

海口海事法院

优化营商环境白皮书

(中英文对照本)

White Paper of Haikou Maritime Court
on Improvement of Business Environment

中华人民共和国海口海事法院

Haikou Maritime Court of the People's Republic of China

April 2022

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前 言

“营商环境”是关系国家经济实力和国际竞争力的重要风向标。习近平总书记多次强调“法治是最好的营商环境”，海南省委书记沈晓明也指出“营商环境关乎海南自贸港建设全局”。作为海南自贸港建设的亲历者、参与者，我们必须进一步提高政治站位，把思想和行动统一到习近平总书记重要讲话精神和中央、省委部署上来，健全完善法治化营商环境保障机制，落实落细优化营商环境工作，为海南自贸港建设营造法治化、国际化、便利化的营商环境作出应有贡献。

海口海事法院始终立足海事司法职能，通过一系列务实有效的举措，为改善投资和市场环境，营造稳定公平、透明、可预期的法治化营商环境提供有力的司法服务和保障。本白皮书介绍了海口海事法院关于优化营商环境的工作情况以及优化营商环境的司法举措，同时选取具有代表性的典型案例进行发布，以期为海南自贸港建设和营造法治化营商环境提供有益参考。

Foreword

“Business environment” is a key weathervane for a country’s economic strength and international competitiveness. General Secretary Xi Jinping has stressed on several occasions that “The rule of law is the most favorable environment for business”. This is echoed by Shen Xiaoming, the Secretary of the CPC Hainan Provincial Committee, who points out that “business environment remains at the heart of the construction of Hainan Free Trade Port.” During the construction of Hainan Free Trade Port, we must raise our political awareness to understand and implement the core meaning of the important speech of General Secretary Xi Jinping and the plans of the Central Party Committee and the Provincial Party Committee. We must play a part in fostering a law-based, internationalized, and enabling business environment for Hainan Free Trade Port, by providing better support for a law-based business environment and fully implementing all measures to build a better environment for business.

While always remaining firm to our functions in maritime adjudication, we have taken a series of pragmatic and efficient measures to provide effective judicial service and guarantee for the improvement of an investment and market environment and the creation of a fair, transparent, and predictable business environment under the rule of law. In this white paper, we would like to introduce the work of Haikou Maritime Court on the

improvement of the business environment and the judicial measures taken by this court for such purpose, and we also include some typical cases herein, hoping that they will serve as helpful reference for the construction of Hainan Free Trade Port and the creation of a law-based business environment.

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一、优化营商环境情况介绍

海口海事法院深入贯彻习近平总书记关于“营造国际一流营商环境”的重要指示精神，立足司法职能，为改善投资和市场环境，营造稳定公平透明、可预期的营商环境，提供有力的司法服务和保障。现结合我院工作实际，就优化营商环境工作介绍如下：

（一）切实提高政治站位，增强优化营商环境责任感和紧迫感

我院始终坚持以习近平新时代中国特色社会主义思想为指导，认真贯彻落实习近平总书记关于海南自贸港建设的重要讲话、指示批示精神，特别是加快形成法治化、国际化、便利化营商环境的系列重要论述，深刻领会“两个确立”的决定性意义，不断增强“四个意识”、坚定“四个自信”、做到“两个维护”。

始终坚持立足海事司法职能，为营造优质营商环境提供法治保障，以公正高效的海事司法服务保障海南自贸港建设。在海南自贸港建设的不同阶段，分别制定《海口海事法院关于服务和保障海南自由贸易试验区和中国特色自由贸易港建设的意见》和《海口海事法院贯彻落实〈最高人民法院关于人民法院为海南自由贸易港建设提供司法服务和保障的意见〉举措》，找准

海事司法服务保障海南自贸港建设的着力点，主动担当作为，为海南自贸港建设提供更有针对性的海事司法服务保障。

（二）高效审理涉外纠纷，提升海事司法国际公信力

1. 简化流程提升审判效率

一是适用简易程序审理事实简单、法律关系明确的涉外民商事案件，缩短办案周期。二是适用境外诉讼主体概括性身份证明和授权委托制度，审理一定期间内身份信息和授权明确的涉外案件，减少程序性事项的时间。三是允许离岸公司在经营地对相关授权材料进行公证认证，减少公证认证办理时间。四是运用各类云数据库、司法查验系统、司法协助方式，主动依职权查明境外当事人身份，解决当事人“是谁”和“告谁”的问题。五是利用船讯网、marine traffic 等数据库提供的 AIS 信息、卫星定位数据等，实时查询涉外船舶位置、航线、到港时间、历史轨迹等，解决当事人准确“找船”和“找货”问题。海事庭获评全国法院涉外商事海事审判先进集体。

2. 优化配备提升服务质量

一是加强国际化立案窗口建设，在诉讼服务大厅设立自贸港案件专用通道和涉外诉讼服务引导专员。二是聘请外籍人士担任涉外案件调解员，提高海事审判国际化水平。三是与华东政法大学签署了外国法查明专项合作协议，建立域外法查明机制。四是围绕国际航空运输基本法律问题开展调研，撰写调

研报告，为拓展相关案件的审理做好准备。

3. 平等保护中外当事人合法权益

在涉外案件中充分考虑外国当事人的合法权益，给予与国内主体同等的保护力度。以审理“光汇宝石”轮案为例，原告法国巴黎银行在可以向全球任何国家或地区的法院起诉的情况下，自愿主动选择到海口海事法院诉讼。我院在短短 7 小时内完成对“光汇宝石”轮的司法扣押工作，拍卖成交后数日内即将“光汇宝石”轮移交给买受人，该案从扣船、调解、拍卖移交到债权分配等所有程序在一年内完成，效率远高于新加坡等地同期开展的类案诉讼，充分展现了中国海事司法公正高效的法治形象和国际化的司法服务水准。

4. 着力提高海事司法透明度

一是上线海口海事法院英文门户网站，升级改造中文门户网站，不断扩大司法公开的深度和广度，在 2020 年最受网友欢迎的全国海事法院网站评选活动中，我院得票数位列第二。二是加大司法宣传力度，拓宽法治宣传渠道，打造微信、微博、抖音、新闻客户端新媒体传播矩阵，及时全面推送我院司法动态。2018 年我院获评全国法院司法宣传先进单位。三是发布中英文海事审判白皮书，向全社会展示海事审判成果，提升海事司法国际公信力。

（三）坚持以人民为中心，持续深化司法为民

1. 强化疫情防控应对，做到“两手抓、两不误”

一是发布疫情防控期间诉讼事项调整和执行工作相关事宜的通知，统筹安排立审执工作，保障疫情期间工作不打烊。二是开通互联网法庭，实现线上庭审。积极引导当事人通过微信小程序“海南微法院”网上立案、跨域立案，跨区域远程办理诉讼事项等，最大程度减少人员出行和聚集，最大限度方便当事人和律师参与诉讼。三是深入邮轮港、游艇会等地开展调研，与相关单位就加强司法服务达成框架协议，针对疫情引起的法律问题提出解决思路和法律意见，助力企业、消费者等群体走出疫情阴霾。

2. 践行司法为民宗旨，落实便民利民举措

一是充分发挥派出法庭基层服务功能，加大巡回审判和法治宣传力度，深入渔村、渔港就地办案，提供海事法官包点服务，将法律服务送到群众身边。二是关注弱势群体，解决群众实际困难。2018年以来，共审理船员劳务纠纷案件167件，海上、通海水域人身损害责任纠纷案件28件；为确有困难的57名当事人办理缓交、免交、减交诉讼费17.36万元，展现了司法的人文关怀。三是制定了《海口海事法院司法救助委员会工作规则（试行）》，授权赔偿办对争议不大、案件标的小的案件实施救助，提升了案件办理效率。为符合救助条件的当事人申请司法救助金97.83万元。四是创建“党员先锋岗位”，为老年特殊群体提供“一对一”导诉服务，为律师提供绿色通道“一码通”服务，发布预约车位信息，设置司法便民服务点，让人

民群众感受到法律的温度。

3. 落实行政诉讼异地管辖改革，助力法治政府建设

一是制定《海口海事法院跨域管辖行政案件便民诉讼工作机制》，坚持“方便给予当事人、困难留给法院”的司法理念，采取“三就地三快速”工作方法，方便群众诉讼。自2020年改革以来，共受理了127宗此类案件，其中就地立案86件。二是制定《海口海事法院关于进一步加强和规范司法建议工作的意见》，对因海洋开发使用、海洋生态环境损害等引发的行政执法中普遍性问题向相关单位提出多份司法建议，助力法治政府建设。

4. 深化多元解纷机制建设，高效保障人民权益

一是举办多元解纷工作座谈会，与海南国际仲裁院洋浦海事仲裁中心、海口国际商事调解中心、三亚凤凰公证处等单位签署多元解纷合作协议，为当事人提供更多纠纷解决平台。二是与华东政法大学、上海海事大学、海南海事局、海南省海洋与渔业监察总队等高校、机关签订合作协议，不断优化海事司法服务和保障。三是联合基层检察机关、司法行政机关，建立一站式多元联动解纷机制，构筑“线上+线下”联动调解大格局，主动参与基层治理。

（四）发挥海事审判职能，提供优质高效司法服务

1. 积极服务保障邮轮游艇产业发展

一是召开邮轮游艇产业发展专题座谈会，出台《海口海事

法院海事司法保障促进海南邮轮游艇产业发展的若干意见》，提升海事司法保障的针对性和实效性。二是在三亚凤凰岛邮轮母港等地设立邮轮游艇纠纷巡回审判点，设计制作填表式裁判文书模板，提供菜单式司法服务，创新开启就地“受案、审理、速裁”办案模式。《法制日报》对此进行了专题报道。三是启动邮轮旅游全时空海事司法服务机制，在“南海之梦”邮轮设立巡回审判法庭和法治服务点，通过随船巡回审判+线上远程解纷等方式，开启24小时全天候矛盾化解、法律咨询、法治宣传等海事司法服务。四是妥善审理邮轮游艇案件，依法公正高效审理涉及船舶建造、管理、租用、停泊、保险等邮轮游艇全产业链案件。一篇游艇保险纠纷案例入选2020年全国海事审判典型案例。

2. 助力西部陆海新通道国际航运枢纽建设

一是充分发挥洋浦法庭区位优势，自2020年6月1日起，自贸港建设一年来洋浦法庭受理案件583件，同比增长420.54%，占全院总收案数的36.55%。妥善审理了涉及港口建设、船舶融资金融、海员权益保护、港口仓储物流等海事案件，助力洋浦打造海南自贸港先行区示范区。二是与洋浦经济开发区管委会港航相关部门建立起顺畅的沟通协商机制，深入研判“中国洋浦港”船籍港建设过程中可能存在的国际船舶管理、国际船舶登记、航运金融、保税油供应、港口仓储物流等法律

问题。妥善审理保税燃料油运输等相关纠纷，三是依法审理与大型基础设施建设相关的海洋开发利用纠纷，对相关案件中伪造证据妨害司法的两方当事人开出百万“诚信罚单”，凸显自贸港营商环境的“可预期”性。四是撰写《关于审理船舶物权纠纷案件的裁判指引》，统一与船舶物权有关的民商事纠纷案件的办案标准和裁判尺度，服务保障“中国洋浦港”国际船舶登记工作，促进海南自由贸易港船舶建造、登记、融资市场发展。

3. 强化海洋生态环保

一是切实履行职责使命。完善涉重大围填海项目纠纷审判工作机制，专项报告海洋环境资源审判工作情况。院领导带队调研，带头办理重大复杂案件。二是打造海洋环资司法保护“共同体”。着眼自贸港与粤港澳大湾区联动，牵头与广州、北海海事法院签订海洋环保司法合作协议，发布典型案例。构筑起“跨域司法协作”“环保联防联控”“公益诉讼支持”三大机制。三是通过协调省司法厅为被告提供法律援助、搭建远程庭审系统实现与监狱、看守所视频开庭等方式，疏通、破解环境资源公益诉讼因被告被限制人身自由而无法正常开庭的堵点、难题。四是发布我院 2018-2020 年度海洋环境资源审判白皮书和《关于审理海洋生态环境自然资源纠纷案件的裁判指引（试行）》，梳理海洋环境资源司法保护主要做法和审判经验，扩大海洋环境资源审判工作社会知晓度。五是打造海洋环资典型案例。我

院一宗案例入选最高院第 31 批指导性案例，该案例同时作为中国环境资源司法案例载于联合国环境规划署司法门户网站。三宗案例入选全国法院环境资源典型案例。

4. 提升、巩固执行攻坚效果

一是全力打好“基本解决执行难”攻坚战，以“一五三”工作重点为抓手，强化文明执行理念，不断规范执行行为。2018 年以来，执行案件年均结案率 95% 以上，妥善处理涉民生、涉党政机关为被执行人案件，每年结案率均为 100%。二是强化善意文明执行理念，妥善处理被执行人为行政机关的执行案件，及时为 14 户渔民追回 286.92 万元渔船补偿款；利用周末时间 2 天往返 4010 公里为 20 名浙江舟山籍船员追回薪酬 100 余万元。有力维护了 14 户渔民（申请执行人）的合法权益，也有效保障了粤海铁路南港码头的收尾工作。三是发挥执行职能，做好“六稳”工作、落实“六保”任务。依法执结涉博鳌乐城国际医疗旅游先行区，标的额达 11 亿余元的金融借款合同纠纷案，为自贸港重点园区建设顺利推进提供了法治保障。四是创新工作方法，与海事局等部门建立联动办案机制，借助信息化手段查控船舶，实现 24 小时扣船、看管无缝对接。五是制定《关于加强立案、审判、执行工作相互协作的若干规定》《司法查控财产措施管理细则（试行）》等工作机制，缩短程序性事项流转时间，保障当事人及时实现合法权益。

5. 强化诉前保全、海事强制令效能

一是持续推进“全天候”保全快速响应机制，确保节假日、8小时工作时间外也能受理当事人保全申请并及时采取保全措施，紧急情况下24小时之内办理扣船手续；当事人申请解除扣押船舶提供担保符合条件的，24小时内放船，以优于国际惯例的更高标准和效率兼顾船、货、码头各方利益。二是主动引导相关人员申请诉前保全、海事强制令，通过相关程序的适用，及时处理矛盾纠纷，保障当事人生产、生活的顺利开展。2021年我院高效办结18件海事强制令案件。通过强制令，提升办案效果，使被滞留的农资产品顺利流转，为农户劳作抢抓了时间，解决群众燃眉之急。

（五）全面从严治院，打造过硬海事审判队伍

1. 注重专业审判团队建设

一是组建以青年干警为主体的改革创新研究小组，完善创新小组议事规则和运作模式，组织青年干警参与谋划海事司法改革和创新，让每位干警成为改革创新的星星之火。二是紧扣海事法院涉外性和自贸港法院建设需求，通过开设海事法律英语讲坛、开展英语实务演练、举办海事法律英语高级研修班、组建海事司法翻译团队等举措，提升队伍涉外审判能力水平。三是组建海事刑事审判团队，完善工作运行机制，开展常态化刑事审判培训，筑牢刑事审判队伍基础。

2. 完善审判机构机制

一是在全国海事法院率先设立海事刑事庭，同时设立海事海商庭、海事行政庭，形成以民商事、行政案件为主，涵盖特定刑事案件的专业化审判机制。二是对全院重点工作采取项目化、扁平化管理，由项目责任人直接对接院领导，减少管理层级，以拉单销号方式一盯到底，抓好相关任务贯彻执行。三是充分发挥派出法庭身处一线，贴近基层的便利，通过签署合作协议、设立巡回审判点、实施海事法官包点服务等方式，为重点园区、基层群众提供优质高效的海事司法服务。

3. 加强队伍廉政建设

始终将党风廉政建设放在法院工作的重要位置，坚持全面从严治党、从严治院、从严管理，以“零容忍”态度保持惩治腐败的高压态势，确保班子不出问题、案子不出问题、队伍不出问题。

优化营商环境永远在路上，我院将继续深入践行习近平法治思想，致力于优化法治化营商环境，致力于服务保障自贸港核心政策实施，致力于满足自贸港建设的司法需求，为海南全面深化改革开放和中国特色自由贸易港建设提供更加有力的司法服务与保障。

二、优化营商环境司法举措

为深入贯彻习近平总书记关于优化营商环境的重要指示精神，坚决贯彻中央、省委、最高人民法院关于营商环境建设的决策部署，落实省高院《2022年海南法院优化营商环境计划》中的工作要求，充分发挥海事审判在助力自贸港建设，营造法治化营商环境中的作用，结合海口海事法院工作实际，现就进一步推进我院优化营商环境工作，制定如下举措：

1. 加强优化营商环境工作统筹规划和组织推进。成立海口海事法院优化营商环境工作领导小组，统筹推进全院优化营商环境工作。设立优化营商环境工作专班，深入研究、梳理法治化营商环境的考评指标，建立相关工作机制，抓好工作落实。召开优化营商环境工作新闻发布会，发布《海口海事法院优化营商环境工作白皮书（2018-2021）》，通报优化营商环境重点工作、具体举措及典型案例。

2. 深化一站式诉讼服务建设。全面推行网上立案、跨域立案服务，对符合立案标准的案件实行一窗通办，一次办结。针对诉讼服务平台应用方面存在的不足，加大推进应用力度。严格贯彻执行《海口海事法院关于诉讼费退费有关事项的公告》《海口海事法院诉讼费用退费及追缴监督工作规程》，简化退费流程，规范退费手续，实现主动退费，同时

加强制度执行的监督跟进，确保诉讼费应退尽退。对缴纳诉讼费确有困难的企业，根据具体情况采取缓交诉讼费等办法予以帮助。

3. 进一步完善多元解纷机制。扩大“诉前调解+司法确认”适用范围，除法律规定不适合调解或当事人明确不同意调解的案件外，涉企海商事案件均可实行诉前调解。对调解成功申请司法确认的案件，依法免收诉讼费。进一步完善案件繁简分流工作机制，拓展海事司法诉调对接协作领域，扩大多元解纷合作范围，加强与人民调解、行政调解、行业调解、国际商事调解的衔接，强化与涉海行政机关、司法机构、仲裁机构、特邀调解组织的合作。

4. 深入推进海事审判“三合一”改革。落实最高人民法院关于集中管辖国际多式联运合同纠纷及国际航空运输合同纠纷的相关规定，强化与航空公司、临空产业园等机构交流。加强海事刑事审判团队建设，梳理总结海事刑事案件审判经验，健全完善海事审判体系，打造海事刑事特色品牌。统筹海事刑事和民事诉讼审判需求，探索协调省司法厅、省法律援助中心等机构在法院设立律师工作站。

5. 服务和保障自贸港重点园区发展。充分发挥院本部与三亚、洋浦、博鳌、八所、三沙五个派出法庭“1+5”区位优势，建立海事司法巡回服务点，开展海事司法包点服务，开展巡回审判，为洋浦经济开发区、博鳌乐城国际医疗旅游先行区等重

点园区的建设与发展，提供具有区域特色的针对性海事司法服务。

6. 服务保障儋洋一体化建设。实现海事司法服务职能与洋浦国际航运中心一站式综合服务平台的对接，协调设立海事一站式多元解纷中心。支持“中国洋浦港”船籍港建设，妥善审理涉航运服务、国际船舶登记、航运金融、保税油供应、海洋服务、港口仓储物流等海商事案件，打造自贸港先行区典型案例。根据儋洋一体化推进情况，适时建立与辖区驻地相关单位协调对接机制，深度融入地方经济社会发展。

7. 强化海洋生态环保。加强海洋生态环境资源审判团队建设，充分发挥海洋生态环境资源案件集中管辖的机制优势，注重综合运用民事、行政、刑事手段，对破坏海洋环境的违法行为加大惩治力度。加大环境民事公益诉讼中损害赔偿资金追缴力度，积极支持海洋环境监督管理部门在海洋环境领域的行政执法和生态修复，探索生态环境修复的多样化和恢复性司法措施的应用。

8. 保障邮轮游艇产业发展。深化海南自贸港邮轮旅游全时空海事司法服务机制，完善促进海南邮轮游艇产业发展司法保护的相关意见，助力海南邮轮游艇产业高质量发展。总结梳理近年出现的游艇租赁进口、游艇会费纠纷等涉游艇案件审理情况，提炼总结类案办理思路，统一裁判尺度。针对涉邮轮游艇案件中发现的突出问题、重点问题，及时制作并

向相关邮轮游艇企业及行业管理部门发布法律风险提示及司法建议。

9. 助力法治政府建设。认真贯彻执行《海口海事法院跨域管辖行政案件便民诉讼工作机制》，及时总结改革经验，针对工作中存在送达、现场调查等问题提出针对性解决举措。严格贯彻执行《海口海事法院关于进一步加强和规范司法建议工作的意见》，加强司法建设工作力度。发布《海口海事法院海事行政审判白皮书》，促进政府依法行政，引导当事人依法维护自身权益。

10. 平等保护中外当事人合法权益。牢固树立“统筹推进国内法治和涉外法治”理念，依法正确行使司法管辖权，坚决维护国家司法主权。在涉外审判中准确适用国际条约、国际惯例，加强外国法查明和适用，引导市场主体在涉外交易中加强与国际规则的对接。多语言发布海事审判典型案例，提升海事司法的国际公信力。

11. 严厉惩处虚假诉讼和恶意诉讼行为。探索对提供虚假证据、故意逾期举证等不诚信诉讼行为的规制机制，依法运用罚款、拘留、刑事追责等法律手段，严厉制裁诉讼失信行为，加大虚假诉讼惩戒力度。确立虚假诉讼和恶意诉讼相应罚款标准，树立司法权威，营造公平竞争市场环境。

12. 深入破解执行难题。完善执行联动机制，进一步提升执行到位率，及时兑现各类市场主体胜诉权益。强化涉企案

件文明善意规范执行，坚决避免明显超标的、超范围查封、扣押、冻结。在依法保护当事人合法权益的前提下，尽可能采取“活封”“活扣”等保稳定执行措施，最大限度降低对被执行企业不利影响。妥善处理涉党政机关、国有企业拖欠民营企业中小企业债务的执行案件，努力实现该类案件年度全部执结。统一规范对船舶、集装箱等执行标的查控、处置工作流程，探索建立船舶看管机构名录，完善船舶看管机制。

13. 提升裁判的可预期性。坚持类案和关联案件在判决前强制检索，统一裁判尺度，着力解决“类案不同判”等问题。加强对发改案件的审判监督管理，所有发回重审案件必须提交审判委员会讨论，推行发改案件实质性评查常态化，统一裁判尺度。充分发挥法官会议作用，简化会议流程，提升会议频次，制定会议纪要，固定讨论成效。

14. 着力推进智慧法院建设。巩固提升法院信息化建设成果，根据智能庭审应用技术要求，进一步升级改造科技法庭，逐步打造更加智能、高效的智慧法庭和智能会议室。加快推进三亚、博鳌、八所 3 个派出法庭新办公楼信息化项目建设。在案件材料录入的及时性、规范性上下功夫，提升无纸化办案水平。

三、典型案例

(一) 法国巴黎银行 (BNP PARIBAS) 诉光汇宝石油轮有限公司 (BRIGHTOIL GEM TANKER LTD.) 船舶抵押借款合同纠纷案

【基本案情】

2016年10月28日,法国巴黎银行(以下简称巴黎银行)与光汇宝石油轮有限公司(以下简称光汇公司)签订了一份贷款合同,主要内容为巴黎银行向光汇公司提供不超过5200万美元的贷款,光汇公司如未按合同期限还款,应承担逾期贷款罚息以及相应复利,光汇石油(控股)有限公司作为该笔贷款的保证人之一等。2016年11月1日,双方又签订了一份抵押合同,约定:光汇公司以其名下的“光汇宝石”轮(M.T. BRIGHTOIL GEM)为前述贷款合同项下的所有债务提供抵押担保;如因本合同引起的任何争议,香港法院是解决争议的最适宜和最便利的法院,但巴黎银行有权向任何有管辖权的法院提起诉讼。为此,光汇公司向“光汇宝石”轮登记机关香港海事处船舶登记处和公司注册处办理了该轮的抵押权登记。同日,巴黎银行根据光汇公司的提款请求向其发放了4550万美元贷款。2017年

10月3日，保证人光汇石油（控股）有限公司的股票在香港证券交易所停止交易，且连续停止交易的期间超过了五天。巴黎银行以此停牌事件构成了贷款合同项下的违约事件为由，于同年12月22日向光汇公司发出了贷款提前到期通知。此后，光汇公司向巴黎银行分期支付了少量的本金、利息和逾期利息，仍有绝大部分贷款未能偿还。

2019年1月4日，巴黎银行以光汇公司未能按期偿还贷款为由向海口海事法院申请诉前海事请求保全，请求扣押光汇公司名下的“光汇宝石”轮。海口海事法院依法作出（2019）琼72财保1号民事裁定及扣押船舶命令，将“光汇宝石”轮扣押于海南洋浦港。同年1月28日，巴黎银行向海口海事法院提起诉讼，请求判令：光汇公司在“光汇宝石”轮的价值范围内对巴黎银行主债权合同项下债权承担抵押担保责任；光汇公司按照主债权合同约定的利率支付欠款利息和逾期利息及其他诉讼请求。

诉讼期间，巴黎银行以光汇公司未提供担保且该轮长期停留于台风多发的热带海域、面临较大灭失风险为由，申请拍卖该轮。2019年8月6日，海口海事法院作出（2019）琼72民初22号民事裁定，将“光汇宝石”轮通过网络司法拍卖平台予以拍卖，所得价款在支付因扣押和拍卖船舶的费用后全部存入海口海事法院代管款账户。

【裁判结果】

经海口海事法院主持调解，双方达成调解协议，主要内容为：双方确认应支付的贷款本息；光汇公司承担巴黎银行实现债权的费用以及行使抵押权产生的费用；上述款项从法院处置“光汇宝石”轮所得价款中，依照法定程序和受偿顺序拨付给巴黎银行；巴黎银行确保在收到上述款项后不再就涉案贷款合同和船舶抵押合同向光汇公司以及该轮的船舶管理人、经营人等提出索赔。海口海事法院作出民事调解书，依法审查并确认了该调解协议。

2019年11月20日10时，“光汇宝石”轮在淘宝网司法拍卖平台首轮拍卖中，由来自希腊的买受人莫林有限公司（MERLIN CO.LTD.）以人民币4.033亿元的价格竞得。11月28日，海口海事法院解除对“光汇宝石”轮的扣押，并于12月3日将该轮移交给买受人。

【典型意义】

本案的公正、高效、妥善处理，是海口海事法院贯彻落实习近平总书记“4·13”重要讲话精神，努力建设海南自贸区(港)法治化、国际化、便利化营商环境的生动实践范例。本案当事人约定了单方面、开放式管辖权条款，巴黎银行在有权向全球任何国家或地区的法院起诉的情况下，自愿主动选择到海口海事法院诉讼，充分体现了我国海事司法的国际公信力和影响力。

在海口海事法院的主持下，经过多轮调解，被告光汇公司同意以“光汇宝石”轮拍卖价款偿还欠款。为了顺利拍卖“光汇宝石”轮，海口海事法院采用网络媒体及传统媒体相结合的方式展开宣传和推介。不仅在网站、微博、微信上发布拍卖信息，还通过中国日报（海外版）、人民法院报、劳氏通讯、贸易风等多个渠道刊登了拍卖和债权登记公告。为了便于国内外买家了解船舶情况，海口海事法院开通了24小时咨询电话，先后组织4批意向买家登轮查看。经过32轮激烈竞价，最终该轮以人民币4.033亿元成功拍卖，创淘宝司法拍卖平台开通以来成交金额最高的船舶拍卖纪录，体现了网络司法拍卖方式的成功。

（二）海南省海口市人民检察院与海南中汇疏浚工程有限公司、陈锶、海口浏源土石方工程有限公司海洋环境污染民事公益诉讼案

【基本案情】

新世界地产公司与浏源公司签订施工合同，由浏源公司对恒大美丽沙有关项目地块进行土石方开挖及建筑垃圾清运等，约定浏源公司应选择符合政府部门规定的弃置场地处置。其后，浏源公司将其承包的上述工程的土方外运和垃圾处置交由中汇公司完成，约定由中汇公司使用船舶运输土石方到国家规定的抛泥区域，并约定浏源公司委派职员管理现场。

2018年10月23日起，市民多次举报海口恒大美丽沙音乐广场附近海域有船舶从广场往西1到2公里处向海洋倾倒建筑垃圾。2018年11月15日、19日、20日和同年12月14日，有关检察机关通过无人机拍摄到运泥船在美丽沙临时码头装运建筑垃圾及在附近海域倾倒。2018年12月14日，执法人员在海上当场截获倾废后的船舶“粤珠海浚2322”。根据无人机所拍视频显示，该船当日12:50尚在临时码头装载，但下午13:23即已倾废完毕并被执法人员抓获。2019年7月30日，公益诉讼起诉人申请海南省公安厅物证鉴定中心对2018年12月14日无人机所拍摄的另一倾废船舶进行清晰化鉴定，公安厅出具鉴定文书

认为倾倒建筑垃圾的船舶应为“粤珠海浚 2323”。2019年5月13日，海口市海洋和渔业局对中汇公司和陈锶各处以10万元罚款。

2018年7月，中汇公司与陈锶伪造退塘还林合同一份。合同主要内容为中汇公司将案涉项目所挖土方运输回填到湛江市坡头区南三镇灯塔沙头村500亩废弃虾塘中。中汇公司并以此向海口市海洋和渔业局申请临时靠泊平台临时海域使用权，获准。但三被告均未办理废弃物海洋倾倒许可证。

2019年3月5日，浏源公司称其“在0905地块施工中共计开挖土方约30万立方米，其自行组织车辆外运至新埠岛等地4090车，回填于美丽沙场内11286车，交中汇公司处置约1.5万立方米”。新世界地产公司共计向浏源公司支付工程款8925589.68元。诉讼中，各方均认可浏源公司共计开挖30万土方。浏源公司土方运输车队工作人员表示土方运输车辆满载为15立方米，车辆甚至加高达20公分。同年3月7日，海口市海洋和渔业监察支队对案涉土方运输的两类十轮卡车分别抽样进行测量，显示车辆满载量为14.9立方米。

中汇公司涉案分包工程的所有主要合同义务的办理，从分包合同的签订、美丽沙临时泊位工程的环境影响评价的对外委托、海域使用权的申办到倾废船舶的联系、调度，均由陈锶具体经办。参与案涉建筑垃圾海上运输的船舶共有四艘，其中两艘“粤珠海浚 2322”和“粤珠海浚 2323”系陈锶个人所有。截

止 2018 年 12 月 13 日，浏源公司共向中汇公司和陈锶支付工程款 184.6 万元。其中，由陈锶实际收取 169.2 万元。

本案审理期间，经从船讯网上检索，从海口恒大美丽沙临时码头坐标点到海口市政府指定的海洋倾倒区，海上直线距离约为 4.6 海里即 8.5 公里；到湛江市沙头村坐标点的海上直线距离约为 64.3 海里即 118.9 公里。2019 年 12 月 30 日，船讯网上显示“粤珠海浚 2323”当日最大航速约为 6 节即 6 海里/小时，普遍航速为 4-5 节。

公益诉讼起诉人经委托华南所评估鉴定，案涉倾废事件造成海洋生态环境损害达 860.064 万元。

【裁判结果】

1. 被告海南中汇疏浚工程有限公司、陈锶、海口浏源土石方工程有限公司自本判决生效之日起 10 日内连带赔偿环境污染损害 860.064 万元。该款项上交国库用于修复被损害的海洋生态环境；

2. 被告海南中汇疏浚工程有限公司、陈锶、海口浏源土石方工程有限公司自本判决生效之日起 10 日内在全国发行的媒体上公开赔礼道歉；

3. 被告海南中汇疏浚工程有限公司、陈锶、海口浏源土石方工程有限公司自本判决生效之日起 10 日内连带向海南省海口市人民检察院支付鉴定费 47.5 万元，公告费 800 元。

宣判后，陈锶、海口浏源土石方工程有限公司提出上诉海南省高级人民法院于 2020 年 11 月 23 日作出(2020)琼民终 276 号民事判决，驳回上诉，维持原判。

【典型意义】

1. 筑牢自贸港营商环境建设生态基础。生态环境保护是《中华人民共和国海南自由贸易港法》中的重要篇章，海南自由贸易港实施最严格的生态环境保护制度，严惩破坏海洋环境的行为，是营造良好营商环境、维护人民群众拥有美好环境权益的重要一环。

2. 肯定检察机关在海洋环保公益诉讼中的起诉人资格，具有典型意义。此案系海南省首例海洋环境污染责任纠纷民事公益诉讼，该案肯定了检察机关在海洋环保公益诉讼中的起诉人资格，符合当前环保国策要求。

3. 有裁判规则指引意义。海洋环资损害案件具有收集、提取、固定证据难和事实查明难的特点，在被告有隐匿证据嫌疑情况下，通过举证责任再分配明确举证义务主体，并运用事实推定原则查明倾废数量，最终确定被告的损害赔偿额，有类判指导性。

4. 具有环保倡导示范效应。该案运用法官后语载体形式向社会大众传递环保意识，并释放“损害者必担责”的司法理念，情理兼备，价值导向分明。

(三) 特莱顿国际集装箱有限公司 (Triton Container International Limited) 申请承认与执行外国仲裁裁决案

【基本案情】

海南泛洋航运有限公司(泛洋公司)、海南泛洋航运有限(香港)公司(泛洋香港公司)与特莱顿国际集装箱有限公司(Triton Container International Limited)于2010年至2011年间签订了HPO40至HPO45共六份集装箱租赁协议,六份协议分别约定了仲裁条款。洋浦经济开发区建设投资开发有限公司(建投公司)在其中一份协议即HPO42号协议中以共同承租人的身份签字,并无条件、不可撤回地授权泛洋公司、泛洋香港公司代表其行使与本协议有关的权利,承诺对该协议相关的费用及产生的损失与两公司承担连带责任,对其他协议,建投公司未签字或做出类似承诺。因泛洋公司、泛洋香港公司拖欠租金,特莱顿公司依据前述六份协议向美国国际争议解决中心(ICDR)提交了仲裁申请,请求泛洋公司、建投公司连带清偿拖欠的租金、解除合同的损失等共65817973.41美元。在仲裁过程中,泛洋公司、泛洋香港公司与特莱顿公司签订了一份《违约处理协议函》,对六份协议合并进行了处理,未重新约定仲裁条款,泛洋公司代理人代表建投公司参与了该协议函的签署。依据该协议函,ICDR遂裁决泛洋公司及建投公司就涉案六份协议向特莱顿公司连带赔偿65817973.41美元。仲裁裁决作出后,泛洋公司、建投公司未依据协议履行付款义务,特莱顿公司向我院申请承

认与执行该仲裁裁决。

【裁判结果】

海口海事法院经审查，并层报最高人民法院审核后作出（2015）琼海法他字第1号民事裁定书，裁定：

1. 对美国国际争议解决中心作出的 50-125-T-00029-13 仲裁裁决涉及海南泛洋航运有限公司裁决的部分，予以承认和执行；

2. 驳回特莱顿国际集装箱有限公司（Triton Container International Limited）其他请求。

【典型意义】

本案审查过程中，对分别包含独立仲裁条款的多份协议中各协议的缔约方作出了谨慎、精准的认定，严格区分仲裁庭有权裁决部分与超裁部分，并对超裁部分与有权裁决部分是否可分作了多层次的认定。一是认定涉及泛洋公司的裁决与涉及建投公司的裁决具有可分性，故对涉及泛洋公司的部分予以承认和执行；二是认定涉及建投公司的裁决中有权裁决的 HPO42 号协议项下该公司责任与超裁的另五份协议项下该公司的责任不可分，故对涉及建投公司的部分全部不予承认和执行。这种多层次的认定避免了对仲裁裁决的整体否定，最大限度促成外国仲裁裁决的承认与执行，展示了我国法院对于外国仲裁裁决的支持态度和我国在履行《承认及执行外国仲裁裁决公约》中国际义务的有力作为。

（四）宝石航运新加坡私人有限公司（Gemadept Shipping Singapore Pte. Ltd.）与得利卡航运有限公司（Delica Shipping S.A.）海事请求保全案

【基本案情】

2020年11月6日，得利卡公司所属的“Ken Breeze”轮与宝石公司所属的“Pacific Grace”轮在琼州海峡附近水域发生碰撞。就本次船舶碰撞事故，宝石公司向本院提起索赔诉讼。在案件审理过程中，宝石公司向本院提出海事请求保全申请，扣押“Ken Breeze”轮。据了解，“Ken Breeze”轮即将完成在广州黄埔港的维修作业，即将离港。我院立即启动内部扣船联动机制，立案、审判、执行三部门密切配合，一方面保持与船舶修理厂、海事局的畅通联系，实时掌握船舶动态；另一方面向广州疫情防控和边检部门了解当地防疫政策和要求。在做好充分准备后，本院于2021年3月16日作出（2021）琼72民初13号之一民事裁定书和（2021）琼72民初13号扣押船舶命令，并于次日将“Ken Breeze”轮扣押于广州某船舶修理厂。扣押船舶后，本院对在船的18名外籍船员按照当地疫情防控措施对在船人员妥善安顿，并对后续可能出现的移泊、被告提供担保后的船舶解扣和离港做了预案。3月19日，“Ken Breeze”轮提出移泊申请。考虑到该轮在修理厂占用生产泊位，费用高昂，合

议庭迅速做出同意移泊的决定，并及时通知边检、海事等协助部门。3月20日，中国再保险（集团）股份有限公司向本院出具了金额为150万美元的担保函。3月21日，得利卡公司向本院申请解除对“Ken Breeze”轮的扣押。本院在收到申请后四小时完成评议、文书制作和移送执行，于3月22日通过C4执行指挥平台委托广州海事法院于当日晚间解除了“Ken Breeze”轮扣押，该轮于3月23日开航离港。

【裁判结果】

对于宝石公司的保全申请，本院审查后作出（2021）琼72民初13号之一民事裁定书和（2021）琼72民初13号扣押船舶命令，扣押“Ken Breeze”轮；对于得利卡公司的解除船舶扣押申请，本院经审查后作出（2021）琼72民初13号之二民事裁定书和（2021）琼72民初13号解除扣押船舶命令，解除“Ken Breeze”轮扣押。

【典型意义】

该案探索出了一条疫情防控形势下扣押外轮的路径。自新冠疫情在全球流行以来，外籍船舶（尤其是配备外籍船员并从国外始发的外籍船舶）的扣押成为海事法院面临的一大难题，在实践中甚至出现了“扣船白条”（作出扣船裁定却无法实施扣船）这样的尴尬局面，对法律权威性和海事司法的国际影响力产生了负面影响。在本案中，本院收到海事请求人的扣船申请

后，并未急于作出法律判断，而是第一时间与海事、边检、防疫、船舶修理厂等进行联系，掌握船员配备、船舶状态、航行计划和防疫要求，在做好充分准备后再作出扣船裁定并付诸实施，有效防止了“扣船白条”僵局的出现。此外，该案充分体现了海事法院公正、高效司法。从收到扣船申请，到移泊，再到船舶解扣，本次异地扣放船过程仅用时一周。这种高效的海事司法，已远超其他国际著名海事纠纷解决地，被当事人盛赞为“自贸港速度”。

（五）海南蓝海鲍业有限公司诉文昌市生态环境局不服环境保护行政处罚案

【基本案情】

原告海南蓝海鲍业有限公司（以下简称蓝海鲍业）成立于1992年，1996年原告开始在文昌市龙楼镇楼前港紫薇村自留地建设相关设施并从事海水养殖至今。原告在经营过程中先后于2006年至2009年取得相关的海域使用权证书和土地使用权证书，并办理了水产苗种生产许可证，但始终未办理水域滩涂养殖许可证。原告曾于1997年及2000年两次向文昌县环保部门申请办理环评手续，但均未通过验收。

2018年7月25日，海南省生态环境保护厅批复原文昌市生态环境保护局（以下简称文昌环保局）对铜鼓岭保护区内的违法建筑等进行处理。2018年8月16日，文昌环保局派遣两名执法人员到原告处调查取证。2019年1月9日，该局对原告违规建设养殖场的行为立案查处，同年4月4日，本案被告作为原文昌环保局机构改革后的职责承继机关作出文环罚决字[2019]7号行政处罚决定书，该文书于4月10日由被告张贴于原告养殖场外墙。因文昌环保局及被告在上述行政处罚的作出过程中始终未掌握原告占用铜鼓岭保护区的具体情节，6月12日，即涉案行政处罚作出2个月后，被告委托第三方对原告占用保护

区的行为进行了测绘并最终确定原告养殖场共有 8.388 亩位于铜鼓岭保护区实验区内及占用的具体位置。同时，被告认为，因为原告的违法行为开始于 1996 年，故应当适用 1991 年 9 月 20 日通过的《海南省自然保护区管理条例》而非现行有效的《海南省自然保护区条例》。

经查，铜鼓岭保护区设立于 1983 年，设立之初为县级自然保护区。2003 年经审定晋升为国家级自然保护区其核心区、缓冲区和实验区的具体界限是在 2003 年标定和测绘完成的。

【裁判结果】

2019 年 10 月 30 日，海口海事法院作出（2019）琼 72 行初 50 号行政判决书，以〔2019〕7 号处罚决定主要证据不足，适用法律、法规错误，超越职权，程序违法，依法应予撤销为由，判决撤销被告文昌市生态环境局于 2019 年 4 月 4 日作出的文环罚决字〔2019〕7 号行政处罚决定书。现该判决已生效。

【典型意义】

近年来，随着国家和人民群众对于环境保护问题的日益重视和关注，环保行政机关对违反环境保护制度的违法行为的处罚力度也日益增强，但从海口海事法院受理的一系列涉海、涉环保行政案件的审理情况来看，环保行政机关虽然有较强的执法意愿，实践中也采取了不少执法措施，但由于法律知识、法治意识和执法水平等方面的限制，某些执法行为并没有做到合

法合理。政府依法行政是法治化营商环境应有之义，海口海事法院办理的这宗案件对指导海事行政机关和环保机关更好的行使行政执法权，营造法治化营商环境，更好的推进海南生态文明建设具有重要意义。

（六）请求人海南及时雨农业生产资料有限公司与被请求人洋浦三丰物流有限公司等申请海事强制令案

【基本案情】

2020年1月1日，海南及时雨农业生产资料有限公司（以下简称及时雨公司）将其在广东购买的价值1641600元的432吨化肥委托洋浦三丰物流有限公司（以下简称三丰公司）从广东省运至海南省海口市，并支付了全部运费。后三丰公司将该批货物装载在12个集装箱内并分别委托广州市信德货运有限公司（以下简称信德公司）、海南洋浦航力物流有限公司（以下简称航力公司）安排货运，信德公司和航力公司又委托上海中谷物流股份有限公司（以下简称中谷公司）最终实际承运。货物运抵海口港集装箱码头后，信德公司以三丰公司长期拖欠以往运费为由，拒绝交付货物。及时雨公司遂向法院申请依法发布海事强制令，责令信德公司将涉案集装箱交付给及时雨公司，并为此提供了保险公司出具的保险保函。

【裁判结果】

海口海事法院经审查认为，涉案集装箱内的货物归请求人所有，且请求人已经支付了全程运费，故请求人有权要求被请求人交付涉案货物。因被请求人拒绝交付货物，涉案货物到港至今已超过一个多月，不立即提取货物显然会扩大损失。请求

人向本院申请海事强制令，已按涉案货物价值提供了足额担保，其申请符合法律规定，应予准许。故裁定准许请求人及时雨公司的海事强制令申请并责令被请求人将涉案集装箱内所载农用物资（化肥）交付给及时雨公司。

【典型意义】

海上多式联运是海上运输的一种常见方式，因该运输方式环节多，任何环节出现拖欠运费，区段承运人均可能以其具有留置权为由扣押货物，导致货物的正常流转受阻。货主为了维护自身的合法权益，往往采取向海事法院申请海事强制令，责令被请求人放货的方式维权。因该类案件中双方当事人往往均非过错一方，扣押与反扣押均具有一定的权利基础，如何准确适用法律，依法公正高效维护各方当事人的合法权益成为此类案件审查的关键。本案中，法院依照法律规定，从维护各方当事人的合法权益、保证货物的正常流转出发，在保险公司出具保险保函的情况下，及时发出海事强制令，责令被请求人放货，避免货物扩大损失，对今后处理该类案件具有积极的借鉴意义。同时，该案的快速处理，也提升了商事主体对海南海事司法服务能力水平的认可，亦增强了航运经贸业界对于自贸港营商环境的信心。

（七）国投裕廊洋浦港口有限公司申请实现担保物权系列案件

【基本案情】

申请人国投裕廊洋浦港口有限公司与被申请人海南长盛航运股份有限公司实现担保物权系列案件，因被申请人海南长盛航运股份有限公司于 2013 年起陆续将 76 个集装箱堆存在申请人国投裕廊洋浦港口有限公司的港口堆场内，之后便人去楼空，无法联系，期间既不搬箱也未支付堆存费。后申请人于 2021 年 4 月 8 日向向本院提出实现担保物权申请。

【裁判结果】

本院认为，被申请人欠付相应集装箱堆存费已届清偿期，申请人对堆存在其堆场内的 76 个集装箱享有的留置权依法成立有效，故申请人提出的实现担保物权申请符合法律规定，应予支持。本院遂裁定：对被申请人海南长盛航运股份有限公司堆存于申请人国投裕廊洋浦港口有限公司堆场的 76 个集装箱准许采取拍卖、变卖或其他变价处理等方式依法变价，申请人国投裕廊洋浦港口有限公司对变价后所得款项在欠付堆存费范围内优先受偿。

【典型意义】

市场经济健康发展需要法治化的营商环境，而航运市场的

高速运转往往离不开海事司法的有效调节。本案纠纷发生在洋浦港，作为海南自贸港的先行区和示范区，洋浦港正在按照国家的统一部署全力打造国际集装箱枢纽港，其中集装箱吞吐量能否实现快速增长无疑是一项重要指标，但当前洋浦港的集装箱存储资源稀缺问题已成为制约港口经济快速发展的一个堵点。由于传统的诉讼程序实现担保物权存在程序复杂、成本高、效率低等不足，因此如何高效便捷解决空置集装箱挤占集装箱堆场的问题至为关键。为此，海口海事法院通过采用实现担保物权特别程序快速成功解决了本案纠纷，这既为辖区港航企业快速解决集装箱堆存资源被挤占问题提供了一条低成本、高效率的解决途径，也为进一步优化自贸港营商环境作出了有益贡献。

（八）李某某、林某某与天安财产保险股份有限公司深圳分公司海上保险合同纠纷案

【基本案情】

2019年4月25日，李某某、林某某所有的“温妮”号游艇参加大帆船场地赛后，返回三亚途中触礁搁浅。施救过程中连续遭受台风影响，导致游艇翻沉灭失，构成全损。李某某、林某某向天安财产保险股份有限公司深圳分公司索赔被拒后，遂诉至法院。

【裁判结果】

海口海事法院一审认为，本次事故属于保险责任范围。案涉游艇持有有效的适航证书，驾驶人具有相应驾驶资格，事发当时已配备最新的电子海图。保险人关于案涉游艇未配备纸质海图属于不适航、违反保证义务的抗辩主张不能成立。一审判决保险人向李某某、林某某支付案涉保险赔偿款。海南省高级人民法院二审调解结案。

【典型意义】

游艇经济作为海南的特色产业，是海南国际旅游消费中心建设的重要组成部分，也是海南自贸港建设成效的具体体现。本案是游艇触礁沉没引发的海上保险合同纠纷，一审法院严格

区分事故原因和保险责任，综合保险责任范围、是否属于除外责任情形等因素，判定保险人承担保险责任；二审法院加大调解力度，化解矛盾，做到“案结事了”。本案的审理充分保护了游艇所有人的合法权益，有利于提振游艇旅游市场信心，激发游艇旅游消费潜力，为推进海南游艇产业的持续健康发展和海南自贸港高质量建设提供有力司法保障。

（九）公益诉讼起诉人海口市检察院诉被告卢家宝生态破坏民事公益诉讼案

【基本案情】

2015年12月至2019年1月期间，被告卢家宝多次采挖野生珊瑚4539块、捕捞野生海龟10只、玳瑁6只，并将其销售给案外人蔡枫，累计销售金额211136元。经鉴定，涉案珊瑚、海龟、玳瑁均为国家二级保护动物。为此，被告卢家宝被判处有期徒刑两年六个月，缓刑三年，处罚金20000元。经公告，公益诉讼起诉人海口市人民检察院起诉请求被告卢家宝赔偿生态环境资源损失289086元，承担专家咨询费757.50元，并在省级以上新闻媒体公开赔礼道歉。

【裁判结果】

海口海事法院于2020年12月17日作出（2020）琼72民初314号民事判决书，认为被告卢家宝未经许可捕捞并销售珍贵、濒危野生水生生物海龟、玳瑁、珊瑚，其行为违反了国家法律法规的规定，对海洋生态环境造成了损害，依法应当承担损害赔偿赔偿责任，故判令被告卢家宝支付海洋生态环境损害赔偿金289086元，该款项上交国库用于修复被损害的海洋生态环境，承担专家咨询费757.50元，并在省级以上媒体上公开赔礼道歉。

【典型意义】

海洋生态文明建设是海南自贸港“三区一中心”建设的重要内容，是海南自贸港最具吸引力的软性营商环境之一。珊瑚、海龟、玳瑁均为海洋生态系统的重要组成部分，对保持海洋生物种群多样性、维持海洋生态系统平衡具有重要作用，是我国国家二级重点保护野生动物，也是《濒危野生动植物种国际贸易公约》附录中的保护物种。在海南建设国家生态文明试验区的进程中，应大力加强对珍贵、濒危野生海洋生物的保护力度，充分运用刑事、民事等司法手段保护海洋生态环境，在严惩此类违法犯罪行为的同时，更加注重生物资源的修复。本案在非法捕捞行为人已经承担刑事责任的基础上，判令其承担生态修复责任，体现了司法在保护珍贵、濒危海洋生物中的积极作用。

（十）深圳东奕永泰投资有限公司与千博乐城开发有限公司等金融借款合同纠纷执行案

【基本案情】

海南千博乐城开发有限公司（以下简称千博公司）于 2013 年向琼海市农村信用合作联社等 15 家金融机构借款 5 亿元，并以其名下位于琼海市乐城岛的 10 宗国有土地使用权进行抵押。因千博公司逾期未按约还款，15 家金融机构遂向海南省高级人民法院提起诉讼，海南高院作出（2016）琼民初 3 号民事判决书，判令千博公司等偿还借款本金 4.89 亿元及利息等，15 家金融机构对上述其中 9 宗土地使用权等享有价款优先受偿权。千博公司等不服上诉至最高院，最高院终审维持原判。因被执行人未自觉履行生效判决确定的义务，根据债权人的申请，海南省高级人民法院于 2019 年 1 月 31 日立案执行。

海南省高级人民法院在执行过程中，依法裁定变更深圳市某投资有限公司为本案申请执行人，并在依法进行评估完结基础上裁定拍卖上述 10 宗国有土地使用权。2019 年 12 月 27 日，海南省高级人民法院依法裁定，指定该案由海口海事法院执行。

海口海事法院在执行过程中，依法委托拍卖机构拍卖上述国有土地使用权，前后经过两次拍卖，第一次拍卖保留价按土地评估价值 1269005662 元起拍，第二次拍卖保留价以第一次拍

卖保留价降低 10% 即 1142105000 元起拍。两次拍卖流拍后，申请执行人申请对上述国有土地使用权按二拍保留价人民币 1142105000 元依法裁定以物抵债。2020 年 10 月 29 日，经过审查，海口海事法院依法作出以物抵债执行裁定书，裁定将被执行人千博公司名下上述 10 宗国有土地使用权作价 1142105000 元交付申请执行人抵偿被执行人千博公司所欠本案债务 1106430403.6 元。申请执行人向法院缴纳抵债差价款 35674596.4 元后，海口海事法院依法向其送达抵债执行裁定书。至此，本案以执行完毕结案。

【 裁判结果 】

依照《最高人民法院关于人民法院民事执行中拍卖、变卖财产的规定》第二十三条、第二十八条第一款、第二十九条第二款的规定，裁定如下：

1. 将被执行人海南千博乐城开发有限公司名下位于海南省琼海市博鳌镇乐城岛的十处国有土地使用权作价 1142105000 元，交付申请执行人深圳市东奕永泰投资有限公司抵偿被执行人海南千博乐城开发有限公司所欠本案债务 1106430403.6 元。该土地使用权自本裁定送达申请执行人深圳市东奕永泰投资有限公司时起转移。

2. 申请执行人深圳市东奕永泰投资有限公司可持本裁定书到登记机构办理相关产权过户登记手续。

【典型意义】

本案中，被执行人除了拖欠本案债务之外，还存在拖欠税费、公司员工工资等其他案外债权人债务的情形。为此，本案处理中综合考量申请执行人、被执行人、案外债权人及千博公司员工的权益实现，依法先后对两次拍卖的保留价、起拍价采取“一拍不降价、二拍下降 10%”的处置原则，合理确定了首次拍卖起拍价和再次拍卖降价幅度，最大限度地保障各方的合法权益。在案件中，法院较好地合法合理地行使执行工作的自由裁量权，在以物抵债后，被执行人尚有抵债差价款，基本保障了公司员工的合法权益，取得了较好的法律效果和社会效果。

涉案土地涉博鳌乐城国际医疗旅游先行区建设，本案的顺利执行也为加快地方闲置土地盘活利用和顺利推进海南自贸港重点园区建设提供了法治保障。

I. Introduction to the Work on Improvement of Business Environment

To further implement the important instruction of General Secretary Xi Jinping on “fostering a world-class business environment”, Haikou Maritime Court has been focusing on performing its judicial functions and providing effective judicial service and guarantee, so as to improve the investment and market environment and to foster a stable, fair, transparent, and predictable environment for business. Now we would like to report the work of this court as below on the improvement of business environment:

1. Raising our political awareness to enhance the sense of responsibility and urgency in fostering a better business environment

We always remain firm to the guidance of the Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and act on the important speeches, comments, and instructions of General Secretary Xi Jinping regarding the construction of Hainan Free Trade Port, especially the important remarks calling for stepping up efforts to foster a law-based, internationalized, and enabling business environment. We acquire a deep understanding of the decisive significance of the establishment of Comrade Xi Jinping’s core position on the Party Central Committee and in the Party as a whole and the guiding role of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, and continue to boost our consciousness of the need to maintain political integrity, think in big-picture terms, follow the leadership core, and keep in alignment with the central Party leadership. We stay confident in the path, the

theory, the system, and the culture of socialism with Chinese characteristics. We firmly uphold Comrade Xi Jinping's core position on the Party Central Committee and in the Party as a whole and uphold the Central Committee's authority and its centralized, unified leadership.

We always focus on performing our maritime judicial functions to provide judicial guarantee for the creation of a favorable business environment, and to serve the construction of Hainan Free Trade Port by providing fair and efficient maritime judicial services. In light of different stages of the development of Hainan Free Trade Port, we formulate the *Opinions of Haikou Maritime Court on Providing Service and Guarantee for the Construction of Hainan Pilot Free Trade Zone and Free Trade Port with Distinctive Chinese Characteristics* and the *Measures of Haikou Maritime Court on Implementing the "Opinions of the Supreme People's Court on Providing Judicial Service and Guarantee for the Construction of Hainan Pilot Free Trade Port by People's Courts"*, pinpoint the priority in providing maritime judicial service for the construction of Hainan Free Trade Port, and actively take up our responsibilities to provide more targeted judicial service and guarantee for the construction of Hainan Free Trade Port.

2. Handling foreign-related disputes in efficient manner to enhance the credibility of our maritime judicial service in the world

a) We streamline the process to bring efficiency of trial

First, we apply summary procedure to handle foreign-related civil and commercial cases with simple facts and clear legal relationships, so that these cases could be settled in a shorter period of time. **Second**, we rely on the scheme of general identity certification for overseas litigants and power of

attorney to handle foreign-related cases where the identity information of litigants is clear and authorization is granted within a given time, by which the time on procedural matters is reduced. **Third**, we allow offshore companies to have authorization documents notarized and authenticated at the place of their business, so that notarization and authentication can be done quickly. **Fourth**, we actively rely on various cloud databases, judicial enquiry systems, and judicial assistance to ascertain the identities of foreign parties, hence solving the problem in ascertaining the identity of the party and the defendant against whom the complaint is made. **Fifth**, we use the AIS data and satellite positioning data provided by www.shipxy.com, Marine Traffic and other databases to get real-time information of the position, route, time of arrival, and history of navigation of foreign ships, helping the parties to accurately find the ships and cargos. Our Maritime Affairs Division has been awarded the National Advanced Group for the Trial of Foreign-related Commercial and Maritime Cases handled by People's Courts.

b) We upgrade facilities to provide better services

First, we set up a case filing window to deal with cases filed by foreign parties, establish a special channel in the litigation service hall for cases involving the free trade port, and assign staff to provide litigation service and guidance for foreign-related cases. **Second**, we are able to provide better maritime adjudication services to the world by inviting foreign specialists to act as mediator in foreign-related cases. **Third**, our mechanism of ascertaining foreign laws is institutionalized by concluding a special agreement with East China University of Political Science and Law for collaboration on the ascertainment of foreign laws. **Fourth**, we make research into the basic legal

issues concerning international air transport and draft research reports, making preparations for the trial of cases in relation to such sector.

c) We protect the legitimate rights and interests of both Chinese and foreign parties

In cases involving foreign elements, we attach equal importance to the protection of legitimate rights and interests of both Chinese and foreign parties. Take the case of M/T “Brightoil Gem” for example, the plaintiff BNP PARIBAS, albeit with the right to sue before any court in any countries or regions around the world, chose this court as the forum. We took only 7 hours to arrest M/T “Brightoil Gem”, and transferred the ship to the buyer in several days after the auction sale. The whole process, from the arrest of ship, mediation, auction and transfer of the ship, to the distribution of proceeds, was completed within a year. The case was completed much faster than other similar cases operating in Singapore and other places over the same period. It fully demonstrated the fair and efficient administration of justice by the maritime judicial force of China and the capability to provide judicial services to the world.

d) We step up efforts to make maritime justice more transparent

First, we launch our English website and upgrade the Chinese website to increase the coverage and depth of the disclosure of judicial information. In 2020, Haikou Maritime Court ranked the second place in the online poll for the most popular website of maritime courts in China. **Second**, we step up efforts to promote judicial publicity and broaden channels for publicity of law by working through new media platforms such as WeChat, Sina Weibo, Douyin and news client, to provide timely and inclusive information about the judicial movements of this court. In 2018, this court was awarded the National Advanced Group for

Judicial Publicity by People's Courts. **Third**, we publish white papers on maritime trial in both Chinese and English versions, to showcase our achievements in maritime trial and enhance our credibility of maritime justice in the world.

3. Adhering to the people-centered approach and further enhancing administration of justice for the people

a) We attach equal importance to the work of this court and the response to pandemic prevention and control

First, we publish notices concerning changes to the litigation and enforcement matters during pandemic prevention and control, and make overall arrangements for case filing, hearing and enforcement, ensuring that ongoing judicial services are open to the public during the hardship brought by the virus. **Second**, we launch internet courtroom to enable online hearing of cases. We encourage the parties to use “Hainan WeChat Court” to file cases online or across regions and to attend remote court sessions. This not only helps to reduce travels and crowded gatherings, but is also convenient for the parties and lawyers to participate in litigation. **Third**, we conduct study of and research on cruise ports and yacht clubs, conclude framework agreements with relevant organizations on enhancing judicial service, and provide solutions and legal opinions in respect of the legal issues brought by the pandemic, helping enterprises and consumers to early dispel the gloom of the coronavirus.

b) We stay true to the mission of administration of justice for the people and roll out measures to facilitate easy access to justice for the people

First, we bring legal services close to people's homes. Detached tribunals fully perform their function to serve at the grassroots level, enhance circuit

trials and publicity of the rule of law, hold trials on the spot in fishing villages and fishing ports, and assign maritime judges to serve at designated spots. **Second**, we attend to the needs of disadvantaged groups to address the real difficulties of the people. Since 2018, we have handled 167 cases of crew labor dispute and 28 cases of dispute over liability for personal injuries at sea and waters connected to sea, and succeeded in deferment, reduction, or exemption of CNY 173,600 of litigation expenses for 57 parties who have trouble with payments, which shows the attention to compassionate care paid in the administration of justice. **Third**, we formulate the *Working Rules for the Judicial Reparation Committee of Haikou Maritime Court (for trial implementation)* and authorize the state compensation committee to grant judicial reparation in cases that involve trivial disputes and small amounts, hence improving the case handling efficiency. We help eligible parties to apply for a total of CNY978,300 of judicial reparation. **Fourth**, we are dedicated to delivering a welcoming feel to the people by assigning “Party member vanguards” to give litigation guidance to elderly people on a one-to-one basis, allowing easy access to lawyers using a unified code, publishing parking lot appointment notices, and setting up stations to provide convenient judicial services.

c) We roll out the reform on trans-regional jurisdiction of administrative litigation and support the building of a rule of law government

First, we formulate the *Working Mechanism of Haikou Maritime Court on the Provision of Convenient Litigation Service by Exercising Trans-regional Jurisdiction over Administrative Cases*, and apply the approach that “three types of cases are tried at the spot and three types of cases are handled in fast

trial procedure”, making judicial service more accessible to the people by upholding the principle of “bringing convenience to the masses and leave difficulties to the courts”. Since the reform in 2020, we have accepted 127 such cases and 86 of them are accepted and docketed at the spot. **Second**, we formulate the *Opinions of Haikou Maritime Court on Further Enhancing and Regulating the Work on Judicial Advice*, and provide several pieces of judicial advice to the relevant organizations in respect of the common problems during enforcement of law by administrative organs arising from ocean exploitation and damage to the marine ecological environment, helping to build a rule of law government.

d)We improve the diversified dispute resolution mechanism to protect the rights and interests of the people effectively

First, we hold work conferences to discuss diversified dispute resolution methods, and provide access to the parties to more dispute resolution platforms by signing agreements with relevant entities, such as Hainan International Arbitration Court Yangpu Maritime Arbitration Center, Haikou International Business Mediation Center and Sanya Fenghuang Notary Office, for the cooperation on diversified dispute resolution. **Second**, we enter into cooperation agreements with universities and government organs, such as the East China University of Political Science and Law, Shanghai Maritime University, Hainan Maritime Safety Administration, and Hainan Ocean and Fisheries Inspection and Supervision Division, with continuous efforts to improve maritime judicial service and guarantee. **Third**, we actively take part in the grassroots governance by working with primary–level procuratorial organs and administrative organs of justice, so as to establish a “one–stop” coordinated mechanism for diversified

dispute resolution which enables mediation both online and offline.

4. Performing the function of maritime adjudication and providing high-quality and efficient judicial service

a) We actively support the development of the cruise and yacht industry

First, we hold symposiums to discuss the development of the cruise and yacht industry, and formulate the *Several Opinions of Haikou Maritime Court on Providing Maritime Judicial Guarantee to Boost the Development of the Cruise and Yacht Industry in Hainan* to make maritime judicial service better targeted and more effective. **Second**, we establish circuit trial offices at places, such as Sanya Phoenix Island Cruise Home Port, to resolve cruise and yacht-related disputes, prepare written judgment templates to provide maritime judicial service tailored to different needs, and introduce a new case handling mode to accept and handle cases on the spot and make speedy judgments. These measures have been covered by the *Legal Daily*. **Third**, we roll out a maritime judicial service mechanism that offers service accessible at all times and places. For instance, we set up circuit court and legal service office on board “Nan Hai Zhi Meng”, and by holding trials on board and resolving disputes online, we will offer 24-hour maritime judicial services, including dispute resolution, legal consultation, and the publicity of the rule of law. **Fourth**, we handle cruise and yacht-related cases properly, and deal with cases involving the whole industry chain of the cruise and yacht industry, including the building, management, chartering, berthing and insurance in a fair and effective manner according to law. A case of yacht insurance dispute handled by this court was selected in the national typical cases of maritime trial in 2020.

b) We contribute to the building of the international shipping hub – the

New Western Land–Sea Corridor

First, we give full play to the advantageous location of our detached tribunal in Yangpu. For a year since 1 June 2020 when the construction of the free trade port kicked off, Yangpu Tribunal has accepted and handled 583 cases, an increase of 420.54% than the previous year, accounting for 36.55% of all the cases accepted by this court. The tribunal properly handles maritime cases involving port construction, ship financing, protection of the benefits of crew, and warehousing and logistics at ports, with efforts to facilitate the building of Yangpu into a pilot zone for Hainan Free Trade Port. **Second**, we establish unimpeded communication and coordination with the port and navigation divisions of the Administrative Committee of Yangpu Economic Development Zone, further study the legal issues that may arise during the building of “China Yangpu Port” into a port of registry, including the management of foreign ships, registration of foreign ships, shipping finance, bonded bunker fuel supply, and warehousing and logistics at ports, and properly handle disputes in relation to the transportation of bonded fuel oil. **Third**, we handle cases of ocean exploitation disputes involving construction of large infrastructure projects according to law. In one of these cases, we impose a substantial penalty (over CNY 1 million) on both parties for their dishonest behaviors for forgery of evidence. This demonstrates the effort of this court to build a more predictable business environment for the free trade port. **Fourth**, we draft the *Adjudication Guidance for Cases on Dispute over the Real Right of Ships* to unify the standard for handling civil and commercial disputes concerning the real right of ships and the judgment criteria, provide support and guarantee to the registration of foreign ships at “China Yangpu Port”, and promote the ship building, registration, and financing market of Hainan Free

Trade Port.

c) We step up efforts to protect the marine ecological environment

First, we fully perform our duties and missions by improving the working mechanism for the trial of disputes involving major reclamation projects and giving reports to the Provincial Party Committee on the trial of cases involving marine environment and resources. Court leaders take the lead to carry out study and research, and handle the major and complicated cases. **Second**, we take part in the building of a community that provides judicial protection for marine environment and resources. To link the free trade port with the Guangdong–Hong Kong–Macao Greater Bay Area, we sign collaboration agreements with Guangzhou Maritime Court and Beihai Maritime Court for protection of marine environment and resources, and publish typical cases in this respect. With all these efforts, three mechanisms, i.e. “trans–regional judicial collaboration”, “joint prevention and control for environmental protection”, and “support for public interest litigation” are established. **Third**, we provide legal aid to defendants through coordination with the Provincial Department of Justice, and build a remote court system to conduct hearing by video connected to prison and detention house, so that defendants under confinement are able to attend court sessions for public interest litigation. **Fourth**, we publish the White Paper on the Trials of Marine Environmental and Resource Cases (2018–2020) and the *Adjudication Guidance for Cases of Dispute over Marine Ecological Environment and Natural Resources (for trial implementation)* to summarize major measures on judicial protection of the marine environment and resources and the practice of trial, and to draw the public attention to the trial of cases over marine environment and resources. **Fifth**, we deliver typical cases on marine environment and resources. One of the

cases handled by this court is selected in the 31st batch of guiding cases of the Supreme People's Court, and this case is also published on the judicial web portal of the United Nations Environment Programme as a Chinese judicial case over environment and resources. Three cases of this court are listed in the national typical cases over environment and resources handled by people's courts.

d) We consolidate the results of the battle against enforcement difficulty

First, we make every effort to basically solve the problem of difficult enforcement. With focus on the “1+5+3” work priority scheme, i.e. addressing 1 crucial issue to establish a long-term working mechanism for enforcement, stepping up efforts in enforcement of 5 types of cases, and enhancing administration from 3 aspects, we continue to have a deeper understanding of civilized enforcement and regulate our enforcement behaviors. Since 2018, the annual average closing rate of enforcement cases has exceeded 95%, and enforcement cases involving people's livelihood, the Party and government organs have achieved an annual average closing rate at 100%. **Second**, we conduct enforcement in a benevolent and civilized manner, and properly deal with enforcement cases involving administrative organs. We successfully recover CNY 2,869,200 of fishing boat compensation for 14 fishery households, and judges travel for 4,010 kilometers over weekend to recover more than CNY 1 million of wages for 20 seafarers native to Zhoushan, Zhejiang province. The timely action of this court not only protects the lawful rights and interests of the 14 fishery households (i.e. the applicants for enforcement), but also ensure the smooth completion of Nangang Wharf of the Guangdong-Hainan Railway. **Third**, we perform our enforcement function to stabilize the six fronts (employment, finance, foreign trade, inbound investment, domestic investment, and market

expectations) and guarantee the six priorities (i.e. jobs, daily living needs, food and energy, industrial and supply chains, the interests of market players, and the smooth functioning of grassroots government). In the case of dispute over financial loan contract involving Hainan Boao Lecheng International Medical Tourism Pilot Zone, we enforce a value of more than CNY 1.1 billion, providing legal support for promoting smooth progress of the construction of key projects in the free trade port. **Fourth**, we introduce innovative working methods, including taking coordinated actions with relevant departments such as the maritime safety administration and applying information technology to find out and follow the movements of ships to enable 24-hour arrest of ships and seamless transition of the arrested ships to custody. **Fifth**, we draft working rules such as the *Several Provisions on Strengthening Collaboration on Case Filing, Trial and Enforcement* and the *Detailed Regulations on the Measures of Judicial Inquiry and Control of Properties (for trial implementation)*, with a view to reducing the time on procedural matters and to ensuring that the parties realize their legitimate rights and interests in a timely manner.

e) We enhance the efficiency of pre-litigation preservation and maritime injunction

First, we continue to implement the 24-hour fast response system for preservation, to ensure that preservation requests of the parties in holidays and beyond the normal working hours are heard and preservation measures are taken in time. Arrest of ships can be completed within 24 hours in case of emergency, and when the parties apply for release with satisfactory security provided, the ship could be released within 24 hours. The fast response of this court, with better and more efficient service than the international practice, protects the benefits of ship interests, cargo interests, and terminals at the same

time. **Second**, we provide guidance to the parties to apply for pre-litigation preservation and maritime injunction, and timely resolve controversies and disputes to enable normal production and life of the parties by the application of relevant procedures. In 2021, we effectively concluded 18 cases involving maritime injunction. With the application of maritime injunction, we resolve disputes efficiently to enable circulation of the affected agricultural supplies and agricultural products. And agricultural households are able to resume agricultural production in time as their pressing needs are met.

5. Exercising full and strict self-governance of this court and building a competent maritime judge team

a) We attach great importance to the building of a professional judge team

First, we set up a reform and innovation research group with young judges as the main actors, improve the system for the innovation group to make decisions and to operate, and encourage young judges to take part in the reform and innovation on maritime adjudication. We inspire every judge to come up with new ideas for the reform and innovation. **Second**, we always act on the task of building a maritime court that is able to provide international service and serve the free trade port. To improve the capability of our judge team to handle foreign-related cases, we have arranged various activities such as maritime legal English lectures, English practice exercises, advanced training class for maritime legal English, and maritime legal English translation team. **Third**, we establish a maritime criminal judge team and lay a solid foundation for the work of the criminal judge team by setting working and operating rules and providing regular trainings on criminal adjudication.

b) We continue to improve the organization of our adjudication divisions

First, among the maritime courts in China we take the lead to set up a

maritime criminal division. Together with the maritime affairs & admiralty division and maritime administrative division, a professional adjudication system is in place to mainly deal with civil and commercial cases and administrative cases, as well as some specific criminal cases. **Second**, we exercise flat management by project for the major works of this court. Judges responsible for a project will directly report to court leaders. Excessive reporting is reduced, and the reporting will continue until the case is finally settled. **Third**, we give full play to the functions of detached tribunals in serving the grassroots. By going on circuit to hold trials and assigning maritime judges to serve at specific spots, we aim at providing high-quality and efficient maritime judicial service to key industrial parks and the grassroots.

c) We exercise rigorous self-discipline within this court

We always take the Party Conduct as a priority of the work of this court. By exercising full and strict discipline over the Party and rigorous self-governance of this court, we maintain a tough position on fighting corruption to ensure that our conduct, our performance in work, and our team are clean and reliable.

Improvement of business environment is a journey to which there's no end. We will continue to implement the Xi Jinping Thought on the Rule of Law and make every effort to improve a law-based business environment, serve and guarantee the implementation of the core policies of the free trade port, meet the judicial demands during the construction of the free trade port, and provide more effective judicial service and guarantee for the deepening and comprehensive reform and opening up of Hainan and the construction of the free trade port with distinctive Chinese characteristics.

II. Judicial Measures to Improve the Business Environment

To further implement the spirit of the important instructions of General Secretary Xi Jinping on improvement of business environment, faithfully implement the decisions and plans of the Central Party Committee, the Provincial Party Committee of Hainan, and the Supreme People's Court, and act upon the requirements of the High People's Court of Hainan Province under the *Plan for Hainan Courts to Improve Business Environment in the Year of 2022*, we now roll out the following measures on the improvement of business environment in consideration of the work of this court, hoping that by fully performing our maritime adjudication function we will better serve the construction of the free trade port and foster a law-based business environment. These measures include:

- 1. Strengthening coordinated planning and organization for the work on improving the business environment.** We will set up a leading group to guide the work of this court on the improvement of business environment and drive coordinated progress in building a better environment for business. We will assign a special task force, which will take the responsibility to study and formulate a performance assessment system for the work in building a law-based business environment and establish relevant working mechanisms to ensure that the work is done as required. We will also hold news press conference to brief the work on improvement of business environment and publish the *White Paper of Haikou Maritime Court on Improvement of Business*

Environment (2018–2021) to report this court’s work priorities, detailed measures, and typical cases in respect of the improvement of business environment.

2. Improving the one–stop litigation service. We will provide comprehensive online case filing and trans–regional case filing service, and have those cases meeting the case filing requirements to be handled at a single window and require a single visit by the parties. We will step up efforts to encourage more people to use the litigation service platforms. We will strictly implement the requirements of the *Notice of Haikou Maritime Court on the Refund of Litigation Expenses* and the *Working Rules of Haikou Maritime Court on the Supervision over the Refund and Collection of Litigation Expenses*, streamline the refund procedures, and regulate the refund formalities. We will make refund actively and supervise the refund operation, to ensure that the due amounts of litigation expenses are returned. In some cases, we allow enterprises having trouble in paying litigation expenses to defer the payment.

3. Improving the diversified dispute resolution mechanism. We will apply the mode of “pre–litigation mediation + judicial confirmation” to more cases. Save those cases not suitable for mediation as provided by law and those cases where mediation is not agreed by the parties, all the maritime affairs and admiralty cases involving enterprises may undergo mediation before commencing litigation. For the successfully mediated cases applying for judicial confirmation, litigation expenses will be exempted according to law. We will further improve the mechanism for separation between complicated cases and simple ones, extend coordination of litigation and mediation to more sectors, expand cooperation on diversified dispute resolution, enhance connection with

mediation by people's mediation committees, administrative organs, industry associations and international commercial mediation institutes, and strengthen cooperation with sea-related administrative organs, the judiciary, arbitration institutes, and specially invited mediation organizations.

4. Deeping the reform on “three in one” scheme for maritime trial. We will implement relevant provisions of the Supreme People's Court on exercising centralized jurisdiction over international multimodal transport contract disputes and international air transport contract disputes, and strengthen communications with air lines and airport economic zones. We will strengthen the building of a maritime criminal judge team, summarize the experience in the trial of maritime criminal cases, improve the maritime adjudication system, and create a bright spot for maritime criminal trial. We will respond to the litigation demands of maritime criminal cases and civil cases, and coordinate with the Provincial Department of Justice and the provincial legal aid center to establish lawyer's station at this court.

5. Serving and safeguarding the development of key industrial parks in the free trade port. We will rely on the advantageous locations of the head office of this court and the five detached tribunals at Sanya, Yangpu, Boao, Basuo and Sansha, set up mobile service points to provide maritime judicial service, assign maritime judges to serve at specific spots, go on circuit to hold trials, and provide targeted maritime judicial service with local features, to boost the development of the key industrial parks, such as Yangpu Economic Development Zone and Hainan Boao Lecheng International Medical Tourism Pilot Zone.

6. Serving and safeguarding the coordinated development of Danzhou and

Yangpu. We will connect our maritime judicial service to the one-stop comprehensive service platform of Yangpu international shipping hub, and coordinate to set up a one-stop maritime diversified dispute resolution center. We will support the building of “China Yangpu Port” into a port of registry, properly handle maritime affairs and admiralty cases in relation to shipping service, registration of foreign ships, shipping finance, bonded bunker fuel supply, marine service, and warehousing and logistics at ports, and deliver typical cases for the pilot zone of the free trade port. We will take into account of the progress of the coordinated development of Danzhou and Yangpu, and coordinate with relevant local entities within this court’s jurisdiction to further participate in the development of the local economy and society.

7. Strengthening protection of the marine ecology. We will strengthen the building of a judge team to deal with cases over marine ecological environment and resources, fully rely on the advantage of centralized jurisdiction of this court to handle cases over marine ecological environment and resources, and use a combination of civil, administrative and criminal methods to impose severe punishment on the illegal activities that harm the marine environment. We will step up efforts to collect the compensation for damages awarded in public interest litigation, actively support the marine environment supervision and administration authorities in law enforcement in the marine environment sector and the restoration of ecological environment, and explore new ways to restore the ecological environment and the implementation of restorative judicial measures.

8. Safeguarding the development of the cruise and yacht industry. We will improve the maritime judicial service mechanism that offers service accessible

at all times and places for cruise travel in Hainan Free Trade Port, and further provide opinions on judicial protection for the development of the cruise and yacht industry in Hainan, so as to facilitate the high-quality development of the cruise and yacht industry in Hainan. We will review the trials of yacht-related cases in the recent years, such as disputes over the chartering and importation of yachts and disputes over yacht club membership fees, summarize the methods for dealing with similar cases, and unify the judgment criteria. For the acute and key issues discovered in the cruise and yacht-related cases, we will timely give legal risk alerts and judicial suggestions to the relevant cruise and yacht enterprises and the industry administrative departments.

9. Facilitating the construction of a rule of law government. We will conscientiously implement the *Working Mechanism of Haikou Maritime Court on the Provision of Convenient Litigation Service by Exercising Trans-regional Jurisdiction over Administrative Cases*, timely summarize the experience on reform, and provide solutions to address problems concerning the service of instruments and onsite investigations. We will improve our work on the provision of judicial suggestions by strictly implementing the *Opinions of Haikou Maritime Court on Further Enhancing and Regulating the Work on Judicial Advice*. We will publish the *White Paper of Haikou Maritime Court on the Trials of Administrative Cases* to promote law-based administration by the government and guide the parties to protect their legitimate rights and interests.

10. Providing equal protection to the legitimate rights and interests of both Chinese and foreign parties. We will firmly uphold the concept of “taking a coordinated approach to promoting the rule of law at home and in matters involving foreign parties”, exercise judicial jurisdiction according to law, and

firmly safeguard the judicial sovereignty of the state. We will apply international treaties correctly and follow the international practices in the trial of cases involving foreign parties, enhance the ascertainment and application of foreign laws, and guide market players to comply with international rules when trading with foreign parties. We will publish typical cases of maritime trial in different languages to enhance the credibility of maritime justice in the world.

11. Imposing severe punishment on fraud litigation and malicious litigation acts. We will set rules to confine dishonest litigation acts such as provision of false evidence or delay of the production of evidence by intention, and use legal methods such as penalty, detention and criminal accusation to impose severe punishment on dishonest and fraud litigation acts. We will set up specific penalty criteria for fraud litigation and malicious litigation, so as to safeguard the authority of justice and create a market environment for fair competition.

12. Further resolving the problem of difficult enforcement. We will further improve the coordinated mechanism for enforcement, achieve more successful enforcement outcomes, and timely enable market players to receive their benefits recovered by the enforcement. We will strengthen civilized, benevolent, and well-regulated enforcement in cases related to enterprises, and avoid seizure, arrest, or freeze of properties beyond the due amount and range subject to enforcement. While protecting the legitimate rights and interests of the parties according to law, we will seek to take “flexible seizure” or “flexible arrest” to ensure stable enforcement and minimize any negative effect to the enterprises subject to enforcement. We will properly handle those enforcement cases where Party organs, administrative organs, or state-owned enterprises delay in payments to medium and small private enterprises, and make all efforts

to successfully enforce such cases within the year such enforcement cases are brought to this court. We will establish unified and well-regulated procedures for the finding, control, and disposal of ships, containers and other properties subject to enforcement, explore ways to establish a register of ship custody agencies, and improve the ship custody mechanism.

13. Improving the predictability of judgment. We will require our judges to refer to similar cases and related cases before making judgment, unify judgment criteria, and solve the problem of “similar cases with different judgments”. We will strengthen supervision over the remanded cases for amendment of original verdicts. All the cases remanded for retrial must be referred to the a adjudicatory committee for discussion. We will make routine assessment and examination on the remanded cases for amendment of original verdicts to unify judgment criteria. We will hold judges conference frequently, streamline conference agenda, and keep minutes to record the discussion results.

14. Promoting the building of a smart court. We will consolidate the achievements of IT application in this court, further upgrade the technology-based court room to meet the needs for smart court hearing, and gradually build a more intelligent and efficient smart court and meeting room for collegial bench. We will accelerate the installation of IT applications in the new office buildings of the three detached tribunals at Sanya, Boao and Basuo. We will make efforts to keep timely and standardized record of case files, and improve the capability of this court in handling cases by means of paperless office.

III. Typical Cases

1. BNP Paribas v. Brightoil Gem Tanker Ltd. over a Dispute under a Loan Contract with Ship Mortgage

【 Basic Facts 】

On 28 October 2016, BNP Paribas entered into a loan contract with Brightoil Gem Tanker Ltd. (hereinafter referred to as “Brightoil”), mainly agreeing that BNP Paribas would provide a loan of up to USD 52 million to Brightoil and that Brightoil should bear penalty interest and corresponding compound interest on the overdue loan if it failed to repay the loan within the agreed time. Brightoil Petroleum (Holdings) Limited was one of the guarantors of the loan. On 1 November 2016, the parties further entered into a mortgage contract, under which Brightoil mortgaged M.T. BRIGHTOIL GEM that it owned as a security for all its obligations under the above loan contract; and in the event of any dispute arising out of this contract, Hong Kong courts would be the most appropriate and convenient forum for the resolution of the dispute, provided that BNP Paribas has the right to institute proceedings in any competent court. Brightoil registered the ship’s mortgage with the Hong Kong Shipping Register under the Marine Department and with Companies Registry. On the same day, BNP Paribas granted a loan of USD 45.5 million to Brightoil

at its request. On 3 October 2017, the shares of the guarantor, Brightoil Petroleum (Holdings) Limited, came to a trading halt on HKEX for over five consecutive days. On 22 December 2017, BNP Paribas issued a notice of early maturity of the loan to Brightoil on the grounds that the trading halt constituted an event of default under the loan contract. Subsequently, Brightoil paid a small amount of the principal, interest, and late repayment interest to BNP Paribas in instalments, whereas the majority of the loan remained outstanding.

On 4 January 2019, BNP Paribas applied to Haikou Maritime Court for a pre-litigation preservation of maritime claims on the grounds that Brightoil had failed to repay the loan on time, requesting the arrest of M.T. BRIGHTOIL GEM owned by Brightoil. Haikou Maritime Court duly rendered Civil Ruling (2019) Qiong 72 Cai Bao No. 1 and an order for the arrest of the ship, thereby arresting M.T. BRIGHTOIL GEM in Yangpu Port, Hainan. On 28 January 2019, BNP Paribas brought an action before Haikou Maritime Court, requesting the court to, among others, order Brightoil to assume liability to the extent of the value of M.T. BRIGHTOIL GEM for the claims of BNP Paribas under the primary loan contract and to pay the interest and late repayment interest at the rates agreed in the primary loan contract.

During the proceedings, BNP Paribas applied for the ship to be auctioned off on the grounds that Brightoil had not provided security and that the ship had been berthed in typhoon-prone tropical waters for a long time and was at high risk of being lost. On 6 August 2019, Haikou Maritime Court rendered Civil Ruling (2019) Qiong 72 Min Chu No. 22 to put M.T. BRIGHTOIL GEM up for auction on the online judicial auction platform. The auction proceeds were deposited into the escrow account of Haikou Maritime Court after paying for the

costs of the ship arrest and auction.

【 Judgment 】

Through mediation presided by Haikou Maritime Court, the parties reached a mediation agreement, under which the parties agreed on the amount of the loan principal and interest repayable; Brightoil would bear the costs incurred by BNP Paribas in realising its creditor's rights and exercising its right of mortgage; the above amounts would be paid to BNP Paribas, according to legal procedures and the priority of claims, from the proceeds of the court's disposal of the ship; BNP Paribas ensured that, after receiving the said amounts, it would not make any further claims against Brightoil or the ship's manager or operator in relation to the loan contract and the ship mortgage contract in question. After duly reviewing the mediation agreement, Haikou Maritime Court rendered a civil mediation statement to confirm the agreement.

At 1000hrs on 20 November 2019, M.T. BRIGHTOIL GEM was sold to a Greek buyer, MERLIN CO., LTD., for CNY 403.3 million in its first auction on Taobao judicial auction platform. Haikou Maritime Court released the ship from arrest on 28 November 2019 and handed over the ship to the winning buyer on 3 December 2019.

【 Significance 】

The fair, efficient, and proper handling of this case is a telling example of Haikou Maritime Court's efforts to carry through the spirit of General Secretary Xi Jinping's "13 April" keynote speech and to build a law-governing, international, and convenient business environment in Hainan Free Trade Zone

(Port). Although the parties to this case had agreed on a unilateral, open-ended jurisdiction clause, BNP Paribas voluntarily chose to institute proceedings with Haikou Maritime Court when it had the right to sue in courts of any country or region around the world. This fully reflects the international credibility and influence of China's maritime justice. Through several rounds of mediation presided by Haikou Maritime Court, the defendant, Brightoil, agreed to repay the outstanding amount with the auction proceeds of M.T. BRIGHTOIL GEM. To auction off the ship, Haikou Maritime Court promoted and advertised the auction through both online and traditional media. It not only posted about the auction on its website, Weibo, and WeChat account, but also announced the auction and registration of claims through various channels such as China Daily (Overseas Edition), People's Court Daily, Lloyd's Newsletter, and TradeWinds. To help domestic and foreign buyers to understand the condition of the ship, Haikou Maritime Court set up a 24-hour hotline and organized four groups of interested buyers to board and inspect the ship. After 32 rounds of intense bidding, the ship was eventually auctioned off at CNY 403.3 million, a record winning price for vessel auctions on Taobao judicial auction platform. This was a big success in online judicial auction.

2. Haikou People’s Procuratorate v. Hainan Zhonghui Dredging Engineering Co., Ltd., Chen Si, and Haikou Liuyuan Earthwork Engineering Co., Ltd. in Civil Public Interest Litigation concerning Dispute over Liability for Environmental Pollution

【 Basic facts 】

New World China Land Limited contracted with Liuyuan Co. for the excavation and outbound transport of earthworks and the removal of construction waste in relation to Evergrande Melissa project. Under the contract, it’s agreed that Liuyuan Co. shall choose sites that comply with relevant governmental regulations for the disposal of the earthworks and waste. It then subcontracted the outbound transport of earthworks and disposal of construction waste to Zhonghui Co. Under the agreement between Zhonghui Co. and Liuyuan Co., Zhonghui Co. was responsible for carrying the earthworks to the dumping area specified under relevant regulations of the state and Liuyuan Co. should appoint staff for on-site management.

Since 23 October 2018, it’s been reported repeatedly by residents that ships have dumped construction waste into the sea waters 1 to 2 kilometers west to the Music Plaza in Haikou Evergrande Melissa Project. On 11, 15, 19, and 20 November, and 14 December 2018, the relevant procuratorial authorities used drones to take photos of the dredgers loading construction waste at a temporary wharf at Melissa and dumping the waste in sea waters nearby. On 14 December 2018, law enforcement officers intercepted the dredger, “Yue Zhu Hai Jun 2322”, that had dumped waste into the sea waters on the spot.

According to the video taken by the drone, the ship was loaded with waste at the temporary wharf at 1250hrs, but was captured by law enforcement officers at 1323hrs after dumping the waste. On 30 July 2019, the plaintiff of the public interest litigation applied before the Physical Evidence Identification Center of Hainan Provincial Public Security Department for clarity identification of another ship dumping waste photographed by the drone on 14 December 2018. According to the identification by the Public Security Department, it's "Yue Zhu Hai Jun 2323" that dumped construction waste. On 13 May 2019, Haikou Ocean and Fishery Bureau fined Zhonghui Co. and Chen Si CNY 100,000 respectively.

In July 2018, Zhonghui Co. and Chen Si forged a pond-to-mangrove restoration contract, under which Zhonghui Co. was responsible for transporting the earthworks in question to be dumped in the deserted shrimp pond of 500 mu (333,333m²) in Dengta Shatou Village, Nansan Town, Potou District, Zhanjiang City. With this forged contract, Zhonghui Co. applied before Haikou Ocean and Fishery Bureau for the right to use sea areas by building a temporary wharf and such application was granted. However, the three defendants did not obtain a permit for dumping waste in the ocean.

On 5 March 2019, Liuyuan Co. claimed that "there were around 300,000m³ earthworks excavated during the construction on plot 0905, and it arranged 4090 trucks for outbound transport of the earthworks to Xinbu Island, 11,286 trucks for backfilling in Melissa project and around 15,000m³ was disposed of by Zhonghui." New World China Land Limited paid a total of CNY 8,925,589.68 to Liuyuan Co. for the project. In the proceedings, all parties agreed that Liuyuan Co. had excavated a total of 300,000m³ earthworks. The staff of the transport fleet of Liuyuan Co. stated that the full capacity of a truck

for transport the earthworks was 15m³ and the side panels of the trucks were even heightened by 20cm. On 7 March 2019, Haikou Ocean and Fisheries Inspection and Supervision Sub-Division sampled and measured two types of ten-wheeled trucks involved in the transport of earthworks in question, and the results showed that the full load of the trucks was 14.9m³.

It's Chen Si that engaged in the main obligations under the sub-contract of the project in question, including the conclusion of the sub-contract, commission the third party to carry out environmental impact assessment on the construction of temporary wharf at Melissa, application for the right to use sea areas, communication with the owners of and deployment of the ships dumping the construction waste. There were four ships involved in the dumping of construction waste in the ocean, among which "Yue Zhu Hai Jun 2322" and "Yue Zhu Hai Jun 2323" were owned by Chen Si. By 13 December 2018, Liuyuan Co. had paid a total of CNY 1.846 million to Zhonghui Co. and Chen Si, among which, CNY 1.692 million was actually collected by Chen Si.

During the trial of this case and with retrieval from www.shipxy.com, it's noted that linear distance at sea from the temporary wharf at Haikou Evergrande Melissa project to the marine dumping area designated by the Haikou Municipal Government is about 4.6 nautical miles, i.e. 8.5 kilometers, and the linear distance at sea to Shatou Villiage in Zhanjiang is about 64.3 nautical miles, i.e. 118.9 kilometers. On 30 December 2019, as showed on www.shipxy.com, the maximum speed of "Yue Zhu Hai Jun 2323" on that day was about 6 knots, namely 6 nautical miles/hour, while the ordinary speed was 4-5 knots.

The plaintiff of the public interest litigation claimed that the damage to the marine ecological environment by the subject illicit waste dumping was

evaluated to total CNY 8,600,640 by South China Institute of Environmental Sciences under the Ministry of Ecology and Environment.

【 Judgment 】

1. The Defendants, Hainan Zhonghui Dredging Engineering Co., Ltd., Chen Si, and Haikou Liuyuan Earthwork Engineering Co., Ltd. shall, within 10 days upon the effectiveness of the judgment, jointly and severally pay a compensation for the environmental pollution in the sum of CNY 8,600,640. The said compensation will be handed over to the state treasury to restore the damaged marine ecological environment;

2. The Defendants, Hainan Zhonghui Dredging Engineering Co., Ltd., Chen Si, and Haikou Liuyuan Earthwork Engineering Co., Ltd. Shall, within 10 days upon the effectiveness of the judgment, openly apologize on a national news media;

3. The Defendants, Hainan Zhonghui Dredging Engineering Co., Ltd., Chen Si, and Haikou Liuyuan Earthwork Engineering Co., Ltd. shall, within 10 days upon the effectiveness of the judgment, jointly and severally pay Haikou People's Procuratorate the assessment fee of CNY 475,000 and public announcement fee of CNY 800.

After the judgment rendered by Haikou Maritime Court, Chen Si and Haikou Liuyuan Earthwork Engineering Co., Ltd. filed an appeal before the High People's Court of Hainan Province, which rendered the Civil Judgment of (2020) Qiong Min Zhong No. 276 on 23 November 2020, overruling the appeal and affirming the original judgment.

【 Significance 】

1. It consolidates the ecological foundation of fostering the business

environment in the free trade port. Protection of ecological environment is an important chapter in the *Law of the People's Republic of China on the Hainan Free Trade Port*. The implementation of the strictest system for the protection of ecological environment and severe punishment on acts that damage the marine environment in Hainan Free Trade Port are important measures taken to foster a good business environment and maintain the people's rights and interests in enjoying nice environment.

2. The procuratorial authorities' capacity as plaintiff in marine and environmental public interest litigation has been affirmed and this is a case with typical demonstration significance. It is the first case of civil public interest litigation in Hainan Province that has concerned dispute over liability for marine pollution. The trial of the case has affirmed procuratorial authorities' capacity as plaintiff in marine environmental public interest litigation, which is in keeping with existing environmental policies of the country.

3. The trial of the case has provided guidance for the judgment of similar cases. In cases concerning damage to marine environment and resources, it is typically difficult to collect, obtain and fix evidence and to ascertain facts. As the defendant was suspected of having concealed evidence, the court re-allotted the burden of proof to determine the party obliged to produce evidence, and further used the presumption of facts to ascertain the quantity of waste dumped, eventually determining the damages to be paid by the defendant.

4. The trial of the case also sets an example in and advocates environmental protection. The judge's commentary remarks deliver a message to promote the public's environmental awareness and convey the judicial ideology that "whoever causes damage to the environment shall be held liable"; drawing on both morality and sense, the remarks pass on clear values.

3. Application by Triton Container International Limited for Recognition and Enforcement of a Foreign Arbitral Award

【 Basic Facts 】

Hainan Pan Ocean Shipping Co., Ltd. (hereinafter referred to as “POS”) and Hainan Pan Ocean Shipping (Hong Kong) Co., Ltd. (hereinafter referred to as “POS HK”) entered into six container lease agreements with Triton Container International Limited (hereinafter referred to as “Triton”) between 2010 and 2011. The agreements were numbered from HPO40 to HPO45 and each contained an arbitration clause. Yangpu Economic Development Zone Construction Investment Development Co., Ltd. (hereinafter referred to as “CIC”) signed one of the agreements, namely Agreement No. HPO42, as a joint lessee and unconditionally and irrevocably authorised POS and POS HK to exercise its rights in relation to this Agreement on its behalf. It also undertook to assume joint and several liability with the two companies for the costs and losses incurred in relation to this Agreement. CIC did not sign or make similar undertakings under other agreements. As POS and POS HK were in arrears of rent, Triton filed a request for arbitration with the International Centre for Dispute Resolution (hereinafter referred to as “ICDR”) in the United States based on the six agreements, requesting POS and CIC to jointly and severally settle the arrears of rent and damages for termination of the contracts, totalling USD 65,817,973.41. In the course of the arbitration, POS and POS HK entered into an Agreement with Triton for the Handling of Breach of Contract to handle

the six agreements altogether. No new arbitration clause was set out in the Agreement, and POS's agent signed the Agreement on behalf of CIC. Based on the Agreement, ICDR passed an award, ordering POS and CIC to jointly and severally compensate Triton a sum of USD 65,817,973.41 in relation to the six agreements in question. After the arbitral award was made, POS and CIC failed to perform their payment obligations under the Agreement, and Triton applied to this court for recognition and enforcement of the arbitral award.

【 Judgment 】

Haikou Maritime Court, after examining the application and reporting to the Supreme People's Court for review, rendered Civil Ruling (2015) Qiong Hai Fa Ta Zi No. 1, ruling to:

1. Recognize and enforce the arbitral award numbered 50-125-T-00029-13 made by the International Centre for Dispute Resolution, United States to the extent of the part concerning Hainan Pan Ocean Shipping Co., Ltd.; and
2. Overrule other claims made by Triton Container International Limited.

【 Significance 】

In trying this case, the court carefully and precisely determined the parties to each of the six agreements containing a separate arbitration clause, strictly distinguished the part of the award within the tribunal's jurisdiction from those beyond, and tactically determined whether these parts were severable. Firstly, the court found that the part of the award concerning POS was severable from that concerning CIC, and therefore recognised and enforced the part concerning POS. Secondly, the court found that the liability of CIC under Agreement

HPO42, which was within the jurisdiction of the tribunal, was not severable from its liability under the other five agreements, which were outside the jurisdiction of the tribunal. Accordingly, the court did not recognise or enforce the entire part of the award that concerned CIC. By determining the award in parts, the court avoided rejecting the arbitral award in its entirety and was able to recognise and enforce a foreign arbitral award to the greatest extent possible. This has demonstrated the supportive attitude of Chinese courts towards foreign arbitral awards and the strong actions China takes in fulfilling its international obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

4. Gemadept Shipping Singapore Pte. Ltd. v. Delica Shipping S.A. in relation to Preservation of Maritime Claims

【 Basic Facts 】

On 6 November 2020, M/V “Ken Breeze”, owned by Delica Shipping S.A. (hereinafter referred to as “Delica”), collided with M/V “Pacific Grace”, owned by Gemadept Shipping Singapore Pte. Ltd. (hereinafter referred to as “Gemadept”), in the waters off Qiongzhou Strait. Gemadept brought an action before this court in relation to the collision. During the trial of the case, Gemadept filed a request for preservation of maritime claims with the court, requesting to arrest M/V “Ken Breeze”. It was understood that M/V “Ken Breeze” was near the end of her repair service in Huangpu Port, Guangzhou and was about to leave the port. We promptly initiated the internal coordination mechanism for ship arrest, and maintained close coordination between the filing, trial, and enforcement divisions. On the one hand, we stayed in smooth communication with the ship yard and the Maritime Safety Administration to keep track of the ship in real time. On the other hand, we resorted to the epidemic prevention and control authorities and border control authorities of Guangzhou to understand the local epidemic prevention policies and requirements. After making adequate preparations, the court rendered Civil Ruling (2021) Qiong 72 Min Chu No. 13–1 and Order for Arrest of Ship numbered (2021) Qiong 72 Min Chu No. 13 on 16 March 2021. On the next day, the court arrested M/V “Ken Breeze” at a ship yard in Guangzhou. Following

the arrest of the ship, the court properly settled the 18 foreign crew members on board in accordance with the local epidemic prevention and control measures, and made plans for possible subsequent shifting of the ship and for the release and departure of the ship after the defendant provided security. On 19 March 2021, the ship interests of M/V “Ken Breeze” filed an application for shifting the ship. Considering the high cost of the ship’s occupation of the shipyard capacity, the Collegial Bench quickly decided to grant such application for shifting, and promptly notified the border control, maritime, and other assisting authorities. On 20 March 2021, China Reinsurance (Group) Corporation issued a letter of guarantee to the court in the amount of USD 1.5 million. On 21 March 2021, Delica applied to the court for the release of M/V “Ken Breeze” from arrest. Within four hours upon receipt of the application, the court completed the review of the application, preparation of documents, and delivery of the documents for enforcement. On 22 March 2021, through the C4 Enforcement Command Platform, the court entrusted Guangzhou Maritime Court with the release of M/V “Ken Breeze” in the evening of the same day. The ship departed on 23 March 2021.

【 Judgment 】

In response to Gemadept’s application for preservation, the court rendered Civil Ruling (2021) Qiong 72 Min Chu No. 13–1 and Order for Arrest of Ship numbered (2021) Qiong 72 Min Chu No. 13 to arrest M/V “Ken Breeze”. In response to Delica’s application for release of the ship, the court rendered Civil Ruling (2021) Qiong 72 Min Chu No. 13–2 and Order for Release of Ship numbered (2021) Qiong 72 Min Chu No. 13 to release M/V “Ken Breeze” from

arrest.

【 Significance 】

The trial of the case has explored a path to arrest foreign vessels under the impact of the pandemic. Since the COVID-19 pandemic hit the globe, the arrest of foreign vessels (especially those manned with foreign crews and sailing from abroad) has been a major challenge facing maritime courts. In practice, there have been “ship arrest IOUs” (an awkward situation in which a ruling is made to arrest a ship whereas the arrest is unenforceable). This has had a negative impact on the authority of the law and the international influence of China’s maritime justice. In this case, the court did not rush into a legal decision after receiving the maritime claimant’s application for ship arrest. Instead, it first contacted the maritime, border control, and epidemic prevention authorities as well as the shipyard to find out about the manning, condition, and navigation plan of the ship and applicable epidemic prevention requirements. Fully prepared, it then made and implemented a ruling on ship arrest, effectively avoiding the aforesaid deadlock. The trial of the case has also fully demonstrated the fair and efficient administration of justice by maritime courts. The arrest and release of the ship off-site took only one week from the receipt of the arrest application to the shifting and release of the ship. This efficient maritime justice has far surpassed that of other internationally renowned venues for maritime dispute resolution. It has been highly praised by the parties concerned as the “free trade port speed”.

5. Hainan Lanhai Abalone Co., Ltd. v. Wenchang Municipal Bureau of Ecology and Environment over Environmental Administrative Penalty

【 Basic facts 】

The plaintiff, Hainan Lanhai Abalone Co., Ltd. (hereinafter referred to as “Lanhai Abalone”), was founded in 1992. Starting from 1996, it has built facilities and been engaged in aquaculture on a plot of land allotted for private use in Ziwei Village, Louqian Port, Longlou Town, Wenchang City. In the course of its operations, the plaintiff had, between 2006 and 2009, successively obtained the required licences to use sea areas, to use land, and to produce aquatic fingerlings. However, it had never obtained a licence for aquaculture in waters and tidal flats. Respectively in 1997 and 2000, the plaintiff applied to the environmental protection authorities of Wenchang County for an environmental impact assessment but both times failed the assessment.

On 25 July 2018, the Department of Ecology and Environment of Hainan Province granted the request of the former Wenchang Municipal Bureau of Ecology and Environmental Protection (hereinafter referred to as “Wenchang Environmental Protection Bureau”) to deal with illegal constructions in Tongguling National Nature Reserve. On 16 August 2018, Wenchang Environmental Protection Bureau sent two law-enforcing officers to the plaintiff’s premises for investigation and evidence collection. On 9 January 2019, the bureau filed a case to investigate the plaintiff’s illegal practice of building aquaculture facilities. On 4 April the same year, the successor to the

former Wenchang Environmental Protection Bureau after an institutional reform, namely the defendant in the case, made Decision numbered Wen Huan Fa Jue Zi [2019] No. 7 on Administrative Penalty. The paper was pasted on the outside wall of the plaintiff's aquaculture premises by the defendant on 10 April. In imposing the said administrative penalty, Wenchang Environmental Protection Bureau and the defendant had never found out the details of the plaintiff's misuse of Tongguling National Nature Reserve. For this reason, on 12 June, two months after imposing the administrative penalty, the defendant commissioned a third party to survey the plaintiff's misuse of the nature reserve and eventually determined that a total of 8.388 mu (5,592m²) of the plaintiff's aquaculture premises were within the pilot area of Tongguling National Nature Reserve; the exact locations were also mapped. Meanwhile, the defendant held that as the plaintiff's illegal act started from 1996, the *Regulations of Hainan Province on Managing Nature Reserves* which came into effect on 20 September 1991 should apply instead of the *Regulations of Hainan Province on Nature Reserves* currently in effect.

It was verified that Tongguling National Nature Reserve was established in 1983 as a county-level nature reserve. In 2003 it was assessed and promoted to a national nature reserve. The boundaries between its core area, buffer area and pilot area were marked and mapped in 2003.

【 Judgment 】

On 30 October 2019, Haikou Maritime Court rendered the Administrative Judgement of (2019) Qiong 72 Xing Chu No. 50, holding that Decision [2019] No. 7 was based on insufficient primary evidence, incorrect application of law and regulations, abuse of authority, and unlawful procedures. The court thus

revoked the Decision numbered Wen Huan Fa Jue Zi [2019] No. 7 on Administrative Penalty made by the defendant, Wenchang Municipal Bureau of Ecology and Environment, on 4 April 2019.

【 Significance 】

In recent years, as environmental issues attract increasing concern and attention from the government and the public, environmental administrative authorities have been imposing increasingly harsh penalties for violations of environmental regulations. However, as reflected in the trial of a series of marine and environmental administrative cases entertained by Haikou Maritime Court, environmental administrative authorities are not always acting legally or reasonably in the course of their law enforcement, despite their best intentions and the many law-enforcing measures they have taken in practice. This is due to their limited knowledge of law, awareness of the rule of law, and law-enforcing skills. The law-based government administration is the meaning of a law-based business environment. The trial of this case by Haikou Maritime Court will provide helpful guidance for marine administrative authorities and environmental authorities, leading them to better exercise their administrative authority, foster a law-based business environment, and better promote the ecological civilization of Hainan.

In administrative trial, it has long been difficult to apply law to administrative violations committed under an old law and continuing under the new law replacing it. Haikou Maritime Court's analysis of application of law to an act spanning old and new laws will provide helpful guidance for dealing with similar issues in administrative trial.

**6. Application for maritime injunction made by the claimant,
Hainan Jishiyu Agricultural Production Materials Co., Ltd.,
against the respondents, Yangpu Sanfeng Logistics Co.,
Ltd., etc.**

【 Basic Facts 】

On 1 January 2020, Hainan Jishiyu Agricultural Production Materials Co., Ltd. (hereinafter referred to as “Jishiyu Co.”) entrusted, and paid up the freight for, a shipment of 432 tons of fertilizer worth CNY 1,641,600 it had purchased in Guangdong to Yangpu Sanfeng Logistics Co., Ltd. (hereinafter referred to as “Sanfeng Co.”), commissioning the latter to transport it from Guangdong to Haikou, Hainan. Later, Sanfeng Co. loaded the shipment in 12 containers and entrusted Guangzhou Xinde Freight Co., Ltd. (hereinafter referred to as “Xinde Co.”) and Hainan Yangpu Hangli Logistics Co., Ltd. (hereinafter referred to as “Hangli Co.”) with the transport. Xinde Co. and Hangli Co. further entrusted Shanghai Zhonggu Logistics Co., Ltd. (hereinafter referred to as “Zhonggu Co.”) with the actual carriage of the cargo. After the cargo arrived at the container terminal of Haikou Port, Xinde Co. refused to deliver the cargo on the grounds that Sanfeng Co. had long defaulted on previous freight charges. Jishiyu Co. subsequently applied to the court for a maritime injunction to order Xinde Co. to deliver the containers in question to Jishiyu Co. For this purpose, it also provided a letter of guarantee issued by its insurer.

【 Judgment 】

After examination, Haikou Maritime Court held that the cargo in the containers at issue belonged to the claimant, who had paid the full freight, so the claimant had the right to request the respondents to deliver the cargo at issue. As the respondents refused to deliver the cargo, it had been over one month since the cargo at issue arrived at the port. It was apparent that the loss incurred would increase unless the cargo were taken delivery promptly. When applying to this court for a maritime injunction, the claimant provided full guarantee according to the value of the cargo at issue. Its application was in compliance with applicable provisions of the law and should therefore be granted. Accordingly, the court ruled to grant the maritime injunction requested by the claimant, Jishiyu Co., and to order the respondent to deliver to Jishiyu Co. the agricultural materials (fertilizer) loaded in the containers at issue.

【 Significance 】

Multimodal transport by sea is a common means of maritime transport. Due to the many transport modes involved, if there is a default on freight in relation to any of these modes, the affected sub-carrier may detain the cargo on the grounds that it has a lien, thus hindering the normal circulation of the cargo. To protect their lawful rights and interests, cargo owners would often apply to a maritime court for a maritime injunction to order the respondent to release the cargo. It's common in such cases that both parties involved are not at fault, and both the detention and counter-detention are based on certain rights. The key in trying these cases is to properly apply the law and to duly protect the lawful rights and interests of the parties in a fair and efficient manner. In this case, the

court promptly issued a maritime injunction against the insurer's letter of guarantee in accordance with the law. This was intended to protect the lawful rights and interests of the parties concerned and to ensure the normal circulation of the cargo. Through the injunction, the court ordered the respondent to release the cargo to avoid causing any further loss in relation to the cargo. Such measures serve as a positive reference for the handling of similar cases in the future. The efficient handling of the case has also improved commercial entities' recognition of Hainan's capacity for maritime judicial services, and boosted the confidence that the shipping, trade, and economic industries have in the business environment of the free trade port.

7. Series of Cases regarding the Application for Realization of Security Interest made by SDIC Jurong Yangpu Port Co., Ltd.

【 Basic Facts 】

The applicant, SDIC Jurong Yangpu Port Co., Ltd., was involved in a series of cases regarding the realization of security interest with the respondent, Hainan Changsheng Shipping Co., Ltd. Starting from 2013, the respondent, Hainan Changsheng Shipping Co., Ltd., successively stored 76 containers in the port yard of the applicant, SDIC Jurong Yangpu Port Co., Ltd., and then disappeared and could not be contacted. During this time, the containers were not removed, and the storage fees not paid. On 8 April 2021, the applicant filed an application to this court for realization of security interest.

【 Judgment 】

The court held that the container storage fees owed by the respondent had become due, and the applicant duly had a valid lien on the 76 containers stored in its yard. The applicant's application for the realization of security interest was in compliance with applicable provisions of the law and should be supported. The court thus ruled that: The 76 containers stored by the respondent, Hainan Changsheng Shipping Co., Ltd., in the yard of the applicant, SDIC Jurong Yangpu Port Co., Ltd., were allowed to be auctioned or sold off or otherwise disposed of to convert them into money in accordance with the law. The applicant, SDIC Jurong Yangpu Port Co., Ltd., had priority in claiming

compensation from the proceeds from such conversion to the extent of the outstanding storage fees.

【 Significance 】

The healthy development of a market economy relies on a law-based business environment, and the efficient operation of the shipping market often depends on effective regulation through maritime justice. The dispute occurred in Yangpu Port. As a pilot and demonstration area of Hainan Free Trade Port, Yangpu Port is sparing no effort in building an international container hub port in accordance with national strategies. Whether its container throughput can achieve rapid growth is undoubtedly one of the major indicators of the effect of such effort. However, the current shortage in container storage in Yangpu Port has become an obstruction to the rapid economic growth of the port. As realizing security interest through traditional litigation proceedings involves complicated procedures, high costs, inefficiency, and other problems, it has become vital to be able to efficiently and quickly free up container yard space taken up by vacant containers. To this end, Haikou Maritime Court resolved the dispute fast through a special procedure for the realization of security interest. This has not only provided port and shipping companies within its jurisdiction a low-cost and efficient resolution of container storage misuse, but also contributed to further optimizing the business environment of the free trade port.

8. Case concerning a Marine Insurance Contract Dispute between Li, Lin, and TiAn Property Insurance Company Limited Shenzhen Branch

【 Basic Facts 】

On 25 April 2019, the yacht “Winnie” owned by Li and Lin ran aground on her way back to Sanya after participating in a track race of the Round Hainan Regatta. The rescue operation was affected by a typhoon, and the yacht eventually capsized and sank, constituting a total loss. After Li and Lin's insurance claim was declined by TiAn Property Insurance Company Limited Shenzhen Branch, they brought an action before Haikou Maritime Court.

【 Judgment 】

In the first instance, Haikou Maritime Court held that the accident was covered by the relevant insurance policy. The yacht in question held a valid certificate of seaworthiness, was navigated by eligible officers onboard, and was equipped with the latest electronic charts at the time of the accident. It's groundless for the insurer to raise its defense that the yacht was unseaworthy due to a lack of paper charts and was in breach of warranty. The first-instance court ordered the insurer to pay the insurance claim made by Li and Lin. The case was concluded by the High People's Court of Hainan Province through mediation in the second instance.

【 Significance 】

Yacht-related businesses are a special industry of Hainan, and an

important part of the construction of Hainan international tourism consumption center. They also reflect the achievements in the building of Hainan Free Trade Port. The case concerned a marine insurance contract dispute caused by the sinking of a yacht after it ran aground. The court of the first instance rigorously examined the cause of the accident against the insurance coverage, and decided that the insurer was liable for the insurance settlement after considering the scope of coverage and whether the accident was an exclusion. The court of the second instance made great efforts in the mediation to resolve the conflict, thereby settling the dispute and concluding the case. The trial of this case fully protected the lawful rights and interests of the yacht owners. This helps to boost confidence in the yacht tourism market, stimulate yacht tourism consumption, and provide strong judicial support for the sustainable and healthy growth of Hainan's yacht industry and the high-quality construction of Hainan Free Trade Port.

9. Haikou People’s Procuratorate v. Lu Jiabao over Ecological Damage in Public Interest Civil Litigation

【 Basic Facts 】

Between December 2015 and January 2019, the defendant, Lu Jiabao, harvested on multiple occasions 4,539 pieces of wild coral and caught 10 wild sea turtles and 6 hawksbill turtles, which he then sold to Cai Feng, a non-party to the case, for cumulative proceeds of CNY 211,136. It was verified that the coral, sea turtles, and hawksbill turtles involved were all under Class II state protection. The defendant, Lu Jiabao, was therefore given a fix-term sentence of two years and six months of imprisonment, suspended for three years, in addition to a fine of CNY 20,000. Following the announcement, the plaintiff of public interest litigation, Haikou People’s Procuratorate, sued the defendant, Lu Jiabao, requesting him to compensate for the damage to the ecological and environmental resources in a sum of CNY 289,086, to bear the expert consultation fees of CNY 757.50, and to make a public apology in news media on or above the provincial level.

【 Judgment 】

Haikou Maritime Court made Civil Judgment (2020) Qiong 72 Min Chu No. 314 on 17 December 2020, holding that the unauthorized harvest and sale by the defendant, Lu Jiabao, of precious and endangered wild aquatic organisms, namely sea turtles, hawksbill turtles, and coral, was in violation of applicable laws and regulations of China and caused damage to the marine ecological environment. The defendant should therefore be liable for the damage.

Accordingly, the court ordered the defendant, Lu Jiabao, to pay CNY 289,086 in compensation for the damage to the marine ecological environment. The money would be paid to the state treasury for restoring the damaged marine ecological environment. The defendant was also ordered to bear the expert consultation fees of CNY 757.50 and to make a public apology in news media on or above the provincial level.

【 Significance 】

Marine ecological civilization is vital to achieving the goal of building Hainan Free Trade Port into “three areas and a centre”. It is one of the most appealing soft strengths of Hainan Free Trade Port in terms of business environment. Coral, turtles, and hawksbill turtles are important components of the marine ecosystem and are important to maintaining the diversity of marine populations and the balance of the marine ecosystem. They are under Class II state protection in China, and are protected species listed on the appendices of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. As Hainan strives to build a national ecological civilization pilot zone, more efforts should be made to protect precious and endangered wild marine organisms. Criminal, civil, and other judicial means should be fully exploited to protect the marine ecological environment. On top of strict punishment of illegal and criminal acts, more attention should be paid to restoring damaged biological resources. In this case, the court ordered the illegal fishing/harvesting offender to, in addition to the imposed criminal liability, assume the liability for restoring the ecosystem. This shows the active role that justice plays in the protection of precious and endangered marine organisms.

10. Enforcement Case concerning a Financial Loan Contract Dispute between Shenzhen Dongyi Yongtai Investment Co., Ltd. and Qianbo Lecheng Development Co., Ltd., etc.

【 Basic Facts 】

Hainan Qianbo Lecheng Development Co., Ltd. (hereinafter referred to as “Qianbo Co.”) borrowed CNY 500 million from fifteen financial institutions including Qionghai Rural Credit Cooperative in 2013 and mortgaged the right to use ten lots of state-owned land in its name located in Lecheng Island, Qionghai City. As Qianbo Co. failed to pay its debts when they fell due, the fifteen financial institutions filed a lawsuit with the High People’s Court of Hainan Province, which rendered Civil Judgment numbered (2016) Qiong Min Chu No. 3, ordering Qianbo Co., and other defendants to repay the loan principal of CNY 489 million plus interest thereon. The fifteen financial institutions had the priority for repayment from the value of the right to use nine of the ten land lots at issue. Qianbo Co. and other defendants appealed to the Supreme People’s Court, which upheld the original judgment. As the parties subject to enforcement did not willingly fulfil their obligations imposed by the effective judgment, the creditors filed a case for enforcement and the High People’s Court of Hainan Province entertained the enforcement case on 31 January 2019.

In the course of the enforcement, the High People’s Court of Hainan Province duly ruled to substitute an investment limited company in Shenzhen as

the applicant for enforcement in this case, and ruled to auction off the right to use the ten lots of state-owned land after duly completing evaluation. On 27 December 2019, the High People's Court of Hainan Province made a ruling in accordance with the law and designated the case to be enforced by Haikou Maritime Court.

In the process of the enforcement, Haikou Maritime Court duly commissioned an auction institution to auction off the right to use the above state-owned land lots. Two auctions were hosted. The reserve price of the first auction was set at CNY 1,269,005,662 based on the assessed value of the land, and the reserve price of the second auction was set 10% lower than that of the first auction, namely at CNY 1,142,105,000. After the two auctions failed, the applicant for enforcement applied for a ruling on debt repayment in kind with the right to use the above state-owned land lots at the reserve price of the second auction, namely CNY 1,142,105,000. On 29 October 2020, upon examination, Haikou Maritime Court duly ruled on the enforcement of debt repayment in kind, ordering the party subject to enforcement, Qianbo Co., to deliver the right to use the above ten lots of state-owned land in its name in the value of CNY 1,142,105,000 to the applicant to offset the debts of CNY 1,106,430,403.6 owed by it. After the applicant for enforcement paid the difference of CNY 35,674,596.4 to the court, Haikou Maritime Court served on it a ruling on the enforcement of debt repayment in kind. At this point, the case was closed upon enforcement.

【 Judgment 】

In accordance with Article 23, Article 28.1, and Article 29.2 of the

Regulations of the Supreme People's Court on the Auction and Sale of Property in Civil Enforcement by People's Courts, it was ruled as follows:

1. The right to use the ten lots of state-owned land located in Lecheng Island, Bo'ao Town, Qionghai City, Hainan Province, in the name of the party subject to enforcement, Hainan Qianbo Lecheng Development Co., Ltd., would be valued at CNY 114,210,500 and delivered to the applicant for enforcement, Shenzhen Dongyi Yongtai Investment Co., Ltd., to offset the debts of CNY 110,6430,403.6 owed by the party subject to enforcement, Hainan Qianbo Lecheng Development Co., Ltd. The right to use the said land lots would be transferred upon the service of this ruling on the applicant for enforcement, Shenzhen Dongyi Yongtai Investment Co., Ltd.

2. The applicant for enforcement, Shenzhen Dongyi Yongtai Investment Co., Ltd., may take this ruling to the competent registration authorities to go through formalities for transferring the relevant property right.

【 Significance 】

The right to use the land lots in question was put up for auction via an entrusted auction entity. The party subject to enforcement had not only defaulted on the debts at issue, but was also in debt to other creditors not a party to the case, such as taxes and employee wages. For this reason, the court took into account the rights and interests of the applicant for enforcement, the party subject to enforcement, the non-party creditors, and the employees of Qianbo Co. As regards the reserve price and starting price of the two auctions, it followed the principle of “no price reduction in the first auction and 10% reduction in the second auction”. This way, it reasonably determined the

starting price of the first auction and the price reduction of the second auction, thereby maximizing the protection of the lawful rights and interests of all parties concerned. In this case, the court exercised lawful and reasonable discretion in relation to the enforcement. After repaying the debts in kind, the party subject to enforcement was still left with the difference in value, which fundamentally covered the lawful rights and interests of the company's employees. The handling of the case had a positive impact both legally and socially.

The land lots in question were involved in the construction of Bo'ao Lecheng International Medical Tourism Pilot Zone. The successful enforcement of the case also provides judicial support for accelerating the use of idle local land and promoting the construction of key areas of Hainan Free Trade Port.



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