congresses are not in session.

Local people's governments at various levels are responsible and report on their work to the State administrative organs at the next higher level. Local people's governments at various levels throughout the country are State administrative organs under the unified leadership of the State Council and are subordinate to it.

**第一百一十一条** 城市和农村按居民居住地区设立的居民委员会或者村民委员会是基层群众性自治组织。居民委员会、村民委员会的主任、副主任和委员由居民选举。居民委员会、村民委员会同基层政权的相互关系由法律规定。

居民委员会、村民委员会设人民调解、治安保卫、公共卫生等委员会,办理本居住地区的公共事务和公益事业,调解民间纠纷,协助维护社会治安,并且向人民政府反映群众的意见、要求和提出建议。

**Article 111** The residents committees and villagers committees established among urban and rural residents on the basis of their place of residence are mass organizations of self-management at the grass-roots level. The chairman, vice-chairmen and members of each residents or villagers committee are elected by the residents. The relationship between the residents and villagers committees and the grass-roots organs of state power is prescribed by law.

The residents and villagers committees establish sub-committees for people's mediation, public security, public health and other matters in order to manage public affairs and social services in their areas, mediate civil disputes, help maintain public order and convey residents' opinions and demands and make suggestions to the people's government.

#### 第六节 民族自治地方的自治机关

### Section 6 The Organs of Self-Government of National Autonomous Areas

**第一百一十二条** 民族自治地方的自治机关是自治区、自治州、自治县的人民代表大会和人民政府。

**Article 112** The organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties.

**第一百一十三条** 自治区、自治州、自治县的人民代表大会中,除实行区域自治的民族的代表外,其他居住在本行政区域内的民族也应当有适当名额的代表。

自治区、自治州、自治县的人民代表大会常务委员会中应当有实行区域自治的民族的公民担任主任或者副主任。

**Article 113** In the people's congress of an autonomous region, autonomous prefecture or autonomous county, in addition to the deputies of the nationality exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation.

Among the chairman and vice-chairmen of the standing committee of the people's congress of an autonomous region, autonomous prefecture or autonomous county there shall be one or more citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

**第一百一十四条** 自治区主席、自治州州长、自治县县长由实行区域自治的民族的公民担任。

**Article 114** The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned.

**第一百一十五条** 自治区、自治州、自治县的自治机关行使宪法第三章第五节规定的地方国家机关的职权,同时依照宪法、民族区域自治法和其他法律规定的权限行使自治权,根据本地方实际情况贯彻执行国家的法律、政策。

**Article 115** The organs of self-government of autonomous regions, autonomous prefectures and autonomous counties exercise the functions and powers of local organs of State as specified in Section 5 of Chapter III of the Constitution. At the same time, they exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, the Law of the People's Republic of China on Regional National Autonomy and other laws and implement the laws and policies of the State in the light of the existing local situation.

**第一百一十六条** 民族自治地方的人民代表大会有权依照当地民族的政治、经济和文化的特点,制定自治条例和单行条例。自治区的自治条例和单行条例,报全国人民代表大会常务委员会批准后生效。自治州、自治县的自治条例和单行条例,报省或者自治区的人民代表常务委员会批准后生效,并报全国人民代表大会常务委员会备案。

**Article 116** The people's congresses of national autonomous areas have the power to enact regulations on the exercise of autonomy and other separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and other separate regulations of autonomous regions shall be



submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

**第一百一十七条** 民族自治地方的自治机关有管理地方财政的自治权。凡是依照国家财政体制属于民族自治地方的财政收入,都应当由民族自治地方的自治机关自主地安排使用。

**Article 117** The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the State shall be managed and used by the organs of self-government of those areas on their own.

**第一百一十八条** 民族自治地方的自治机关在国家计划的指导下,自主地安排和管理地方性的经济建设事业。

国家在民族自治地方开发资源、建设企业的时候,应当照顾民族自治地方的利益。

**Article 118** The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of State plans.

In exploiting natural resources and building enterprises in the national autonomous areas, the State shall give due consideration to the interests of those areas.

**第一百一十九条** 民族自治地方的自治机关自主地管理本地方的教育、科学、文化、卫生、体育事业,保护和整理民族的文化遗产,发展和繁荣民族文化。

**Article 119** The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, protect and sift through the cultural heritage of the nationalities and work for a vigorous development of their cultures.

**第一百二十条** 民族自治地方的自治机关依照国家的军事制度和当地的实际需要,经国务院批准,可以组织本地方维护社会治安的公安部队。

**Article 120** The organs of self-government of the national autonomous areas may, according to the military system of the State and practical local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.

**第一百二十一条** 民族自治地方的自治机关在执行职务的时候,依照本民族自治地方自治条例的规定,使用当地通用的一种或者几种语言文字。

**Article 121** In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the provisions of the regulations on the exercise of autonomy in those areas, employ the spoken and written language or languages in common use in the locality.

**第一百二十二条** 国家从财政、物资、技术等方面帮助各少数民族加速发展经济建设和文化建设事业。

国家帮助民族自治地方从当地民族中大量培养各级干部、各种专业人才和技术工人。

**Article 122** The State provides financial, material and technical assistance to the minority nationalities to help accelerate their economic and cultural development.

The State helps ethnic autonomous areas to cultivate a large number of cadres, professionals and skilled workers from local ethnic groups.

## 第七节 监察委员会

## Section 7: Supervision Commissions

**第一百二十三条** 中华人民共和国各级监察委员会是国家的监察机关。

**Article 123** Supervision commissions at all levels of the People's Republic of China shall be the supervisory organs of the State.

**第一百二十四条** 中华人民共和国设立国家监察委员会和地方各级监察委员会。

监察委员会由下列人员组成:

主任,

副主任若干人,

委员若干人。

监察委员会主任每届任期同本级人民代表大会每届任期相同。国家监察委员会主任连续任职不得超过两届。

监察委员会的组织和职权由法律规定。

**Article 124** The People's Republic of China shall establish a National Supervision Commission and local supervision commissions at all levels.

A supervision commission shall consist of the following personnel:

One director,

Several deputy directors, and

Several members.

The term of office of the director of a supervision commission shall be the same as that of the people's congress at the corresponding level. The director of the National Supervision Commission shall not serve more than two consecutive terms.

The organization and authority of a supervision commission shall be prescribed by law.

**第一百二十五条** 中华人民共和国国家监察委员会是最高监察机关。

国家监察委员会领导地方各级监察委员会的工作,上级监察委员会领导下级监察委员会的工作。

**Article 125** The National Supervision Commission of the People's Republic of China shall be the supreme supervisory organ of the State.

The National Supervision Commission shall direct the work of local supervision commissions at all levels. A superior supervision commission shall direct the work of a lower-level supervision commission.

**第一百二十六条** 国家监察委员会对全国人民代表大会和全国人民代表大会常务委员会负责。地方各级监察委员会对产生它的国家权力机关和上一级监察委员会负责。

**Article 126** The National Supervision Commission shall be accountable to the National People's Congress and the Standing Committee of the National People's Congress. A local supervision commission at any level shall be accountable to the organ of State power which created it and the relevant supervision commission at the next higher level.

**第一百二十七条** 监察委员会依照法律规定独立行使监察权,不受行政机关、社会团体和个人的干涉。

监察机关办理职务违法和职务犯罪案件,应当与审判机关、检察机关、执法部门互相配合,互相制约。

**Article 127** A supervision commission shall exercise supervisory power independently in accordance with the law, and shall be free from any interference by any administrative organ, social organization and individual.

When handling cases of occupation-related illegal and criminal activities, a supervisory organ shall cooperate with judicial organs, procuratorial organs and law enforcement departments, and act as checks and balances against each other.

#### 第八节 人民法院和人民检察院

### Section 8 The People's Courts and the People's Procuratorates

**第一百二十八条** 中华人民共和国人民法院是国家的审判机关。

**Article 128** The people's courts of the People's Republic of China are the judicial organs of the State.

**第一百二十九条** 中华人民共和国设立最高人民法院、地方各级人民法院和军事法院等专门人民法院。

最高人民法院院长每届任期同全国人民代表大会每届任期相同,连续任职不得超过两届。  
人民法院的组织由法律规定。

**Article 129** The People's Republic of China establishes the Supreme People's Court and the people's courts at various local levels, military courts and other special people's courts.

The term of office of the President of the Supreme People's Court is the same as that of the National People's Congress. The President shall serve no more than two consecutive terms.

The organization of the people's courts is prescribed by law.

**第一百三十条** 人民法院审理案件,除法律规定的特殊情况外,一律公开进行。被告人有权获得辩护。

**Article 130** Except in special circumstances as specified by law, all cases in the people's courts are heard in public. The accused has the right to defence.

**第一百三十一条** 人民法院依照法律规定独立行使审判权,不受行政机关、社会团体和个人的干涉。

**Article 131** The people's courts exercise judicial power independently, in accordance with the provisions of law, and not subject to interference by any administrative organ, public organization or individual.

**第一百三十二条** 最高人民法院是最高审判机关。

最高人民法院监督地方各级人民法院和专门人民法院的审判工作,上级人民法院监督下级人民法院的审判工作。

**Article 132** The Supreme People's Court is the highest judicial organ.

The Supreme People's Court supervises the administration of justice by the people's courts at various local levels and by the special people's courts. People's courts at higher levels supervise the administration of justice by those at lower levels.

**第一百三十三条** 最高人民法院对全国人民代表大会和全国人民代表大会常务委员会负责。地方各级人民法院对产生它的国家权力机关负责。

**Article 133** The Supreme People's Court is responsible to the National People's Congress and its

Standing Committee. Local people's courts at various levels are responsible to the organs of state power which created them.

**第一百三十四条** 中华人民共和国人民检察院是国家的法律监督机关。

**Article 134** The people's procuratorates of the People's Republic of China are State organs for legal supervision.

**第一百三十五条** 中华人民共和国设立最高人民检察院、地方各级人民检察院和军事检察院等专门人民检察院。

最高人民检察院检察长每届任期同全国人民代表大会每届任期相同,连续任职不得超过两届。

人民检察院的组织由法律规定。

**Article 135** The People's Republic of China establishes the Supreme People's Procuratorate and the people's procuratorates at various local levels, military procuratorates and other special people's procuratorates.

The term of office of the Procurator-General of the Supreme People's Procuratorate is the same as that of the National People's Congress; the Procurator-General shall serve no more than two consecutive terms.

The organization of the people's procuratorates is prescribed by law.

**第一百三十六条** 人民检察院依照法律规定独立行使检察权,不受行政机关、社会团体和个人的干涉。

**Article 136** The people's procuratorates exercise procuratorial power independently, in accordance with the provisions of law, and not subject to interference by any administrative organ, public organization or individual.

**第一百三十七条** 最高人民检察院是最高检察机关。

最高人民检察院领导地方各级人民检察院和专门人民检察院的工作,上级人民检察院领导下级人民检察院的工作。

**Article 137** The Supreme People's Procuratorate is the highest procuratorial organ.

The Supreme People's Procuratorate directs the work of the people's procuratorates at various local levels and of the special people's procuratorates. People's procuratorates at higher levels direct the work of those at lower levels.

**第一百三十八条** 最高人民检察院对全国人民代表大会和全国人民代表大会常务委员会负责。地方各级人民检察院对产生它的国家权力机关和上级人民检察院负责。

**Article 138** The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. People's procuratorates at various local levels are responsible to the organs of state power which created them and to the people's procuratorates at higher levels.

**第一百三十九条** 各民族公民都有用本民族语言文字进行诉讼的权利。人民法院和人民检察院对于不通晓当地通用的语言文字的诉讼参与人,应当为他们翻译。

在少数民族聚居或者多民族共同居住的地区,应当用当地通用的语言进行审理;起诉书、判决书、布告和其他文书应当根据实际需要使用当地通用的一种或者几种文字。

**Article 139** Citizens of all China's nationalities have the right to use their native spoken and written languages in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages



commonly used in the locality.

In an area where people of a minority nationality live in a concentrated community or where a number of nationalities live together, court hearings should be conducted in the language or languages commonly used in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages commonly used in the locality.

**第一百四十条** 人民法院、人民检察院和公安机关办理刑事案件，应当分工负责，互相配合，互相制约，以保证准确有效地执行法律。

**Article 140** The people's courts, the people's procuratorates and the public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of law.

#### 第四章 国旗、国歌、国徽、首都

#### Chapter IV The National Flag, the National Anthem, the National Emblem and the Capital

**第一百四十一条** 中华人民共和国国旗是五星红旗。  
中华人民共和国国歌是《义勇军进行曲》。

**Article 141** The national flag of the People's Republic of China is a red flag with five stars.  
The national anthem of the People's Republic of China is the March of the Volunteers.

**第一百四十二条** 中华人民共和国国徽,中间是五星照耀下的天安门,周围是谷穗和齿轮。

**Article 142** The national emblem of the People's Republic of China consists of an image of Tian'anmen in its centre illuminated by five stars and encircled by ears of grain and a cogwheel.

**第一百四十三条** 中华人民共和国首都是北京。

**Article 143** The capital of the People's Republic of China is Beijing.

ENGLISH TRANSLATION BY THE GENERAL OFFICE OF THE LEGISLATIVE AFFAIRS  
COMMISSION, THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS.

LICENSED FOR USE AS OF MARCH 2009.

# EXHIBIT 13

## 中华人民共和国人民法院组织法

### Organic Law of the People's Courts of the People's Republic of China

颁布机关: 全国人民代表大会常务委员会  
Promulgating Institution: Standing Committee of the National People's Congress

文 号: 中华人民共和国主席令第十一号  
Document Number: Order No. 11 of the President of the People's Republic of China

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效力状态: 有效  
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中华人民共和国主席令

第十一号

《中华人民共和国人民法院组织法》已由中华人民共和国第十三届全国人民代表大会常务委员会第六次会议于2018年10月26日修订通过，现将修订后的《中华人民共和国人民法院组织法》公布，自2019年1月1日起施行。

中华人民共和国主席 习近平

2018年10月26日

#### Order No. 11 of the President of the People's Republic of China

The Organic Law of the People's Courts of the People's Republic of China, revised and adopted at the 6th Session of the Standing Committee of the 13th National People's Congress of the People's Republic of China on October 26, 2018, is hereby promulgated and shall come into effect on January 1, 2019.

President of the People's Republic of China Xi Jinping

October 26, 2018

中华人民共和国人民法院组织法

#### Organic Law of the People's Courts of the People's Republic of China

(1979年7月1日第五届全国人民代表大会第二次会议通过 根据1983年9月2日第六届全国人民代表大会常务委员会第二次会议《关于修改〈中华人民共和国人民法院组织法〉的决定》第一次修正 根据1986年12月2日第六届全国人民代表大会常务委员会第十八次会议《关于修改〈中华人民共和国地方各级人民代表大会和地方各级人民政府组织法〉的决定》第二次修正 根据2006年10月31日第十届全国人民代表大会常务委员会第二十四次会议《关于修改〈中华人民共和国人民法院组织法〉的决定》第三次修正 2018年10月26日第十三届全国人民代表大会常务委员会第六次会议修订)

(Adopted at the 2nd Session of the 5th National People's Congress on July 1, 1997; amended for the first time in accordance with the Decision on Revising the "Organic Law of the People's Courts of the People's Republic of China" adopted at the 2nd Session of the Standing Committee of the 6th National People's Congress on September 2, 1983; amended for the second time in accordance with the Decision on Revising the "Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China" adopted at 18th Session of the Standing Committee of the 6th National

People's Congress on December 2, 1986; amended for the third time in accordance with the Decision on Revising the "Organic Law of the People's Courts of the People's Republic of China" adopted at the 24th Session of the Standing Committee of the 10th National People's Congress on October 31, 2006; revised at the 6th Session of the Standing Committee of the 13th National People's Congress on October 26, 2018)

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## 第一章 总则

## Chapter 1: General Provisions

**第一条** 为了规范人民法院的设置、组织和职权,保障人民法院依法履行职责,根据宪法,制定本法。

**Article 1** With a view to standardizing the setup, organizations and powers of the people's courts and guaranteeing the performance of duties by the people's courts in accordance with the law, this Law is formulated in accordance with the Constitution.

**第二条** 人民法院是国家的审判机关。

人民法院通过审判刑事案件、民事案件、行政案件以及法律规定的其他案件,惩罚犯罪,保障无罪的人不受刑事追究,解决民事、行政纠纷,保护个人和组织的合法权益,监督行政机关依法行使职权,维护国家和社会秩序,维护社会公平正义,维护国家法制统一、尊严和权威,保障中国特色社会主义建设的顺利进行。

**Article 2** The people's courts shall be the judicial organs of the State.

The people's courts shall, through trial of criminal cases, civil cases, administrative cases and other cases prescribed by the law, punish criminals, guarantee that innocent persons are free from criminal prosecution, solve civil and administrative disputes, protect the lawful rights and interests of individuals and organizations, supervise administrative organs in exercising powers in accordance with the law, maintain national security and social order, uphold social fairness and justice, safeguard the legal uniformity, dignity and authority of the State and guarantee the smooth progress of the building of socialism with Chinese characteristics.

**第三条** 人民法院依照宪法、法律和全国人民代表大会常务委员会的决定设置。

**Article 3** The people's courts shall be set up in accordance with the Constitution, laws and the



decisions of the Standing Committee of the National People's Congress.

**第四条** 人民法院依照法律规定独立行使审判权,不受行政机关、社会团体和个人的干涉。

**Article 4** The people's courts shall exercise judicial power independently in accordance with the provisions of the law and shall not be subject to interference by any administrative organ, social organization or individual.

**第五条** 人民法院审判案件在适用法律上一律平等,不允许任何组织和个人有超越法律的特权,禁止任何形式的歧视。

**Article 5** In trial of cases by the people's courts, the law shall be applied equally, no organization or individual may have privileges beyond the law and discrimination in any form is prohibited.

**第六条** 人民法院坚持司法公正,以事实为根据,以法律为准绳,遵守法定程序,依法保护个人和组织的诉讼权利和其他合法权益,尊重和保障人权。

**Article 6** The people's courts shall uphold judicial justice, take facts as the basis and law as the criterion, comply with statutory procedures, protect the litigation rights and other lawful rights and interests of individuals and organizations in accordance with the law and respect and safeguard human rights.

**第七条** 人民法院实行司法公开,法律另有规定的除外。

**Article 7** The people's courts shall implement judicial openness, unless otherwise provided for by the law.

**第八条** 人民法院实行司法责任制,建立健全权责统一的司法权力运行机制。

**Article 8** The people's courts shall implement judicial accountability and establish and improve the judicial power operation mechanism integrating powers and responsibilities.

**第九条** 最高人民法院对全国人民代表大会及其常务委员会负责并报告工作。地方各级人民法院对本级人民代表大会及其常务委员会负责并报告工作。

各级人民代表大会及其常务委员会对本级人民法院的工作实施监督。

**Article 9** The Supreme People's Court shall be responsible and report work to the National People's Congress and its Standing Committee. The local people's courts at various levels shall be responsible and report work to the people's congresses at corresponding levels and their standing committees.

People's congresses at various levels and their standing committees shall supervise the work of the people's courts at the corresponding level.

**第十条** 最高人民法院是最高审判机关。

最高人民法院监督地方各级人民法院和专门人民法院的审判工作,上级人民法院监督下级人民法院的审判工作。

**Article 10** The Supreme People's Court shall be the highest judicial organ.

The Supreme People's Court shall supervise the judicial work of the local people's courts at various levels and the special people's courts; the people's courts at higher levels shall supervise the judicial work of the people's courts at lower levels.

**第十一条** 人民法院应当接受人民群众监督,保障人民群众对人民法院工作依法享有知情权、参与权和监督权。

**Article 11** The people's courts shall accept supervision by the masses and guarantee that the masses are legally entitled to the right to be informed of, the right to participate in and the right to supervise the work of the people's courts.

## 第二章 人民法院的设置和职权

### Chapter 2: Setup and Powers of the People's Courts

**第十二条** 人民法院分为:

- (一)最高人民法院;
- (二)地方各级人民法院;
- (三)专门人民法院。

**Article 12** The people's courts shall be divided into:

- (1) Supreme People's Court;
- (2) Local people's courts at various levels; and
- (3) Special people's courts.

**第十三条** 地方各级人民法院分为高级人民法院、中级人民法院和基层人民法院。

**Article 13** Local people's courts at various levels are divided into high people's courts, intermediate people's courts and primary people's courts.

**第十四条** 在新疆生产建设兵团设立的人民法院的组织、案件管辖范围和法官任免,依照全国人民代表大会常务委员会的有关规定。

**Article 14** The organization, scope of jurisdiction over cases as well as the appointment and removal of the judges of the people's courts established in the Xinjiang Production and Construction Corps shall be subject to relevant provisions of the Standing Committee of the National People's Congress.

**第十五条** 专门人民法院包括军事法院和海事法院、知识产权法院、金融法院等。

专门人民法院的设置、组织、职权和法官任免,由全国人民代表大会常务委员会规定。

**Article 15** Special people's courts shall include, without being limited to, military courts, maritime courts, intellectual property courts and financial courts.

The setup, organization, powers as well as the appointment and removal of the judges of special people's courts shall be prescribed by the Standing Committee of the National People's Congress.

**第十六条** 最高人民法院审理下列案件:

- (一)法律规定由其管辖的和其认为应当由自己管辖的第一审案件;
- (二)对高级人民法院判决和裁定的上诉、抗诉案件;
- (三)按照全国人民代表大会常务委员会的规定提起的上诉、抗诉案件;
- (四)按照审判监督程序提起的再审案件;
- (五)高级人民法院报请核准的死刑案件。

**Article 16** The Supreme People's Court shall handle the following cases:

- (1) First-instance cases that are assigned to its jurisdiction by the law or that it deems it necessary to be placed under its jurisdiction;
- (2) Cases of appeals or protests against the judgments and rulings rendered by high people's courts;
- (3) Cases of appeals or protests lodged in accordance with the provisions of the Standing Committee of the National People's Congress;

- (4) Retrial cases lodged in accordance with trial supervision procedure; and
- (5) Cases involving death sentence submitted by high people's court for approval.

**第十七条** 死刑除依法由最高人民法院判决的以外,应当报请最高人民法院核准。

**Article 17** Death sentence shall be submitted to the Supreme People's Court for approval unless the judgment thereon is rendered by the Supreme People's Court in accordance with the law.

**第十八条** 最高人民法院可以对属于审判工作中具体应用法律的问题进行解释。  
最高人民法院可以发布指导性案例。

**Article 18** The Supreme People's Court may make interpretation in respect of the issues falling under the specific application of laws in judicial work.

The Supreme People's Court may promulgate guiding cases.

**第十九条** 最高人民法院可以设巡回法庭,审理最高人民法院依法确定的案件。  
巡回法庭是最高人民法院的组成部分。巡回法庭的判决和裁定即最高人民法院的判决和裁定。

**Article 19** The Supreme People's Court may set up circuit courts for trying the cases determined by the Supreme People's Court in accordance with the law.

The circuit courts are the integral part of the Supreme People's Court. The judgments and rulings rendered by the circuit courts shall be the judgments and rulings of the Supreme People's Court.

**第二十条** 高级人民法院包括:

- (一)省高级人民法院;
- (二)自治区高级人民法院;
- (三)直辖市高级人民法院。

**Article 20** High people's courts shall include:

- (1) High people's courts of provinces;
- (2) High people's courts of autonomous regions; and
- (3) High people's courts of municipalities directly under the Central Government.

**第二十一条** 高级人民法院审理下列案件:

- (一)法律规定由其管辖的第一审案件;
- (二)下级人民法院报请审理的第一审案件;
- (三)最高人民法院指定管辖的第一审案件;
- (四)对中级人民法院判决和裁定的上诉、抗诉案件;
- (五)按照审判监督程序提起的再审案件;
- (六)中级人民法院报请复核的死刑案件。

**Article 21** High people's courts shall handle the following cases:

- (1) First-instance cases assigned to their jurisdiction by the law;
- (2) First-instance cases submitted by the people's courts at lower level for trial;
- (3) First-instance cases assigned to their jurisdiction by the Supreme People's Court;
- (4) Cases of appeals or protests against the judgments and rulings rendered by intermediate people's courts;
- (5) Retrial cases lodged in accordance with trial supervision procedure; and

(6) Cases involving death sentence submitted by intermediate people's courts for review.

**第二十二条** 中级人民法院包括:

- (一)省、自治区辖市的中级人民法院;
- (二)在直辖市内设立的中级人民法院;
- (三)自治州中级人民法院;
- (四)在省、自治区内按地区设立的中级人民法院。

**Article 22** Intermediate people's courts shall include:

- (1) Intermediate people's courts of the municipalities under the jurisdiction of provinces and autonomous regions;
- (2) Intermediate people's courts set up in municipalities directly under the Central Government;
- (3) Intermediate people's courts of autonomous prefectures; and
- (4) Intermediate people's courts set up in prefectures of provinces and autonomous regions.

**第二十三条** 中级人民法院审理下列案件:

- (一)法律规定由其管辖的第一审案件;
- (二)基层人民法院报请审理的第一审案件;
- (三)上级人民法院指定管辖的第一审案件;
- (四)对基层人民法院判决和裁定的上诉、抗诉案件;
- (五)按照审判监督程序提起的再审案件。

**Article 23** Intermediate people's courts shall handle the following cases:

- (1) First-instance cases assigned to their jurisdiction by the law;
  - (2) First-instance cases submitted by primary people's courts for trial;
  - (3) First-instance cases assigned to their jurisdiction by the people's courts at higher level;
  - (4) Cases of appeals or protests against the judgments and rulings rendered by primary people's courts;
- and
- (5) Retrial cases lodged in accordance with trial supervision procedure

**第二十四条** 基层人民法院包括:

- (一)县、自治县人民法院;
- (二)不设区的市人民法院;
- (三)市辖区人民法院。

**Article 24** Primary people's courts shall include:

- (1) People's courts of counties and autonomous counties;
- (2) People's courts of municipalities not divided into districts; and
- (3) People's courts of municipal districts.

**第二十五条** 基层人民法院审理第一审案件,法律另有规定的除外。

基层人民法院对人民调解委员会的调解工作进行业务指导。

**Article 25** Primary people's courts shall handle the cases of first instance, unless otherwise provided for by the law.

Primary people's courts shall provide professional guidance to the mediation work of people's mediation committees.



**第二十六条** 基层人民法院根据地区、人口和案件情况,可以设立若干人民法庭。  
人民法庭是基层人民法院的组成部分。人民法庭的判决和裁定即基层人民法院的判决和裁定。

**Article 26** A primary people's court may set up a number of people's tribunals according to the conditions of the locality, population and cases.

A people's tribunal is an integral part of the primary people's court. The judgments and rulings of the people's tribunals shall be the judgments and rulings of the primary people's courts.

**第二十七条** 人民法院根据审判工作需要,可以设必要的专业审判庭。法官额较少的中级人民法院和基层人民法院,可以设综合审判庭或者不设审判庭。

人民法院根据审判工作需要,可以设综合业务机构。法官额较少的中级人民法院和基层人民法院,可以不设综合业务机构。

**Article 27** A people's court may set up necessary special tribunals according to the requirements of judicial work. An intermediate people's court or a primary people's court with small number of staff members may set up comprehensive tribunal or maintain no tribunal.

A people's court may set up a comprehensive professional agency according to the requirements of judicial work. An intermediate people's court or a primary people's court with small number of staff members may not set up the comprehensive professional agency.

**第二十八条** 人民法院根据工作需要,可以设必要的审判辅助机构和行政管理机构。

**Article 28** A people's court may set up necessary ancillary judicial agencies and administrative agencies according to the requirements of work.

### 第三章 人民法院的审判组织

#### Chapter 3: Trial Organizations of the People's Courts

**第二十九条** 人民法院审理案件,由合议庭或者法官一人独任审理。  
合议庭和法官独任审理的案件范围由法律规定。

**Article 29** A case handled by a people's court may be tried by a collegial panel or a sole judge.

The scopes of the cases tried by a collegial panel or a sole judge shall be prescribed by the law.

**第三十条** 合议庭由法官组成,或者由法官和人民陪审员组成,成员为三人以上单数。  
合议庭由一名法官担任审判长。院长或者庭长参加审理案件时,由自己担任审判长。  
审判长主持庭审、组织评议案件,评议案件时与合议庭其他成员权利平等。

**Article 30** A collegial panel shall be composed of judges or be composed of judges and people's assessors and shall have at least three members in an odd number.

One of the judges shall act as the presiding judge of the collegial panel. The president of the court or the chief judge of a division, when participating in the judicial proceedings, shall act as the presiding judge.

The presiding judge shall preside over court hearing and organize deliberation on the case and shall have same rights as other members of the collegial panel in deliberation on the case.

**第三十一条** 合议庭评议案件应当按照多数人的意见作出决定,少数人的意见应当记入笔录。评议案件笔录由合议庭全体组成人员签名。

**Article 31** In deliberation on a case, a collegial panel shall render decision according to the

opinions of the majority and the opinions of the minority shall be recorded in the written record. The written record on deliberation on the case shall be signed by all members of the collegial panel.

**第三十二条** 合议庭或者法官独任审理案件形成的裁判文书,经合议庭组成人员或者独任法官签署,由人民法院发布。

**Article 32** The written ruling formed upon trial of a case by a collegial panel or a sole judge shall be published by the people's court after being signed by the members of the collegial panel or the sole judge.

**第三十三条** 合议庭审理案件,法官对案件的事实认定和法律适用负责;法官独任审理案件,独任法官对案件的事实认定和法律适用负责。

人民法院应当加强内部监督,审判活动有违法情形的,应当及时调查核实,并根据违法情形依法处理。

**Article 33** In trial of a case by a collegial panel, the judges shall be responsible for the ascertainment of facts and the application of the law in the case; in trial of a case by a sole judge, the sole judge shall be responsible for the ascertainment of facts and the application of the law in the case.

A people's court shall strengthen internal supervision, conduct promptly investigation and verification of the violation of law, if any, in judicial activities and make disposition thereof legally in light of the circumstances of the violation.

**第三十四条** 人民陪审员依照法律规定参加合议庭审理案件。

**Article 34** People's assessors shall participate in the trial of cases conducted by collegial panels in accordance with the law.

**第三十五条** 中级以上人民法院设赔偿委员会,依法审理国家赔偿案件。  
赔偿委员会由三名以上法官组成,成员应当为单数,按照多数人的意见作出决定。

**Article 35** A people's case at intermediate or higher level shall set up a compensation committee and conduct trial of cases involving State compensation in accordance with the law.

A compensation committee shall be composed of at least three judges in an odd number and render decision according to the opinions of the majority.

**第三十六条** 各级人民法院设审判委员会。审判委员会由院长、副院长和若干资深法官组成,成员应当为单数。

审判委员会会议分为全体会议和专业委员会会议。

中级以上人民法院根据审判工作需要,可以按照审判委员会委员专业和工作分工,召开刑事审判、民事行政审判等专业委员会会议。

**Article 36** People's courts at all levels shall set up judicial committees. A judicial committee shall be composed of the court's president, vice presidents and several senior judges and its members shall be in an odd number.

Meetings of a judicial committee shall be divided into plenary meetings and special meetings of the committee.

A people's court at intermediate or higher level may, according to the requirement of judicial work, hold special meetings of the judicial committee on trial of criminal cases and trial of civil and administrative cases, etc. based on the specialties and division of work of the committee members.

**第三十七条** 审判委员会履行下列职能:

(一)总结审判工作经验;

(二)讨论决定重大、疑难、复杂案件的法律适用;

(三)讨论决定本院已经发生法律效力的判决、裁定、调解书是否应当再审;

(四)讨论决定其他有关审判工作的重大问题。

最高人民法院对属于审判工作中具体应用法律的问题进行解释,应当由审判委员会全体会议讨论通过;发布指导性案例,可以由审判委员会专业委员会会议讨论通过。

**Article 37** A judicial committee shall perform the following functions:

(1) Summarizing the experiences in judicial work;

(2) Discussing and deciding on the application of law in major, difficult and complicated cases;

(3) Discussing and deciding on whether or not retrial is required for the court's judgments, rulings and statements of mediation that have become legally effective; and

(4) Discussing and deciding on other major issues concerning judicial work.

The interpretation of the Supreme People's Court on the issues falling under the specific application of laws in judicial work shall be approved by a plenary meeting of the judicial committee upon discussion; the publication of guiding cases by the Supreme People's Court may be approved by a special meeting of the judicial committee upon discussion..

**第三十八条** 审判委员会召开全体会议和专业委员会会议,应当有其组成人员的过半数出席。

审判委员会会议由院长或者院长委托的副院长主持。审判委员会实行民主集中制。

审判委员会举行会议时,同级人民检察院检察长或者检察长委托的副检察长可以列席。

**Article 38** When a judicial committee convenes a plenary meeting or special meeting, more than half of its members shall be present at the meeting.

A meeting of the judicial committee shall be presided over by the court's president or the vice president designated by the president. The judicial committee shall adopt the system of democratic centralism.

When the judicial committee holds a meeting, the chief procurator or deputy chief procurators designated by the chief prosecutor of the people's procuratorate at the same level may be present at the meeting as non-voting participants.

**第三十九条** 合议庭认为案件需要提交审判委员会讨论决定的,由审判长提出申请,院长批准。

审判委员会讨论案件,合议庭对其汇报的事实负责,审判委员会委员对本人发表的意见和表决负责。审判委员会的决定,合议庭应当执行。

审判委员会讨论案件的决定及其理由应当在裁判文书中公开,法律规定不公开的除外。

**Article 39** If a collegial panel believes that a case need to be submitted to the judicial committee for discussion and decision, the presiding judge shall file application which shall be subject to approval by the president of the court.

In discussion of a case by the judicial committee, the collegial panel shall be responsible for the facts reported thereby and any member of the judicial committee shall be responsible for the opinions delivered and vote taken thereby. The collegial panel shall execute the decision made by the judicial committee.

The decision on a case discussed by the judicial committee and the reasons therefor shall be disclosed by the written ruling, unless the decision and the reasons shall not be disclosed under the law.

#### 第四章 人民法院的人员组成

### Chapter 4 Composition of Personnel of the People's Courts

**第四十条** 人民法院的审判人员由院长、副院长、审判委员会委员和审判员等人员组成。

**Article 40** The judicial personnel of a people's court shall consist of the court's president, vice presidents, members of the judicial committee, judges and other relevant personnel.

**第四十一条** 人民法院院长负责本院全面工作,监督本院审判工作,管理本院行政事务。人民法院副院长协助院长工作。

**Article 41** The president of a people's court shall be in charge of the overall work of the court, supervise the judicial work of the court and manage the administrative affairs of the court. The vice presidents of the people's court shall assist the president in work.

**第四十二条** 最高人民法院院长由全国人民代表大会选举,副院长、审判委员会委员、庭长、副庭长和审判员由院长提请全国人民代表大会常务委员会任免。

最高人民法院巡回法庭庭长、副庭长,由最高人民法院院长提请全国人民代表大会常务委员会任免。

**Article 42** The President of the Supreme People's Court shall be elected by the National People's Congress and the vice presidents, members of the judicial committee, chief judges, associate chief judges and judges of the Supreme People's Court shall be appointed and removed by the Standing Committee of the National People's Congress upon the recommendation of the President of the Supreme People's Court.

The chief judges and associate chief judges of the circuit courts of the Supreme People's Court shall be appointed and removed by the Standing Committee of the National People's Congress upon the recommendation of the President of the Supreme People's Court.

**第四十三条** 地方各级人民法院院长由本级人民代表大会选举,副院长、审判委员会委员、庭长、副庭长和审判员由院长提请本级人民代表大会常务委员会任免。

在省、自治区内按地区设立的和在直辖市内设立的中级人民法院院长,由省、自治区、直辖市人民代表大会常务委员会根据主任会议的提名决定任免,副院长、审判委员会委员、庭长、副庭长和审判员由高级人民法院院长提请省、自治区、直辖市人民代表大会常务委员会任免。

**Article 43** The presidents of local people's courts at various levels shall be elected by the people's congresses at the corresponding level, and vice presidents, members of judicial committees, chief judges, associate chief judges and judges shall be appointed and removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the presidents of these courts.

The appointment or removal of the presidents of the intermediate people's courts set up in prefectures of the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be decided on by the standing committees of the people's congresses of provinces, autonomous regions or municipalities directly under the Central Government on the basis of the nominations made by the respective councils of chairmen and the vice-presidents, members of the judicial committees, chief judges and associate chief judges and judges shall be appointed or removed by the standing committees of the people's congresses of the provinces, autonomous regions or municipalities directly under the Central Government upon the recommendations of the presidents of the high people's courts.

**第四十四条** 人民法院院长任期与产生它的人民代表大会每届任期相同。

各级人民代表大会有权罢免由其选出的人民法院院长。在地方人民代表大会闭会期间,本级人民代表大会常务委员会认为人民法院院长需要撤换的,应当报请上级人民代表大会常务委员会批准。

**Article 44** The term of office of the president of a people's court shall be the same as that of the



people's congress electing the president.

The people's congresses at various levels shall have the power to remove from office the presidents of the people's courts they have elected. If, during the period when a local people's congress is not in session, the standing committee of the people's congress at the corresponding level believes that the president of the people's court need to be replaced, it shall submit the same to the standing committee of the people's congress at higher level for approval.

**第四十五条** 人民法院的法官、审判辅助人员和司法行政人员实行分类管理。

**Article 45** Classified management shall be applied to the judges, ancillary judicial personnel and judicial administrative personnel of the people's courts.

**第四十六条** 法官实行员额制。法官员额根据案件数量、经济社会发展情况、人口数量和人民法院审级等因素确定。

最高人民法院法官员额由最高人民法院商有关部门确定。地方各级人民法院法官员额,在省、自治区、直辖市内实行总量控制、动态管理。

**Article 46** Quotas of headcount shall apply to judges. The quotas of headcount of judges shall be determined according to the number of cases, economic and social development, population size, levels of the people's courts and other factors.

The quota of the headcount of the judges of the Supreme People's Court shall be determined by the Supreme People's Court in consultation with relevant departments. The quota of the headcount of the judges of the local people's courts at various levels shall be subject to control of total number and dynamic management within the provinces, autonomous regions and municipalities directly under the Central Government.

**第四十七条** 法官从取得法律职业资格并且具备法律规定的其他条件的人员中选任。初任法官应当由法官遴选委员会进行专业能力审核。上级人民法院的法官一般从下级人民法院的法官中择优遴选。

院长应当具有法学专业知识和法律职业经历。副院长、审判委员会委员应当从法官、检察官或者其他具备法官、检察官条件的人员中产生。

法官的职责、管理和保障,依照《中华人民共和国法官法》的规定。

**Article 47** Judges shall be selected and appointed from the persons who have obtained legal professional qualifications and meet other conditions prescribed by the law. Persons who are appointed judges for the first time shall be subject to professional capability review by the judge selection committee. The judges of the people's courts at higher level shall in general be selected from the best judges of the people's courts at lower level.

Presidents of the people's courts shall possess professional knowledge of law and legal professional experiences. Vice presidents and the members of judicial committees shall be selected from judges, procurators, or other persons meeting the conditions for judges or procurators.

Responsibilities, management and guarantee of judges shall be subject to the provisions of the Law of the People's Republic of China on Judges.

**第四十八条** 人民法院的法官助理在法官指导下负责审查案件材料、草拟法律文书等审判辅助事务。

符合法官任职条件的法官助理,经遴选后可以按照法官任免程序任命为法官。

**Article 48** Assistant judges of the people's courts shall be responsible for reviewing case materials, drafting legal documents and other ancillary judicial affairs under the direction of judges.

The assistant judges meeting the conditions for serving as judges may, after selection, be appointed as the judges according to the procedures for appointment and removal of judges.

**第四十九条** 人民法院的书记员负责法庭审理记录等审判辅助事务。

**Article 49** Clerks of the people's courts shall be responsible for records of court hearing and other ancillary judicial affairs.

**第五十条** 人民法院的司法警察负责法庭警戒、人员押解和看管等警务事项。司法警察依照《中华人民共和国人民警察法》管理。

**Article 50** Judicial police of the people's courts shall be responsible for the guard of courtrooms, person escort and custody and other policing matters.

Judicial police shall be managed in accordance with the Law of the People's Republic of China on People's Police.

**第五十一条** 人民法院根据审判工作需要,可以设司法技术人员,负责与审判工作有关的事项。

**Article 51** The people's courts may, according to the requirements of judicial work, maintain judicial technicians who shall be responsible for the matters relating to judicial work.

## 第五章 人民法院行使职权的保障

### Chapter 5: Guarantee of Exercise of Powers of the People's Courts

**第五十二条** 任何单位或者个人不得要求法官从事超出法定职责范围的事务。

对于领导干部等干预司法活动、插手具体案件处理,或者人民法院内部人员过问案件情况的,办案人员应当全面如实记录并报告;有违法违纪情形的,由有关机关根据情节轻重追究行为人的责任。

**Article 52** No entity or individual may require judges to engage in the affairs beyond scope of statutory duties and responsibilities.

The personnel handling cases shall make comprehensive and truthful record and report of the intervention of leading cadres, etc. in judicial activities or handling of specific cases or the interference of internal personnel of the people's courts with the handling of cases; in case of any violation of laws or disciplines, relevant organs shall impose liability on the actors in light of the seriousness of circumstances.

**第五十三条** 人民法院作出的判决、裁定等生效法律文书,义务人应当依法履行;拒不履行的,依法追究法律责任。

**Article 53** Obligors shall perform in accordance with the law the judgments, rulings and other effective legal documents rendered by the people's courts; if they refuse to perform, they shall be subject to legal liability in accordance with the law.

**第五十四条** 人民法院采取必要措施,维护法庭秩序和审判权威。对妨碍人民法院依法行使职权的违法犯罪行为,依法追究法律责任。

**Article 54** The people's courts shall take necessary measures to safeguard the order of courtrooms and judicial authority. In case of any violation of laws or criminal offense that intervenes in the legal exercise of functions and powers by the people's courts, legal liability shall be imposed in accordance with the law.

**第五十五条** 人民法院实行培训制度,法官、审判辅助人员和司法行政人员应当接受理论和业务培训。

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Article 55 The people's courts shall adopt training system and judges, ancillary judicial personnel and judicial administrative personnel shall accept theoretical and professional training.

第五十六条 人民法院人员编制实行专项管理。

Article 56 The staffing of the people's courts shall be subject to special management.

第五十七条 人民法院的经费按照事权划分的原则列入财政预算,保障审判工作需要。

Article 57 The funds of the people's courts shall be incorporated in the fiscal budget according to the principle of division of duties to guarantee the demand of judicial work.

第五十八条 人民法院应当加强信息化建设,运用现代信息技术,促进司法公开,提高工作效率。

Article 58 The people's courts shall strengthen the development of information technology and use modern information technology to promote judicial openness and improve work efficiency.

## 第六章 附则

### Chapter 6: Supplementary Provisions

第五十九条 本法自2019年1月1日起施行。

Article 59 This Law shall come into force as of January 1, 2019.

# EXHIBIT 14





# 全国人民代表大会

The National People's Congress of the People's Republic of China

中国人大网

En

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## 全国人大常委会法制工作委员会简介

来源： 中国人大网    浏览字号： 大 中 小    2022年07月15日 16:25:56

### 一、机构沿革

1978年，党的十一届三中全会提出了健全社会主义民主和加强社会主义法治的任务，强调“为了保障人民民主，必须加强社会主义法制，使民主制度化、法律化，使这种制度和法律具有稳定性、连续性和极大的权威，做到有法可依，有法必依，执法必严，违法必究。从现在起，应当把立法工作摆到全国人民代表大会及其常务委员会的重要日程上来”。1979年2月，第五届全国人大常委会第六次会议决定设立全国人大常委会法制委员会。会议通过了由八十人组成的法制委员会名单，彭真为主任，胡乔木、谭政、王首道、史良（女）、安子文、杨秀峰、高克林、武新宇、陶希晋、沙千里为副主任，委员六十九人，3月开始正式办公。9月，中共中央批准成立立法制委机关党组，任命武新宇为党组书记，刘复之为党组副书记，王汉斌为党组成员。11月，第五届全国人大常委会第十二次会议任命武新宇为秘书长，刘复之为第一副秘书长，王汉斌为副秘书长。

1983年6月，第六届全国人大第一次会议通过决议，成立全国人大法律委员会。法律委员会为专门委员会，委员由全国人大代表组成，实行任期制。9月，第六届全国人大常委会第二次会议通过决议，法制委员会改为法制工作委员会（以下简称法工委）。

### 二、机构设置

法工委是全国人大常委会的立法工作机构。法工委设主任一人、副主任若干人，由委员长提请全国人大常委会会议任免。法工委下设办公室、宪法室、立法规划室、刑法室、民法室、经济法室、国家法室、行政法室、社会法室、法规备案审查室、研究室，并设机关党委、机关纪委。

### 三、主要职责

法工委在全国人大常委会领导下开展有关法律案的起草、修改、研究及审议服务工作，全面承担常委会立法工作的规划、组织、协调、指导和服务职能，对报送备案的行政法规、地方性法规和司法解释进行合法性审查，承办宪法实施监督具体工作，为全国人大及其常委会行使国家立法权提供服务保障、当好参谋助手。具体有：

1. 受委员长会议委托，拟订有关法律方面的议案草案。
2. 承担推动宪法实施、开展宪法解释、推进合宪性审查、加强宪法监督、配合宪法宣传等方面的具体工作。
3. 负责制定本届全国人大常委会立法规划和年度立法计划工作。

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- 推进全民科普 筑牢创新根基
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- 学习习近平总书记关于民法典重要...
- 全过程人民民主

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4. 为全国人大和全国人大常委会审议法律草案服务。对提请全国人大和全国人大常委会审议的有关法律草案进行调查研究, 征求意见, 提供相关资料, 提出修改建议稿; 在法律草案交付表决前, 负责法律用语的规范和文字方面的工作。

5. 对各省、自治区、直辖市人大常委会及中央和国家机关有关部门提出的有关法律方面问题的询问进行研究予以答复, 同时报人大常委会备案。

6. 研究、处理并答复全国人大代表提出的有关立法工作的建议、批评和意见以及全国政协委员的有关提案。

7. 开展法规、司法解释的备案审查工作。

8. 进行与人大工作有关的法学理论、法制史和比较法学的研究。

9. 负责法工委发言人办公室日常工作, 开展法制宣传, 人权理论研究等工作。

10. 负责汇编、译审法律文献的有关工作。

11. 负责法律信息数据的开发、维护和管理工作的。

12. 负责法工委党建和纪检工作。

13. 办理全国人大常委会领导交办的其他事项。

#### 四、现任领导

现任主任: 沈春耀

现任副主任: 李宁、张勇、许安标、武增、王瑞贺

编 辑: 冯涛

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# EXHIBIT 15

## 中华人民共和国缔结条约程序法

### Law of the People's Republic of China on the Procedure of the Conclusion of Treaties

颁布机关: 全国人民代表大会常务委员会  
Promulgating Institution: Standing Committee of the National People's Congress

文 号: 中华人民共和国主席令第三十七号  
Document Number: Order No.37 of the President of the People's Republic of China

颁布时间: 12/28/1990  
Promulgating Date: 12/28/1990

实施时间: 12/28/1990  
Effective Date: 12/28/1990

效力状态: 有效  
Validity Status: Valid

#### 中华人民共和国主席令

##### 第三十七号

《中华人民共和国缔结条约程序法》已由中华人民共和国第七届全国人民代表大会常务委员会第十七次会议于1990年12月28日通过，现予公布，自公布之日起施行。

中华人民共和国主席 杨尚昆

1990年12月28日

#### Order of the President of the People's Republic of China

##### No. 37

The Law of the People's Republic of China on the Procedure of the Conclusion of Treaties, adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress of the People's Republic of China on December 28, 1990, is hereby promulgated and shall enter into force as of the date of promulgation.

Yang Shangkun

President of the People's Republic of China

December 28, 1990

#### 中华人民共和国缔结条约程序法

### Law of the People's Republic of China on the Procedure of the Conclusion of Treaties

(1990年12月28日第七届全国人民代表大会常务委员会第十七次会议通过)

(Adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990 promulgated by Order No.37 of the President of the People's Republic of China on December 28, 1990, and effective as of the date of promulgation)



**第一条** 根据中华人民共和国宪法，制定本法。

**Article 1** The present Law is enacted in accordance with the Constitution of the People's Republic of China.

**第二条** 本法适用于中华人民共和国同外国缔结的双边和多边条约、协定和其他具有条约、协定性质的文件。

**Article 2** This Law shall be applicable to bilateral or multilateral treaties and agreements and other instruments of the nature of a treaty or agreement concluded between the People's Republic of China and foreign States.

**第三条** 中华人民共和国国务院，即中央人民政府，同外国缔结条约和协定。

中华人民共和国全国人民代表大会常务委员会决定同外国缔结的条约和重要协定的批准和废除。

中华人民共和国主席根据全国人民代表大会常务委员会的决定，批准和废除同外国缔结的条约和重要协定。

中华人民共和国外交部在国务院领导下管理同外国缔结条约和协定的具体事务。

**Article 3** The State Council, that is, the Central People's Government, of the People's Republic of China concludes treaties and agreements with foreign States.

The Standing Committee of the National People's Congress of the People's Republic of China decides on the ratification and abrogation of treaties and important agreements concluded with foreign States.

The President of the People's Republic of China, in accordance with decisions of the Standing Committee of the National People's Congress, ratifies and abrogates treaties and important agreements concluded with foreign States.

The Ministry of Foreign Affairs of the People's Republic of China, under the leadership of the State Council, administers the specific affairs concerning the conclusion of treaties and agreements with foreign States.

**第四条** 中华人民共和国以下列名义同外国缔结条约和协定：

(一)中华人民共和国；

(二)中华人民共和国政府；

(三)中华人民共和国政府部门。

**Article 4** The People's Republic of China shall conclude treaties and agreements with other States in the name of:

(1)the People's Republic of China;

(2)the Government of the People's Republic of China;

(3)the governmental departments of the People's Republic of China.

**第五条** 谈判和签署条约、协定的决定程序如下：

(一)以中华人民共和国名义谈判和签署条约、协定，由外交部或者国务院有关部门会同外交部提出建议并拟订条约、协定的中方草案，报请国务院审核决定；

(二)以中华人民共和国政府名义谈判和签署条约、协定，由外交部提出建议并拟订条约、协定的中方草案，或者由国务院有关部门提出建议并拟订条约、协定的中方草案，同外交部会商后，报请国务院审核决定。属于具体业务事项的协定，经国务院同意，协定的中方草案由国务院有关部门审核决定，必要时同外交部会商；

(三)以中华人民共和国政府部门名义谈判和签署属于本部门职权范围内事项的协定，由本部门决定或者本部门同外交部会商后决定；涉及重大问题或者涉及国务院其他有关部门职权范围的，由本部门或者本部门同国务院其他有关部门会商后，报请国务院决定。协定的中方草案由本部门审核决定，必要

时同外交部会商。

经国务院审核决定的条约、协定的中方草案，经谈判需要作重要改动的，重新报请国务院审核决定。

**Article 5** The decision to negotiate and sign treaties and agreements shall be made according to the following procedures:

(1) In the case of a treaty or agreement to be negotiated and signed in the name of the People's Republic of China, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation and draw up a draft treaty or agreement of the Chinese side and submit it to the State Council for examination and decision;

(2) In the case of a treaty or agreement to be negotiated and signed in the name of the Government of the People's Republic of China, the Ministry of Foreign Affairs or the department concerned under the State Council shall make a recommendation and draw up a draft treaty or agreement of the Chinese side and, after consultation with the Ministry of Foreign Affairs, submit it to the State Council for examination and decision. In the case of an agreement concerning a specific line of business, its Chinese draft shall, with the consent of the State Council, be examined and decided upon by the department concerned under the State Council or when necessary in consultation with the Ministry of Foreign Affairs;

(3) Agreements to be negotiated and signed in the name of a governmental department of the People's Republic of China concerning matters within the scope of functions and powers of the department concerned shall be decided upon by the department itself or after consultation with the Ministry of Foreign Affairs. In the case of an agreement relating to matters of major importance or matters falling within the functions and powers of other departments under the State Council, the department concerned shall submit it by itself or after consultation with the other departments concerned under the State Council, to the State Council for decision. The draft agreement of the Chinese side shall be examined and decided upon by the department concerned or when necessary in consultation with the Ministry of Foreign Affairs;

When major modification in the Chinese draft of a treaty or agreement already examined and decided upon by the State Council are necessary as a result of negotiation, the revised draft shall be submitted to the State Council for examination and decision.

**第六条** 谈判和签署条约、协定的代表按照下列程序委派：

(一) 以中华人民共和国名义或者中华人民共和国政府名义缔结条约、协定，由外交部或者国务院有关部门报请国务院委派代表。代表的全权证书由国务院总理签署，也可以由外交部长签署；

(二) 以中华人民共和国政府部门名义缔结协定，由部门首长委派代表。代表的授权证书由部门首长签署。部门首长签署以本部门名义缔结的协定，各方约定出具全权证书的，全权证书由国务院总理签署，也可以由外交部长签署。

下列人员谈判、签署条约、协定，无须出具全权证书：

(一) 国务院总理、外交部长；

(二) 谈判、签署与驻在国缔结条约、协定的中华人民共和国驻该国使馆馆长，但是各方另有约定的除外；

(三) 谈判、签署以本部门名义缔结协定的中华人民共和国政府部门首长，但是各方另有约定的除外；

(四) 中华人民共和国派往国际会议或者派驻国际组织，并在该会议或者该组织内参加条约、协定谈判的代表，但是该会议另有约定或者该组织章程另有规定的除外。

**Article 6** Representatives for negotiating and signing treaties or agreements shall be appointed according to the following procedures:

(1) In the case of a treaty or agreement to be concluded in the name of the People's Republic of China or

the Government of the People's Republic of China, the Ministry of Foreign Affairs or the department concerned under the State Council shall submit a report to the State Council for the appointment of a representative. The full powers of the representative shall be signed by the Premier of the State Council, but may also be signed by the Minister of Foreign Affairs;

(2) In the case of an agreement to be concluded in the name of a governmental department of the People's Republic of China, a representative shall be appointed by the head of the department concerned. The letter of authorization for the representative shall be signed by the head of the department. Where the head of a department signs an agreement concluded in the name of the governmental department, and where the contracting parties agree that it is necessary for the head of the department to produce full powers, the full powers shall be signed by the Premier of the State Council, but may also be signed by the Minister of Foreign Affairs.

The following persons shall dispense with full powers for negotiating and signing treaties and agreements:

- (1) the Premier of the State Council, the Minister of Foreign Affairs;
- (2) the head of a diplomatic mission of the People's Republic of China who negotiates and signs treaties and agreements concluded between China and the State to which he is accredited, unless it is otherwise agreed by the contracting parties;
- (3) the head of a governmental department of the People's Republic of China who negotiates and signs the agreements concluded in the name of his department, unless it is otherwise agreed by the contracting parties;
- (4) the person, dispatched to an international conference or accredited to an international organization by the People's Republic of China, who is at the same time the representative for negotiating treaties or agreements in that conference or organization, unless it is otherwise agreed by the conference or otherwise provided for in the constitution of the organization.

**第七条** 条约和重要协定的批准由全国人民代表大会常务委员会决定。

前款规定的条约和重要协定是指：

- (一) 友好合作条约、和平条约等政治性条约；
- (二) 有关领土和划定边界的条约、协定；
- (三) 有关司法协助、引渡的条约、协定；
- (四) 同中华人民共和国法律有不同规定的条约、协定；
- (五) 缔约各方议定须经批准的条约、协定；
- (六) 其他须经批准的条约、协定。

条约和重要协定签署后，由外交部或者国务院有关部门会同外交部，报请国务院审核；由国务院提请全国人民代表大会常务委员会决定批准；中华人民共和国主席根据全国人民代表大会常务委员会的决定予以批准。

双边条约和重要协定经批准后，由外交部办理与缔约另一方互换批准书的手续；多边条约和重要协定经批准后，由外交部办理向条约、协定的保存国或者国际组织交存批准书的手续。批准书由中华人民共和国主席签署，外交部长副署。

**Article 7** The ratification of treaties and important agreements shall be decided upon by the Standing Committee of the National People's Congress.

The treaties and important agreements referred to in the preceding paragraph are as follows:

- (1) treaties of friendship and cooperation, treaties of peace and similar treaties of a political nature;
- (2) treaties and agreements relating to territory and delimitation of boundary lines;

(3) treaties and agreements relating to judicial assistance and extradition;

(4) treaties and agreements which contain stipulations inconsistent with the laws of the People's Republic of China;

(5) treaties and agreements which are subject to ratification as agreed by the contracting parties; and

(6) other treaties and agreements subject to ratification.

After the signing of a treaty or an important agreement, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall submit it to the State Council for examination and verification; the State Council shall then refer it to the Standing Committee of the National People's Congress for decision on ratification; the President of the People's Republic of China shall ratify it in accordance with the decision of the Standing Committee of the National People's Congress.

After the ratification of a bilateral treaty or an important bilateral agreement, the Ministry of Foreign Affairs shall execute the formalities for the exchange of the instruments of ratification with the other contracting party. After the ratification of a multilateral treaty or an important multilateral agreement, the Ministry of Foreign Affairs shall execute the formalities for the deposit of the instrument of ratification with the depositary State or international organization. The instrument of ratification shall be signed by the President of the People's Republic of China and countersigned by the Minister of Foreign Affairs.

**第八条** 本法第七条第二款所列范围以外的国务院规定须经核准或者缔约各方议定须经核准的协定和其他具有条约性质的文件签署后，由外交部或者国务院有关部门会同外交部，报请国务院核准。

协定和其他具有条约性质的文件经核准后，属于双边的，由外交部办理与缔约另一方互换核准书或者以外交照会方式相互通知业已核准的手续；属于多边的，由外交部办理向有关保存国或者国际组织交存核准书的手续。核准书由国务院总理签署，也可以由外交部长签署。

**Article 8** After the signing of the agreements and other instruments of the nature of a treaty which do not fall under paragraph 2, Article 7 of this Law and which are subject to approval as prescribed by the State Council or as agreed by the contracting parties, the Ministry of Foreign Affairs or the departments concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall submit them to the State Council for approval.

After the approval of agreements and other instruments of the nature of a treaty, in the case of a bilateral one, the Ministry of Foreign Affairs shall execute the formalities for the exchange of the instruments of approval with the other contracting party or for mutual notification of the approval by diplomatic notes. In the case of a multilateral one, the Ministry of Foreign Affairs shall execute the formalities for the deposit of the instruments of approval with the depositary state or international organization concerned. The instruments of approval shall be signed by the Premier of the State Council, but may also be signed by the Minister of Foreign Affairs.

**第九条** 无须全国人民代表大会常务委员会决定批准或者国务院核准的协定签署后，除以中华人民共和国政府部门名义缔结的协定由本部门送外交部登记外，其他协定由国务院有关部门报国务院备案。

**Article 9** After the signing of the agreements which need no decision on ratification by the Standing Committee of the National People's Congress or approval by the State Council, the agreements shall be submitted by the departments concerned under the State Council to the State Council for the record, except those agreements concluded in the name of the governmental departments of the People's Republic of China which are to be submitted by these departments to the Ministry of Foreign Affairs for registration.

**第十条** 缔约双方为使同一条约、协定生效需要履行的国内法律程序不同的，该条约、协定于缔约



双方完成各自法律程序并以外交照会方式相互通知后生效。

前款所列条约、协定签署后，应当区别情况依照本法第七条、第八条、第九条的规定办理批准、核准、备案或者登记手续。通知照会的手续由外交部办理。

**Article 10** If the two contracting parties need to go through different domestic legal procedures for the entry into force of the same treaty or agreement, the said treaty or agreement shall enter into force after the accomplishment by the two parties of their respective legal procedures and the mutual notification by diplomatic notes.

After the signing of the treaties and agreements listed in the preceding paragraph, the formalities of ratification, approval, entry on the record or registration shall be executed as the case requires in accordance with Article 7, 8 or 9 of this Law. The formalities of notification by note shall be completed by the Ministry of Foreign Affairs.

**第十一条** 加入多边条约和协定，分别由全国人民代表大会常务委员会或者国务院决定。

加入多边条约和协定的程序如下：

(一)加入属于本法第七条第二款所列范围的多边条约和重要协定，由外交部或者国务院有关部门会同外交部审查后，提出建议，报请国务院审核；由国务院提请全国人民代表大会常务委员会作出加入的决定。加入书由外交部长签署，具体手续由外交部办理；

(二)加入不属于本法第七条第二款所列范围的多边条约、协定，由外交部或者国务院有关部门会同外交部审查后，提出建议，报请国务院作出加入的决定。加入书由外交部长签署，具体手续由外交部办理。

**Article 11** The decision to accede to multilateral treaties or agreements shall be made by the Standing Committee of the National People's Congress or the State Council as the case requires.

The procedures for acceding to multilateral treaties or agreements shall be as follows:

(1)To accede to a multilateral treaty or an important multilateral agreement listed in Paragraph 2, Article 7 of this Law, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation after examination and submit it to the State Council for examination and verification; the State Council shall then refer it to the Standing Committee of the National People's Congress for decision on accession. The instrument of accession shall be signed by the Minister of Foreign Affairs, and the specific formalities executed by the Ministry of Foreign Affairs;

(2)To accede to a multilateral treaty or agreement other than those listed in Paragraph 2, Article 7 of this Law, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation after examination and submit it to the State Council for decision on accession. The instrument of accession shall be signed by the Minister of Foreign Affairs, and the specific formalities executed by the Ministry of Foreign Affairs.

**第十二条** 接受多边条约和协定，由国务院决定。

经中国代表签署的或者无须签署的载有接受条款的多边条约、协定，由外交部或者国务院有关部门会同外交部审查后，提出建议，报请国务院作出接受的决定。接受书由外交部长签署，具体手续由外交部办理。

**Article 12** The decision to accept a multilateral treaty or an agreement shall be made by the State Council. In the case of a multilateral treaty or agreement containing clauses of acceptance which is signed by the Chinese representative or does not require any signature, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation after examination and submit it to the State Council for decision on

acceptance. The instrument of acceptance shall be signed by the Minister of Foreign Affairs, and the specific formalities executed by the Ministry of Foreign Affairs.

**第十三条** 中华人民共和国同外国缔结的双边条约、协定，以中文和缔约另一方的官方文字写成，两种文本同等作准；必要时，可以附加使用缔约双方同意的另一种第三种文字，作为同等作准的第三种正式文本或者作为起参考作用的非正式文本；经缔约双方同意，也可以规定对条约、协定的解释发生分歧时，以该第三种文本为准。

某些属于具体业务事项的协定，以及同国际组织缔结的条约、协定，经缔约双方同意或者依照有关国际组织章程的规定，也可以只使用国际上较通用的一种文字。

**Article 13** A bilateral treaty or an agreement concluded by the People's Republic of China with a foreign State shall be done in the Chinese language and the official language of the other contracting party, both texts being equally authentic. When necessary, a text in the language of a third State agreed upon by the two contracting parties may be executed in addition as a third, equally authentic, official text or an unofficial text for reference. It may be stipulated by agreement of the two contracting parties that the third text shall prevail in case of divergence of interpretation of the treaty or agreement.

For agreements on specific lines of business and treaties and agreements concluded with international organizations, a single language fairly commonly used internationally may also be used by agreement of the two contracting parties or in accordance with the provisions of the constitutions of the international organizations concerned.

**第十四条** 以中华人民共和国或者中华人民共和国政府名义缔结的双边条约、协定的签字正本，以及经条约、协定的保存国或者国际组织核证无误的多边条约、协定的副本，由外交部保存；以中华人民共和国政府部门名义缔结的双边协定的签字正本，由本部门保存。

**Article 14** Signed originals of bilateral treaties and agreements concluded in the name of the People's Republic of China or the Government of the People's Republic of China and copies of multilateral treaties and agreements certified as true by the depositary States or international organizations concerned shall be deposited with the Ministry of Foreign Affairs. Signed originals of bilateral agreements concluded in the name of the governmental departments of the People's Republic of China shall be deposited with these departments.

**第十五条** 经全国人民代表大会常务委员会决定批准或者加入的条约和重要协定，由全国人民代表大会常务委员会公报公布。其他条约、协定的公布办法由国务院规定。

**Article 15** A treaty or an important agreement of which the Standing Committee of the National People's Congress has decided on ratification or accession shall be published in the bulletin of the Standing Committee of the National People's Congress. The measures for publishing other treaties and agreements shall be made by the State Council.

**第十六条** 中华人民共和国缔结的条约和协定由外交部编入《中华人民共和国条约集》。

**Article 16** Treaties and agreements concluded by the People's Republic of China shall be compiled by the Ministry of Foreign Affairs into a Collection of the Treaties of the People's Republic of China.

**第十七条** 中华人民共和国缔结的条约和协定由外交部按照联合国宪章的有关规定向联合国秘书处登记。

中华人民共和国缔结的条约和协定需要向其他国际组织登记的，由外交部或者国务院有关部门按照各该国际组织章程的规定办理。

**Article 17** Treaties and agreements concluded by the People's Republic of China shall be registered with the Secretariat of the United Nations by the Ministry of Foreign Affairs in accordance with the

relevant provisions of the United Nations Charter.

Treaties and agreements concluded by the People's Republic of China that require registration with other international organizations shall be registered by the Ministry of Foreign Affairs or the departments concerned under the State Council in accordance with the respective constitutions of the international organizations.

**第十八条** 中华人民共和国同国际组织缔结条约和协定的程序，依照本法及有关国际组织章程的规定办理。

**Article 18** The procedures for the conclusion of a treaty or an agreement with an international organization by the People's Republic of China shall follow this Law and the constitution of the relevant international organization.

**第十九条** 中华人民共和国缔结的条约和协定的修改、废除或者退出的程序，比照各该条约、协定的缔结的程序办理。

**Article 19** The procedures for amendment to, abrogation of and withdrawal from treaties and agreements concluded by the People's Republic of China shall follow mutatis mutandis the procedures for the conclusion of the treaties and agreements in question.

**第二十条** 国务院可以根据本法制定实施条例。

**Article 20** The State Council may make regulations in accordance with this Law for its implementation.

**第二十一条** 本法自公布之日起施行。

**Article 21** This Law shall enter into force as of the date of promulgation.

ENGLISH TRANSLATION BY THE GENERAL OFFICE OF THE LEGISLATIVE AFFAIRS  
COMMISSION, THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS.

LICENSED FOR USE AS OF MARCH 2009.

# EXHIBIT 16





中华人民共和国司法部

Ministry of Justice of the People's Republic of China

(中国政府法制信息网)

English

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## 我国开展国际民商事司法协助工作概况

来源：司法部官网    发布时间：2021-10-20 15:46

分享到



### 一、法律依据

中国开展国际民商事司法协助工作，主要适用以下法律规定：

#### （一）国内法

主要有民事程序法，即《中华人民共和国民事诉讼法》。

#### （二）国际条约

##### 1.国际公约

主要有“海牙两公约”，即《海牙送达公约》《海牙取证公约》。

##### 2.双边条约

主要有已生效的37项国际民商事以及民刑事司法协助条约。

#### （三）其他法律渊源

含有国际民商事司法协助内容的其他国内法和国际法。

### 二、中央机关

上述国际条约均指定中国司法部为中方中央机关。司法协助交流中心代表司法部具体行使中央机关职能。

### 三、请求内容

#### （一）司法文书送达

#### （二）调查取证

#### （三）判决的承认与执行

#### （四）其他请求

主要有提供咨询、交换信息，以及实践中依对等原则执行的请求。

### 四、执行程序

#### （一）向外国提出司法协助请求

主要由中方中央机关以请求书附表格方式提出。

北京、上海、江苏、浙江、广东省（市）高级人民法院可直接向外国中央机关提出文书送达和调查取证请求。

#### （二）接收外国司法协助请求

1.外国请求方将请求发中国司法部司法协助交流中心。

2.司法协助交流中心初步审查，符合规定的转中方主管机关最高人民法院；不符合规定的予以退回。

3.人民法院执行请求并向司法协助交流中心反馈结果。

4.司法协助交流中心以官方证明书向请求方反馈结果。

09/08/2022, 14:17

## 我国开展国际民商事司法协助工作概况

### (三) 接收外国涉港澳台司法协助请求

由司法协助交流中心依相关规定安排办理。

近年国际民商事司法协助请求执行情况，请参看本网站相关数据信息。

### 五、线上请求

为推动民商事司法协助公约条约缔约国线上提交请求，提高转递效率，民商事司法协助系统（www.ilcc.online）已试运行。目前，该系统正在升级，旨在为民商事领域国际合作提供更大便利。

责任编辑: 张丽青

▲ 上一篇: 司法部司法协助交流中心2022年部门预算

▼ 下一篇: 司法协助交流中心与乌兹别克斯坦共和国司法部国际法律合作司举行民商事司法协助视频会议

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国务院各部门

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司法部  
移动端

# EXHIBIT 17

## 江苏省高级人民法院关于印发《司法文书电子送达规定(试行)》的通知

江苏省高级人民法院关于印发《司法文书电子送达规定(试行)》的通知

(苏高法[2015]155号)

各市中级人民法院，南京、徐州铁路运输法院，各基层人民法院，本院各部门：

为方便当事人诉讼，提高审判效率，省法院制定了《司法文书电子送达规定(试行)》。省法院从今年7月份开始，将每月检查通报各市法院司法文书电子送达的落实情况，并把落实情况纳入对各市中级人民法院的综合考评。现将该规定予以印发，请认真组织学习，抓好贯彻落实。

2015年7月8日

### 司法文书电子送达规定(试行)

为方便当事人诉讼，提高审判效率，根据民事、[行政诉讼法](#)等相关法律、司法解释的规定，结合全省法院审判工作实际，制定本规定。

第一条 司法文书电子送达(以下简称“电子送达”)是以提高审判效率为目标，依托江苏法院诉讼服务网，通过专用电子送达系统在人民法院和诉讼当事人之间实现安全的文书送达和数据交互过程。

第二条 电子送达的适用对象为民事、行政、执行案件的当事人及其代理人、辩护人以及公诉机关等(以下简称“受送达人”)。

第三条 电子送达实行自愿原则。受送达人同意适用电子送达的，立案人员或承办法官、书记员应当引导其填写身份证号、手机号码等必要信息，并签订同意电子送达方式确认书。受送达人不同意的，人民法院应当以直接送达或通过特快专递等传统方式送达文书。



第四条 除法律规定的判决书、裁定书、调解书、决定书不得适用电子送达外，下列文书可以适用电子送达：

- （一）案件受理通知书；
- （二）应诉通知书；
- （三）告知当事人审判组织组成人员通知书、告知当事人权利义务通知书、审判组织变更通知书；
- （四）开庭传票；
- （五）听证通知书；
- （六）举证通知书；
- （七）执行通知书；
- （八）限期履行通知书；
- （九）缴费、缴款通知书；
- （十）审判信息查询须知；
- （十一）其他诉讼文书。

第五条 案件登记受理时，立案人员应当在案件管理系统中录入受送达人的身份信息、手机号码等，勾选是否“同意电子送达”，并告知受送达人电子送达过程中使用的网址、案件查询账号、密码等信息。

第六条 需要送达的司法文书在案件管理系统中加盖电子送达专用章并经操作确认后，自动上传至案件数据管理中心，通过保密网闸发送至江苏法院诉讼服务网，并由系统即时发送短信提示。

第七条 受送达人在收到短信提示后应当及时登录江苏法院诉讼服务网，输入案件查询账号、密码等信息，依次点击“文书送达”、“待签收文书”，查阅电子版司法文书。

第八条 电子送达与传统送达方式具有相同的法律效力。当事人点击诉讼服务网上电子版司法文书的时间视为送达时间。

第九条 受送达人点击电子版司法文书后，外网送达平台自动生成送达回证，送达回证自动生成并反馈至案件管理系统具体案件名下，由书记员打印送达回证归入案件卷宗。

第十条 本规定自下发之日起施行。

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[法宝使用](#)、[如何快速找到您需要的检索结果?](#) [法宝 V6 有何新特色?](#)



原文链接: <https://www.pkulaw.com/law/455296d9c696bb864b738ced705233f1bd1b.html>

## 四川省高级人民法院关于启用全省电子送达(提交)平台的通知

四川省高级人民法院关于启用全省电子送达(提交)平台的通知

(川高法明电[2018]28号 2018年4月18日)

# 四川省发电

发电单位

名称 明电 川高法明电[2018]28号

川高法 号

## 四川省高级人民法院 关于启用全省电子送达(提交)平台的通知

全省各中级人民法院、成都铁路运输中级法院：

2017年12月1日，省法院与四川法院设备供应商于建立全省电子送达(提交)平台的基础信息(运行)库，依托四川法院网上诉讼服务中心，建立起全省法院统一电子送达、案件提交诉讼材料应用平台，经省法院与省法院、各法院系统数据互联互通应用。截至2018年3月，全省已有13885名律师注册了个人用户账号，注册律师数占全省律师总数约76.15%，平台经过前期、站前测试等阶段使用效果良好，运行顺畅，应用便捷及效率提升，以推广应用，全面实施应用。现决定自即日起正式启用电子

此 函

总结《意见》平台，就相关注意事项通知如下：

一、法院诉讼中当事人委托代理律师的案件，当事人同意电子送达的，法官、审判辅助人员可以通过内网诉讼服务平台，用个人社号或密码登录诉讼服务平台，使用电子送达平台由律师送达裁判文书、裁定书、调解书外的所有诉讼文书。《具体操作指引（附件1）》已经送达的诉讼文书需要更正的，应当重新送达。

二、各级法院诉讼服务中心要做好相关衔接工作，引导当事人或者诉讼代理人在线签署送达地址确认书时，在“是否接受电子送达”一处勾选“是”，并优先将律师的电子送达平台号用于确认书送达诉讼文书的电子送达地址。

三、案件受理后，法官、审判辅助人员应当受送达文书，应当通知并告知当事人电子送达事项。通过电子送达平台送达诉讼文书后，应当及时通过电话或短信告知代理律师，提醒其及时接收查看。未送达的，应打印电子送达凭证入卷。

四、律师通过电子送达平台提交诉讼材料，由各级法院诉讼服务中心（立案庭）通过内网诉讼服务平台统一接收，再转交承办法官或审判辅助人员内网办案系统。各级法院诉讼服务中心要安排专人负责律师提交电子材料的接收转递，确保及时流转。

五、各级法院要加强平台运行情况的跟踪，如有问题和建议，请及时报告省法院。

附件：

1. 电子送达平台操作指引

（二）民事司法理论



2. 送达地址确认书（确认送达地址用）
3. 受理案件通知书（通知提起诉讼的当事人用）
4. 应诉通知书（通知对方当事人用）



北京国信律师事务所

附件1

## 电子送达平台操作指引

## 一、如何实现电子送达

1. 在内网系统中点击常用功能，添加诉讼服务系统或者直接打开IE浏览器在网址框输入：http://134.27.6.81:8881/act/gk/init.do 弹出页面



## 2. 选择法院



民事司法评论

3. 输入与审判系统相同的账号和密码登录

4. 点击“诉讼服务管理-网上送达”功能



5. 点击“新增送达”按钮，弹出页面



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6. 输入“数字”，点击“案号”后方的 $\mathcal{M}$ 查询案号

7. 选择案号

民事司法评论



8. 输入标题，在接收人方框点击“选择”按钮，选择送达的律师



9. 在需送达的文书界面点击“选择”按钮选择要送达的文书

10. 双击每个文书标题可以查看文书正文

11. “备注”功能可以进行话语描述

12. 确认所有内容没有问题后，点击下方“发送”按钮，进行发送

13. 如需打印文书送达凭证，选中记录后，点击“打印”功能

 需要帮助评论

## 二、如何转接律师提交的电子材料

1. 诉讼服务中心（立案庭）专岗人员登录后，在“材料转接”中可看到待接收记录：



序号	材料名称	材料来源	材料类型	材料状态	材料时间	材料大小	材料格式	材料备注
1	起诉状	原告	起诉状	待接收	2022-08-08 10:00:00	100KB	PDF	
2	答辩状	被告	答辩状	待接收	2022-08-08 10:00:00	100KB	PDF	
3	证据材料	原告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
4	证据材料	被告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
5	证据材料	原告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
6	证据材料	被告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
7	证据材料	原告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
8	证据材料	被告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
9	证据材料	原告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	
10	证据材料	被告	证据材料	待接收	2022-08-08 10:00:00	100KB	PDF	

## 2. 点击接收“\*”，填出处理意见



材料名称：\*  
材料来源：\*  
材料类型：\*  
材料状态：\*  
材料时间：\*  
材料大小：\*  
材料格式：\*  
材料备注：\*

处理意见：\*

处理时间：\*

处理人：\*

处理结果：\*

分为两种处理结果：

(1)【接收】需填写“材料处理情况”



接收人: 接收日期: 材料处理情况:

点击“接收”，弹出“接收成功”对话框，点击“确定”



接收成功

高事司法律

接收成功后，对接审判系统，材料自动推送至该案过程卷中：



(2)【退回】无需填写，表示当事人提交的材料不符合要求，点击“退回”，材料不得推送至该案过程卷中。



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## 附件 2

送达地址确认书（确认送达地址用）

## 送达地址确认书

案号			
案由			
告知事项	<p>1. 为便于当事人及时收到人民法院诉讼文书，保证诉讼程序顺利进行，当事人应当如实提供准确的送达地址。</p> <p>2. 如果提供的地址不准确，或不及时告知变更后的地址，使诉讼文书无法送达或未按时送达，当事人将自行承担因此可能产生的法律后果。</p> <p>3. 为提高送达效率，法院可以采用传真、电子邮件等方式送达诉讼文书，但判决书、裁定书、调解书除外。以传真或电子邮件方式送达诉讼文书的，应当及时对书面告知人民法院变更后的送达地址。</p> <p>4. 确认的送达地址适用于一审、二审、再审案件、执行程序。如果送达地址有变更，应当及时书面告知人民法院变更后的送达地址。</p> <p>5. 有关送达的法律规范，以本确认书为准。</p>		
送达地址方式	当事人姓名		
	证件类型	证件号码	
	确认送达地址		
	是否接受 电子送达	<input type="checkbox"/> 是 <input type="checkbox"/> 否 <input type="checkbox"/> 电子邮箱（请完整填写账号）： <input type="checkbox"/> 手机号码： <input type="checkbox"/> 传真号码： <input type="checkbox"/> 电子邮件地址：	
	手机号码	邮编	
其他联系方式			
送达人确认	<p>我已阅读（听明白）本确认书的告知事项，提供了上述送达地址，确认了上述送达方式，并保证所提供送达地址各项内容是正确的、有效的。如在诉讼过程中送达地址发生变化，将及时通知法院。</p> <p style="text-align: right;">受送达人（签名或盖章）： 年 月 日</p>		
备注			
法院工作人员签署			

根据《中华人民共和国民事诉讼法》第八十五条

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民事司法理论

附件3

受理案件通知书（通知提起诉讼的当事人用）

××××人民法院

## 受理案件通知书

（××××）……民初……号

××××

……（写明当事人及案由）一案，本院于××××年××月××日立案。本案案号为（××××）……民初……号。现将受理案件的有关事项通知如下：

一、在诉讼过程中，当事人必须依法行使诉讼权利，有权行使《中华人民共和国民事诉讼法》第四十九条、第五十条、第五十一条等规定的诉讼权利；同时也必须遵守诉讼秩序，履行诉讼义务。

二、自然人应当提交身份证或者通行证、护照复印件；法人或者其他组织应当提交营业执照或者事业单位法人代码证复印件、法定代表人或者主要负责人身份证明书。

三、当事人、法定代理人可以委托一至二人作为诉讼代理人。

委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进行和解，提起反诉或者上诉，必须有委托人的特别授权。

（此稿为法院理论

侨居在国外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

四、应在接到本通知书后七日内，向本法院预交案件受理费/申请费——元。本院诉讼费开户名称：×××××人民法院（财政汇缴专户）；开户银行：——；账号：——。

五、根据《最高人民法院关于人民法院在互联网公布裁判文书的规定》，本院作出的生效裁判文书将在中国裁判文书网上公布。如果你认为案件涉及个人隐私或商业秘密，申请对裁判文书中的有关内容进行技术处理或者申请不予公布的，还应在裁判文书送达之日起三日内以书面形式提出并说明具体理由。经本院审查认为理由正当的，可以在公布裁判文书时隐去相关内容或不予公布。

六、根据《四川省高级人民法院、四川省司法厅关于建立全省电子送达（异步）平台的实施意见（试行）》的规定，如果你委托了律师代理本案，可以在送达地址确认书中确认使用律师在电子送达（异步）平台的专用账号接受除判决书、裁定书、调解书外的所有诉讼文书送达。

七、本案审判组织成员为审判长×××、审判员/代理审判员/人民陪审员×××。审判员/代理审判员/人民陪审员×××。

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（一）简易程序

※. 书记员※※※.

联系人: ..... (写明姓名、部门、职务)

联系电话: .....

联系地址: .....

特此通知:

※※※※年※※月※※日

(院印)

民事司法理论



## 附件4

应诉通知书（通知对方当事人用）

××××人民法院

## 应诉通知书

（××××）……民初……号

××××

……（写明当事人及案由）一案，本院于××××年××月××日立案。本案案号为（××××）……民初……号。现将应诉的有关事项通知如下：

一、在诉讼过程中，当事人必须依法行使诉讼权利，有权行使《中华人民共和国民事诉讼法》第四十九条、第五十条、第五十一条等规定的诉讼权利，同时也必须遵守诉讼秩序，履行诉讼义务。

二、在收到起诉状/答辩状/申请书副本后十五/三十日内向本庭提交答辩状，并按对方当事人的人数提出副本。

三、自然人应当提交身份证或者通行证，护照复印件；法人或者其他组织应当提交营业执照或者事业单位法人代码证复印件，法定代表人或者主要负责人身份证明书。

四、当事人、法定代理人可以委托一至二人作为诉讼代理人。

委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。授权委托书必须记明委托事项和权限。诉讼

 民事司法理论

代理人代为承认、放弃、变更诉讼请求、进行和解、提起反诉或者上诉，必须有委托人的特别授权。

侨居在国外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

五、根据《最高人民法院关于人民法院在互联网公布裁判文书的规定》，本院作出的生效裁判文书将在中国裁判文书网上公布。如果你认为案件涉及个人隐私或商业秘密，申请对裁判文书中的有关内容进行技术处理或者申请不予公布的，至迟应在裁判文书送达之日起三日内以书面形式提出并说明具体理由。经本院审查认为理由正当的，可以在公布裁判文书时隐去相关内容或不予公布。

六、根据《四川省高级人民法院 四川省司法厅关于建立全省电子送达（提交）平台的实施意见（试行）》的规定，如果你委托了律师代理本案，可以在送达地址确认书中确认使用律师在电子送达（提交）平台的专用账号接受裁判文书、裁定书、调解书外的所有诉讼文书送达。

七、本案审判组织成员为审判长×××、审判员/代理审判员/人民陪审员×××、审判员/代理审判员/人民陪审员×××、书记员×××。

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民事判决书



附件：四川省高级人民法院、四川省司法厅印发《关于建立全省电子送达（提交）平台的实施意见（试行）》的通知（略）

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法宝快讯: 如何快速找到您需要的检索结果? 法宝V6有何新特色?



原文链接: <https://www.pkulaw.com/lan/5e68b9394574e65bc5e68f2a23b8b7d4bd4fb.html>



## 广州市中级人民法院印发《关于电子送达的若干规定(试行)》的通知

广州市中级人民法院印发《关于电子送达的若干规定(试行)》的通知

(穗中法〔2020〕36号)

各基层法院，本院各部门：

为进一步提高诉讼文书送达效率，节约诉讼成本，服务和保障优化营商环境建设，落实最高人民法院民事诉讼程序繁简分流改革试点工作，结合广州法院审判工作实际，制定本规定，并于2020年2月26日经我院审判委员会讨论通过，现印发给你们，请结合实际认真贯彻落实。

广州市中级人民法院

2020年2月27日

### 关于电子送达的若干规定(试行)

**第一条** 为进一步提高诉讼文书送达效率，节约诉讼成本，服务和保障优化营商环境建设，根据《中华人民共和国民事诉讼法》、最高人民法院《民事诉讼程序繁简分流改革试点实施办法》等规定，结合广州法院审判工作实际，制定本规定。

**第二条** 本规定所称的电子送达，是指区别于传统的纸质邮寄送达方式，通过电子送达平台，采用电子邮件、短信、微信、传真、录音电话、12368语音通知等电子方式送达相关诉讼文书。

**第三条** 经受送达人同意，人民法院可以对民商事(含破产清算案件、强制清算案件以及衍生案件，下同)、刑事、执行、国家赔偿案件，通过电子方式送达案件受理通知书、传票、举证通知书、应诉通知书、缴费通知书、异议通知书、听证通知书、决定书等程序性诉讼文书和当事人提交的答辩状、证据材料。

具备下列情形之一的，人民法院可以确定受送达人同意电子送达：

(一)受送达人明确表示同意的；

(二)受送达人对在诉讼中适用电子送达已作出过约定的；

(三)受送达人在提交的起诉状、答辩状中主动提供用于接收送达的电子地址的；

(四)受送达人通过回复收悉、参加诉讼等方式接受已经完成的电子送达，并且未明确表示不同意电子送达的。

采用电子送达的案件不再进行纸质邮寄送达。

第四条 经受送达人明确表示同意，法院可以电子送达民商事案件的判决书、裁定书、调解书等裁判文书。当事人提出需要纸质裁判文书的，法院应当提供。

第五条 立案窗口负责引导案件受送达人选择电子送达方式，并填写《诉讼文书电子送达地址确认书》。准确登记身份证号码或者组织机构代码、律师执业证号码、手机号码、电子邮箱等信息。

保险合同、金融合同等民商事合同中约定的或企业注册登记时登记的电子送达地址可作为送达诉讼文书的确认地址。

受送达人通过公证录音电话明确表示同意电子送达的，该电话中确认的电子送达地址可作为送达诉讼文书的确认地址。

受送达人可使用法院为其免费提供的专用电子邮箱，也可以在送达地址确认书中填写确认使用的普通电子邮箱。

第六条 当事人诉讼中提供的其他诉讼参与人的电子送达地址应当真实、有效，并准确填写在《诉讼文书电子送达地址确认书》中。

当事人故意提供其他诉讼参加人的虚假电话或电子邮箱、明知其他诉讼参加人的电话或电子邮箱而隐瞒不提供，导致诉讼文书无法送达或者未能及时送达，影响审判程序的正常进行，可按照违反诚信诉讼原则，对其予以处罚。

第七条 通过网上立案方式立案的、受送达人确认了电子送达地址的，原则上应使用电子送达，没有特别理由，不使用其他送达方式。

受送达人为法人或其他组织、破产清算案件、强制清算案件管理人以及委托律师代理诉讼的，应当优先适用电子送达方式送达诉讼文书。



第八条 受送达人不同意电子送达的，在严格遵照《中华人民共和国民事诉讼法》及其司法解释中有关电子送达使用条件的前提下，可采取与人型门户网站、通信运营商合作的方式，通过查证核实的专门电子邮箱、特定通信号码、信息公众号等渠道，以录音电话、弹屏短信等方式送达除判决书、裁定书、调解书外的其他诉讼文书。

送达人员应核查并保留受送达人特定电子邮箱、通信号码、信息公众号的收发记录及所送达诉讼文书内容的材料存卷备查。

第九条 经受送达人同意，法院通过电子送达平台发起电子送达。具体操作方式如下：

(一)法院从专门的送达信息库中提取电话号码，拨打录音电话进行身份、电子送达地址核实并口头通知送达事项；

(二)法院向受送达人确认的手机号码发送电子送达告知短信，告知其送达的内容及书面诉讼文书的获取指引；

(三)受送达人在收到短信后可通过登录微信小程序“微法院送达平台”或电子邮箱等方式获取书面诉讼文书；

(四)诉讼文书到达“微法院送达平台”后，需由受送达人通过身份验证或手机号码验证登录，受送达人数字签名签收后由系统自动生成送达回证；

(五)法院向为受送达人免费提供的专用电子邮箱进行送达的，送达信息到达电子邮箱所在系统时，即为送达；

(六)法院向受送达人主动提供或者确认的电子邮箱送达及向受送达人同意电子送达但未主动提供或者确认电子邮箱的法院获取的受送达人电子邮箱进行送达的，该电子邮箱所在系统反馈受送达人已阅知，或者有其他证据可以证明受送达人已经收悉的，推定完成有效送达，但受送达人能够证明存在系统错误、送达地址非本人使用或者非本人阅知等未收悉送达内容的情形除外。

录音电话通话成功、弹屏短信发送成功时，即为送达；

同时采用多种方式送达的，以最先送达日期为准。

完成有效送达的，法院制作相应电子送达凭证，电子送达凭证具有送达回证效力。

第十条 受送达人应当确保填写电子送达地址是真实、准确的，确认电子送达地址后，该地址一审、

二审、再审(含申请再审、申诉审查)及执行等所有司法程序中持续有效。

因受送达人提供虚假地址或者提供电子送达地址不准确、电子送达地址变更未及时告知法院、受送达人拒绝签收,导致诉讼文书未能被受送达人实际接收的,电子诉讼文书到达受送达人确认的电子邮箱系统、微信小程序、手机号码或其他即时通讯账户之日为送达之日。同时采用多种方式送达的,以最后一次送达日期为准。

**第十一条** 立案法官及办案法官应当及时登录案件审判系统查看电子送达情况,发现电子送达未成功的,在故障排除或不可抗力等原因消除后应再次启用电子送达。

因网络故障或不可抗力等原因无法进行再次电子送达的,应即转为其他法定方式进行送达。

**第十二条** 市中院立案庭为电子送达工作的牵头部门,负责电子送达工作管理、督办、业务指导及工作考核,电子送达工作纳入各部门绩效考核。

考核遵循“谁办理、谁负责”的原则,市中院立案庭负责对各基层法院、市中院各部门电子送达的使用情况进行监督,定期检查通报,对应适用电子送达而不适用的个人和电子送达使用率低的基层法院、部门予以通报督导,市中院科信处、各审判业务部门予以配合。

**第十三条** 两级法院立案部门应当在立案大厅或诉讼服务中心等公共区域通过多种形式和渠道就电子送达的使用进行宣传推广。

**第十四条** 各基层法院、市中院各部门指定专人负责电子送达工作的沟通协调、数据报送和工作督导等工作。

**第十五条** 案件立案时,立案庭应积极引导受送达人选择电子送达的方式。立案人员、法官助理及书记员在录入案件信息时,应准确录入电子送达地址,并对当事人是否选择了电子送达在系统中予以确认。

各相关业务部门负责在案件办理阶段做好电子送达的再宣传、信息录入以及文书电子送达工作。凡受送达人尚未选择电子送达的,承办法官、法官助理与书记员均应积极引导其选择电子送达。

**第十六条** 市中院科信处负责电子送达工作的技术服务保障工作,优化智慧送达平台,探索裁判文书查验真伪程序。做到送达工作全程留痕、送达提示、随时查询;及时反馈电子邮件、微信、短信、语音提醒等电子送达方式的送达结果并生成电子送达凭证,以便随案备查及归档入卷;自动统计本意见所述的电子送达相关数据,定期对各基层法院、市中院各部门应用电子送达案件数、使用次数及使用比例进行统



计并在内网电子送达专栏予以公示，公示内容应具体到电子送达方式的类别及各基层法院、市中院各部门的单项数据。

**第十七条** 本规定适用于广州市两级法院，自印发之日起实行。此前有关规定与本规定不一致的，以本规定为准。

**第十八条** 本规定由广州市中级人民法院负责解释。

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## 上海市高级人民法院关于进一步推广适用电子送达的若干规定(试行)

上海市高级人民法院关于进一步推广适用电子送达的若干规定（试行）

（2022年3月28日）

为深入推进全流程网上办案体系建设，充分发挥电子送达方便当事人诉讼、节约诉讼成本、提高诉讼效率的作用，根据《中华人民共和国民事诉讼法》《中华人民共和国行政诉讼法》、最高人民法院《人民法院在线诉讼规则》及上海市高级人民法院《关于完善全流程网上办案体系促进审判高质量发展的指导意见》等有关规定，结合上海法院工作实际，制定本规定。

**第一条** 电子送达是指人民法院通过电子邮件、特定通讯号码、微信小程序、即时通讯工具等电子化途径向受送达人的电子邮箱、通讯终端、即时通讯账号、诉讼平台专用账号等电子地址送达诉讼文书和证据材料的送达方式。

本规定所称受送达人，包括案件当事人和其他诉讼参与人。

本规定所称案件承办人，包括法官、法官助理、书记员等从事审判或审判辅助事务的人员。

**第二条** 在案件诉前调解、立案、审理、执行、结案等阶段，经受送达人同意，人民法院可以向其电子地址，按照法律和司法解释的相关规定送达诉讼文书和证据材料，具体包括案件受理通知书、举证通知书、应诉通知书、小额诉讼程序适用告知书、缴费通知书、传票等程序性文书，起诉状、答辩状、证据材料等当事人提交的诉讼材料，审计、评估、鉴定报告等诉讼材料，以及判决书、裁定书、调解书等裁判文书。

人民法院在电子送达时，应当兼顾未成年人、老年人、残障人士等特殊群体的司法需求，强化提示、说明、告知义务，提供相应司法便利。不适合电子送达的，采用其他方式送达。

人民法院向在中华人民共和国领域内没有住所的受送达人送达诉讼文书和证据材料的，若受送达人所在国法律未禁止电子送达方式的，可以依据《民事诉讼法》第二百七十四条的规定采用电子送达方式，但违反



我国缔结或者共同参加的国际条约规定的除外。受送达人所在国系《海牙送达公约》成员国，并在公约项下声明反对邮寄方式送达的，应当推定其不允许电子送达方式，人民法院不能采用电子送达方式。

第三条 电子送达的具体途径包括中国审判流程信息公开网、上海法院诉讼服务网、上海一网通办政务平台等网站，“随申办市民云”手机App，“上海法院12368”微信公众号，“人民法院在线服务”微信小程序，手机短信，电子邮件等。

案件承办人应当适用多种电子化途径同时送达，以便受送达人能够及时有效收到诉讼文书和证据材料。

第四条 具备下列情形之一的，人民法院可以确定受送达人同意电子送达：

- （一）受送达人明确表示同意的，包括但不限于受送达人在线上、线下填写的送达地址确认书中勾选同意电子送达的，或通过电话、手机短信、电子邮件、诉讼平台在线确认等方式同意电子送达的；
- （二）受送达人在诉讼前对调解和诉讼中适用电子送达已作出约定或者承诺的；
- （三）受送达人在提交的起诉状、上诉状、申请书、答辩状、授权委托书、律师事务所函等诉讼材料中主动提供明确用于接收送达的电子地址的。

第五条 受送达人通过回复收悉、参加诉讼等方式接受已经完成的电子送达，并且未明确表示不同意电子送达的，人民法院可以据此认定受送达人同意电子送达。

第六条 根据本规定第四条确定受送达人同意电子送达后，受送达人在诉讼过程中又反悔的，应当在相应送达前的合理期限内提出。经审查，人民法院认为不存在故意拖延诉讼等不当情形的，改用其他方式送达。

根据本规定第五条认定受送达人同意电子送达后，受送达人又明确表示不同意电子送达的，已经完成的电子送达有效，同一案件后续送达改用其他方式。

第七条 对于同意电子送达的受送达人，应当采用电子送达方式送达诉讼文书和证据材料。

电子送达成功后因电子化材料不清晰等原因导致识别困难或系判决书、裁定书、调解书，受送达人提出需要纸质材料申请的，人民法院应当提供。

第八条 受送达人在下列情形主动提供、确认或约定的电子地址，为送达地址：

- （一）在本规定第四条、第五条情形中主动提供、确认或约定的电子地址；
- （二）受送达人为企业，在国家企业信用信息公示系统或该企业官网中最新填报的电子地址。

受送达人符合上述情形的各个电子送达地址，均为有效电子送达地址。受送达人明确表示变更或取消的电子送达地址，不再作为有效的电子送达地址。

第九条 受送达人未明确表示不同意电子送达，且无法根据本规定第八条确定电子送达地址的，人民法院可以向通过以下途径获取的电子地址发起电子送达的同时发送电子送达地址确认书：

（一）受送达人向法院提交的起诉状、答辩状等诉讼材料中记载的本人的未明确用于接收送达的电子地址；

（二）受送达人在其他诉讼、仲裁活动中提供的本人的电子地址；

（三）受送达人进行签订合同等民事活动时经常使用的本人的电子地址；

（四）通讯运营商采集的受送达人实名认证的电子地址；

（五）其他合法途径取得的受送达人本人的电子地址。

按照本条第一款获取的电子地址是手机号码的，可以采用短信附带链接的方式发起电子送达的同时发送电子送达地址确认书。

第十条 人民法院向根据本规定第八条确定的电子送达地址进行送达的，送达信息到达电子送达地址所在系统时，即为完成有效送达。

人民法院向根据本规定第九条获取的电子地址发起电子送达的同时发送电子送达地址确认书的，若受送达人未提供或者未确认电子送达地址，根据下列情形确定是否完成有效送达：

（一）受送达人回复收悉，或者根据送达内容作出相应诉讼行为的，视为完成有效送达；

（二）受送达人的电子地址所在系统反馈受送达人已阅知，或者有其他证据可以证明受送达人已经收悉的，推定完成有效送达，但受送达人能够证明存在系统错误、送达地址非本人使用或者非本人阅知等未收悉送达内容的情形除外。

第十一条 对同一内容的送达材料采取本规定第三条提及的多种电子化途径发送受送达人的，以根据本规定第十条确定的最先完成的有效送达时间作为送达生效时间。

第十二条 人民法院向根据本规定第八条确定的电子送达地址进行送达的，诉讼文书和证据材料到达电子送达地址所在系统后，审判管理系统自动显示送达成功。

人民法院向根据本规定第九条获取的电子地址进行送达或者地址确认的，诉讼文书和证据材料、电子



送达地址确认书发出后，案件承办人应当及时登录审判管理系统查看送达、确认情况。上述电子化材料发出后24小时内联系受送达人未回应的，案件承办人应当及时改用其他方式送达。

**第十三条** 除受送达人明确表示不同意电子送达外，案件承办人应当优先适用电子送达。不得在发起电子送达前、发起电子送达时，或发起电子送达后尚未按本规定第十条、第十二条确认电子送达无效或受送达人24小时内经联系未回应的情况下，采用EMS邮寄等方式送达。

**第十四条** 人民法院开展电子送达，应当在审判管理系统中全程留痕，便于查询、跟踪、核验。完成有效送达的，系统自动生成电子送达凭证。电子送达凭证具有送达回证效力。

**第十五条** 各法院审判管理办公室、立案庭为电子送达工作的牵头部门，其他审判业务部门和办公室、信息管理部门密切配合。

审判管理办公室负责电子送达工作的协调与管理，制定考评机制，并定期分析通报各业务庭优先适用电子送达情况。

立案庭负责立案阶段对当事人的宣传推介、电子送达地址信息的确认与录入、向通讯运营商协查、电子送达及相关跟踪督促工作。

各审判业务部门负责案件办理阶段电子送达的再宣传推广、“非原告方”电子送达地址信息的确认与录入、包含裁判文书在内的电子送达及相关跟踪督促工作。

办公室负责电子送达与EMS邮政专递面单电子化衔接等工作。

信息管理部门负责电子送达的技术支持，保障送达渠道畅通。

**第十六条** 上海市高级人民法院之前发布的关于电子送达等相关规定与本规定不一致的，适用本规定。

**第十七条** 本规定由上海市高级人民法院审判管理办公室与立案庭负责解释，并在实施过程中予以指导、协调和监督。

**第十八条** 本规定自发布之日起试行。

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