

上海法院域外法查明典型案例

Typical Proof of Foreign Law Cases by Shanghai Courts

上海市高级人民法院

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Shanghai High People's Court

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一、准确查明适用瑞士法，确立“单边选择性争端解决条款”的效力

——原告厦门建发化工有限公司诉被告瑞士艾伯特贸易有限公司买卖合同
纠纷案

**I. Accurately ascertain and apply the Swiss law to establish the effectiveness
of "one-sided optional dispute resolution clause"**

——Xiamen C&D Chemical Co., Ltd. v. Switzerland Albert Trading Co., Ltd.
for sales contract dispute

【基本案情】

[Basic Facts]

厦门建发化工有限公司（以下简称厦门建发公司）和瑞士艾伯特贸易有限公司（以下简称瑞士艾伯特公司）签订《销售确认书》，《销售确认书》第 14 条约定：“出售方（被告）可以选择将由此产生的一切争议提交瑞士楚格州法院解决或根据巴黎国际商会仲裁调解规则在楚格州进行仲裁，仲裁地在楚格州”。瑞士艾伯特公司认为，此条款根据瑞士法律规定是一个有效条款，具体管辖应由被告选择，中国法院对该案无管辖权，据此提出管辖权异议。为查明瑞士的法律或判例，上海市浦东新区人民法院委托华东政法大学外国法查明研究中心进行域外法查明，该中心出具了《法律意见书》，双方当事人对该《法律意见书》均无异议。

The plaintiff Xiamen C&D Chemical Co., Ltd. (hereinafter referred to as “Xiamen C&D”) and the defendant Switzerland Albert Trading Co., Ltd. (hereinafter referred to as “Switzerland Albert”) signed the Sales Confirmation, Article 14 of which agreeing that "the seller (the defendant) can submit all disputes arising therefrom either to the court of Zug, Switzerland, or to arbitration in Zug in accordance with the arbitration rules of the International Chamber of Commerce in

Paris". Switzerland Albert believed that this clause is a valid one according to Swiss law, the jurisdiction should be selected by the defendant, and the Chinese court has no jurisdiction over the case; Switzerland Albert therefore raised a jurisdictional objection. In order to ascertain the laws or precedents of Switzerland, the Pudong New Area Primary People's Court of Shanghai Municipality entrusted the Center for Proof of Foreign Law (the Center) of East China University of Political Science and Law to ascertain the foreign law. Later, the Center issued a Legal Opinion, which was accepted by both parties.

【裁判结果】

[Court Ruling]

上海市浦东新区人民法院认为：本案中瑞士艾伯特公司基于双方约定而取得单方选择权，其选择瑞士楚格州法院处理双方争议与法不悖，中国法院对本案无管辖权，遂裁定驳回厦门建发公司的起诉。上海市第一中级人民法院二审驳回上诉，维持原裁定。

The Pudong New Area Primary People's Court of Shanghai Municipality held that in this case, Switzerland Albert obtained the one-sided option based on the agreement of both parties, and its choice of the Zug court to handle the disputes between the two parties was not contrary to the law; the Chinese court had no jurisdiction over this case. Therefore, the Pudong New Area Primary People's Court of Shanghai Municipality dismissed the case. Shanghai First Intermediate People's Court dismissed the appeal in the second instance and upheld the original ruling.

【典型意义】

[Typical Significance]

在涉外商事案件审理中，一定条件下查明域外法是我国法院和法官的职责，

不能轻易以“无法查明域外法”为由而适用中国法。在当事人无法提供域外法，法院穷尽合理途径仍无法查明的情况下，才可以依据“无法查明域外法”的规定适用中国法。本案系争合同约定了“单边选择性争端解决条款”，约定的仲裁地是瑞士楚格州，故要认定该条款的效力，就必须查明瑞士法的相关规定。法院在双方当事人均无法提供瑞士法的情况下，没有直接适用中国法，而是通过委托专门的域外法查明机构对案件所涉域外法进行了查明，在此基础上，对合同约定“单边选择性争端解决条款”的效力作出正确认定，对此类案件的审理有一定参考价值。

In the trial of foreign-related commercial cases, it is the duty of Chinese courts and judges to ascertain foreign laws under certain conditions. It is not allowed to apply Chinese law on the ground of "unable to ascertain foreign laws" without actually paying any effort to ascertainment. Only when the parties are unable to provide foreign laws and the court is unable to ascertain foreign laws through all reasonable channels can Chinese law be applied in accordance with the provisions of "unable to ascertain foreign laws". The contract in this case stipulates the "one-sided optional dispute resolution clause", agreeing the seat of arbitration to be Zug, Switzerland. Therefore, to determine the effectiveness of this clause, we must ascertain the relevant provisions of Swiss law. The Pudong New Area Primary People's Court did not directly apply Chinese law when both parties were unable to provide Swiss law. Instead, it entrusted a specialized foreign law ascertainment agency to ascertain the foreign law involved in the case. On this basis, the Pudong New Area Primary People's Court correctly determined the effectiveness of the "one-sided optional dispute resolution clause" agreed in the contract, thus providing certain reference value for the trial of similar cases.

二、准确查明适用《瑞士民法典》，营造法治化国际化营商环境

——原告招商局物流集团上海奉贤有限公司诉被告温特图尔发动机股份公司等所有权确认纠纷案

II. Accurately ascertain and apply the Swiss Civil Code to create a law-based and international business environment

—China Merchants Logistics Group Shanghai Fengxian Co., Ltd. v. Winterthur Gas Diesel Ltd. et al. for ownership dispute

【基本案情】

[Basic Facts]

2007 年，闽东丛贸船舶实业有限公司(以下简称闽东船舶公司)作为需方，与供方温特图尔发动机股份公司（以下简称温特图尔公司）签订《供货合同》，购买两台“瓦锡兰 7RT-flex50-B”型主柴油发动机，收到所有合同款项前，温特图尔公司将保留所有货物的所有权。涉案发动机由闽东船舶公司报关后，由中外运物流华东有限公司（以下简称中外运公司）从港口提取至其位于上海市嘉定区的仓库内。闽东船舶公司支付部分合同款项并取得涉案发动机的提单后，未能支付合同尾款，亦未能提取涉案发动机货物。货物长期存储于中外运公司仓库内亦产生了大额仓储费用，中外运公司、温特图尔公司、瓦锡兰中国有限公司（以下简称瓦锡兰公司）于 2014 年签署《和解协议》，约定温特图尔公司与闽东船舶公司之间《供货合同》项下的权利义务由温特图尔公司另行主张，温特图尔公司同意中外运公司对涉案发动机行使留置权，采取拍卖、变卖等方式处理后，将对价用于补偿仓储费等费用。中外运公司随即与招商局物流集团上海奉贤有限公司（以下简称招商奉贤公司）签订《买卖及仓储合同》，将涉案发动机出售给招商奉贤公司。中外运公司已于 2014 年收到合同项下货款并向招商奉贤公司开具了仓单及增值税发票。

In 2007, Mindong Congmao Shipping Industry Co.,Ltd. (hereinafter referred to as “Mindong Shipping”), the buyer, signed the Supply Contract with the supplier Winterthur Gas Diesel Ltd. (hereinafter referred to as “Winterthur Company”), to purchase two "Wartsila 7RT-flex50-B" main diesel engines, and agreed to pay the contract payment in installments. Winterthur Company would retain the ownership of all goods until all contract payments were received. After the engines involved in the case were declared by Mindong Shipping, Sinotrans Limited took them from the port to its warehouse in Jiading District, Shanghai. After Mindong Shipping Company paid part of the contract payment and obtained the bill of lading of the engines involved, it failed to make the final payment and take delivery of the engines involved. The long-term storage of the engines in the warehouse of Sinotrans Limited incurred a large amount of storage costs. Sinotrans Limited, Winterthur Company and Wartsila China signed a Settlement Agreement in 2014, agreeing that the rights and obligations under the Supply Contract between Winterthur Company and Mindong Shipping shall be claimed by Winterthur Company separately, Winterthur Company agreed Sinotrans Limited to exercise the lien on the engines involved in the case, and use the proceeds from auction and sale of the engines involved to reimburse the storage fees and other expenses. Sinotrans Limited immediately signed the Sales and Storage Contract with China Merchants Logistics Group Shanghai Fengxian Co., Ltd. to sell the involved engines to China Merchants Logistics Group Shanghai Fengxian Co., Ltd. (hereinafter referred to as “China Merchants Fengxian Company”). Sinotrans Limited received the payment under the contract in 2014 and then issued warehouse receipts and VAT invoices to China Merchants Fengxian Company.

后因本案各方就涉案两台发动机所有权归属存在异议,招商奉贤公司提起诉

讼，请求确认涉案两台发动机归属其所有；闽东船舶公司提起反诉，主张其凭借货物正本提单已经获取涉案发动机所有权，且中外运公司与温特图尔公司及瓦锡兰公司之间的《和解协议》涉嫌恶意串通，应被认定无效，闽东船舶公司请求确认涉案货物归其所有，并要求中外运公司及招商奉贤公司向其交付涉案发动机。

Later, the parties in this case disputed about the ownership of the two engines involved, China Merchants Fengxian Company filed a lawsuit with the court of first instance, requesting the court to confirm that the two engines involved shall be owned by China Merchants Fengxian Company. Mindong Shipping filed a counterclaim, claiming that it had obtained the ownership of the two engines involved by virtue of the original bill of lading, and the Settlement Agreement among Sinotrans Limited, Winterthur Company and Wartsila China was suspected of malicious collusion, which should be found as null and void; Mindong Shipping Company requested the court to confirm that the two engines involved shall be owned by it, and Sinotrans Limited and China Merchants Fengxian Company shall deliver the engines involved to it.

【裁判结果】

[Court Ruling]

上海市第二中级人民法院认为：本案当事人之一温特图尔公司系注册于瑞士联邦的外国法人，关于法律适用问题，首先，就招商奉贤公司与其他各被告之间的动产所有权确认这一基础法律关系，依据《中华人民共和国涉外民事关系法律适用法》第三十七条“当事人没有选择的，适用法律事实发生时动产所在地法律”之规定，即应适用中华人民共和国法律进行审理；其次，依据《中华人民共和国涉外民事关系法律适用法》第四十一条“当事人可以协议选择合同适用的法律”之规定，涉及温特图尔公司与闽东船舶公司之间就《供货合同》项下的权利义务问题则应适用双方约定的瑞士法律规定；涉及中外运公司、温特图尔公司及

瓦锡兰公司之间的《和解协议》项下的权利义务问题则适用各方约定的新加坡法律规定。

The Shanghai Second Intermediate People's Court held that, Winterthur Company was a foreign legal person registered in the Swiss Confederation. Regarding the application of law, the Shanghai Second Intermediate People's Court held that: First, the basic legal relationship, i.e., the confirmation of movables ownership, between the plaintiff China Merchants Fengxian Company and the defendants in this case shall be governed by the law of the People's Republic of China in accordance with Article 37 (i.e., if the parties fail to choose the governing law, the law of the place where the movable property is located when the legal fact occurs shall prevail) of the Law of the People's Republic of China on the Application of Law on Foreign-related Civil Relations. Second, according to Article 41 (i.e., the parties may choose the law applicable to the contract by agreement) of the Law of the People's Republic of China on the Application of Law on Foreign-related Civil Relations, the rights and obligations between Winterthur Company and Mindong Shipping under the Supply Contract shall be governed by the Swiss law agreed by both parties; the rights and obligations under the Settlement Agreement among Sinotrans Limited, Winterthur Company and Wartsila China shall be governed by the Singapore law agreed by the parties.

根据所查明的《瑞士民法典》的规定，提单的交付代表占有的转移，但并不意味着所有权的转移，提单持有人是否能够取得物权以及取得何种形式的物权，还取决于当事人之间关于物权变动的具体约定。合同双方明确约定了所有权保留条款且所有权转移条件未成就，即使闽东船舶公司取得了提单，但双方后续行为表明温特图尔公司并无转移所有权的意思表示。根据新加坡律师事务所出具的

《法律意见书》，温特图尔公司与瓦锡兰公司之间的《和解协议》满足新加坡法律中关于合同订立的要约与承诺、对价及建立法律关系的意图等要素，不存在新加坡法律规定的违反法律或违背公共政策而不能被执行的情形。闽东船舶公司不认可该意见但未提供反驳证据，应承担举证不能的后果。故判决涉案发动机的所有权人为招商奉贤公司，对闽东船舶公司的全部反诉请求不予支持。

According to the Swiss Civil Code ascertained, although the delivery of the bill of lading represents the transfer of possession, it does not mean the transfer of ownership. Whether the holder of the bill of lading can obtain the real right and the type of real right obtained depend on the specific agreement on the change of real right between the parties. Given that both parties of the contract have explicitly agreed on the ownership reservation clause and the conditions for ownership transfer have not been satisfied, therefore, even if Mindong Shipping Company has obtained the bill of lading, the ownership of the engines has not been transferred after considering the subsequent actions of both parties, i.e., Winterthur Company has no intention to transfer the ownership thereof. According to the Legal Opinions issued by a Singapore law firm, the Settlement Agreement between Winterthur Company and Wartsila China met the elements of offer and acceptance, consideration and intention to establish legal relationship in the Singapore law, and there was no such unenforceable circumstance due to violation of law or public policy stipulated by the Singapore law. Given that Mindong Shipping Company neither accepted the said Legal Opinions nor provided refuting evidence, it shall bear the consequences of failure to provide evidence. Therefore, the court ruled that the owner of the engines involved in the case shall be China Merchants Fengxian Company and dismissed all the counterclaim requests of Mindong Shipping Company.

【典型意义】

[Typical Significance]

根据《中华人民共和国涉外民事关系法律适用法》第三条、第四条之规定，只要不属于我国法律强制性排除域外法适用的情形，当事人均可以依法明示选择涉外民事关系适用的法律。本案根据当事人之间的相关约定以及多个不同的法律关系性质分别查明适用不同国家的法律规定。其中，温特图尔公司系瑞士籍大型发动机设备生产制造商，瑞士系继意大利、卢森堡后第三个加入中国“一带一路”倡议的欧洲国家，本案经过精心审理，法院合理适用《瑞士民法典》、新加坡《合同法》等法律，依法维护了外国公司在华合法利益。为人民法院积极服务“一带一路”、海洋强国等国家对外开放重大战略，服务保障法治化国际化营商环境作出了积极的司法回应。

According to the provisions of Articles 3 and 4 of China's Law on the Application of Law on Foreign-related Civil Relations, the parties may expressly choose the law applicable to foreign-related civil relations according to law as long as it does not fall under the situation where China's law expressly excludes the application of foreign law. In this case, according to the pertinent agreements between the parties and the nature of different legal relations, the legal provisions of different countries were ascertained separately. Among them, Winterthur Company was a Swiss manufacturer of large engine equipment, with internationally advanced production technology and substantial market share especially in the field of large ship engines, and had made a number of cooperation and investment projects in China for a long time. Switzerland is the third European countries joining China's Belt and Road Initiative after Italy and Luxemburg. After careful and prudent trial, the Swiss Civil Code, the Contracts (Rights of Third Parties) Act of Singapore and other laws

were properly applied, safeguarding the legitimate interests of foreign companies in China according to law. This case is a positive judicial response of Chinese courts to the promotion of the Belt and Road Initiative, the opening-up strategies such as building a maritime power and creating a law-based and international business environment.

三、准确查明英属维尔京群岛公司法，依据冲突规范正确认定侵权行为地
——原告杨新宙诉被告堀雄一郎损害股东利益责任纠纷案

III. Accurately ascertain the BVI Business Companies Act and correctly determine the *lex loci delicti* (the place of the delict) according to the rules of conflict of laws

—Yang Xinzhou v. Yuichiro Hori for dispute over liability for damaging shareholders' interests

【基本案情】

[Basic Facts]

本案系损害股东利益责任纠纷。2013 年，Stellarworks Holding Ltd.（以下简称 SW 控股公司）在英属维尔京群岛注册成立，股东为堀雄一郎和杨新宙二人，持股比例分别为 70%和 30%，堀雄一郎被任命为董事。SW 控股公司系 Stellarworks Investment Ltd.（以下简称 SW 投资公司）全资股东，SW 投资公司系富迅国际贸易有限公司(以下简称富迅公司)全资股东。2014 年 3 月，Stellarworks International Ltd.（以下简称 SW 国际公司）在英属维尔京群岛注册成立，股东为堀雄一郎，持股比例 100%。SW 控股公司拟将其持有的 SW 投资公司全部股份转让给 SW 国际公司，对 SW 投资公司唯一实质性资产即富迅公司资产进行了评估。评估过程中堀雄一郎向评估公司提出了若干建议，后堀雄一郎作为 SW 控股

公司的唯一董事批准了股份转让协议。杨新宙认为，堀雄一朗作为 SW 控股公司的大股东、唯一董事，在转让公司资产给自己名下其他公司时，故意压低评估价格，损害了小股东杨新宙的利益，因此主张其赔偿损失。

This case is about the dispute over liability for damaging shareholders' interests. In 2013, Stellarworks Holding Ltd. (SW Holding Company) was incorporated in the British Virgin Islands, with two shareholders: Yuichiro Hori and Yang Xinzhou, each holding 70% and 30% equity. Yuichiro Hori was appointed as the director. SW Holding Company was a wholly-owned shareholder of Stellarworks Investment Ltd. (SW Investment Company), which was a wholly-owned shareholder of Fuxun International Trade Co., Ltd. (Fuxun Company). In March 2014, Stellarworks International Ltd. (SW International Company) was incorporated in the British Virgin Islands, with one shareholder: Yuichiro Hori, holding 100% equity. SW Holding Company intended to transfer all its shares in SW Investment Company to SW International Company, and evaluated the assets of Hong Kong Fuxun Company, the only substantive asset of SW Investment Company. During the evaluation, Yuichiro Hori made several suggestions to the evaluation company. As the sole director of SW Holding Company, Yuichiro Hori then approved the Share Transfer Agreement. Yang Xinzhou believed that Yuichiro Hori, as the majority shareholder and the only director of SW Holding Company, deliberately lowered the evaluation price when transferring the company's assets to another company under his name, damaging the interests of the minority shareholder Yang Xinzhou, and therefore Yang Xinzhou claimed against Yuichiro Hori for compensation.

【裁判结果】

[Court Ruling]

上海市闵行区人民法院认为，堀雄一郎系日本国公民，杨新宙以堀雄一郎在执行 SW 控股公司事务时侵害其的股东权益为由主张赔偿。本案属涉外侵权纠纷，应根据《中华人民共和国涉外民事关系法律适用法》第四十四条的规定，本案所涉侵权责任问题应适用侵权行为地法律。因杨新宙所主张侵权行为为股权转让行为，故侵权行为地为 SW 投资公司的住所地。SW 投资公司住所地位于英属维尔京群岛，故本案应适用英属维尔京群岛法律。杨新宙为此提供了《2004 年英属维尔京群岛商业公司法》法条规定和律师法律意见书，上海市闵行区人民法院认为，根据英属维尔京群岛法律，若杨新宙作为 SW 控股公司股东的权利受到堀雄一郎执行 SW 控股公司事务时的不公平行为损害，则杨新宙有权向堀雄一郎主张赔偿。

Minhang District Primary People's Court of Shanghai Municipality found that Yuichiro Hori was a citizen of Japan, and Yang Xinzhou claimed compensation against Yuichiro Hori on the grounds that Yuichiro Hori infringed upon Yang Xinzhou's shareholders' rights in the execution of SW Holding Company's affairs. This case is a foreign-related infringement dispute, which should be governed by the law determined by Article 44 of the Law of the People's Republic of China on the Application of Law on Foreign-related Civil Relations. The liabilities for delict in this case should be governed by the *lex loci delicti commissi*, i.e., the law of the place where the delict was committed. Given the delict claimed by Yang Xinzhou was an equity transfer, the place where the equity was located, i.e., the place where SW Investment Company was domiciled, shall be the place where the direct result of the delict occurred. Therefore, the place of delict shall be the domicile of SW Investment

Company, i.e., the British Virgin Islands; the law of the British Virgin Islands shall apply to this case. Considering the provisions of the ascertained law and the lawyer's legal opinions, the Minhang District Primary People's Court of Shanghai Municipality held that according to the laws of the British Virgin Islands, if Yang Xinzhou's rights as a shareholder of the SW Holding Company were damaged due to the unfair execution of the SW Holding Company's affairs by Yuichiro Hori, Yang Xinzhou had the right to claim against Yuichiro Hori.

堀雄一朗提起上诉，要求适用双方共同经常居所地即中华人民共和国法律。

Yuichiro Hori filed an appeal, requesting the law of the People's Republic of China, i.e., the common habitual residence of both parties, be applied in this case.

上海市第一中级人民法院认为，堀雄一朗提供的外国人就业证等证据不足以证明其经常居所地在中华人民共和国境内，案件管辖权认定中的“住所地”概念与前述法律规定中的“经常居所地”并非同一概念，因此上海市闵行区人民法院适用侵权行为地即英属维尔京群岛法律并无不当。

The Shanghai First Intermediate People's Court held that, such evidence as foreigner work permit provided by Yuichiro Hori was insufficient to prove that his habitual residence was within the territory of the People's Republic of China. The concept of "place of domicile" in the determination of case jurisdiction is not the same as that of "place of habitual residence" in the above-mentioned legal provisions. Therefore, it is not improper for the court of first instance to apply the *lex loci delicti commissi*, i.e., the law of the British Virgin Islands.

【典型意义】

[Typical Significance]

本案涉及公司类侵权案件的法律适用问题，侵权行为发生在英属维尔京群岛，

但根据侵权案件法律适用的有关规定，当事人有共同经常居所地的，适用共同经常居所地法律。本案争议焦点之一即是双方是否均以上海为共同经常居所地，本案应适用英属维尔京群岛法律还是我国法律。堀雄一朗提供了其在上海有房产、工作等证据，但出入境记录显示其在涉案行为发生期间频繁往来于日本和上海，因此法院认定其证据不足以证明其经常居所地在上海。法院最终根据英属维尔京群岛官方网站上的法律条文、杨新宙提交的翻译件、杨新宙委托的当地律师出具的法律意见书查明了英属维尔京群岛相关法律，作出了判决。本案对同类案件的法律适用、侵权行为认定具有典型示范意义。

This case concerns the application of law for company-related delict. The delict occurred in the British Virgin Islands. However, according to the relevant provisions on the application of law in delict cases, if the parties concerned have a common habitual residence, the law of common habitual residence shall apply. One of the disputed issues in this case is whether both parties take Shanghai as their common habitual residence? Should the law of the British Virgin Islands or the law of China be applied in this case? Yuichiro Hori provided evidence that he had real estate and worked in Shanghai, but the entry-exit records showed that he frequently traveled between Japan and Shanghai during the occurrence of the delict. Therefore, the court found that his evidence was insufficient to prove that his habitual residence was Shanghai. The court finally ascertained the relevant laws of the British Virgin Islands and rendered a judgment according to the legal provisions on the official website of the British Virgin Islands, the translation submitted by Yang Xinzhou and the legal opinion issued by the local lawyer entrusted by Yang Xinzhou. This case is of great reference value for the application of law and the finding of delict in similar cases.

四、准确查明新加坡《商船法》，认定船舶金融抵押合同效力

——原告印度国家银行诉被告瓦伦亚洲私人有限公司金融借款合同纠纷案

IV. Accurately ascertain the Merchant Shipping Act of Singapore to determine the validity of a ship mortgage contract

—State Bank of India v. Varun Asia Pte. Ltd. over loan contract dispute

【基本案情】

[Basic Facts]

印度国家银行和案外人巴罗达银行作为共同初始贷款人，与瓦伦亚洲私人有限公司（以下简称瓦伦公司）作为借款人，在新加坡签署了 132,000,000 美元贷款额度的贷款协议，用于瓦伦公司支付其采购“AMBA BHAKTI”轮、“AMBA BHAVANEE”轮、“AMBA BHARGAVI”轮（现名“OCEAN MARE”轮）的船舶价款。瓦伦公司就“AMBA BHAKTI”轮与印度国家银行签订抵押合同及第一顺位承诺契据，并在新加坡船舶登记处办理完成了抵押登记。后瓦伦公司拖欠偿付贷款本金及利息。2018 年 3 月，因案外人依据（2017）海仲沪裁字第 016 号仲裁裁决书向上海海事法院申请执行，法院依法拍卖了瓦伦公司所有的“AMBA BHAKTI”轮。在司法拍卖“AMBA BHAKTI”轮的公告期内，本案印度国家银行以其系“AMBA BHAKTI”轮的船舶抵押权人为由申请债权登记，并提起确权诉讼，请求判令瓦伦公司偿还欠款人民币 10,880,000 元，并确认印度国家银行以抵押权人的身份就上述债权对船舶“AMBA BHAKTI”轮享有抵押权，有权从船舶拍卖价款中优先受偿。

The State Bank of India and the Bank of Baroda (a third party to this case), as the joint initial lender, entered into a Loan Agreement with Varun Asia Pte. Ltd. (hereinafter referred to as “Varun Company”), as the borrower, in Singapore with a loan limit of USD 132,000,000 for Varun Company to pay for the following vessels:

"AMBA BHAKTI", "AMBA BHAVANEE" and "AMBA BHARGAVI" (now known as "OCEAN MARE"). Varun Company signed a Mortgage Contract and a First-Order Commitment Deed with the State Bank of India regarding "AMBA BHAKTI", and completed the mortgage registration at the Singapore Registry of Ships (SRS). Later, Varun Company defaulted on the repayment of the loan principal and interest. In March 2018, given that the Bank of Baroda (a third party to this case) applied to the Shanghai Maritime Court for enforcement according to the arbitral award [(2017) Hai Zhong Hu Cai Zi No. 016], the Shanghai Maritime Court auctioned "AMBA BHAKTI" owned by Varun Company according to law. During the announcement period of the judicial auction of "AMBA BHAKTI", the State Bank of India applied to the Shanghai Maritime Court for creditor's right registration on the ground that it was the mortgagee of "AMBA BHAKTI", and therefore filed this lawsuit to confirm its right, requesting the court to order Varun Company to repay the arrears of RMB 10,880,000, and confirm that the State Bank of India, as the mortgagee, enjoys the mortgage right on "AMBA BHAKTI" regarding the foregoing creditor's right, and has the priority to be repaid by the proceeds from the auction of the ship.

【裁判结果】

[Court Ruling]

上海海事法院认为, 本案系与船舶抵押权有关的金融借款合同确权纠纷。案涉贷款协议的签订和履行行为均发生在境外, 且原、被告系注册在境外的企业法人, 本案具有涉外因素, 当事人依法有权选择法律适用。双方当事人对适用新加坡法律解决涉案纠纷的书面约定是明确的且意思表示一致, 这一约定并不违反中国的强制性法律规定, 也未损害中国公共利益, 故本案应以新加坡共和国法律作为准据法。

The Shanghai Maritime Court held that this case concerned a dispute over the confirmation of the ship mortgage in a Loan Agreement. Given that the signing and performance of the Loan Agreement involved in this case occurred abroad, and both the plaintiff and the defendant were legal persons incorporated abroad, this was a foreign-related case, and the parties had the right to choose the applicable law according to law. Both parties expressly agreed on the application of Singapore law for dispute resolution, and such agreement neither violated China's mandatory legal provisions, nor damaged China's public interests. Therefore, the law of the Republic of Singapore should be the applicable law in this case.

华东政法大学外国法查明研究中心出具的新加坡法律意见书查明了新加坡现行民商事法律原则和《商船法》，上海海事法院确认了该意见书的效力。依据新加坡现行民商事合同方面的法律原则，案涉借贷双方之间签订的贷款协议合法有效，现瓦伦公司违反其在贷款协议在内的融资文件项下的还款义务，发生了贷款协议中约定的违约事件。印度国家银行作为贷款协议项下的贷款人和代理行，有权在借款人违反贷款协议的还款义务后，代理巴罗达银行要求借款人承担违约责任，提前收回已发放的贷款本息和相关费用。为保证贷款协议的履行，瓦伦公司就其所有的“AMBA BHAKTI”轮与印度国家银行签订抵押合同及第一顺位承诺契据，将“AMBA BHAKTI”轮作为贷款协议的抵押物，并在新加坡船舶登记处办理完成了船舶抵押登记。根据新加坡《商船法》的规定，可以将新加坡船舶或其任何份额作为贷款或其他有价对价的担保。如果在同一船舶或同一部分上有多个抵押权并存，则尽管有任何明示、暗示或推定性告知，抵押人仍应根据登记册中每个抵押所登记的日期和时间享有优先权。据此，上海海事法院认定印度国家银行享有对“AMBA BHAKTI”轮的抵押权，有权向瓦伦公司主张贷款协议和抵押合同项下权利。上海海事法院判决支持印度国家银行的全部诉讼请求。

The Legal Opinion issued by the Center for Proof of Foreign Law of East China University of Political Science and Law ascertained the existing civil and commercial legal principles and the Merchant Shipping Act of Singapore, and the Shanghai Maritime Court confirmed the validity of the Opinion. In terms of the legal relationship in the Loan Agreement, Varun Company was the borrower, and the State Bank of India and the Bank of Baroda were the joint lender. Pursuant to the current legal principles of civil and commercial contracts of Singapore, the Loan Agreement signed between the two parties was legal and valid. However, Varun Company violated its repayment obligations under the financing documents including the Loan Agreement, triggering a default event as agreed in the Loan Agreement. As the lender and the correspondent bank under the Loan Agreement, the State Bank of India had the right to hold the borrower liable for breach of contract and recover the loan principal granted and interest accrued and relevant expenses in advance on behalf of the Bank of Baroda after the borrower violated its repayment obligation under the Loan Agreement. In order to ensure the fulfillment of the Loan Agreement, Varun Company signed a Mortgage Contract and a First-Order Commitment Deed with the State Bank of India regarding "AMBA BHAKTI" owned by it, made "AMBA BHAKTI" as the collateral of the Loan Agreement, and completed the ship mortgage registration at the SRS. According to the Merchant Shipping Act of Singapore, Singapore ships or any share thereof can be used as collateral for loans or other valuable consideration. If there are multiple mortgages on the same ship or any share thereof, the mortgagor shall enjoy priority according to the date and time of each mortgage registered in the register, notwithstanding any express, implied or constructive notice. Accordingly, the Shanghai Maritime Court held that the State

Bank of India enjoyed the mortgage right on "AMBA BHAKTI" and may claim its rights under the Loan Agreement and Mortgage Contract against Varun Company. The Shanghai Maritime Court supported all the claims of the State Bank of India.

【典型意义】

[Typical Significance]

我国正在实施新一轮高水平对外开放，构建开放型经济新体制，海事司法正积极为“一带一路”建设营造法治化、国际化、便利化的航运营商环境。本案双方均为“一带一路”沿线重要国家企业，双方选择中国法院管辖后又协议选择适用新加坡法律，体现了对中国海事司法的信任。准确查明和适用域外法，既是对当事人意思自治的尊重，也是依法平等保护当事人合法权益的保障。本案委托华东政法大学外国法查明研究中心查明域外法，查证了新加坡《商船法》关于船舶抵押合同的相关规定和新加坡民商事合同法律原则，据此确认了贷款合同效力及在国外设立的船舶抵押权的优先受偿效力。围绕“一带一路”经济交往中法律适用问题以及域外法查明、运用等问题，司法实践一直在不断探索交流。本案即是完善域外法查明机制和拓宽域外法查明途径的有益尝试，对今后此类案件的审理具有一定参考价值。

China is now implementing another round of high-level opening-up, and building an inclusive economic system. The maritime courts are now contributing to the Belt and Road Initiative by means of building a law-based, international and convenient business environment in terms of shipping. Both the plaintiff and the defendant in this case are enterprises from countries along the Belt and Road Initiative. However, the two sides choose the Chinese court and then the Singapore laws for their dispute resolution, which embodies their trust in China's maritime justice. At this point, accurate ascertainment and application of foreign laws is not only a respect for

the parties' autonomy, but also a guarantee for equal protection of the parties' legitimate rights and interests according to law. In this case, the Shanghai Maritime Court entrusted the Center for Proof of Foreign Law of East China University of Political Science and Law to ascertain the pertinent foreign laws and legal provisions on ship mortgage contracts such as the Merchant Shipping Act of Singapore and the legal principles of Singapore's civil and commercial contracts, and thereby confirmed the validity of the Loan Agreement and the repayment priority of ship mortgages established abroad. Around the application and ascertainment of foreign laws occurred during the economic exchanges under the Belt and Road Initiative, China keeps making trial and error in judicial practice. This case is not only a useful attempt to improve the mechanism of foreign law ascertainment and broaden the ways thereof, but is also of a certain reference value for the trial of similar cases in the future.

五、法官依职权查明美国法，当庭经互联网查证认定关键事实

——原告赵涛诉被告姜照柏、上海鹏欣（集团）有限公司、高汉中及美国 MPI 股份有限公司出资纠纷案

V. Judges ascertain precedents under the Delaware General Corporation Law *ex officio* and find key facts in court through the Internet

—Zhao Tao v. Jiang Zhaobai, Shanghai Pengxin (Group) Co., Ltd., Gao Hanzhong and MPI Corporation for capital contribution dispute

【基本案情】

[Basic Facts]

MPI 公司是根据美国特拉华州普通公司法成立的股份有限公司，姜照柏、高汉中系 MPI 公司股东。赵涛与姜照柏、高汉中及鹏欣公司签订合同约定在 MPI

公司原有股本的基础上向赵涛增发价值 400 万美元的新股，赵涛签订合同后将 400 万美元的 50% 汇入姜照柏、高汉中共同指定的银行账户，余款在合同签订之日起 15 个工作日支付。姜照柏、高汉中应保证收到增资款后两个月内完成以赵涛名义对 MPI 公司的增资，确保赵涛合法的成为 MPI 公司新股东，享有股东权利，并成为 MPI 公司董事。赵涛实现上述合同目的应以姜照柏、高汉中共同提供的 MPI 公司董事会决议、股东会决议、依法修改后的公司章程等文件为准。2002 年 4 月 9 日赵涛获得 MPI 公司股权证明一份，2002 年 4 月 18 日、5 月 22 日，MPI 公司总裁高汉中召集电话会议分别通过增资提案、决议修改公司章程。截至 2002 年 4 月 5 日的 MPI 公司股东名册上，赵涛被列为“已缔约，但尚未签发股票”的股东。后双方为赵涛是否具有 MPI 公司股东身份产生争议，遂涉诉。

MPI Corporation was a joint stock limited company established in accordance with the Delaware General Corporation Law. Jiang Zhaobai and Gao Hanzhong were shareholders of MPI Corporation. Zhao Tao signed a contract with Jiang Zhaobai, Gao Hanzhong and Pengxin Company to privately issue new shares worth USD 4 million to Zhao Tao on the basis of the original share capital of MPI Corporation. After signing the contract, the plaintiff remitted 50% of USD 4 million to the bank account jointly designated by Jiang Zhaobai and Gao Hanzhong, with the other 50% to be paid within 15 working days from the date of signing the contract. Jiang Zhaobai and Gao Hanzhong shall guarantee to complete the capital increase of MPI Corporation in the name of the plaintiff within two months after receiving the capital increase payment, and ensure that Zhao Tao legally became a new shareholder of MPI Corporation, enjoyed shareholder rights and became a director of MPI Corporation. Zhao Tao's realization of the above contractual purposes was subject to the resolutions of the board of directors, the shareholders' meeting, the legally amended

articles of association and other documents of MPI Corporation jointly provided by Jiang Zhaobai and Gao Hanzhong. On April 9, 2002, Zhao Tao obtained a share certificate of MPI Corporation. On April 18 and May 22, 2002, Gao Hanzhong, President of MPI Corporation, convened a teleconference to adopt the capital increase proposal and resolution to amend the articles of association respectively. In the register of shareholders of MPI as of April 5, 2002, Zhao Tao was listed as the shareholder of "contract has been concluded, but shares have not yet been issued". The dispute then rose as whether Zhao was a shareholder of MPI.

【裁判结果】

[Court Ruling]

上海市第一中级人民法院认为，根据特拉华州公司法及相关判例，由 MPI 公司董事长高汉中签发给赵涛的股权证，是确立股东身份的重要凭据。并且根据被告提供的美国特拉华州衡平法院的公司法相关判例，股东名册亦系确立股东身份的直接证据。本案中，赵涛持有的 MPI 公司股权证真实有效，在收到股权证之时其已被登记在 MPI 公司的股东名册上，实际成为 MPI 公司股东，并且经 MPI 公司特别股东会议选举，已成为 MPI 公司的董事，表明姜照柏、高汉中已按照系争合同履行了约定义务。遂驳回赵涛诉讼请求。

The Shanghai First Intermediate People's Court, based on the Delaware General Corporation Law and relevant precedents, held that the share certificate issued to the plaintiff by Gao Hanzhong, chairman of MPI Corporation, was important evidence to establish the identity of shareholders. Moreover, according to the company law precedents of the court of equity of Delaware provided by the defendant, the register of shareholders was also direct evidence to establish the identity of shareholders. The Court held that the share certificate of MPI Corporation held by Zhao Tao was

authentic and valid. At the time of receiving the share certificate, the plaintiff had been registered in the register of shareholders of MPI Corporation, actually became a shareholder of MPI Corporation, and had been elected as a director of MPI Corporation by the *ad hoc* shareholders' meeting of MPI Corporation, indicating that Jiang Zhaobai and Gao Hanzhong had fulfilled their obligations in accordance with the contract. Therefore, the Zhao Tao's claim was dismissed.

【典型意义】

[Typical Significance]

本案系涉外出资纠纷，双方虽在系争合同中约定合同的订立、效力、解释和争议解决均适用中华人民共和国法律，但本案争议焦点是赵涛是否具有 MPI 公司股东、董事身份。由于我国采用本国法为法人的属人法，上海市第一中级人民法院在认定赵涛是否具有 MPI 公司股东身份的关键事实时，依据了 MPI 公司注册地美国特拉华州普通公司法及相关判例。由于双方当事人均提供了特拉华州相关法律，且对部分条文持有异议，法庭在庭审中利用计算机互联网，对双方提交的美国特拉华州法典（DELAWARE STATE CODE）第八篇（TITLE 8）第一章普通公司法（CHAPTER 1.GENERAL CORPORATION LAW）的相关条文和被告方提交的来源于美国“LEXIS”网站的判例在互联网上进行了当庭查询，并交由双方质证，双方对此均不持异议。华东政法大学教授作为专家证人出庭，见证查询过程并发表专家意见。最终法院依据查明的特拉华州普通公司法及相关判例认定赵涛持有的 MPI 公司股东、董事身份有效。本案域外法查明的典型意义在于法官依职权积极主动查明域外法，穷尽查明途径实现域外法的“查”与“明”，查明过程及法律适用理由阐述详尽，为类案处理提供了可供借鉴思路。

This case concerns a foreign-related capital contribution dispute. Although the plaintiff and the defendant agreed in the disputed contract that the conclusion, validity,

interpretation and dispute resolution of the contract shall be governed by the laws of the People's Republic of China, the disputed issue in this case is whether Zhao Tao has the status of shareholder and director of MPI Corporation. Since China adopted the domestic law as the *lex personalis* for legal person, Shanghai First Intermediate People's Court determined Zhao Tao's shareholder status of MPI Corporation based on the Delaware General Corporation Law and relevant precedents. Since both parties provided relevant laws of Delaware but disagreed on some provisions, the court examined the relevant provisions of Chapter 1 General Corporation Law of Title 8 of the Delaware State Code submitted by the plaintiff and the precedents sourced from Lexis submitted by the defendants through the Internet during court trial, and then handed it over to the plaintiff and the defendants for cross examination. Both sides had no objection to the query results. A professor from East China University of Political Science and Law appeared in court as an expert witness to witness the query process and provide expert opinions. Finally, the court held that the identity of shareholder and director of MPI Corporation held by Zhao Tao was valid according to the Delaware General Corporation Law and relevant precedents. The significance of the foreign law ascertainment in this case lies in: judges ascertain foreign law *ex officio*, exhausts the ways of ascertaining foreign law, and expounds the process of ascertainment and the reasons for the application of law, which provides reference values for the handling of similar cases.

六、准确查明英属维尔京群岛公司法，依法确认公司意志代表权问题

——原告 Cova 国际企业有限公司诉被告佳啤贸易(上海)有限公司股东知情权纠纷案

VI. Accurately ascertain the BVI Business Companies Act to legally determine issues related to the representation of corporate will

——Cova International Enterprises Ltd. v. Just Beer (Shanghai) Co., Ltd. for shareholders' right to be informed dispute

【基本案情】

[Basic Facts]

Cova 国际企业有限公司（以下简称 Cova 公司）系根据《2004 年英属维尔京群岛商业公司法》（以下简称 2004《BVI 公司法》）于 2007 年 9 月 5 日成立的一家位于英属维尔京群岛地区的商业公司，公司三位股东 Mathewpeterryan、Stevenjamesroadknight 及 Frankjianli 均系公司董事，另 Mathewpeterryan 于 2013 年 10 月 17 日被任命为 Stevenjamesroadknight 的代理董事。因佳啤贸易(上海)有限公司（以下简称佳啤公司）拒绝向 Cova 公司提供自 2012 年 1 月至 2013 年 9 月的财务会计报告、会计账簿等，Mathewpeterryan 基于 2013 年 10 月 29 日的董事会决议代表 Cova 公司签署起诉状、授权委托书等提起本案股东知情权诉讼。在知情权纠纷中，双方对 Cova 公司 2013 年 10 月 29 日的董事会决议效力产生异议，故本案首先要解决 Mathewpeterryan 以 Cova 公司名义签署起诉状和授权委托书的行为能否代表 Cova 公司的问题。

Cova International Co., Ltd. (hereinafter referred to as “Cova Company”) was a business company established in the British Virgin Islands on September 5, 2007 in accordance with the BVI Business Companies Act, 2004 (hereinafter referred to as the “2004 BVI Companies Act”). The three shareholders of Cova, Mathew Peter Ryan, Steven James Roadknight and Frank Jian Li, were all directors of Cova. Mathew Peter Ryan was appointed as the acting director of Steven James Roadknight on October 17,

2013. However, Cova refused to provide financial reports and accounting books between January 2012 and September 2013, and Mathew Peter Ryan, based on the resolution made by the board of directors of Cova Company on October 29, 2013, signed the complaint and power of attorney on behalf of Cova Company. In this lawsuit of shareholders' right to know, both parties raised objections to the validity of the resolution. Therefore, the primary issue in this case was to resolve whether Mathewpeterryan could sign the complaint and power of attorney on the Caova Company's behalf.

【裁判结果】

[Court Ruling]

上海市浦东新区人民法院认为,系争董事会决议的效力对本案公司意志代表权的认定具有关键作用,并就相关法律适用委托专家证人进行了查明,Cova 公司向法院提交了自 <http://www.bvifsc.vg> 网站查询的 2004 年《BVI 公司法》以及根据 2012 年公司法修正案修正的第 126 至 133 条的条文,证明 Cova 公司章程与 2004《BVI 公司法》的规定没有冲突,根据 2004《BVI 公司法》第 130 条规定,董事可以通过书面形式指定代理董事;根据第 127 条规定,即使未通知董事,董事会决议效力不受影响;故 Mathewpeterryan 依据 Cova 公司 2013 年 10 月 29 日做出的董事会决议取得合法授权,其代表 Cova 公司签署起诉状和授权委托书的行为能够代表 Cova 公司。后上海市浦东新区人民法院根据《中华人民共和国公司法》的相关规定认定 Cova 公司主张行使股东知情权合法有据,判决佳啤公司向 Cova 公司提供自 2012 年 1 月至 2013 年 9 月的财务会计报告、会计账簿,供 Cova 公司查阅、复制。佳啤公司不服,提起上诉。上海第一中级人民法院驳回上诉,维持一审判决。

The Pudong New Area Primary People's Court of Shanghai Municipality held

that the effectiveness of the resolution of the board of directors played a key role in the determination of the corporate will representation, and then entrusted relevant expert witness to ascertain the pertinent law application, and Cova submitted to the Pudong New Area Primary People's Court of Shanghai Municipality the 2004 BVI Companies Act sourced from <http://www.bvifsc.vg> and Articles 126 to 133 (as amended) according to the 2012 BVI Companies Act (as amended), proving that the articles of association of Cova did not conflict with the provisions of the 2004 BVI Companies Act; pursuant to Article 130 of the 2004 BVI Companies Act, a director may appoint an acting director in writing; pursuant to Article 127, the validity of a resolution of the board of directors shall not be affected even if the directors are not notified; therefore, Mathew Peter Ryan had obtained legal authorization according to the resolution of the board of directors made by Cova on October 29, 2013, and his signing of the complaint and the power of attorney on behalf of Cova was binding upon Cova. Later, according to the relevant provisions of the Company Law of the People's Republic of China, the Pudong New Area Primary People's Court of Shanghai Municipality held that Cova may exercise the shareholders' right to be informed and request to consult the accounting reports and books of Just Beer company. Just Beer filed an appeal, and the Shanghai First Intermediate People's Court upheld the first-instance judgment.

【典型意义】

[Typical Significance]

本案系股东知情权诉讼，必须解决 Cova 公司提起诉讼的公司意志代表权问题。因 Cova 公司系登记注册于英属维尔京群岛的公司，应适用英属维尔京群岛法律，并适用该法对 Cova 公司 2013 年 10 月 29 日的董事会决议效力做出了确

认。就本案股东知情权争议，涉及标的公司系注册于中国上海的法人，根据《中华人民共和国涉外民事法律关系适用法》第十四条的规定，对股东权利的行使等事项适用我国公司法。本案依据英属维尔京群岛公司法对公司意志代表权问题的审查确认，对标的公司组织机构及股东权利行使等问题适用我国公司法认定，同一案件存在多法域法律适用。该案域外法查明过程严谨，说理详实规范，实体结果处理妥当，可对同类案件予以借鉴。

This case concerns the shareholder's right to know. In order to solve the problem of corporate will representation in the lawsuit filed by Cova Company, the laws of the British Virgin Islands shall apply given Cova Company was a company registered in the British Virgin Islands. Therefore, the court ascertained the BVI Companies Act provided by Cova Company. and applied it to confirm the effectiveness of the resolution of the board of directors of Cova Company on October 29, 2013. With regard to the dispute over the shareholders' right to know and the exercise of the shareholders' rights of Just Beer Company, the Company Law of China was applicable pursuant to the provisions of Article 14 of the Law of the People's Republic of China on the Application of Law on Foreign-related Civil Relations because Just Beer Company was registered in Shanghai, China. This case involves the examination and confirmation of the corporate will representation in accordance with the BVI Companies Act, the determination of the corporate structure and exercise of shareholder's rights of the target company pursuant to the Company Law of China, and there is the application of laws of multiple jurisdictions. In this case, the ascertainment process of foreign laws is prudent, the reasoning is detailed and standardized, and the substantive results are reasonable, which can therefore provide reference to similar cases.

七、准确查明新加坡法律，确定商业保理审查规则

——原告中金汇理商业保理（新加坡）有限公司（CHINA INTERNATIONAL FACTORING (SINGAPORE) PTE.LTD.）诉被告东莞市入世丰针织有限公司其他合同纠纷

VII. Accurately ascertain Singapore laws to determine commercial factoring examination rules

—China International Factoring (Singapore) Pte. Ltd. v. Dongguan RuShiFeng Knitting Co., Ltd. for contract disputes

【基本案情】

[Basic Facts]

2019 年 6 月 13 日，中金汇理商业保理（新加坡）有限公司（以下简称中金汇理公司）与东莞市入世丰针织有限公司（以下简称东莞入世丰公司）签订《保理协议》，约定东莞入世丰公司将应收账款转让给中金汇理公司，中金汇理公司向东莞入世丰公司提供应收账款管理、催收、融资等服务。中金汇理公司将根据请求自行决定是否从东莞入世丰公司处购买合格应收账款。协议 21.1 条约定：本协议和拟根据本协议签署的文件等，受新加坡法律的管辖。后东莞入世丰公司向中金汇理公司提供 9 份买卖合同，先后三次申请应收账款转让。中金汇理公司核准后于 2019 年 6 月 21 日、6 月 26 日、7 月 17 日向东莞入世丰公司支付保理融资款 230,634.76 美元、451,204.69 美元、281,153.06 美元（已扣除费用、利息）。东莞入世丰公司亦向中金汇理公司提供买方接受并同意的《应收账款受让通知书》。2019 年 11 月 4 日，双方签订《协议书》确认前述 9 份买卖合同应收账款融资到期日已到期，中金汇理公司未收到买方支付的任何款项，东莞入世丰公司同意于 2019 年 11 月 15 日前一次性偿付原告人民币 7,043,479.67 元；东莞入世丰公司付清价款后，中金汇理公司将应收账款全部转让给东莞入世丰公司，如未

按约足额支付的应计算违约金。后因东莞入世丰公司未按约支付款项，中金汇理公司遂提起诉讼。

On June 13, 2019, China International Factoring (Singapore) Pte. Ltd. (hereinafter referred to as “CIF”) signed a Factoring Agreement with Dongguan RuShiFeng Knitting Co., Ltd. (hereinafter referred to as “RuShiFeng”), agreeing that RuShiFeng would transfer the accounts receivable to the plaintiff, and CIF provided RuShiFeng with services such as accounts receivable management, collection and financing. CIF would decide on its own whether to purchase qualified accounts receivable from RuShiFeng according to the accounts receivable request. Article 21.1 of the Factoring Agreement stipulated that this Agreement and the documents to be signed according to this Agreement shall be governed by the laws of Singapore. Later, RuShiFeng provided CIF with 9 sales contracts and applied for the transfer of accounts receivable three times. Upon approval, CIF paid the factoring financing funds of USD 230,634.76, USD 451,204.69 and USD 281,153.06 (expenses and interest had been deducted) to RuShiFeng on June 21, June 26 and July 17, 2019. RuShiFeng also provided CIF with the Transfer Notice of Accounts Receivable accepted and agreed by the buyer. On November 4, 2019, CIF and RuShiFeng signed an Agreement to confirm that the financing maturity date of accounts receivable of the above nine sales contracts had expired, but CIF had not received any payment from the buyer. RuShiFeng agreed to pay CIF RMB 7,043,479.67 in a lump sum before November 15, 2019; after RuShiFeng paid the price in full, CIF transferred all the accounts receivable to RuShiFeng; if RuShiFeng failed to pay in full as agreed, the liquidated damages shall be paid. CIF then filed this lawsuit.

【裁判结果】

[Court Ruling]

上海市静安区人民法院认为，本案涉及到新加坡法律的查明，故委托华东政法大学外国法查明研究中心查明了新加坡法律关于商业保理的法律规定，并根据新加坡有关保理的法律规则处理了本案，判决东莞入世丰公司支付中金汇理公司人民币 3,630,816.13 元及截止 2020 年 3 月 30 日逾期违约金人民币 28,880.12 元等。东莞入世丰公司未上诉，一审判决已生效。

The Jing'an District Primary People's Court of Shanghai Municipality held that, this case is concerned with the ascertainment of Singapore law, and then entrusted the Center for Proof of Foreign Law of East China University of Political Science and Law to ascertain the legal provisions of Singapore law on commercial factoring, and tried the case in accordance with Singapore's legal provisions on factoring. It then ruled that RuShiFeng should pay CIF RMB 3,630,816.13 and the overdue liquidated damages of RMB 28,880.12 as of March 30, 2020. RuShiFeng did not appeal, and the first-instance judgment has now come into force.

【典型意义】

[Typical Significance]

新加坡共和国系“一带一路”沿线国家，与中国经贸往来密切，本案涉及对《保理协议》中约定的新加坡法律的查明，为此法院委托了华东政法大学外国法查明研究中心查明新加坡法律关于商业保理的相关规定。新加坡法律中有关保理制度的主要法律渊源是《民法法令》第 4 条第(8)款以及《保理商法》，中金汇理公司作为国际保理商联合会成员，在法律没有明文规定的范围内，可以适用国际保理商联合会《国际保理通则》。上海市静安区人民法院根据上述法律以及英国判例法，认定保理制度的核心是保理商通过购买客户的债项而获得债权转让，

并探索确立了依据新加坡法律审查商业保理的要件,为类似案件的审理提供借鉴思路,依法保护了外国公司在华权益。

Singapore is one of the countries along the Belt and Road Initiative, and has close business contact with China. This case involves the ascertainment of Singapore laws agreed in the Factoring Agreement. The Jing'an District Primary People's Court of Shanghai Municipality entrusted the Center for Proof of Foreign Law of East China University of Political Science and Law to ascertain Singapore's legal provisions on commercial factoring. The main legal sources are Article 4 (8) of the Civil Law Act and the Factors Act. As a member of the International Factoring Association, CIF, within the scope not expressly prohibited by the law, may apply the General Principles of International Factoring of the International Factoring Association. According to the above laws and British case law, the Jing'an District Primary People's Court of Shanghai Municipality held that the core of the factoring system was that the factoring company obtained the creditor's rights by purchasing the customer's debts, and further established the elements of examining commercial factoring according to Singapore law. This case provides reference value for the trial of similar cases and protects the rights and interests of foreign companies in China according to law.

八、准确查明适用香港判例，适用“揭开公司面纱”原则否认公司独立人格——原告马格内梯克控制系统(上海)有限公司诉被告李建斌、张佳榕、施慧玲、埃姆埃(香港)自动化控制技术与服务有限公司、朱家文侵害商业秘密、其他不正当竞争纠纷案

VIII. Accurately ascertain Hong Kong precedents to apply the principle of "piercing the corporate veil"

—Magnetic Control System (Shanghai) Co., Ltd. v. Li Jianbin, Zhang Jiarong, Shi Huiling, MA(HK) Auto Control Technology & Service Co., Limited and Zhu Jiawen for disputes over trade secrets infringement and unfair competition

【基本案情】

[Basic Facts]

马格内梯克控制系统(上海)有限公司（以下简称马格内梯克上海公司）成立于 1997 年 5 月 15 日，系马格内梯克德国公司全资子公司，经营范围为生产销售挡车自动臂及零部件和配套控制件等。埃姆埃(香港)自动化控制技术与服务有限公司(以下简称埃姆埃香港公司)于 2014 年 9 月 18 日依据香港法例第 622 章《公司条例》在香港特别行政区成立为法团，唯一股东为李建斌前妻朱家文。李建斌利用担任马格内梯克上海公司销售经理的便利向案外人深圳达实智能股份有限公司(以下简称达实公司)称埃姆埃香港公司是马格内梯克上海公司的关联公司，最终达实公司与埃姆埃香港公司签订《深圳地铁 9、11 号线 AFC 系统设备采购项目扇门模块采购合同》。李建斌、张佳榕、施慧玲从马格内梯克上海公司处辞职后到懋拓自动化控制系统（上海）有限公司（以下简称懋拓公司）工作，懋拓公司协助埃姆埃香港公司履约。马格内梯克上海公司主张涉案合同产品性能数据、价格、销售利润、付款条件、结算方式等不公开信息均属于马格内梯克上海公司的商业秘密，李建斌等违法将商业秘密泄露给朱家文及埃姆埃香港公司并允许其

使用，实施了侵害涉案商业秘密的行为，遂起诉要求李建斌、张佳榕、施慧玲、埃姆埃香港公司、懋拓公司、潘仕荣、朱家文等停止侵权并承担赔偿责任。其中对埃姆埃香港公司股东朱家文还主张若不构成共同侵权，则基于一人有限公司应对埃姆埃香港公司的赔偿责任承担连带责任。

Magnetic Control System (Shanghai) Co., Ltd. (hereinafter referred to as “Magnetic Shanghai Company”) was established on May 15, 1997 and was a wholly-owned subsidiary of Magnetic Germany. The business scope of Magnetic Shanghai Company was the production and sales of automatic arms, parts and supporting control parts. MA(HK) Auto Control Technology & Service Co., Limited (hereinafter referred to as “MA Hong Kong Company”) was incorporated in the Hong Kong Special Administrative Region on September 18, 2014 in accordance with the Companies Ordinance, Chapter 622 of the Laws of Hong Kong, as a limited company with its only shareholder being Zhu Jiawen. Li took advantage of his position as sales manager and declared the MA Hong Kong Company was affiliated to Magnetic Shanghai Company, which finally contributed to the Door Module Procurement Contract for AFC System Equipment Procurement Project of Shenzhen Metro Lines 9 and 11 (hereinafter referred to as the “Disputed Contract”) between Dashi Company and MA Hong Kong Company. After resigning from Magnetic Shanghai Company, Li Jianbin, Zhang Jiarong and Shi Huiling worked for Maotuo Auto Control (Shanghai) System Co., Limited. (“Maotuo System Shanghai Company”), which helped the MA Hong Kong Company to perform the contract. Magnetic Shanghai Company claimed that the performance data, price, sales profit, payment terms, settlement method and other non-public information in the Disputed Contract were trade secrets of Magnetic Shanghai Company, but Li Jianbin illegally disclosed these

trades secrets to Zhu Jiawen and MA Hong Kong Company and allowed their use, which committed the act of infringing the trade secrets involved in this case. Magnetic Shanghai Company sued for damages caused and the burden of court costs against Li Jiabin, Zhang Jiarong, Shi Huiling, MA Hong Kong Company, Maotuo Maotuo System Shanghai Company, Pan Shirong and Zhu Jiawen. It also claimed that the Zhu Jiawen, the only shareholder of MA Hong Kong Company, should bear several and joint liabilities if Zhu was found not involved with the infringement.

【裁判结果】

[Court Ruling]

上海市杨浦区人民法院认为, 由于埃姆埃香港公司注册地为香港特别行政区, 朱家文作为埃姆埃香港公司的唯一股东是否应承担连带责任, 根据法律规定需查明与本案最相关的香港特别行政区法律, 故依法委托华东政法大学外国法查明研究中心予以查明, 对香港法例第 32 章《公司(清算及杂项条文)条例》和第 622 章《公司条例》出具了《法律意见书》。上海市杨浦区人民法院经审查认为李建斌、张佳榕、埃姆埃香港公司、懋拓公司侵害涉案商业秘密的行为损害了马格内梯克上海公司的经济利益, 李建斌、张佳榕、埃姆埃香港公司、懋拓公司、朱家文、潘仕荣应当就此共同承担相应的民事责任。其中对朱家文的责任承担, 上海市杨浦区人民法院认为, 其具有利用埃姆埃香港公司的组织架构及独立法律地位, 将埃姆埃香港公司作为其从事违法行为的工具、逃避法律责任的主观恶意, 本案可适用“揭开公司面纱”原则, 由作为埃姆埃香港公司实际控制人的朱家文对埃姆埃香港公司对马格内梯克上海公司的赔偿责任承担连带责任。

Given that MA Hong Kong Company was registered in Hong Kong Special Administrative Region, to determine whether Zhu Jiawen, as the sole shareholder of MA Hong Kong Company, should bear joint and several liability, it was necessary to

ascertain the laws of Hong Kong Special Administrative Region most relevant to this case according to law. The Yangpu District Primary People's Court of Shanghai Municipality entrusted the Center for Proof of Foreign Law of East China University of Political Science and Law to ascertain the relevant laws according to law, which then issued the Legal Opinions with respect to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the Companies Ordinance (Cap. 622) of the Laws of Hong Kong. After examination, the Yangpu District Primary People's Court of Shanghai Municipality held that Li Jianbin, Zhang Jiarong, MA Hong Kong Company and Maotuo Company infringed upon the trade secrets involved in this case and damaged the economic interests of Magnetic Shanghai Company. Li Jianbin, Zhang Jiarong, MA Hong Kong Company, Maotuo Company, Zhu Jiawen and Pan Shirong should jointly bear corresponding civil liabilities for this infringement. Among them, regarding the liability of Zhu Jiawen, the Yangpu District Primary People's Court of Shanghai Municipality held that given Zhu Jiawen manipulated MA Hong Kong Company's organizational structure and independent legal status to engage in illegal acts and evade legal liability, the principle of "piercing the corporate veil" should be applied in this case, and Zhu Jiawen, as the actual controller of MA Hong Kong Company, shall be jointly and severally liable for the compensation liability of MA Hong Kong Company to Magnetic Shanghai Company.

【典型意义】

[Typical Significance]

本案虽系侵害商业秘密、其他不正当竞争纠纷案件，但埃姆埃香港公司及控制股东之间是否构成法人人格混同以及股东的责任承担问题涉及香港公司法中“揭开公司面纱”规则的适用。由于香港特别行政区法律属于英美法系，判例法

占据重要地位。在成文法缺少对“揭开公司面纱”原则作出明确规定的情况下，上海市杨浦区人民法院委托华东政法大学外国法查明研究中心查阅了香港特别行政区和英国法院判例，总结适用“揭开公司面纱”原则的条件。且根据香港特别行政区判例法确立的审查标准，上海市杨浦区人民法院还审查了埃姆埃香港公司经营情况以及公司股东是否有转移公司财产的行为等。上海市杨浦区人民法院根据查明的香港判例确认“揭开公司面纱”规则，否认了埃姆埃香港公司独立人格，正确认定了埃姆埃香港公司控制股东滥用法人人格的责任承担问题，保护了债权人利益及市场公平秩序，为同类案件的审理提供了有益借鉴。

Although this is an infringement case, MA Hong Kong Company, whether the controlling shareholder manipulated the legal person status and the responsibility associated therewith involves the application of the principle of “piercing the corporate veil” stipulated by the Hong Kong Companies Ordinance. Since the laws of the Hong Kong Special Administrative Region fall under the common law system, the case law occupies an important position. In the absence of explicit provisions on the principle of “piercing the corporate veil” in the written law, the Yangpu District Primary People’s Court of Shanghai Municipality consulted the case law of the Hong Kong Special Administrative Region and the British courts by entrusting the Center for Proof of Foreign Law of East China University of Political Science and Law for ascertainment, and further summarized three conditions for the application of the principle of “piercing the corporate veil”: 1. Shareholders can fully control the company; 2. The shareholders have the malicious intention of manipulating the company’s independent corporate personality to commit illegal acts such as fraud and law evasion, so as to evade their own legal responsibilities; 3. The principle of “piercing the corporate veil” can only be applied as a last resort. If the company’s own

property is sufficient to compensate for the loss, or the loss can be compensated through other remedies, the company's independent corporate personality should still be respected, and the principle of "piercing the corporate veil" should not be applied. According to the examination criteria established by the case law of the Hong Kong Special Administrative Region, the Yangpu District Primary People's Court of Shanghai Municipality also examined: 1. Whether MA Hong Kong Company has engaged in other normal business activities other than those involved in this case as of its establishment; 2. Whether the company's shareholders have transferred the company's property after the commencement of legal proceedings. According to the application rules of "piercing the corporate veil" stipulated by the ascertained Hong Kong precedents, the Yangpu District Primary People's Court of Shanghai Municipality denied the independent corporate personality of MA Hong Kong Company, correctly determined the responsibility of the controlling shareholder of MA Hong Kong Company for abusing the corporate personality, and protected the interests of creditors and fair market order, which further provided reference value for the trial of similar cases in the future.

九、准确查明日本商业惯例，认定日本版权交易领域特殊规则

——原告上海宽娱数码科技有限公司诉被告福州市嘀哩科技有限公司、福州霸绊网络有限公司、福建天下无双投资集团有限公司侵害作品信息网络传播权纠纷案

IX. Accurately ascertain Japanese business practices to determine special rules of copyright transactions in Japan

—Shanghai Kuanyu Digital Technology Co., Ltd. v. Fuzhou Dili Technology Co., Ltd., Fuzhou Jiban Network Co., Ltd. and Fujian Tianxia Wushuang Investment Group Co., Ltd. for dispute over infringement upon information network dissemination right of works

【基本案情】

[Basic Facts]

2018年6月，Avex Pictures Inc.（以下简称Avex公司）作为许可方与被许可方Bilibili Inc.签订许可协议，将涉案作品《碧蓝之海》互联网权利（指通过互联网下载或互联网流式传输使用电影）授予Bilibili Inc.。Avex公司同时出具《原产国证明书》确认其系涉案作品《碧蓝之海》制作委员会的代表，版权：©Kenji Inoue, Kimitake Yoshioka, KODANSHA/Grand Blue Dreaming Project。Avex公司另出具《授权书》和《授权证明书》明确其对在日本制作的涉案作品《碧蓝之海》拥有权利并有权授予Bilibili Inc.互联网权利及分许可权，许可期限为5年，Bilibili Inc.有权亲自或委托第三方向侵权者维护自身合法权利。

In June 2018, Avex Pictures Inc. (hereinafter referred to as "Avex") as the Licensor signed a License Agreement with the Licensee Bilibili Inc. to grant Bilibili Inc. the Internet right (referring to the use of motion picture through Internet downloading or Internet streaming transmission) of the disputed works "Blue Sea",

and issued the Certificate of Origin, the main content of which is: Avex was the representative of the production committee of the disputed works "Blue Sea", Copyright: ©Kenji Inoue, Kimitake Yoshioka, KODANSHA/Grand Blue Dreaming Project. Avex also issued a Power of Attorney and a Certificate of Authorization, the main content of which is: Avex owned rights to the disputed works "Blue Sea" produced in Japan and had the right to grant Bilibili Inc. the Internet right and sublicense right for a period of 5 years, while Bilibili Inc. had the right to claim against infringers by itself or through a third party.

2019 年 4 月 2 日, Bilibili Inc. 出具《授权与确认函》, 主要内容为: 其将 2016 年 1 月 1 日至 2025 年 12 月 31 日期间取得的所有作品的著作权或被许可权 (包括但不限于信息网络传播权) 授权上海宽娱数码科技有限公司 (以下简称宽娱公司) 在中华人民共和国境内行使, 宽娱公司有权以自身名义采取任何及全部的必要法律行动, 包括但不限于有权以自身名义针对涉嫌侵权行为人提起诉讼或采取任何法律行动, 以要求并获得任何和全部损害赔偿、补偿以及依据中华人民共和国法律可获得的其他救济。

On April 2, 2019, Bilibili Inc. issued the Letter of Authorization and Confirmation, the main content of which is: it authorized Shanghai Kuanyu Digital Technology Co., Ltd. (hereinafter referred to as "Kuanyu Company") to exercise the copyright or license (including but not limited to the information network dissemination right) of all works obtained from January 1, 2016 to December 31, 2025 within the territory of the People's Republic of China, Kuanyu Company had the right to take any and all necessary legal actions in its own name, including but not limited to the right to bring a lawsuit or take any legal action against the alleged infringer in its own name, so as to claim and obtain any and all damages,

compensation and other remedies available under the laws of the People's Republic of China.

宽娱公司提交的(2018)泰祥证民内字第774号等公证书显示福州市嘀哩科技有限公司(以下简称嘀哩公司)、福州羁绊网络有限公司(以下简称羁绊公司)、福建天下无双投资集团有限公司(以下简称天下无双公司)共同经营的网站为涉案作品《碧蓝之海》提供在线播放、下载服务,所播放、下载的内容与宽娱公司上述享有信息网络传播权的作品相同。宽娱公司以嘀哩公司、羁绊公司、天下无双公司侵害其作品信息网络传播权为由提起诉讼。

According to the notarial certificates [(2018) Tai Xiang Zheng Min Nei Zi No. 774] submitted by Kuanyu Company, the website jointly operated by Fuzhou Dili Technology Co., Ltd. (hereinafter referred to as "Dili Company"), Fuzhou Jiban Network Co., Ltd. (hereinafter referred to as "Jiban Company") and Fujian Tianxia Wushuang Investment Group Co., Ltd. (hereinafter referred to as "Tianxia Wushuang Company") provided online play and download services regarding the disputed works "Blue Sea", and the content played and downloaded was the same as the said works to which the plaintiff enjoyed the information network dissemination right. Kuanyu Company then sued for the infringement of information network dissemination right

【裁判结果】

[Court Ruling]

上海市杨浦区人民法院认为,本案的主要争议焦点为宽娱公司是否对涉案作品《碧蓝之海》享有信息网络传播权,对该焦点的认定涉及日本法相关内容的查明,华东政法大学外国法查明研究中心根据法院委托出具《法律意见书》。上海市杨浦区人民法院认为,虽然本案不存在直接适用域外法的情形,但《法律意见书》中有关日本动漫影视作品的制作方式、作品署名、权益分配、作品授权等行

业惯例的介绍，具有客观反映一定法律事实的功能，可作为认定涉案作品权属的参考。同时，上海市杨浦区人民法院还认为，宽娱公司享有对涉案作品在中国大陆地区的独家信息网络传播权，有权提起本案诉讼。嘀哩公司、羁绊公司、天下无双公司共同经营的被控侵权网站为涉案作品《碧蓝之海》提供在线播放、下载服务，所播放、下载的内容与宽娱公司享有信息网络传播权的作品相同，侵犯了宽娱公司对涉案作品享有的信息网络传播权，应共同承担相应的民事责任。本案一审判决后，各方当事人均未上诉。

The Yangpu District Primary People's Court held that, the disputed issue in this case is whether Kuanyu Company enjoys the information network dissemination right of the works "Blue Sea". The Court then entrusted the Center for Proof of Foreign Law of East China University of Political Science and Law to issue a Legal Opinion. Although there was no direct application of foreign law in this case, the production methods, right of authorship, distribution of rights, works license and other industry practices of Japanese animation and film works in the Legal Opinion reflect certain legal realities which can be seen as a reference to determining the copyright. Kuanyu Company had the right to exclusive information network dissemination of the works in Mainland China and had the right to file a lawsuit. The alleged infringing website jointly operated by Dili Company, Jiban Company and Tianxia Wushuang Company provided online play and download services regarding the disputed works "Blue Sea", and the content played and downloaded was the same as that of the said works to which Kuanyu Company enjoyed the information network dissemination right. The acts of the three defendants infringed Kuanyu Company's right to information network dissemination of the disputed works, and should jointly bear the corresponding civil liability. After the first-instance judgment took effect, neither

party appealed.

【典型意义】

[Typical Significance]

本案系侵害作品信息网络传播权纠纷，有关日本动漫影视作品的制作方式、作品署名、权益分配、作品授权等行业惯例的查明关系到本案侵权事实的认定。上海市杨浦区人民法院委托华东政法大学外国法查明研究中心就日本影视制作行业是否存在“制作委员会”“窗口公司”等商业惯例进行了查明。对于涉案作品的原始权属争议问题，查明了有关日本动漫影视作品的制作方式、作品署名等行业惯例。对于 Avex 公司单独授权的效力争议问题，明确了“窗口公司”在日本版权交易领域关于作品授权、权益分配等方面的商业惯例。近年来，大量优质境外影视作品进入到中国版权交易市场，随着境外影视作品交易量的递增，相关作品著作权的权属及权利范围问题，既是诉讼维权的逻辑起点，也是法院裁判的基本依据，在权利人确认和版权确认等方面的域外法查明问题逐步凸显。本案的域外法查明工作对解决类案审判难点问题有重要参考价值。

This is an infringement case and the ascertainment of the production methods, right of authorship, distribution of rights, works license and other industry practices of Japanese animation and film works plays a key role in the finding of the disputed issues in this case. The Court entrusted the Center for Proof of Foreign Law of East China University of Political Science and Law to ascertain whether there were business practices such as "production committee" and "window company" in Japan's film and television production industry. Regarding the dispute over the original ownership of the disputed works, the industry practices such as the production method and authorship of Japanese animation film and television works were ascertained. Regarding the effectiveness of Avex's separate authorization, the court clarified the

business practices of “window company” in the field of copyright trading in Japan concerning the licensing of works and the distribution of rights. In recent years, a large number of high-quality overseas film and television works have entered China’s copyright trading market. With the increasing trading volume of overseas film and television works, the problems in the confirmation of right holder and copyright have become increasingly prominent. The ownership and scope of copyright of relevant works are not only the logical starting point of rights protection by litigation, but also the basis of court judgment. This case may provide important reference value for the trial of similar cases.