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## China Exempts the Notarization and Authentication of Extra-territorial Evidence

In the past, evidence developed outside the territory of China shall be notarized by a notary public of the foreign country and authenticated by the embassy or consulate of China in said country. Recently, the Supreme People's Court of China ("SPC") revised the Provisions of the Supreme People's Court on Evidence in Civil Proceedings ("Evidence Provisions") and shall come into force this May 1st.

The Evidence Provisions divide evidence into three categories, and we summarize their respective requirements as follows:

- i) evidence relating to identity relationship: shall still need to be notarized and authenticated, including POA, COLR and Certificate of Good Standing;
- ii) public documentary evidence: shall be notarized; and it refers to those documents that are issued by government bureaus or social institutions and are made ex officio.
- iii) other private documentary evidence: no requirement for notarization and authentication.

In the event that the evidence developed in Hong Kong, Macau or Taiwan region, such evidence shall be certified through relevant procedures.

The Evidence Provisions offers a choice for foreign disputing party that either present the original copy of evidence before the Chinese court to prove the authentication of the evidence, or have the evidence notarized in their country.

The material removal of the requirement of notarization and authentication procedures for evidence, except public documentation and those relating to identity relationship, will largely relieve the heavy burden of parties involved in Chinese proceeding who would otherwise face the long and expensive notarization and authentication process in the foreign country, and also lead parties to focus on more substantive issues in the cross examination of evidence before the Chinese court.

## **China Unifies Compensation Standard of Urban and Rural Citizens under Tort Liability**

At present, the Chinese Government uphold the household registration system and divide Chinese citizens into urban citizen and rural citizen. The Supreme People's Court of China had issued a notice in last September to unify the compensation standard of personal injury and death for urban and rural citizens from some pilot areas. We notice that the higher people's court of many provinces have already implemented this notice. Ever since tort cases happens or after 1 January 2020, the compensation of rural citizen shall all be calculated as per the standard of urban citizens.

Previously, when a ship collided with a fishing ship, the compensation for death for fishermen would be counted differently as per their identity. Under the new rule, the compensation standard for fishermen from rural or urban areas will be equally calculated according to that of urban citizens. In this sense, the compensation for death of rural citizens will be raised more than double. It can be ascertained that the Owner shall be obliged to pay much more money for compensation of death than before.

Legally, when a commercial ship collide with a fishing boat, the (family members of) fishermen are entitled to lodge personal injury/death claims against either party. Under the Maritime Law of China, the foreign Owner shall be jointly and severally liable for the compensation for death of the fishermen. However practically, the Owner of the commercial ship normally bear all of the compensation, as the fishing boat may sink during the collision, or the fishing boat owner is financially incapable of paying the compensation.

We have handled a collision case for a foreign Owner last year, and 12 fishermen died. We learnt that many fishing boat owners purchase employer liability insurance from local Fishery Mutual Insurance Association or other commercial insurance companies, and noticed that the family members of the departed fishermen had received insurance indemnity. During negotiation, we successfully compelled the fishing boat owner to undertake nearly half of the compensation, and saved more than RMB 10million for our Owner/Club. This is the first case that Owner shared compensation for personal injury or death with fishing boat owner in China.

Please feel free to discuss with us if you need more information.

## **Chinese Customs no Longer Issue Certificate of Weight for Bulk Commodity Ex Officio**

Ever since 1 November 2019, the Consignee or its agent shall apply for Customs to issue the Certificate of Weight for bulk cargo; and without such application, the Customs shall no longer issue the Certificate of Weight, unless necessary.

Under the Civil Procedure Law of China, documents issued by the Government offices ex officio are defined as public documentary evidence and the probative force is basically more powerful than that of other documentary evidence. In the past, the China Entry-Exit Inspection and Quarantine Bureau (“CIQ”, merged into China Customs), a government institution under the General Administration of Customs, would issue Certificate of Weight ex officio for each and every batch of bulk cargo import to and export from China. And thus, the Certificate of Weight would prevail over private documentary evidence, such as the Draft Survey conducted by the Owner, and is more easily accepted by the Chinese court. And thus, it is hard for Owner to challenge the Certificate of Weight issued by CIQ.

Besides, many CIQ, especially those alongside the Yangtze River, would issue Certificate of Weight as per the result of weighing scales, rather than draft survey. Although Owner may defend that the result of weighing scales exceed the period of Carrier’s responsibility, some Chinese court would still accept the Certificate of Weight.

We opine this alteration would be a good point for Owner to challenge the Certificate of Weight issued by CIQ, and substantiate the probative force of Draft Survey in the Chinese court. The Certificate of Weight issued by CIQ will be made through the application of Consignee, rather than made ex officio by CIQ and defined also as private documentary evidence.

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