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Content

Rules

1. Special provisions on safety management of water traffic in main channel of Yangtze River take effect since 1 January 2018

The Special Provisions on Safety Management of Water Traffic in Main Line of Yangtze River (the "Provisions") promulgated by the PRC Ministry of Transport has taken effect since 1 January 2018. All vessels navigating, anchoring, berthing or operating in the main channel of Yangtze River shall obey the Provisions.

The Provisions explicitly stipulate that names, ports of registry and loadline marks of vessels shall not be altered and the vessels shall be equipped with AIS and keep it in good working condition. Carriers for passenger transport or hazardous chemical cargo in bulk shall equip with shore-based monitoring & control systems to monitor the vessels when they are in the main channel of Yangtze River.

According to the Provisions, water traffic control refers to measures taken for traffic restriction and dispersion of particular vessels in specific area of water traffic control zone designated by the maritime administration authority for a certain time period. The measures include: closure of navigation, prohibition of berthing/anchorage, one-way navigation, restriction of sailing such as limiting the time, type, dimension, and speed of the passing vessels.

Obviously it is advisable for parties concerned to get familiar with and comply with the Provisions for avoidance of losses and extra costs/expenses.

WJ News

1. Lawyer Wang Weisheng (Wilson Wang) obtained the Practising Certificate to practise as a solicitor of England and Wales

As supported by this firm, Lawyer Wang Weisheng, passed all the exams in Qualified Lawyers Transfer Scheme in the United Kingdom in 2017 and obtained the Practising Certificate to practise as a solicitor of England and Wales on December 15, 2017.

Mr. Wang graduated from Dalian Maritime University with a LLB degree at maritime law, and obtained a LLM degree with Distinction at Tulane law School in the United States. He obtained the PRC lawyer practising license in 2009.

Mr. Wang has been handling foreign related litigation and arbitration cases for over ten years and has profound knowledge in PRC law and common law. He is experienced in dealing with matters in relation to bill of lading, C/P, shipbuilding and finance, L/C and bank guarantee, cross-border investment and M&A, arbitration and many other fields. He has served as legal advisor or expert in PRC law in many litigation or arbitration proceedings in England, Singapore and Hong Kong.

Mr. Wang has won high praise from clients with his diligent and precise work style. As a member of this firm's professional lawyers and legal experts, Mr. Wang will continue to provide high-quality legal service to clients.

GMC judgment upheld by Higher People's Court: work-related injury insurance cover can't be contracted out

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First instance judgment: Guangzhou Maritime Court (2015) GuangHaiFaChuZi No.343;
Second instance judgment: Guangdong High People's Court (2016) YueMinZhong No.711.

Case background

The employment service company Shenzhen Xinlong Company ("XL") was entrusted by the shipowner Shenzhen Shuiwan Company ("SW") to recruit seamen to work for vessels owned by SW. XL then entered into an employment contract with Crew Mr. An, and designated Mr. An to work for SW as 1/E. The employment contract provided, inter alia, that XL should arrange personal accident insurance for Mr. An, and, should Mr. An suffer any work-related injury or death during his employment, the compensation shall be paid according to the insurance policy. XL effected the personal injury insurance cover from PICC for Mr. An and other crew. The insurance covers accidental death and disable of the crew up to RMB 0.6 million per crew. XL did not provide social insurance cover, which is compulsory under Chinese law, to Mr. An, and alleged this had been agreed by parties under the employment contract.

Mr. An died from capsize of the vessel he worked on in South Pacific in 2013. It was later confirmed that it belongs to work-related death and there was a labor relationship between Mr. An and the shipowner SW. After receiving PICC's death compensation of RMB0.6 million, Mr. An's family (the "Claimants") claimed against SW for compensation under work-related injury insurance scheme, the reasonable amount of which is about RMB0.52 million. SW refused to pay on the ground that Mr. An had agreed to waive his social insurance cover, including work-related injury insurance cover, by accepting the substitution of the personal injury insurance. It is also agreed that compensation for work-related injury/ death, if any, shall be paid by PICC under the person injury insurance policy.

Judgments

Guangzhou Maritime Court Shantou Tribunal supported the Claimants' claims and held that an employer's obligation to arrange work-related injury insurance for its employee is a compulsory legal obligation and such obligation can't be contracted out by parties' mutual agreements, even if the employer had arranged commercial insurance for the crew and the commercial insurance will compensate the crew in case the crew suffers work-related injuries, regardless of the compensation level. The Claimants, therefore, were entitled to claim insurance benefits under work-related injury insurance according to the relevant regulations, in addition to the death compensation paid by PICC under

commercial insurance scheme. Due to the fact that SW should arrange work-related injury insurance for Mr. An but failed to arrange it, the compensation calculated according to the Regulation on Work-Related Injury Insurance shall be paid by SW.

SW subsequently appealed against the first instance judgment before Guangdong Higher People's Court and the appeal was dismissed. Guangdong Higher People's Court further clarified that the commercial insurance arranged by SW for its crew shall be regarded as benefits offered by the company, and such benefits shall not exempt SW from its compulsory legal obligation to arrange work-related injury insurance under the relevant regulations for the crew. Employer's obligation to arrange work-related injury insurance could not be avoided/altered by any means.

Guangzhou Maritime Court's judgment was published by the Gazette of the Supreme People's Court, which makes it an important reference to other courts when dealing with similar issues, though it does not have the binding power as the Guidance Cases of the Supreme Court.

Chinese Supreme Court conservatively supports shipowners' defence of navigation negligence instead of peril of sea and clarifies "actual carrier"

——A brief summary of the Chinese Supreme Court's decision in a recent cargo claim involving typhoon

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In dispute cases concerning typhoon-induced cargo damage, carriers' defence for liability exemption on grounds that the cargo damage was caused by typhoon always failed, since strict standard is adopted to examine such argument in the Chinese judicial practice. Nonetheless, the PRC Supreme Court recently made a significant decision to uphold the judgment by Shanghai Higher People's Court and supported the carriers' such defence. It has been the first among five serial cases of cargo damage totally amounting to USD10 million, where final court decision is made to such effect, and it is of great significance to shipowners. In this article, we will introduce the PRC Supreme Court's decision on the following two major issues.

I. Causes of cargo loss

It is the main dispute in this case. The first instance court (i.e. Shanghai Maritime Court) held the cargo loss was a joint result of typhoon "Muifa" and adverse sea condition caused by Muifa (80%) and defects in cargo lashing and securing (20%). Adverse sea condition caused by typhoon constituted the "act of God and perils of the sea" as provided for in Article 51 of the Chinese Maritime Code (which provides circumstances under which the liability for cargo loss can be exempted). However, the second instance court (i.e. Shanghai Higher People's Court) took a conservative view on argument for liability exemption by invoking typhoon, and opined that it was imprudent and negligent for the vessel to decide to sail towards Jeju Island for sheltering. But for the master's decision, the vessel would not encounter typhoon "Muifa" and it was the main cause leading up to the cargo loss. The master had therefore committed navigation negligence. As per the Chinese Maritime Code, the carrier and actual carrier shall be exonerated from the compensation liability for cargo loss arising from navigation negligence.

The PRC Supreme Court decided to maintain the second instance court's opinion by reasoning that the major and decisive cause for the cargo loss was the master's negligent decision to continue sailing for avoiding typhoon; such negligence should be deemed as the master's navigation negligence and thus the carrier and actual carrier should be exempted from the compensation liability for cargo loss.

The PRC Supreme Court's decision reveals the conservative attitude adopted in the present judicial practice, where Chinese courts seldom support carriers' defence of liability exemption by invoking typhoon based on "act of God and perils of the sea" in Article 51 of the Chinese Maritime Code. Judgments distinguishing "force majeure" and "act of God, perils of the sea" are

even fewer. It is of remarkable significance for the first instance court hearing this case to positively support the defense of liability exemption by invoking typhoon. But regrettably the PRC Supreme Court conservatively opted for maintaining the second instance judgment which supported the defense of liability exemption by invoking navigation negligence.

II. Legal positions and liabilities of time charterer and shipowner

As to identification of actual carrier in this case, the Supreme Court held that as the time charterer only completed the cargo lashing operation and was not actually engaged in carriage or control of the cargo or vessel, the time charterer was not qualified as "actual carrier" defined in the Chinese Maritime Code, whilst the shipowner was not only in possession of the vessel but also actually engaged in the cargo carriage. Furthermore, the master authorized the ship agent to issue bills of lading on behalf of the shipowner. Therefore, the shipowner should be identified as the actual carrier.

The Supreme Court's decision in this respect generally followed the common maritime practice in China. That is, if the vessel is not under bareboat charter, it is very likely for the Chinese court to hold the shipowner, based on their possession of the carrying vessel, as having actually performed the cargo carriage and being in status as the actual carrier. It is worthwhile for shipowners to be aware of this point.

On the other hand, given the cargo lashing and securing was actually performed by the time charterer other than ship owner, whilst the Supreme Court maintained the first and second instance courts' finding that lashing and securing was secondary cause of the cargo damage, the shipowner should not be held liable for this part of cargo loss.

Influenced by the Supreme Court's decision, the five serial cases in parallel with total claimed amount about USD10 million and proceeding before 3 Chinese maritime courts for more than 6 years, have been eventually concluded.

Wang Jing & Co. as lawyers always retained by foreign shipowners to defend cargo damage claims have profound understanding of the difficulties for shipowners to argue "act of God, perils of the sea" for liability exemption on cargo loss. We do hope to see, following this remarkable victory, a more flexible and open-minded attitude to prevail in the Chinese judicial practice.

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New marine environment protection law escalates the exposure of Shipowners and P&I Clubs to administrative penalties in China

Yang Dongyang

The amended PRC Marine Environment Protection Law has been adopted since 7 November 2016. The most significant amendment is about administrative penalty for ship-induced oil spill incidents, where penalty will be mainly based on costs and compensation arising from the incident and is not capped or limited. In this article we would like to share our observations based on our experience in handling the oil spill incident concerning M/V ISS CANTATA in Luoyuan Bay on 5 December 2016.

Case background: On 5 December 2016, oil spilled from the deck of M/V ISS CANTATA during the bunkering operation. Quantity of oil spilled was estimated to be around 40MT. Local SPROs were immediately involved to contain and clean up and clean-up costs were thus incurred, whilst local fishing farmers and local government also claimed for oil pollution damages.

Previously the administrative penalty should be 30% of the direct losses regardless of severity of the incident, with a ceiling cap at RMB300,000. Now such cap has been removed and the new rules are: for a general level (level 1) and serious (level 2) oil spill incident, penalty shall be calculated at 20% of the direct losses (without limitation); for a very serious (level 3) and extraordinary (level 4) oil spill incident, penalty at 30% of the direct losses (without limitation). Obviously, as the SPRO fees and damage compensation are usually claimed in large amounts, the penalty not capped or limited nowadays would be much more substantial.

The MSA usually will consider two factors when deciding on the penalty amount. One is severity of the incident (Level 1- Level 4) and the other is the direct loss incurred.

Severity of the incident largely depends on either the quantity of spilled oil or the direct economic loss. It is commonly recognized that an incident with spilled oil less than 100MT is Level 1 incident, 101-500MT being Level 2,501-1000MT being Level 3 and above 1000 being Level 4. It follows that for an incident with oil spill below 500MT, the penalty is 20% of direct economic loss and for an incident with oil spill above 500MT, the penalty is 30% of the direct economic loss.

In terms of the direct economic loss, there are different regimes under the *PRC Regulations on Prevention and Control of Vessel-induced Pollution to the Marine Environment* ("State Regulations") and the *PRC Measures for Water Traffic Accident Statistics* ("MSA Method"). By comparison and contrast, if the direct loss is below RMB50 million, the penalty ratio shall be 20%, if the amount is more than RMB100 million, the penalty ratio shall be 30%. For the range between RMB50 million and RMB100 million, there is conflict-under the State Regulations, the ratio is 20%, whilst under the MSA Method it is 30%.

Obviously nature and amount of costs and losses arising

from an oil spill incident sometimes remains arguable, such as the loss of profit by a fishing farm, the natural fishing resource loss and so forth. However, as a general principle, the MSA are inclined to consider most of relevant costs/losses as direct economic loss arising from the incident.

Given the newly provided aggravation of penalties, in case of oil spill incidents, it is advisable to take effective measures to suppress the oil spill and mitigate loss. In the M/V ISS CANTATA case, through our great efforts in negotiations with relevant parties, the penalty was eventually minimized to about RMB0.84 million.

If you are interested in this topic, we are happy to discuss and share more details.

Legal Issues Relating to Seafarers' Cancer Claims

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Abstract: Since most cancers are not classified as occupational diseases, shipowners are sometimes reluctant to effect work-related injury insurance for seafarers having cancer. Meanwhile, as causes leading to cancers are complicated, it is difficult to prove or overturn the causation between cancer and working environment. The shipowner shall be mindful of the time point when they concluded contract with the seafarer and when the seafarer suffered from cancer as well as of liability under the principle of equitable liability.

"Since the first retrospective investigation on death causes in Fujian carried out in the 1970s, malignant tumor has always been found as the leading death cause of residents and its proportion is remarkably increasing with time." It is not a rare case that seafarers who suffer from cancers during or after their service on board ships eventually choose to claim compensation against the ship side. However, most cancers are not listed in the Chinese Categories and Catalogs of Occupational Diseases and the causes of cancers cannot be thoroughly explained even in view of the current scientific technology level. Seafarers who claim compensation on basis of their suffering from cancers often face multiple barriers. Meanwhile, it will be quite a struggle for the ship side to advocate liability exemption. With recent experience in handling several cases relating to seafarers' cancer claims, we intend to discuss in this Article some legal issues involved, for the reference of legal practitioners.

I. Disputes

1. Is cancer an occupational disease?

It is provided for in the second paragraph of Article 2 of the *PRC Law on Prevention and Control of Occupational Diseases* (the *Prevention and Control of Occupational Diseases Law*) that: "*the categories and catalogue of occupational diseases shall be determined, adjusted, and published by the health administrative department of the State Council in conjunction with the work safety administrative department and labor and social security administrative department of the State Council*". By reference to the Categories and Catalogs of Occupational Diseases [GWJKF (2013) No.48] published on 23 December 2013 by the National Health and Family Planning Commission of PRC, the Ministry of Human Resources and Social Security of PRC, the State Administration of Work Safety and the All-China Federation of Trade Unions, except for the occupational lung cancer, bladder cancer and skin cancer which are obviously caused by specified substances, the other cancers are not listed therein. According to the above stipulations, common cancers like leukemia, liver cancer, and colon cancer are not regarded as occupational diseases.

Whether a disease not listed in the Categories and Catalogs of Occupational Diseases could be determined

as an occupational disease or not? This question remains as not explicitly answered by any regulation. Nonetheless, Article 44 and the second paragraph of Article 53 of the *Prevention and Control of Occupational Diseases Law* contain stipulations in terms of the procedures of diagnosis and identification of occupational diseases, which respectively read that: "*Medical and health institutions shall provide occupational disease diagnosis…*" and that "*In case of disputes over occupational disease diagnosis, the health administrative department of the local people's government at or above the level of a districted city shall, upon the application of a party, organize identification by the occupational disease diagnosis identification committee*". They suggest that whether a disease falls within the scope of occupational diseases should be determined based on results of diagnosis or identification by the competent authorities. However, it is said that if the diagnosis result reveals a disease not listed in the Categories and Catalogs of Occupational Diseases, neither the medical and health institution nor the occupational disease diagnosis identification committee will carry out diagnosis or identification on such disease.

Diagnosis and identification of occupational diseases are work falling within the functions and powers of administrative authorities. If via diagnosis it cannot be identified as occupational disease, it is impossible for the claimant to hold shipowner liable by relying on the argument of occupational disease.

3. Is cancer a kind of work-related injury?

According to Article 14 of the *Regulations on Work-Related Injury Insurance*, occupational disease shall be a kind of work-related injury, and the compensation liability resulting from the damage thereof shall be determined mainly with reference to the said regulations. Since cancers in most cases are not occupational diseases, the seafarers suffering from cancers are certainly unentitled to claim for work-related injury insurance.

Circumstances where "an employee shall be regarded as having suffered from the work-related injury" as provided for in Article 15 of the *Regulations on Work-Related Injury Insurance* should be noted. It stipulates that a worker shall be regarded as having suffered work-related injury if "*during the working hours and on the post, he dies from a sudden disease or dies within 48 hours due to ineffective rescue*".

As it is known to all, the cancer developing process is relatively slow. It may take months or even years from appearance of symptoms to death. Seldom a cancer patient would suddenly die or die in 48 hours due to ineffective rescue "*during the working hours and on the post*". It is therefore difficult for a seafarer having cancer to claim by reliance on the aforesaid Article 15 of the work-related injury insurance regulations.

2. Causation

Though most cancers suffered by seafarers are not regarded as occupational diseases or work-related injuries, it is still possible for the affected seafarers to claim compensations from shipowners as employers based on the employment contracts/service contracts.

According to Article 11 of the *Interpretations of the PRC Supreme People's Court on Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury*, "*where an employee suffers personal injury when carrying out an employment activity, the employer shall bear the compensation liability*". Accordingly, when considering whether the shipowners should bear the tort liability for cancers suffered by seafarers, the courts may not necessarily ponder whether the shipowners are at fault and will just

look into the causation between the tort and the damage.

Nevertheless, causes of cancers are still not yet fully known to humans, so it would be extremely difficult to prove or overturn the causation between onboard working environment and cancers. Considering the judiciary authorities may have sympathy upon seafarers who are in relatively disadvantaged position, possibility cannot be underestimated that the shipowners will be held liable for compensation if the seafarer's cancer occurrs while working on board.

4. What do "cancer infection" and "cancer attack" mean?

To determine whether the cancer suffering by a seafarer has connection with his experience of working on board a ship, the time point of "cancer infection" and the time point of "cancer attack" should be taken into consideration, which are also important as to whether the seafarer could obtain the agreed compensation under the signed contract or the tort damage.

Cancer, generally referring to all kinds of malignant tumors, is a chronic disease developed through multiple stages, usually showing no obvious symptoms at early stage, which means the exact time when a seafarer suffered from the cancer. In other words, the time point of cancer contracting may be difficult to be determined, and only when the symptoms appeared, cancer onset could be known. In one case we recently handled, the time issue was one of major disputes between the parties, and the evidence admitted by the court revealed that cancer symptoms all showed up after the seafarer's disembarkation, on which basis the court finally determined the shipowner should not be held liable for compensating the seafarer.

4. Shipowner's responsibility period

In principle, similar to the carriage of goods, the shipowner is merely responsible for injuries and diseases occurring during its responsibility period. However, unlike the shipowner's responsibilities for goods which cover "TACKLE TO TACKLE" or "CY-CY", the shipowner's responsibility for seafarers shall cover their journey from leaving to going back to the ship, including the period when the seafarers temporarily disembark during the service period. Therefore, it is basically uncontroversial that the shipowner shall be responsible for injuries and diseases occurring during such period. The question is whether the shipowner should bear compensation liability in case a seafarer sent to hospital due to discomfort when serving onboard and was diagnosed as having cancer and died thereafter. If a relevant agreement had been made in the contract (following which the shipowner's liability period was extended), the shipowner undoubtedly should bear the liability, but if there had been no such agreement, the shipowner could certainly argue that they should not be blamed for occurrence of cancer.

II. Court's attitude

In one of the cases we have handled, the Xiamen Maritime Court held that: first, the plaintiff (deceased seafarer's families) had required to apply for identification on causation between the seafarer's death of colon cancer and his working environment as well as the food, medical and sanitary conditions on the foreign vessel involved and for finding out to what extents the said elements were connected with his illness. However, the identification institution rejected the application as it went beyond the scope of clinical forensic identification.

Besides, the colon cancer was not occupational disease listed in the Categories and Catalogs of Occupational Diseases; since the plaintiff failed to adduce evidence to prove that the seafarer suffered personal injury while doing any employment activity, their claim was not factually grounded; secondly, the seafarer left the vessel on 4 October 2013 after expiry of contract; he accepted medical treatment for colon cancer and died of cancer after his disembarkation, which was not within the period of serving on board; therefore, the plaintiff's claim based on contract was not legally grounded either.

In addition, the opinions of Ningbo Maritime Court are also notable. In a disputed case concerning liability for personal injuries at sea and waters joining sea between Wu Zhiwen and Zhejiang Fenghui Overseas Fishery Co., Ltd. [(2014) YHFSCZ No.51], the Ningbo Court opined that: "*according to the current medical research, cancer is a kind of disease resulting from repeated mutation of normal body cells by multiple stages due to multiple reasons, being related to not only external factors but also the individual's innate immunity function; in this case, it lacks evidence and grounds to determine the causation between the plaintiff's suffering from cancer and his engagement in employment activities, and no evidence to prove the defendant was at fault for losses arising from the plaintiff's cancer, thus the plaintiff's claim that the defendant as the employer should bear the compensation liability is groundless according to law and shall not be supported by this court.*" In this precedent, the symptoms appeared when the seafarer worked on board the ship, but the court still rejected the compensation claim.

III. Compensation arising from equitable liability

The shipowner shall also be attentive to that, since claimants in seafarers' personal injury claim cases are usually deemed as vulnerable and disadvantaged group, except the general tort damage, claimants and the court usually resort to applying the principle of "equitable liability" by invoking Article 132 of the *PRC General Principles of the Civil Law* (which reads that "*if none of the parties are at fault for a damage that has been caused, they may share civil liability according to the actual circumstances*") and Article 24 of the *PRC Tort Liability Law* ("*If neither the victim nor the tortfeasor is at fault in the occurrence of a damage, the loss may be shared by both parties according to the actual circumstances*"), and require the shipowner to contribute additional compensation.

Upon our research and study on relevant case precedents, we note in fact not a few courts or judges holding similar opinions in practice, and in absence of a unified criterion for applying the principle of equitable liability, the courts usually invoke the aforesaid two articles to resolve disputes in the event of conflicts between law and human sympathy. The provision in Article 24 of the *PRC Tort Liability Law* concerning "share of loss" does not alter the fundamental doctrine of liability fixation under the *PRC Tort Liability Law,* but just requires the tortfeasor and the infringed to share the loss based on actual circumstances in case all of the other provisions in the *PRC Tort Liability Law* cannot be applied to determine the tortfeasor's liability. Therefore, the applicable scope of such provision should be strictly controlled, and the extent of loss shared by the tortfeasor should also be limited.

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Chinese court explicitly interprets "OFFICIAL TRANSLATION" under New York Convention

Yang Dongyang

Paragraph 2 of Article IV of *the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* ("the New York Convention") provides that "if the arbitral award is not made in an official language of the country in which the award is relied upon, the party applying for the recognition and enforcement of the award shall produce a translation of the award into such language and the translation shall be certified by an official or sworn translator or by a diplomatic or consular agent".

Due to such requirement, when applying before a Chinese court for recognition and enforcement of a foreign arbitral award (e.g., London LMAA award or FOSFA award), the applicant is usually challenged by the respondent that the award should be translated into Chinese and duly notarized and legalized in the place where the award has been issued, which apparently has been very cost and time consuming. Recently a Chinese court has made clear interpretation on such requirement to guide that a Chinese translation of the award provided by a qualified Chinese translation company shall also be acceptable.

Case background: Deawoo Shipbuilding & Marine Engineering Co., Ltd. ("DSME") as the Builder entered into shipbuilding contracts with C Elephant Inc and C Duckling Corporation as the Buyers. As the Buyers failed to pay the shipbuilding installments, DSME instituted London arbitration against the Buyers and obtained a favorable award. DSME then applied to the Qingdao Maritime Court for recognition and enforcement of the award. One of the arguments raised by the Buyers was that the Chinese translation of the award submitted by DSME is not in conformity with the aforesaid requirement since the Chinese translation was not done by a London official translator or certified by the Chinese Embassy in the UK.

In their ruling, the Qingdao Maritime Court made it clear that the "translation …by an official…translator" under Paragraph 2 of Article IV of the Convention should refer to a formal or public translation produced by a duly incorporated translation company having relevant translation competency. Their grounds were that:

(1) The official languages of United Nations include Chinese, English, French, Russian, Arabic, and Spanish. When determining the meaning of "official" under the New York Convention, the same meaning of official language should apply.

(2) Literally in dictionaries including Oxford, Longman and Black's Law, the word "official" means "formal" or "public".

(3) The translation company producing the Chinese translation of the award, in the aforesaid case, is an institute formally set up and opened to the public with competent translators, so the translation should

be acceptable.

We fully concur with the court's determination. Furthermore, we consider the relevant requirement under the *PRC Civil Procedure Law* ("Civil Procedure Law") can also be referred to when Chinese courts examine the Chinese translation of a foreign arbitral award in cases concerning recognition and enforcement of foreign arbitral awards. Under the Civil Procedure Law, the Chinese translation can be produced by the party who submits a document in foreign language as evidence but not necessarily by a translation company; any party having objection to the translation shall undertake the burden of proof to prove that the translation is incorrect. If the other party provides a translation in contrary or otherwise whilst the court is unable to judge which translation is more appropriate, the court may seek assistance from an independent translation company.

It is very encouraging that the Chinese court now open mind on the requirement under the New York Convention. Reportedly, the PRC Supreme People's Court are considering producing detailed guidance in cases concerning recognition and enforcement of foreign arbitral awards, which we assume will facilitate the application for recognition and enforcement of foreign arbitral awards in China.

Also, Wang Jing & Co. have a translation team specialized in translating various legal documents. Please do not hesitate to contact us if we can be of any assistance.