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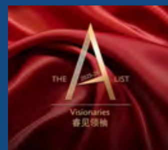

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WJC's Amendments to Chinese Maritime Code Adopted

On 30 December 2025, WJC LAW FIRM was awarded a Certificate of Honor for Adoption of Legislative Opinions by the Jianghai Grassroots Legislative Outreach Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (hereinafter referred to as "Jianghai Legislative Office"), in recognition of the adoption of our proposed amendments to the Chinese Maritime Code.

On 4 December 2024, a delegation led by Mr. XIONG Yongguang, Director of the Jianghai Legislative Office, visited our firm for research and consultation, and invited us to submit comments on the Chinese Maritime Code (Draft Amendment). Mr. CHEN Xiangyong (Director), Mr. John WANG (Executive Managing Partner), Ms. ZHANG Jing (Partner), Mr. CHEN Jingzong and Ms. ZHANG Xiujie (young lawyers) jointly submitted a number of amendment proposals, which covered a wide range of issues including the scope of application, statute of limitations, liability for oil pollution damage caused by a ship, application of law in foreign-related matters, shipowners' mutual insurance associations, and the protection of crew's rights and interests. Among them, our proposed revision concerning liability for oil pollution damage caused by a ship was incorporated into Article 231 of the Chinese Maritime Code. We are deeply encouraged to have been able to contribute our professional expertise to this crucial law, which is of fundamental importance to the high-quality development of China's shipping industry and the advancement of the national strategy of building China into a maritime power.

As the core foreign-related law governing maritime transport and ship-related legal relationships, the Maritime Code of the People's Republic of China has been in force for over three decades since 1993. With the rapid growth of China's shipping and trade sectors, the continuous advancement of marine ecological civilization, and the ongoing development of international maritime legislation, the need to revise the existing Maritime Code has become increasingly urgent. Accordingly, the revision process has attracted sustained and extensive attention and discussion from the shipping industry, the legal profession, and society at large.

During this round of revision, multiple members of our firm were invited on numerous consulting occasions. As legal practitioners with vast practical experience, we have handled a substantial number of cases involving maritime cargo transportation, ship collisions, and oil pollution damage, which equip us with the most direct and profound understanding of the practical difficulties and systematic gaps encountered in the application of the current Maritime Code. We firmly believe that lawyers' participation in legislative amendments is not only a manifestation of professional value, but also an inescapable responsibility. The vitality of the law lies in its application, and practical experience can provide legislators with vivid, problem-oriented insights and pragmatic solutions. It makes statutory provisions more practical and actionable, and legislation and judicial practice can coordinate more precisely.

The commendation from the Legislative Affairs Commission of the Standing Committee of the National People's Congress is not only a high affirmation of WJC's professional competence, but also a significant encouragement to all lawyers who actively engage in the advancement of the rule of law. This honor has further impressed upon us that the legal profession, as an important participant and driving force in the construction of the rule of law, bears a weighty responsibility and a profound sense of pride in transforming frontline practical wisdom into legislative achievements and contributing to the continuous improvement of the national legal system.

Looking ahead, WJC LAW FIRM will take this recognition as a new starting point, remain true to our legal commitment, and continue to leverage our strengths in frontline legal practice to transform them into more valuable legislative proposals, thereby contributing further to the advancement of scientific and democratic legislation.

荣誉证书

HONORARY CREDENTIAL

广东敬海律师事务所：

在《中华人民共和国海商法(修订草案)》立法意见征集活动中，贵单位积极建言献策，提出的意见被《中华人民共和国海商法》第二百三十一条吸收采纳。感谢贵单位一直以来对江海基层立法联系点工作的支持。

特发此证，以资鼓励。

全国人大常委会法制工作委员会

江海基层立法联系点（代章）

二〇二五年十二月四日

(The Certificate of Honor was presented by Mr. LI Zhihao, Director of the Jianghai District People's Congress, and Mr. LIN Zebo, Director of the Tianhe District People's Congress; Lawyer CHEN Jingzong accepted the honor on behalf of WJC LAW FIRM)

WJC Wins ALB South & Central China Maritime Law Firm of the Year for the Fourth Consecutive Time

On 5 December 2025, the Four Seasons Hotel Shenzhen saw the grand opening of the star-studded annual law awards ceremony organized by Asian Legal Business (ALB), a leading international legal media outlet. Among the winners unveiled that evening, WJC LAW FIRM was once again awarded the "Maritime Law Firm of the Year: South China & Central China - Local", which marks the Firm's fourth consecutive win and reflects the sustained recognition and trust it has earned from both the industry and the clients. Partner Ms. ZHANG Jing and young lawyer Ms. HU Xiyan attended the ceremony on behalf of the Firm.

(Ms. ZHANG Jing receiving the award)

(Ms. HU Xiyan attending the ceremony)

Over the past year, WJC LAW FIRM has continued to deepen its expertise in the maritime and admiralty field and has achieved remarkable results. On the occasion marking the 40th anniversary of the establishment of China's maritime courts in November 2024, the Supreme People's Court (SPC) released the 41st batch of guiding cases (Cases No. 230 - No. 236), representing the first time the SPC has dedicated a special issue to guiding cases in the maritime adjudication. This batch contains a wide range of frontier and complex issues, including contract of carriage of goods by sea, maritime rescue, liability for ship collision damage, establishment of a limitation fund for maritime compensation liability, the application for recognition of civil judgments by foreign courts, and the application of foreign-related laws. Two cases handled by our Firm were selected in the batch, representing two out of the seven cases, which further demonstrated our professional expertise and benchmark status in addressing sophisticated and challenging maritime and admiralty cases.

In June 2025, the SPC published the 2024 National Typical Cases of Maritime Trial (a total of six), among which two more were handled by WJC LAW FIRM. Issued in the lead up to "World Oceans Day" and "National Ocean Awareness Day", these cases aim to highlight the positive role of China's maritime judiciary in regulating the shipping industry, promoting the development of the marine economy, and properly resolving international maritime disputes. The Firm's repeated inclusion further evidences our strong capabilities and extensive experience in handling major and complex maritime and admiralty matters.

Additionally, another case represented by WJC LAW FIRM was included in the second batch of Typical Cases on Foreign-Related Commercial and Maritime Mediation published by the SPC in August 2025. This affirms the Firm's notable performance and influence in diversified dispute-resolution mechanisms.

Successive honors are the result of WJC LAW FIRM's relentless pursuit of professional excellence, and continued recognition is rooted in the trust and support of our clients. Looking ahead, WJC LAW FIRM will continue to uphold the highest standards of legal service, providing clients with stable, forward-looking, and high-quality support in the global maritime and admiralty landscape, and working alongside industry peers to safeguard the prosperity of the shipping sector and advance the rule of law.

WJC Awarded Maritime Law Firm of the Year: East China by ALB for the Fourth Time

On the evening of August 22, the ALB China Regional Law Awards 2025: East China Ceremony was grandly held at the glittering Jing An Shangri-La Hotel, Shanghai. This year, with focus on five provinces and one municipality (Shandong, Jiangsu, Anhui, Zhejiang, Jiangxi, and Shanghai), the East China Awards attracted over 120 law firms and in-house legal teams competing across more than 30 categories of legal practice awards. Amid much anticipation, the winners of each award were finally unveiled.

Wang Jing & Co. (WJNCO) stood out once again with its exceptional competence and outstanding achievements, securing the “Maritime Law Firm of the Year: East China - Non-Local” award, which we have won for the fourth consecutive year.

Margot LUO (Partner) and SONG Jia (Senior associate) from WJNCO Shanghai office attended the ceremony on behalf of the firm, sharing in the moment of distinction.

(Lawyer Margot LUO delivered the acceptance speech)

(Lawyers Margot LUO and SONG Jia took the stage to receive the award)

Years of honors have not drifted us away from our roots. WJNCO has always been engaged in the East China legal services to serve our clients with professionalism and dedication. Winning the award for the fourth time not only highly recognizes our brand and competence but also motivates us to move forward. This year, with the addition of Partner Margot LUO and Senior Consultant WANG Canming, the capabilities of our East China team has been further enhanced by injecting fresh vitality into the development of related practice areas.

A Brief Analysis of Liability of Owners for Personal Injury Claim ——from the perspective of an individual case

Author: Mr. GUO Xinwei

Case Background

On 27 May 2010, seafarer YE (hereinafter "the Seafarer") entered into a *Seafarer Employment Agreement* (hereinafter "the SEA") with the Owners through a manning agent and was subsequently dispatched to the involved vessel (hereinafter "the Vessel"). On 17 December 2010, while the Vessel was loading cargo in New Zealand, the Seafarer fell overboard and tragically passed away.

Upon the Vessel's arrival at the discharge port in China, the Owners' P&I Club (hereinafter "the Club") issued a Letter of Undertaking (hereinafter "LOU") to the next of kin of the Seafarer (hereinafter "the NOK") in exchange for the release of the Vessel. Besides, the Owners voluntarily contacted the NOK and negotiated about the indemnity.

During the negotiation, the Owners offered to indemnify the NOK according to the standards set out in the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law for the Trial of Personal Injury Compensation Cases*. However, the NOK refused the proposal and instead demanded compensation far exceeding the statutory amount. Since no agreement was reached, the NOK kept disturbing and interrupting the Owners, the Club and the manning agent.

To break the impasse, we assessed the case merits and advised the Owners to proactively commence a lawsuit by requesting the court to confirm the compensation payable to the NOK. In this way, Owners may fulfill their obligation as per the judgment and discharge the liability in the jurisdiction of P.R China.

Following the communication with the court, we, acting on behalf of the Owners, successfully filed a lawsuit in China (hereinafter "the Chinese Claim"). Concurrently, the NOK retained a Panamanian lawyer (via their Chinese lawyer) to initiate a parallel claim against the Owners in Panama, the flag state of the Vessel (hereinafter "the Panamanian Claim").

In the Chinese proceedings, the court upheld the Owners' claim and confirmed the compensation amount due to the NOK, which the Owners paid accordingly thereupon.

Several years later, the Panamanian Claim ended up in 2022 with a settlement agreement co-signed by the Panamanian lawyers represented the Owners and the NOK respectively. Upon performance of the agreement, the LOU issued by the Club was retrieved and cancelled.

Notwithstanding, the NOK filed a further lawsuit in 2023 before the Chinese court against the Club and the Owners (who were removed later due to dissolution), alleging that the purported settlement in Panama was not authorized by the NOK and they had never received any settlement funds from the Panamanian lawyer. On these grounds, they sought to hold the Club liable under the LOU.

Issues

- Owners' Eligibility to Seek Judicial Confirmation of Compensation under the SEA
- Compensation from Parallel Proceedings
- Nature of the Club's LOU and the Liabilities Thereunder

Analysis and Comments

- Owners are eligible to seek judicial confirmation of compensation under the SEA

In general, the seafarer or the next of kin would initiate a personal injury claim as the plaintiff. However, if they ask for an unreasonable amount of compensation or are reluctant to file a lawsuit before the court, owners may also be entitled to commence a proceeding based on the SEA with the seafarer and request the court to determine the compensation amount.

In the Chinese Claim, the SEA constitutes a valid contract under Chinese law, establishing an employer-employee relationship between the Owners and the Seafarer. When the Seafarer is injured onboard, the compensation will be deemed as a contractual issue under the SEA (albeit with an option of claim in tort). As such, each party of the contract is entitled to bring up a lawsuit concerning disputes arising therefrom under the Chinese law.

We are of the opinion that the above experience may provide an alternative solution for the Club/Owners in case the NOK insisted on unrealistic claims and pressed the Owners or the Vessel beyond legal actions.

Notwithstanding, this option is only applicable to contractual disputes. If it is a tort case, such as those involving third parties (e.g. pilots, stevedores, or representatives of charterers or cargo interests), the Owners will have no legal basis to take this action.

- Compensation from Parallel Proceedings

According to Article 281 of the *Civil Procedure Law of the P.R. China, "for the same dispute between the parties, if one party files a lawsuit in a foreign court while the other party files a lawsuit in a people's court, or if one party files lawsuits in both a foreign court and a people's court, and the people's court has jurisdiction according to this law, it may accept the case. If the parties have entered into an exclusive jurisdiction agreement choosing a foreign court for jurisdiction and this does not violate the provisions of this*

law regarding exclusive jurisdiction, and does not involve the sovereignty, security or public interests of the People's Republic of China, the people's court may rule not to accept the case; if the case has already been accepted, it may rule to dismiss the lawsuit".

That is to say, parallel proceedings are permissible by Chinese courts as long as in the absence of an effective exclusive foreign jurisdiction clause between the parties involved.

It is uncommon for the Seafarer/NOK to commence parallel proceedings both in China and the flag state, but we still identify it as a potential risk for the Club/Owners.

- Nature of the Club's LOU and the Liabilities Thereunder

To determine the Club's potential liabilities under the LOU, the nature of the LOU must be first ascertained. Recently, local maritime court published an article regarding this issue. Combined with our own analysis, we hereby summarize the court's opinion as below:

Pursuant to Article 681 of the *Civil Code of the P.R. China*, "*a suretyship contract is a contract under which a surety and a creditor agree, for the purpose of ensuring the enforcement of an underlying claim, that the surety shall perform the obligation or bear the liability when the debtor fails to perform it when it is due or a circumstance as agreed by the parties occurs*".

Therefore, prerequisite of a suretyship contract is debtor's default. For Club's LOU, which usually reads "*(Club) hereby agrees to pay to you such sum or sums as may be adjudged without the right of appeal by a competent court or arbitration tribunal or agreed between the parties to be due to you from the owners*", it shall not be identified as a suretyship contract since it lacks the abovementioned precondition.

Article 1 of *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Independent Guarantee Dispute Cases* stipulates that "*the independent guarantee referred to in these Provisions means a commitment made by a bank or a non-bank financial institution as the issuer in writing to the beneficiary that it will make payment of a specific amount or within the maximum amount of the guarantee upon the beneficiary's request for payment and submission of documents that meet the requirements of the guarantee*". According to above stipulations, the Club LOU has all necessary factors of an independent guarantee. Since the Club is not a bank or a non-bank financial institution, the LOU may not be recognized as independent guarantee but a special guarantee with the nature of independent guarantee.

As "independent guarantee", the LOU shall be independent of the dispute between Owners and seafarer/NOK. Besides, as agreed in the LOU, the basis for Club to make the payment shall be a valid judgement, an arbitration award or a settlement agreement. Accordingly, the Club, as the issuer of independent guarantee, shall not be a proper defendant in the dispute between Owners and seafarer/NOK. Besides, with no valid judgement, arbitration award or settlement agreement, the precondition of the Club's obligation to make the payment has not been satisfied and therefore the Club shall not be sued.

Mr GUO Xinwei joined WJC in 2008 and is currently a Partner at the Tianjin Office. His practice focuses on cross-border legal services and litigation, covering maritime matters, international trade, financing and security, dispute resolution, investments, and both domestic and international arbitration. With over ten years of litigation experience, he has appeared before courts in various jurisdictions, including High Courts and the Supreme People's Court. He has also represented clients in domestic and international arbitrations, including LMAA arbitrations in London, HKIAC arbitrations in Hong Kong, and ICC arbitrations, and is able to offer clients diversified dispute resolution solutions from multiple perspectives.

Liability of Agents for Issuing Unauthorized BL

Author: Mr. GUO Xinwei

Background

Under time charterparty, shipping agents are typically appointed by Charterers. The NYPE clause provides "*Owners to allow Master/agents to sign and issue Bill(s) of Lading on behalf of Owners strictly in compliance/ conformity with Mate's or Tally Clerks' receipt and governing Charter Party, as well as Letter of Authorization from Master*". It seems that agents are authorized by Owners to issue bills of lading. However, in practice, agents usually follow instructions from the Charterers, who pay their agency fees, when issuing bills of lading.

Disputes

A contradiction arises when agents follow the instructions from the Charterers that conflict with the letter of authorization, especially when the Chief Mate has entered remarks on the Mate's Receipt regarding the cargo condition while the Charterers instruct the agents to issue clean onboard bills of lading.

If Owners are held liable for cargo damages caused by the issuance of unauthorized bills of lading, they are entitled to recover from Charterers under the charterparty in accordance with Inter-Club Agreement (ICA). However, Owners may face the risk that Charterers lack sufficient assets and property to provide such indemnity.

Seeking indemnity from the agents provides another potential solution for handling disputes arising from the issuance of unauthorized bills of lading. Agents often maintain active bank accounts, which may be more easily attached.

When facing a claim for issuing unauthorized bills of lading, agents usually defend that they are appointed by the Charterers, so they are obliged to follow the instructions from the Charterers to issue bills of lading and thus bear no fault for issuing bills of lading contrary to the letter of authorization, and all resulting liabilities, if any, shall be undertaken by the Charterers as principal.

Precedents Research

Based on our research on precedents, most of the Owners claimed for tort against agents, and courts have reached differing conclusions regarding the agents' tort liability.

In the case (2003) WHFTS No.73, the agent issued an anti-dated clean bill of lading despite remarks on the Mate's Receipt indicating that labels of part of the goods were missing. Wuhan Maritime Court held that the shipping agent was at fault for issuing an anti-dated clean bill of lading knowingly contrary to the requirements of the letter of authorization. Under such circumstance, the Court ordered that the agent should be held jointly and severally liable with its principal.

In the case (2010) HGMS (Hai) Z No.136, the agent issued a clean bill of lading even though the cargo condition at the loading port was recognized in the Mate's Receipt as "*quality unknown. Before loading, the goods were contaminated with dust. Rust stains on the binding straps and outer packaging. Scratches on surface. Packaging or binding straps partly damaged or lost*".

At the discharge port, the goods were found damaged. Therefore, the key issue was whether the agent should be liable for issuing a clean bill of lading despite the remarks on the Mate's Receipt.

Shanghai High People's Court ruled that whether the shipping agent's issuance of a clean bill of lading constitutes a tort depends on whether the agent acted intentionally or negligently, and whether this act impaired the rights of the bill of lading holder to refuse payment for the goods.

The Court determined that after accepting the goods, if the carrier issues a clean bill of lading based on their experience and comprehensive judgment without fraudulent intent, and if the remarks on the Mate's Receipt are merely about the surface/apparent condition and outer packing of the goods, it only deprives the bill of lading holder of the right to defend against the poor surface/apparent condition of the goods upon receipt and does not constitute fault.

This judgement is also upheld by the Supreme People's Court in the case (2013) MSZ No.35.

On the contrary, in the case (2010) JGMSZ No.0005, the agent issued an unauthorized bill of lading against the master's letter of authorization. Tianjin High People's Court ruled that since the letter of authorization, issued by the master, was not confirmed by the Charterers, it did not bind the agent, whose act of issuing a clean onboard bill of lading pursuant to Charterers' instructions was thus not at fault, and the agent should not be held liable to the Owners.

In summary, the Supreme People's Court and the Shanghai High People's Court hold that when remarks on the Mate's Receipt concern only surface/apparent condition, the agents have the right to issue clean bills of lading based on their experience and comprehensive judgement when the inner cargo condition is unknown to them. The courts did not explicitly address remarks such as rust, bending, or stains on the goods.

The Wuhan Maritime Court ruled that agents should be held jointly and severally liable with the Charterers for knowingly issuing unauthorized bills of lading whereas Tianjin High People's Court took the opposite view, holding that the letter of authorization not confirmed by Charterers does not bind the agents.

Analysis and Comments

On the basis of the letter of authorization, issuing an unauthorized bill of lading may give rise to potential concurrence in both breach of contract and tort for the agents.

(1) Claim in Contract

If Owners commence a claim for breach of contract against the agents, the primary concern is whether there is a contractual relationship between them.

According to Article 919 of the *Civil Code of the P.R. China*, "*an entrustment contract is a contract under which a principal and an agent agree that the agent shall handle the matters for the principal*". Therefore, to establish a contractual relationship, the parties to the contract shall have consensus on forming an entrustment contract.

The letter of authorization is a unilateral document issued by the master to the agents, fulfilling an obligation under the charterparty and serving as the only document between Owners and the agents. However, it does not expressly demonstrate a clear mutual intention between the Owners and the agents to establish a principal-agent relationship. Furthermore, the agents never show their agreement to such a relationship with the Owners.

Therefore, if Owners choose to claim for breach of contract, they may face a potential risk that the court may not recognize the existence of contractual relationship between them.

(2) Claim in Tort

Alternatively, Owners may claim against the agents for tort. In such cases, the agents' liabilities depend on the specific contents of the unauthorized bills of lading.

According to Article 1165 of the *Civil Code of the P.R. China*, "*an actor who through his fault infringes upon another person's civil-law rights and interests shall bear tort liability*".

If the contents of the unauthorized bills of lading issued by the agents do not cause Owners to lose their rights of exemption and/or defense against consignees, the agents may not be held liable, as their acts do not infringe Owners' rights and interests. Otherwise, the agents may be held liable in tort.

From a different aspect, under tort claim, it is agreed that there is a principal-agent relationship between Charterers and the agents. Article 167 of the *Civil Code of the P.R. China* stipulates that, "*where an agents knows or should have known that doing the authorized matter is in violation of law but still acts as authorized, or, if a principal knows or should have known that an act of the agent is in violation of law but raises no objection thereto, the principal and the agent shall bear joint and several liability*". With the awareness of letter of authorization, agents' knowingly issuing an unauthorized bill of lading could constitute grounds for joint and several liability with the principal, the Charterers.

Accordingly, we consider a tort claim against the agents to be a better choice for Owners, with a higher likelihood of success, if the unauthorized bill of lading infringes upon the rights and interests of the Owners.

Advice

We are now handling a claim against the agents with similar background. This case may help clarify the current judicial stance on this issue. Before that, we would like to advise shipowners to consider the following:

(1) When issuing a letter of authorization to agents, Owners shall copy the same to the Charterers and, if possible, request the Charterers to acknowledge receipt and acceptance.

(2) If Charterers provide a letter of undertaking in exchange for a clean bill of lading, the Certificate of Entry ("CoE") of Charterers should be provided with verification by the Charterers' P&I club, since we have encountered instances of forged CoE.

(3) Owners shall demand the agents confirm that all bills of lading sent to Owners are the actual versions issued to shippers and are in circulation in order to prove the awareness and potential fault of the agents regarding the issuance of unauthorized bills of lading.

Mr GUO Xinwei joined WJC in 2008 and is currently a Partner at the Tianjin Office. His practice focuses on cross-border legal services and litigation, covering maritime matters, international trade, financing and security, dispute resolution, investments, and both domestic and international arbitration. With over ten years of litigation experience, he has appeared before courts in various jurisdictions, including High Courts and the Supreme People's Court. He has also represented clients in domestic and international arbitrations, including LMAA arbitrations in London, HKIAC arbitrations in Hong Kong, and ICC arbitrations, and is able to offer clients diversified dispute resolution solutions from multiple perspectives.

The Landscape of *Forum Non Conveniens* Doctrine in China

Author: Margot LUO, SUN Jinxi

Case Summary

W Company, registered in Wuhan, China, entered into a subcontract with a Hong Kong engineering company (the "HK Company"), under which the HK Company would undertake certain parts of a reclamation project located in the waters of Macao Special Administrative Region.

During the construction, the HK Company chartered ships from D Company, based in Zhongshan, China, to transport project materials, and purchased mountain sand needed for the project from a third party named G Company.

A dispute over charter hire arose between the HK Company and D Company and the latter was awarded certain amount of the charter hire.

On the ground that W Company owed mature debts to the HK Company, D Company filed a creditor's subrogation claims with the Wuhan Maritime Court in October 2023, requesting W Company to pay the aforesaid charter hire. During the defense period, W Company raised a jurisdictional objection, arguing that the case should be under the jurisdiction of Macao courts as a more convenient forum.

It was further found that G Company has already initiated another creditor's subrogation lawsuit against W Company and the HK Company in the Primary Court of Macao (the "Macao Court"), seeking a judgement that W Company still owed project funds to the HK Company and that W Company shall pay G Company for the supplied mountain sand.

Disputable Issue

Whether the Macao Court or the Wuhan Maritime Court is the *forum Conveniens* for the creditor's subrogation claim filed by D Company against W Company.

Abstract of the Ruling of the Wuhan Maritime Court

The Wuhan Maritime Court is the *Forum Non Conveniens* and thus dismissed the claim filed by D Company for the following grounds:

- Since the domicile of W Company is within the jurisdiction of the Wuhan Maritime Court, the (Wuhan Maritime) Court has jurisdiction over this case;
- The core of the dispute lies in the debtor-creditor relationship between the HK Company and W Company. Macao is the place where the basic facts of the dispute occurred;
- The three parties—the HK Company, W Company, and D Company—had not reached an agreement on submitting the dispute to a court in the Chinese Mainland for jurisdiction;
- The case was not subject to the exclusive jurisdiction of courts of Chinese Mainland, nor does it involve the social and public interests of the Chinese Mainland;
- It is more convenient for Macao courts to hear the dispute. The Macao Court had already accepted the subrogation lawsuit filed by G Company and will render a judgment on the debtor-creditor relationship between the HK Company and W Company; and
- The judgement made by Macao courts can be recognized and enforced in Chinese Mainland according to the *Arrangement of Mutual Recognition and Enforcement of Civil and Commercial Judgments between Chinese Mainland and Macao*.

Comments

The Forum Non Conveniens Doctrine was expressly introduced in the Chinese law for the first time in 2023 under Article 282 of the *PRC Civil Procedure Law* (the "*Civil Procedure Law*"), which stipulates that a PRC court may rule to dismiss a case and inform the plaintiff to institute an action in a more convenient foreign court under the following circumstances:

1. It is evidently inconvenient for a PRC court to try the case or for the parties to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People's Republic of China;
2. The parties have not agreed on choosing a PRC court to exercise jurisdiction;
3. The case does not fall under the exclusive jurisdiction of a PRC court;
4. The case does not involve the sovereignty, security, or public interest of the People's Republic of China; and

5. It is more convenient for a foreign court to try the case.

There are several points worth being highlighted:

First, sub-paragraphs 2-4 of Article 282 specify situations where PRC courts will not apply *Forum Non Conveniens* Doctrine. The sub-paragraph 2 provides for the situation where the parties have expressly agreed on jurisdiction of PRC courts. Sub-paragraph 3 refers to the situations where PRC courts will mandatorily exercise exclusive jurisdiction over certain disputes, which, pursuant to Article 34 of the *Civil Procedure Law*, include the follows:

1. An action instituted for a real estate dispute shall be under the jurisdiction of the people's court at the place where the real estate is located;
2. An action instituted for a dispute arising from harbor operations shall be under the jurisdiction of the people's court at the place where the harbor is located; and
3. An action instituted for an inheritance dispute shall be under the jurisdiction of the people's court at the place of domicile of the deceased upon death or at the place where the major part of estate is located.

As for the sub-paragraph 4, it is typically invoked in cases involving crimes and national security matters governed by public laws. To date, no defendant has successfully challenged the jurisdiction on this ground.

Second, unlike sub-paragraphs 2-4, sub-paragraphs 1 and 5 are the core conditions for applying the *Forum Non Conveniens* Doctrine. However, in what situation a PRC court is "evidently inconvenient" and a foreign court is "more convenient" is subject to the discretion of the judge based on specific circumstances. Prior to Wuhan Maritime Court's aforementioned decision, there had been no judicial interpretation or guiding case issued by the Supreme People's Court of PRC concerning the concrete deliberation of "convenience", on which this case indeed sheds some light.

The Wuhan Maritime Court emphasized that the basic facts of the dispute occurred in Macao, where the evidence would be easily collected and tendered. Additionally, there has been an ongoing related lawsuit being tried by the Macao Court, which would be rendered "more convenient" since the Court may have already collected evidence and formed a comprehensive understanding on the case. What's more, to ease the concern of enforcing the judgement of Macao in Chinese Mainland, the judge of Wuhan Maritime Court noted the *Arrangement of the Supreme People's Court on the Mutual Recognition and Enforcement of Civil and Commercial Judgments between the Chinese Mainland and the Macao Special Administrative Region*, a guarantee to the party who seeks enforcement of Macao judgment in the Chinese Mainland. Though it has already elaborated what constitutes "convenience" in the present case, the Wuhan Maritime Court underscored that the assessment remains highly fact-specific. While it is difficult to exhaust parameters for determination to apply or not apply the Forum Non Conveniens Doctrine, disputes whose underlying facts do not occur in PRC are more likely to be dismissed as per the doctrine.

Ms Margo LUO Joined WJC in April 2025, Ms Luo brings us expertise of over two decades as a lawyer specialized in maritime and admiralty. With rich practical experience in shipping and related areas, she has dealt with numerous significant and complicated cases involving substantial amounts, complex legal relations, multiple parties (from different countries), and protracted litigation/arbitration processes. She also serves as a perennial legal adviser for several shipping and logistics companies, assisting clients in addressing various legal challenges and providing them with reasonable solutions.

Mr SUN Jinxi received an LL.B. in Maritime Law from Dalian Maritime University and later obtained an LL.M. in Maritime Law from the University of Southampton (UK). He joined WJC in 2019, having previously worked in the Property Insurance Claims Department of Ping An Property & Casualty Insurance Company of China, where he managed litigation matters. He is experienced in handling marine insurance disputes and subrogation recoveries, as well as other international trade and commercial cases.

The Creditor's Last Resort: Recourse Action against the One-Person Company Shareholder

Author: Margot LUO, SUN Jinxi

Case Summary

In 2018, L Company entered into 13 cotton sales contracts (the "Contracts") with Y Company. The Contracts were subsequently amended in December 2018 to extend the deadline for performance of the Contracts to 2020. However, Y Company subsequently breached the Contracts, prompting L Company to kick-start the international arbitration proceedings against it. An arbitration award in favor of L Company (the "Award") was issued in February 2021.

Y Company was a one-person company with A as its sole shareholder. On 3 July 2019, A transferred all his equity to B, and in July 2021, around 5 months after the issuance of the Award, B transferred 99.5% of his equity to C and 0.5% to D.

Through our efforts, the Award was recognized in April 2022 and was subsequently applied to be enforced against Y Company in China. Not surprisingly, it was found that Y Company did not have enforceable assets. To protect its legitimate rights and interests, L Company applied to add A and B to the enforcement proceedings according to the PRC law (which provides that if the sole shareholder cannot prove that the assets of the one-person company are independent from the personal assets, he/she shall be jointly and severally liable for the one-person company's liabilities). The application was granted by the enforcement Court, but A and B dissented from the decision, which was dismissed by the court of first instance thereafter in the judgment dated 29 December 2023 (the "Judgment").

First Instance Proceedings

During the first instance proceedings, A and B submitted annual audit reports starting from the year of 2011 and a special audit report to demonstrate the independence of the company's assets. They contended that the amount of the debt was only crystallized after the equity transfer between A and B, and the Award became enforceable in China after B transferred the equity to C and D. Furthermore, at the time of L Company's application to add them to the enforcement proceedings, they were no longer shareholders of Y Company and thus should not be held as co-respondents in the enforcement proceedings.

During the proceedings, we discovered that certain of annual audit reports had been prepared retrospectively, with undisclosed existing liabilities and some procedural flaws. Similarly, the special audit report exhibited analogous issues, with certain company accounts remaining unaudited. Concurrently, we submitted to the Court that the sole shareholder of a one-person company could only discharge its burden of proof regarding assets independence by demonstrating: (1) the existence of a comprehensive, independent, and standardized financial system; and (2) clear separation between the shareholder's assets and the company's ones without commingling. We further averred that according to the judicial practice and the legal provisions, the liability of a sole shareholder should **not** be determined based on the timing when the debt was crystalized or when the underlying judgment/arbitration came into effect.

The Judgment

The court of first instance ultimately adopted our position by emphasizing that the provisions of *Company Law* specifically imposes mandatory requirements of annual audits on one-person companies to safeguard the assets and maintain the solvency, given the significant control exercised by the sole shareholder.

Moreover, the annual audit report should be completed in a timely manner. Although the retrospective audit reports do not necessarily imply audit failure, they carry less evidentiary weight and should be subject to stricter review by the court. Given the undisclosed existing liabilities and procedural flaws, the relevant audit reports cannot substantiate the accuracy of the accounting information contained therein, let alone the special audit conducted on such basis. Consequently, the Court held that A and B failed to demonstrate the asset independence.

The Court further held that if the sole shareholder of the one-person company cannot demonstrate the independence of personal assets from the company's ones during the period of shareholding, it cannot be ruled out that they may have impaired the company's assets to the detriment of the company's creditors. Therefore, the timing of debt crystallization or Award enforcement was not essential in the

present case in determining A and B's liability and consequently, A and B's dissention was entirely dismissed.

Our Comments

Although the claim was eventually settled in light of commercial considerations and the Judgment did not take effect, it bears significance and may provide guidance to similar cases.

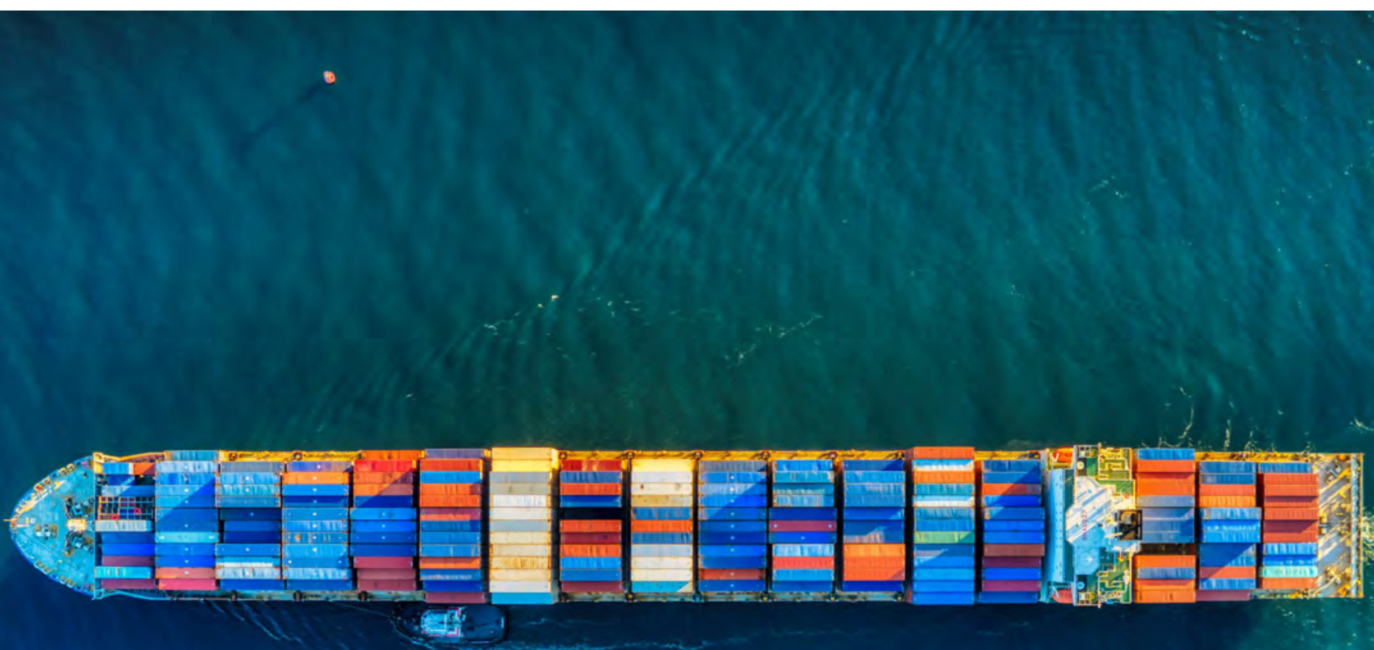
Notably, the Judgment was based on the original *Company Law*. Under the new *Company Law* effective in July 2024, the specific requirement for mandatory annual audits for one-person companies has been replaced by a broader statutory obligation applicable to all companies. This legislative evolution hints that the burden of proof regarding annual audit for the one-person company shareholder might have been changed. To date, the answer remains uncertain and may require further clarification through subsequent judicial practice.

Additionally, the "timing defence" is commonly raised in disputes of similar nature. The Judgment makes clear that the sole shareholder will be held liable for damages to company's assets—and consequently to the interests of creditors—if they are unable to prove the independence of their personal assets from the company's ones during the period of their shareholding. That said, the Judgment also suggests that if the agreement was entered into by the parties after the share transfer, it may be of necessity to consider the "timing defence". In other words, the Court may lower the threshold in considering whether the former shareholder has discharged its burden of proof where the agreement was entered into after the equity transfer.

Where the debtor is, or used to be, a one-person company, the Judgment provides an alternative solution to the creditors when the debtor has no enforceable assets. Although the one-person company shareholder would submit various audit reports or accounting sheets/documents to prove asset independence, these documents are still subject to review. As in the present case, after flagging out the formality flaws and various audit failures, the Court ultimately refused to adopt the audit reports and held A and B jointly and severally liable.

Ms Margo LUO Joined WJC in April 2025, Ms Luo brings us expertise of over two decades as a lawyer specialized in maritime and admiralty. With rich practical experience in shipping and related areas, she has dealt with numerous significant and complicated cases involving substantial amounts, complex legal relations, multiple parties (from different countries), and protracted litigation/arbitration processes. She also serves as a perennial legal adviser for several shipping and logistics companies, assisting clients in addressing various legal challenges and providing them with reasonable solutions.

Mr SUN Jinxi received an LL.B. in Maritime Law from Dalian Maritime University and later obtained an LL.M. in Maritime Law from the University of Southampton (UK). He joined WJC in 2019, having previously worked in the Property Insurance Claims Department of Ping An Property & Casualty Insurance Company of China, where he managed litigation matters. He is experienced in handling marine insurance disputes and subrogation recoveries, as well as other international trade and commercial cases.



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