

Maritime and Commercial Law Newsletter

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| NEWS

WJNCO Lawyers Attended and Delivered a Key-note Speech at the “Maritime Law Forum 2023 • Academic Seminar on the 30th Anniversary of the Implementation of the Chinese Maritime Code”

On 5 July 2023, the “Maritime Law Forum 2023 • Academic Seminar on the 30th Anniversary of the Implementation of the Chinese Maritime Code” hosted by the China Maritime Law Association was successfully held at Sun Yat-Sen University, Guangzhou. The theme of the forum was “Retrospect on the Past 30 Years & Prospect on the Future—Celebrating the 30th Anniversary of the Implementation of the Chinese Maritime Code”. The forum was organized by the Sun Yat-Sen University, co-organized by Sun Yat-Sen University School of Law, Southern Marine Science and Engineering Guangdong Laboratory (Zhuhai), and Guangdong Marine Law Society, and supported by Reed Smith Richards Butler LLP and Guangdong Transport Law Society. Up to 400 representatives from the Supreme People’s Court, the Ministry of Transport of the China, academia, corporates, and law firms attended the grand gathering.

Mr. Chen Xiangyong, managing director of Wang Jing & Co., and Ms. Li Lan, partner of Wang Jing & Co., together with young lawyers of the firm, Mr. Chen Jingzong, Ms. Zhang Hao, and Ms. Xu Fangru, attended the forum.



On 6 July 2023 held the grand opening of the 1st Shipping and Maritime Law Forum co-organized by the China Maritime Association and the China State

Shipbuilding Corporation Limited at Sun Yat-Sen University, Guangzhou. The theme of the forum was “Research on the Frontiers and Practice of Maritime Law Theories under the New Situations”.

In section II “Research on Maritime Dispute Resolution Practices” of the forum hosted by Professor Li Zhiwen from Law School of Dalian Maritime University, Mr. Chen Xiangyong, managing director of Wang Jing & Co., delivered a keynote speech on the topic of “Green Shipping and Public Interest Litigation over Marine Ecological Environmental Damage” from the perspective of practice where discussions were made on several new issues arisen in theory and practice of public litigation over marine ecological environmental damage under the background of green shipping.



In addition, by celebrating the 30th anniversary of the implementation of the Chinese Maritime Code, the China Maritime Law Association held the event of “Excellent Paper 2023” so as to facilitate academic activities in the field of Chinese maritime law and encourage members and scholars to make their contribution to the research of such field to promote the prosperity of the Chinese maritime law discipline.

The paper Research on the Regime of Liability Limitation of Carrier under Carriage of Passengers by Sea and its Improvements co-authored by Professor Guo Ping, senior consultant of Wang Jing & Co. and Ms. Xu Fangru (apprentice lawyer) was honoured with the Excellent Award. The research centres the focus on the regime of liability limitation of carriage

of passengers by sea with an eye on the legislation status, judicial practice, and development of international conventions on such regime and provides useful strategies for the revision of the Chinese Maritime Code.



On this 30th anniversary of the implementation of the Chinese Maritime Code, as one of the standing director units of the China Maritime Law Association, Wang Jing & Co. will always care for the development of the industry and the Strong Maritime Nation Strategy, sailing with the times while implementing the spirit of openness and innovation into the firm's internal building and external exchange so as to bring contributions to the exchange platform of maritime law and practice.

Wang Jing & Co. Honoured Two Sector Awards in China Business Law Awards 2023

Recently, China Business Law Journal released the China Business Law Awards 2023. With excellent performance, Wang Jing & Co. was honoured the sector award in Shipping for the second consecutive time and once again honoured the sector award in Insurance and Reinsurance after 2021.



In order to select law firms with the most outstanding performance in each field in the year of 2022, China Business Law Journal, as always, collected submissions from law firms extensively and solicited feedbacks from the industries. Through months of research and evaluation, hundreds of submissions and thousands of comments from corporate executives, in-house counsels and senior lawyers were received. China Business Law Journal comments Wang Jing & Co. as follows:

“Wang Jing & Co handled multiple domestic and cross-border shipping and vessel-related dispute cases in 2022. In a vessel collision damage compensation dispute of Taiwan Product Insurance v All Oceans Transportation, Yangming Marine Transport, the firm represented the two defendants in the retrial procedure before the Supreme People’s Court and obtained favourable results. The case was selected as one of the top 10 exemplary cases of protecting Taiwanese rights and interests in mainland China published by the Supreme People’s Court.”

“An executive from one of the P&I Clubs commends Guangzhou-based partner Wang Jun: “Wang has extensive experience and knowledge in dispute resolution and transaction design in shipping, insurance, marine engineering, and ship finance cases. He is familiar with Chinese law as well as English law, and specialises in handling legal disputes involving multiple countries.”

Wang Jing & Co. gathers a team of professional lawyers who have long been providing legal services in shipping for international P&I Clubs, shipowners, insurance companies, charterers and logistics companies in maritime affairs and are well-recognized by the industry for their solid command of legal knowledge. Most of our lawyers have years of working experience in shipping enterprises, maritime courts and maritime authorities before joining the firm. In addition, we have also appointed experienced ocean-going captains as our consultants, who have been powering us in handling all kinds of maritime disputes with ease, especially in providing favourable solutions for our clients in complex and complicated cases along with efficient on-site assistance and premium follow-up services.

Wang Jing & Co. has gathered a team of outstanding lawyers with solid legal knowledge and extensive practical experience who have been providing legal service in insurance and reinsurance for nearly 100 insurance groups in resolution of both domestic and foreign insurance disputes and claims and advisory services concerning insurance clauses and insurance agreements while being active in litigations and arbitrations concerning insurance disputes. In addition to maritime insurance, we have also spanned our practices to fields including aviation, property, engineering, liability, credit and other insurance.

Mr. Ho Yan Hung Joined WJNCO as GBA Lawyer

Mr. Ho Yan Hung from James Ho & Co. has acquired the Guangdong-Hong Kong-Macao Greater Bay Area lawyer qualification in November 2022 and will practice in the nine mainland municipalities in the Greater Bay Area (GBA) as a practicing lawyer and senior consultant at Wang Jing & Co. Shenzhen Office.

Academic Background:

Postgraduate Certificate in Laws (PCLL), University of Hong Kong
Bachelor of Laws (LLB), The Manchester Metropolitan University
Bachelor of Science in Estate Management, University of Reading
Master of Laws (LLM), University of London
Postgraduate Diploma in Construction Law and Arbitrations (HKU Space)



Public Service and Appointments:

Member of the Panel of Arbitrators, eBRAM
Sole Proprietor of James Ho & Co.
Member of the Panel of Arbitrators, the Law Society of Hong Kong.
Legal Service Provider of the Free Outreach Legal Advice on Building Management (FOLAS) Program
Fellow Member of the Chartered Institute of Arbitrators
Fellow Member of the Institute of Chartered Shipbrokers
Fellow Member of the Australian and New Zealand Institute of Insurance and Finance

As the sole proprietor of James Ho & Co., Mr. Ho Yan Hung has been practicing law for more than 20 years and has accumulated abundant experience in the fields of shipping, arbitration, and commercial litigation.

Much like rivers flowing into the sea, talents gather where their capacities are admitted. With Mr. Ho Yan Hung joining Wang Jing & Co., the firm's professional strength in foreign-related legal business will be enhanced, especially in relation to shipping arbitration and commercial litigation, providing clients with international legal services that are more professional and diversified. Wang Jing & Co. has been proactively exploring ways to cooperate with GBA lawyers to promote the connections within the legal service rules in the greater bay area and interacting with international legal service talents from Hong Kong. Wang Jing & Co. is expecting more GBA lawyers to join the firm in the near future.

| CASES AND INSIGHTS

Whether Fisheries Mutual Insurance Associations Are Entitled to Subrogation Rights?

As non-profit civil organizations formed by fishermen and other organizations and individuals engaged in or serving the fisheries production for mutual insurance under the supervision of the Ministry of Agriculture and approved by the Ministry of Civil Affairs, Fisheries Mutual Insurance Associations (FMIA) are, in essence, rather different from common commercial insurance companies. However, the terms and wording of the FMIA mutual insurance clauses are, to a large extent, formulated with reference to those of commercial insurances. Therefore, claims in relation to these two are notably similar. Yet, when third-party liabilities are involved in a claim, it is still controversial whether FMIA are entitled to subrogation rights after they have indemnified their members.

In a dispute over coastal fishing vessel collision handled by the author that had lasted five years, there was heated discussions over this issue by the Parties. The Guangzhou Maritime Court (the first instance court) supported our requests and held that the Fujian Fisheries Mutual Insurance Association (FFMIA) was entitled to subrogation rights within the scope of the indemnification made; thereafter, in the second instance and retrial, both the High People's Court of Guangdong Province (the second instance court) and the Supreme People's Court (the retrial court) supported such ascertainment.

I. Case Background

On 16 October 2015, "MIN SHI YU XXX" owned by an FFMIA member was collided by a Guangdong-registered fishing vessel "YUE YANG XI YU XXX" (hereinafter referred to as the "accident"), resulting in the loss of the vessel and all the fishing equipment and properties onboard. After the accident, pursuant to the agreements in their *Certificate of Mutual Insurance for Coastal and Inland Waterway Fishing Vessels* and the *FFMIA Terms and Conditions of Mutual Insurance for Coastal and Inland Waterway Fishing Vessels*, the FFMIA indemnified the Member for the loss of "MIN SHI YU XXX" due to the accident in the amount of RMB3,153,600 and obtained the *Receipt of Indemnification and Transfer of Rights* from the Member.

In September 2017, our firm filed a lawsuit with the Guangzhou Maritime Court on behalf of the FFMIA and the Member, where the FFMIA requested the owner of "YUE YANG XI XXX" to compensate the indemnification it had paid while the Member claimed for other uncompensated damages due to the accident. During the first instance, the court held three hearings, during which one of the dispute focuses was whether the FFMIA was a proper plaintiff.

Author:



Li Lan joined Wang Jing & Co. in 2014 and is now a partner of the firm. With a solid legal background, Lan has nearly ten years of practical experience in shipping law. She has been providing services to domestic and foreign clients including P&I clubs, insurance companies, shipowners, trade companies, shipyards, offshore engineering companies, harbour engineering companies, etc. She is particularly well placed in advising on a broad range of shipping and trade-related matters involving bill of lading, insurance, ship oil pollution, ship collision, shipbuilding, ship sale and purchase, terminal construction projects, ship arrest, international trade, etc.



Li Rongcun joined Wang Jing & Co. in 2002 after working for Penavico and is now director of the firm's Xiamen Office. Rongcun is efficient at handling complex cases in the fields of maritime & admiralty, offshore projects, shipping insurance, international trade, and shipping finance. Some of the significant cases he represented are selected as model cases by the Supreme People's Court, High People's Courts and maritime courts while some are selected as one of the outstanding dispute resolution cases by the Business Law Journal.

II. Source of the Law Application Dispute over FMIAs' Subrogation Rights

The reason that FFIAs, as the plaintiffs, are challenged against their claim for recovery of indemnification against third parties after they have indemnified their members mainly lies in the existing "determination" or stereotype in Chinese judicial precedents regarding law application of disputes between industrial associations and their members.

Early on 26 May 2004, the Supreme People's Court had clearly pointed out in the *Reply to the Request for Instructions on Law Application in the Appeal Case of Maritime Insurance Contract Dispute between China Shipowners Mutual Insurance Associations and Nanjing Hongyou Shipping Co., Ltd.* (doc ref. [2003] Min Si Ta Zi No.34) that "the China Shipowners Mutual Insurance Association (CPI) is not a commercial insurance company under the *Insurance Law of The People's Republic of China* (the '*Chinese Insurance Law*'). The insurance contracts signed between the CPI and its members are of no commercial insurance nature, where other relevant laws including the *Contract Law of the People's Republic of China* (the '*Chinese Contract Law*') shall apply rather than the *Chinese Insurance Law*." Such determination was reiterated by the Supreme People's Court in "Retrial of the Carriage Contract Dispute between Yan Yingjuan and the China Shipowners Mutual Insurance Association" (case ref. [2017] Zui Gao Fa Min Shen No. 3702).

Thereafter, courts at all levels basically adopted the same determination that the P&I insurance contracts signed between FMIAs and their members are not governed by the *Chinese Insurance Law*.

Take the example of *Zhang Kejie v. Guangdong Fishery Mutual Insurance Association*, dispute over sea-going waters P&I contract (first instance ref. [2017] Yue 72 Min Chu No. 974, second instance ref. [2018] Yue Min Zhong No. 638). Regarding the applicable laws, the Guangzhou Maritime Court and the High People's Court of Guangdong Province both held that "The *Chinese Insurance Law* regulates only commercial insurance activities, and mutual insurance associations are not insurance companies or entities that operate commercial insurance business as stipulated by the *Chinese Insurance Law*. Therefore, the relevant provisions of the *Chinese Insurance Law* shall not be applied to determine the validity of the pro-rata indemnification clauses in P&I contracts".

The main reason that the courts held that the *Chinese Contract Law* shall apply to the dispute over P&I contracts instead of the *Chinese Insurance Law* which regulates commercial insurance is that shipowner mutual insurance associations and fishery mutual insurance associations are both non-profit social organizations. As was pointed out by Judge Li Lifei and Judge Shu Jian in article *The P&I Contract between Industry Mutual Insurance Associations and Their Members Does Not Fall in the Regulations of the Chinese Insurance Law* that "as a non-profit social organization with registered capital of merely RMB30,000, the Guangdong Fishery Mutual Insurance Association (GDFMIA) does not fix the feature of commercial insurance entities to pursue maximum economic profits. The association is member-oriented and is not open to the public with indemnification funds mainly coming from membership dues, which means that their risk guarantee would be limited to a certain of indemnification ranges rather than full indemnification of economic loss due to limited capacity. If the relationship between mutual insurance associations and their members is regulated as per those provisions of *Chinese Insurance Law* on regulating commercial insurance legal relationship, there would be uneven rights and obligations." However, after the FMIAs have indemnified their members, pursuant to Article 60 of the *Chinese Insurance Law* on execution of subrogation rights, clearly there will be no such uneven issue.

III. Basis for FMIAs to Exercise Subrogation Rights

The author opines that in addition to legal and contractual basis, there is also a jurisprudential basis for FMIAs to exercise subrogation rights:

1. Legal Basis: According to Chinese Law, as “agricultural mutual insurance organizations” stipulated by the State Council in the *Agricultural Insurance Regulations* (hereinafter referred to as the “*Regulations*”), FMIA shall follow Article 16 of the *Regulations* that “where there is no specification on agricultural insurance contract in this *Regulations*, relevant provisions of the *Insurance Law of the People’s Republic of China* on insurance contract shall apply”. In this regard, either fishery property insurance or “agriculture-related and policy-supported insurance” shall both be governed by the provisions of *Chinese Insurance Law* on insurance contracts in the absence of specific provisions in the *Regulations*. Therefore, although FMIA are not commercial insurance companies, they are entitled to exercise their subrogation rights as per Article 60 of the *Chinese Insurance Law*.

2. Contractual Basis: With reference to the case handled by the author, according to Article 16 of the *FFMIA Terms and Conditions of Mutual Insurance for Coastal and Inland Waterway Fishing Vessels*, it was expressly agreed that the Association is entitled to obtain the right of claim against third parties from the Member: “Where the fishing vessel incurred losses within the scope of liability under the mutual insurance that are attributed to a third party, the Member shall claim against the third party. If the third party fails to pay, the Member shall take all necessary measures to secure the time limit of action; the Association shall indemnify the Member as per the mutual insurance contract upon written request filed by the Member. The Member must transfer the right of claim against the third party to the Association and shall assist the Association in the claim against the third party. If the Association’s subrogation rights are affected due to Member’s omission, the Association is entitled to deduct indemnification accordingly.” In addition, after indemnifying the Member, the FFMIA obtained the *Receipt of Indemnification and Transfer of Rights* from the Member. Therefore, the FFMIA was entitled to exercise the right of recovery against the defendant within the scope of transferred indemnification.

3. Jurisprudential basis. By nature, subrogation right is a kind of claim assignment. In this case, after being indemnified from the FFMIA, the Member transferred the claims accordingly to the FFMIA with confirmation through issuing *Transfer of Rights*. The author opines that such transfer of claims shall be lawful and effective. Therefore, as the assignee of the claims, the FFMIA is entitled to claim against the liable person for recovery.

In the first instance, the Guangzhou Maritime Court supported our requests with citation of Article 16 of the *Regulations* in the Judgement and ascertained that in the absence of a specific provision on FFIA’s subrogation rights in the *Regulations*, provision of Article 60 of the *Chinese Insurance Law* on insurance subrogation rights may be applied.

In the second instance, the High People’s Court of Guangdong Province sustained such ascertainment. In addition, the allegation raised by the owner of “YUE YANG XI YU XXX” that the FFMIA was not entitled to subrogation rights as its claim handling procedures were illegitimate was rejected by the Court as per Article 14 of the *Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Maritime Insurance Dispute Cases* that “the court accepting a case of a dispute over the exercise of the insurer’s subrogation rights to claim for compensation shall only try the legal relationship between the third party causing the accident and the insured”, and FFMIA’s subrogation rights were supported.

During the retrial, as the owner of “YUE YANG XI YU XXX” did not apply for retrial on such issue, the Supreme People’s Court did not retry such issue but merely retried the issues requested by the Parties. However, given that the Parties’ retrial requests were dismissed, it can be inferred that the Supreme People’s Court tacitly supported the ascertainment of such issue in the first and second instance.

It should be noticed that, as disputes over such issue increase, more courts are inclined to adopt a flexible and open approach in handling such issue.

Take another dispute over ocean-going fishing vessel collision the author handled on behalf of an FMIA for example. In the case, both the Xiamen Maritime Court (the first instance court) and the High People’s Court of Fujian Province (the second instance court) supported our requests and ascertained that the *Certificate of Mutual Assis-*

tance Insurance for Ocean-Going Vessels issued by the FMIA shall be deemed as an agricultural insurance contract under the *Regulations*. While there is no specific regulation on subrogation rights under the *Regulations*, pursuant to Article 16 of the *Regulations*, the relevant provisions of the *Chinese Insurance Law* shall be applied. On such basis, the courts supported the FIMA's subrogation rights.

IV. Risk Remainder and Advice

In Chinese judicial practice, courts had long been determining that FMIA-related disputes shall not be regulated by the *Chinese Insurance Law* on the ground that FMIA's are not commercial insurance companies. Fortunately, the author is pleased to see that the courts would think outside the box by referring to Article 16 of the *Regulations* and ascertained that the FMIA's are entitled to subrogation rights as per Article 60 of the *Chinese Insurance Law*. However, there is a different viewpoint that Article 16 of the *Regulations* is not compulsory, and that "apply by reference" does not equal "shall apply". Therefore, it remains uncertain whether the breakthroughs made by the courts in Guangdong and Fujian may be recognized by courts in other provinces. Further, the Supreme People's Court did not explicitly address the FMIA subrogation right issue in the retrial adjudication, which shall be subject to judicial practice in the future.

Still, as was analysed above, even if the FMIA's were not entitled to apply provisions of the *Chinese Insurance Law* for its non-commercial insurance company nature and exercise their subrogation rights, they shall be entitled to exercise the right of recovery against a third party as the assignee of claims. Accordingly, to secure successful recovery, the author advises that the FMIA's prepare the following during claims and recovery:

1. Improve the mutual insurance articles and clauses by securing a clause that the Member agrees to transfer the right of claim against third parties to the Association after being indemnified to provide a contractual basis for FMIA's to exercise subrogation rights. According to the author's research, among the currently accessible mutual insurance clauses, clauses of such transfer of rights are only seen in Article 16 of the *FFMIA Terms and Conditions of Mutual Insurance for Coastal and Inland Waterway Fishing Vessels* while their *Terms and Conditions of Mutual Insurance Clauses for Ocean-Going Vessels* does not include such clauses; a similar clause of right transfer is seen in Article 26 of the *GDFMIA Terms and Conditions of Insurance for Fishing Vessel Property* while there is no such clause in the *Zhejiang FMIA Terms and Conditions of Mutual Insurance for Fishing Vessels* and their *Terms and Conditions of Mutual Insurance for Ocean-going Vessels*;
2. After indemnifying the Member, the FMIA's should obtain the Receipt of Indemnification and Transfer of Rights/Claims from the Member where it is specified that the right of claim against the third party and or the claims are transferred to the Association. In common commercial insurance claims, the document signed by the insured and issued to the insurer would be titled "*Transfer of Rights*". However, as was mentioned above, to avoid courts from denying the FMIA's' subrogation rights, the author suggests adding words like "transfer of claims" to the document to provide double protection for FMIA's to exercise their subrogation rights.

Meanwhile, General Offices of the Ministry of Agriculture and Rural Affairs (GOMARA) and China Banking and Insurance Regulatory Commission (CBIRC) are currently working on structural reform of the fishery mutual insurance regime. According to the reform plan in Nong Ban Yu [2020] No. 16, the China Fisheries Mutual Insurance Association is currently cooperating with local FMIA's to initiate the establishment of a national fishery mutual insurance organization that has legal person entity, which will be supervised by the CBIRC and operated under industrial guidance from the GOMARA, and operate insurance business approved by the CBIRC, including property insurance, liability insurance, accidental damage insurance, and re-insurance within the fishery industry. In such case, the organization after the reformation will be an insurance organization and thus will undoubtedly be directly governed by the provisions of the *Chinese Insurance Law*.

| CASES AND INSIGHTS

Review on Enterprises' Compliance with the Chinese Anti-Sanctions System IV: Implementation of the Law on Foreign Relations of the People's Republic of China?

I. Background

On 28 June 2023, the *Law on Foreign Relations of the People's Republic of China* (hereinafter referred to as the "*Law on Foreign Relations*") was adopted at the Third Meeting of the Standing Committee of the 14th National People's Congress and has come into force since 1 July 2023. This Law is considered as the first comprehensive law of China on foreign relations and a landmark of Chinese legislation of foreign relation related laws.

The *Law on Foreign Relations* is a strong and noteworthy supplement to China's inventory of countering tools as it further specifies the statutory obligations of enterprises to comply with the Chinese anti-sanctions system.

II. Brief Review

i. Oppose Unilateral Trading and Export Control

Article 26 of the *Law on Foreign Relations* stipulates that "the People's Republic of China is committed to advancing high-standard opening-up by developing foreign trade, promoting and protecting inbound foreign investment as per law, encouraging external economic cooperation including outbound investment, and promoting high-quality development of the 'Belt and Road' Initiative while being committed to upholding the multilateral trading system, opposing unilateralism and protectionism, and working to build an open global economy."

The commitment to uphold the multilateral trading system and oppose unilateralism and protectionism mainly aims at the unilateral trading and export control measures imposed by Western countries (including the US) on China. Such wording is not seen in the *Law of the People's Republic of China on Countering Foreign Sanctions* (hereinafter referred to as the "*Law on Countering Foreign Sanctions*") adopted and implemented earlier. Such stipulation demonstrates China's action to protect international economic and trading orders through law and provides legal basis for China to take counter and anti-sanction measures against Western unilateral trading and export control.

ii. The Right to Take Counter and Restrictive Measures

Article 33 of the *Law on Foreign Relations* stipulates that "the People's Republic of China has the right to take, as called for, measures to counter or take restrictive measures against acts that endanger its sovereignty,

Author:



Song Jia graduated from Bristol University and got LLM degree. He then furthered his study at University of Law (London) in British Law and received GDL and LPC. Prior to joining Wang Jing & Co., Mr. Song worked at a shipping company in Singapore and a top Chinese law firm for a couple of years. His practice focuses on dry shipping cases, ship finance leasing, insurance and corporate. Mr. Song also has extensive research experience in sanctions and compliance.

national security and development interests in violation of international law or fundamental norms governing international relations. The State Council and its departments shall adopt administrative regulations and departmental rules as necessary, establish related working institutions and mechanisms, and strengthen inter-departmental coordination and cooperation to adopt and enforce measures mentioned in the preceding paragraph. Decisions made pursuant to the first and second paragraphs of this Article are final.”

Such stipulation echoes the provisions in the *Law on Countering Foreign Sanctions* and provides useful supplements by specifying the necessity and legal basis for China to counter as per the *Law on Countering Foreign Sanctions* against the economic sanctions and “long-arm jurisdiction” imposed by Western countries (including the US) on Chinese enterprises and individuals.

In addition, such authorization to the State Council and its departments to adopt and enforce relevant counter and restrictive measures gives a timely response to Western sanctions from the aspects of legislation and law enforcement, which makes China’s counter measures more efficient with more direct effect and remedies the current hysteresis flaw in the Chinese law system in countering unilateral sanctions. It is foreseeable that China will adopt and enforce more counter measures and we suggest that Chinese enterprises shall keep an eye on such development.

Further, in addition to counter measures, “restrictive” measures are supplemented by the stipulation. We notice that such wording of “restrictive” measures is also included in Article 6 and Article 11 of the *Law on Countering Foreign Sanctions* which mainly apply to Chinese enterprises or individuals, i.e., restrict Chinese enterprises or individuals from conducting relevant transactions or cooperations with those sanctioned entities, or restrict Chinese enterprises or individuals that failed to enforce the counter measures from conducting any relevant activity. However, concerning the implication of “restrictive” measures in Article 33 of the *Law on Foreign Relations* as to whether foreign entities are included shall still be subject to clarification by specific detailed rules or official interpretations.

iii. Further Specification of Chinese Enterprises’ Statutory Obligation to Comply with Counter Measures

Article 8 of the *Law on Foreign Relations* stipulates that “any organization or individual who commits acts that are detrimental to China’s national interests in violation of this Law and other applicable laws in the course of engaging in international exchanges shall be held accountable by law.”

In terms of anti-sanctions, Chinese enterprises shall comply with the aforementioned provisions of Article 26 and Article 33 of the *Law on Foreign Relations*, and the provisions of other “relevant laws” including the *Law on Countering Foreign Sanctions* by actively enforcing the counter measures adopted by competent authorities and shall not enforce or assist foreign countries in adopting discriminatory restrictive measures on Chinese citizens and organizations. As to the specific legal liability that might be held accountable towards those in violation of this stipulation, it shall still be subject to the implementation and interpretation of relevant supplementary rules.

III. Conclusion

The Law on Foreign Relations has further specified the statutory obligations of Chinese enterprises to comply with the counter measures, which supplements the provisions of the *Law on Countering Foreign Sanctions*, the *Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures*, and the *Unreliable Entity List* while complementing one another to improve the Chinese anti-sanction legal system. We shall pay close attention to relevant detailed rules implemented by the State Council and its departments on this issue and continue to provide our insights and suggestions to enterprises for reference.

| CASES AND INSIGHTS

Excellent News: Easier Legalisation of Documents And Evidence for Chinese Legal Proceedings: China to Join The Apostille Convention

On 8 March 2023, the Chinese Ambassador to the Netherlands submitted China's Instrument of Accession to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention), marking China's formal accession to the Apostille Convention, according to the Chinese Ministry of Foreign Affairs. The Apostille Convention will come into force on 7 November 2023 between China and other contracting states that do not object to this accession. This milestone in consular certification of documents signals China's further integration into the world.

I. Application

Article 1 of the Apostille Convention lists "public documents" that have been executed in the territory of its contracting states to which it shall apply as follows: a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server; b) administrative documents; c) notarial acts; d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

To participate in litigation in China, a foreign company needs to provide its certificate of incorporation, power of attorney, and certificate of identity of the legal representative, while a foreign individual needs to submit the identity certification (e.g. passport) and power of attorney.

Before joining the Apostille Convention, the documents mentioned above, to meet the requirements according to the *Civil Procedure Law*, the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China* and the *Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings*, were subject to a three-step process. This process includes step 1- notarisation, step 2- legalisation by local competent authorities (which are usually the apostille process), and step 3 - legalisation by Chinese Embassies/Consulates General, which can be time-consuming, requires significant efforts, and entail high costs.

After China joins the Apostille Convention, the traditional three-step process will no longer be required for documents issued in a contracting state thereof. Only an "apostille" certificate from the issuing country certifying the au-

Author:



Zhao Yuxuan joined Wang Jing & Co. in 2018 as an Associate. His primary practicing areas are wet and dry shipping, insurance and foreign-related civil disputes, including collision, carriage contracts such as Bs/L, insurance contract and other admiralty disputes.



Chen Jingzong joined Wang Jing & Co. in 2020. His primary practicing areas are wet and dry shipping and foreign-related civil disputes, including collision, carriage contracts such as Bs/L, charter parties and other admiralty disputes.

thenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is required for legalisation of a public document. Such step is the second step in the above mentioned three-step process, i.e. legalisation by local competent authorities.

II. Exclusion

The Apostille Convention does not apply to:

- a) documents executed by diplomatic or consular agents;
- b) administrative documents dealing directly with commercial or customs operations

III. Benefits brought to the legalization of documents commonly used in Chinese legal proceedings

In light of the Apostille Convention and China's domestic law, we will briefly comment on two common document types as below if these documents are generated in a contracting state of Apostille Convention.

1. Foreign incorporation certificates and foreign identity certificates (e.g. passports)

Such documents should be "b) administrative documents" provided by Article 1 of the Apostille Convention as they are issued by competent authorities. With China's accession to the Apostille Convention, only step 2 - legalisation by foreign competent authority (i.e. apostille), is mandated for authentication of such document. Step 1 - "notarisation" and step 3 - "legalisation by Chinese Embassies/Consulates General" are no longer necessary. In essence, the only requirement for authentication, which involves verifying the identity of the signatory, the authenticity of the signature, and the validity of the seal on such documents, is legalisation by foreign affairs authorities in the originating country.

2. Power of Attorney (POA) and Certificate of Identity of Legal Representatives (COILR)

POA and COILR are not seen as "public documents". But notarial certificates issued for notarisation of POA and COILR are "c) notarial acts" as defined in Article 1 of the Apostille Convention. This means legalisation for a POA issued by foreign companies and individuals or a COILR issued by foreign companies requires two steps after China accedes to the Apostille Convention, step 1 - "notarisation" and step 2 - legalisation by local competent authorities, while step 3 is no longer necessary.

Given the differing requirements for "legalisation by local competent authorities" across various contracting countries, it's advisable to consult with the local authorities to gain clarity on the exact procedures to follow before proceeding with this step.

IV. Benefits brought to maritime litigations or arbitrations in China

Based on our experience, we will briefly comment on the notarisation and legalisation procedures for documents and evidence that may be involved in maritime litigation or arbitration after the Apostille Convention takes effect in China.

1. Ship's certificates and documents issued by maritime authorities

Such documents or certificates, being issued by maritime authorities or authorised governmental entities (such as classification societies), should be "b) administrative documents" as mentioned above. Accordingly, under the Apostille Convention such documents only require step 2 - "legalisation by local competent authorities", while steps 1 and 3 are no longer necessary.

2. Reports or documents produced in the investigation of accidents by maritime authorities

These documents are produced by the maritime authorities of the country where they're issued and thus should be "b) administrative documents" as mentioned above. After the Apostille Convention takes effect in China, for the legalisation of such documents, only step 2 - "legalisation by local competent authorities" is required while steps 1 and 3 are no longer necessary.

3. Foreign arbitral awards

Notarisation is still necessary before legalisation by local competent authorities can be conducted, after which legalisation by Chinese embassies/consulates can be saved under the Apostille Convention.

Given the differing requirements for "legalisation by local competent authorities" across various contracting countries, it's advisable to consult with the local authorities to gain clarity on the exact procedures to follow before proceeding with this step.

V. Contracting countries to the Apostille Convention

As of today, there are a total of 124 contracting countries that have joined the Apostille Convention, according to the website of the Hague Conference on Private International Law (<https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>), including the major flag of convenience countries such as Panama, Liberia, Belize, the Bahamas, Cyprus, Honduras, Malta, the Marshall Islands, St. Vincent and the Grenadines, and Vanuatu, as well as major countries of shipowners such as Greece, France, the United Kingdom, the United States, and Japan. We believe China's accession to the Apostille Convention can to some extent offer certain conveniences for shipowners in terms of public document legalisation. Apart from the Instrument of Accession, China also submitted a declaration stating that the Apostille Convention would not apply between China and contracting states not recognised by China (such as the Kosovo region).

VI. Significance

With the submission of the Instrument of Accession, China has made notable progress in foreign public documents legalisation. This fosters a more convenient and expeditious environment for both Chinese parties going abroad as well as foreign parties coming to China. In terms of legal procedures, China's accession to the Apostille Convention can also provide certain conveniences for documents and evidence that can be defined as "public documents", thereby speeding up litigation processes and improving judicial effectiveness.