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上海市“十二五”重点图书

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2013 航运金融 法律评论

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Shipping Finance Law Review 2013



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上海国际航运研究中心

航运政策与法律研究所

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序 言

Preamble

由上海国际航运研究中心^①编著的《2012 航运金融法律评论》开启中国航运金融法律论文集之先河,为相关领域的从业者、研究人员初步构建了交流合作平台。现在,我们向您敬献《2013 航运金融法律评论》。与《2012 航运金融法律评论》一样,本书所收录的论文来源于我中心每年举办的“上海国际航运金融法律论坛”。不同之处在于《2012 航运金融法律评论》与当年举办的论坛主题为“航运金融争议解决系统的构建”,而本书及 2013 年论坛主题为“市场变化中的新型航运金融产品及其法律问题”。

The *Shipping Finance Law Review 2012* wrote by Shanghai International Shipping Institute (SISI) is the first theses collection on shipping finance law in China and it provides an exchange and cooperation platform for practitioners and researchers in relevant fields. Now, we present the *Shipping Finance Law Review 2013* to you. As the *Shipping Finance Law Review 2012*, the theses collected in this book coming from the Forum of Shanghai International Shipping Finance Law held by SISI every year. The difference is that, the theses collected in the *Shipping Finance Law Review 2012* were about the construction of shipping finance dispute resolution system, while this book and the forum in 2013 is about new shipping financial products and its legal issues in the changing market.

在过去的 2013 年中,国际航运金融市场“继续向下”,传统航运金融产品,特别是商业银行贷款已风光不再,甚至被一些专业航运银行所抛弃,如全球最大的船舶

^① <http://www.sisi-smu.org/>.

融资银行——德国北方银行仍在减少对航运界的资金投入。在此环境下，航运企业、中介机构不得不寻求新的融资手段，或对传统融资产品进行改造以期获得金融机构的青睐。在新型融资手段中，私募基金，即定向募集社会余资用于船舶建造、购买项目的表现最为突出。而在改良传统融资产品中，船舶融资租赁，即航运企业借用船舶融资租赁公司的信用以获得银行贷款已成为当前市场的中流砥柱。

In the past year of 2013, the international shipping finance market remains in the doldrums and the traditional shipping financial products, especially commercial bank loans has past its prime and was even abandoned by some professional shipping bank, for example, the world's largest ship financing bank, HSH Nordbank AG, continues to reduce its shipping industry investment. In these circumstances, shipping enterprises and intermediary agencies have to seek for new financial means or reform the traditional financial products to get the favour of financial institutions. Among the new financial means, private equity fund, which utilizes a group of investors with cash to invest in shipbuilding and purchasing project, is doing excellent on this aspect. Among the reformed traditional financial products, shipping financial leasing, which shipping companies could borrow ship financial leasing company credit in order to obtain bank loans, has becoming the main financial means in current market.

同时，航运企业开始注重运用现有的金融（保险）工具来避免市场风险，并努力开发新的避险工具。在此方面，由上海清算所、上海浦东发展银行、波罗的海航运交易所联合开发的以人民币计价结算的远期运费协议等航运金融衍生品可谓一枝独秀。它将与上海航运交易所近几年推出的集装箱等运价指数衍生品一起成为上海航运金融中心“皇冠上的明珠”。此外，由地域政治、经济不稳定所引起的海盗问题“迫使”航运企业、保险机构考虑设计全新的航运保险产品。

In the meanwhile, shipping enterprises begin to pay attention to the use of the existing financial (insurance) tools to avoid market risks and make efforts to develop new tools to avoid the risks. In this respect, the RMB-denominated Forward Freight Agreement developed jointly by Shanghai Clearing House, Shanghai Pudong Development Bank and Baltic Exchange makes a remarkable

achievement in committing to the construction of Shanghai International Shipping Center together with the container freight derivatives developed by Shanghai Shipping Exchange. Furthermore, the shipping enterprises and insurance institutions are considering designing brand-new shipping insurance products owing to the piracy problem caused by the instability of regional politics and economy.

当然,航运金融产品的创新离不开国家政策层面上的支持。2013年9月27日,国务院印发的《中国(上海)自由贸易试验区总体方案》中明确指出:“扩大投资领域的开放,提升国际航运服务能级,探索形成具有国际竞争力的航运发展制度和运作模式。积极发展航运金融、国际船舶运输、国际船舶管理、国际航运经纪等产业。加快发展航运运价指数衍生品交易业务。”这为上海发展创新型航运金融产品奠定了基础。航运金融产品的创新也离不开国家法制系统的保障,而在该系统中发挥“守住底线”作用的争议解决机制的构建最受业界关注。

Certainly, the innovation of shipping financial products innovation cannot success without the support of policy on the national level. On 27 September 2013, the *Framework Plan for the China (Shanghai) Pilot Free Trade Zone* published by the State Council expressly provides “open up of investment sectors, elevate the capacity of the shipping service, form a shipping development system and operation model that will have strong global competitive advantages. Shipping related services such as shipping financing, international ship transportation, international ship management, and international ship brokerage, will be proactively encouraged and the development of freight index derivatives will be accelerated”, which laid the foundation for the development of innovative financial products in Shanghai. The innovation of shipping financial products also cannot success without the safeguard of national legal system and the function of the dispute resolution system draws a lot of attention from the industry.

正逢历史发展契机,我们希望此(系列)书能引起国内外专家、学者、业界人士的共鸣,共同夯实“上海国际航运金融法律平台”的基础,将世界航运金融发展的新

理念、新技术及新制度引入中国航运业和上海国际航运中心的建设洪流中。

We hope that this book (series of books) could attract attention from domestic and foreign experts, scholars and practitioners in this field and lay a solid foundation for “Shanghai International Shipping Finance Law Platform” and introduce the new theory, technology and system in the development of shipping finance all over the world to the construction of China shipping industry and Shanghai International Shipping Center.

本书共收录论文 23 篇,分列 4 个篇章。

This book embodies 23 works in total and is divided into 4 parts.

第一篇:“传统航运融资方式”共收录 7 篇论文。

Part I: “Traditional Shipping Finance Means” collects 7 articles in total.

Linn Hertwig Eidsheim 等的《对中国船舶市场中造船和融资方式的新变化的探析》,讲述了当前航运企业无法获得银行贷款的情形下,船厂努力寻求富有创造性的方式,以吸引新的订单,以及船厂在获得新的订单后,如何面对买方越来越重视船舶的细节和质量的问题,以保证及时交付符合令人满意要求的船舶。

“The Analysis of New Changes in Shipbuilding and Sources of Financing in Chinese Shipping Market” by Linn Hertwig Eidsheim *et al.* tells about in the circumstance that the shipping enterprises are unable to obtain bank loans, the shipyards are trying to seek creative ways in order to attract new orders and after the shipyards get the orders, how to deal with the problem that the buyers pay more and more attention to details and quality of ship and how to ensure a ship is delivered timely and conforming to satisfactory requirements.

Dr. Jan Hungar 和 Georg Lehmann 的《深陷困境的德国 KG 基金及其重组和出路》,通过简单介绍 KG 企业的组成与资金构成,分析了这些企业所面临的偿还流动性资金的困境以及有限合伙人的有限责任,否定了一般情况下通过有限合伙人填补流动资金缺口的可能性。为解决 KG 困境,文章着力为使投资人自愿注入新股本,增强企业资本,延期偿还融资银行贷款来应对金融与航运危机寻找新的

出路。

“Distressed Germany KG Funds and Restructuring and Workout Options” by Dr. Jan Hungar and Georg Lehmann introduces the form and the capital construction of KG, analyses the situation such companies faced about repayment of liquidity payouts and the limited liability of the limited partner and concludes that for the KG there is no possibility to close any liquidity gap by demanding repayment in respect of the (liquidity) payouts from the investors. This article tries to construct some new way to make the partners are generally willing to inject fresh equity to strengthen the capital and deferral the time of repayment of the loan in crisis.

LI Chengrong 和 Simon Spells 的《英国法下船舶融资交易中的审查要点及案例分析》，介绍了因受 2008 年经济危机的影响，银行业遭受了巨大的损失，使其借贷变得更加谨慎，造船业融资日益困难。在双方签订合同时，融资者在起草造船合同和还款担保时，应重点审查相应的条款，必须保证合同条款能既清楚又确切地反映双方当事人的合意。

“Things to Check in a Ship Finance Transaction under English Law and Analysis of the Case” by LI Chengrong, Simon Spells introduces that as affected by the subprime crisis of 2008, banks suffered huge losses, making its borrowing become more cautious, financing is increasingly difficult for shipbuilding industry. When signing a contract, the issuer should focus on reviewing the related provisions when drafting the shipbuilding contract and refund guarantee, to ensure that the terms of the contract clearly and exactly reflect the agreement of the parties.

蔡志萍和张昕川的《论船舶融资租赁纠纷若干法律问题——基于实践案例的研究》，基于对现有案例的梳理，总结出船舶融资租赁案件的特点，就融资租赁登记、擅自处分船舶出现的善意取得问题、对承租人根本违约的判定、救济途径的行使方法等突出问题进行分析。同时通过对实践案例进行评析，判断涉案法律关系是否属于融资租赁，并对融资租赁司法解释草案进行适当评析。

“Several Issues in the Ship Financial Leasing Disputes - Based on the Study

of Cases in Practice” by CAI Zhiping and ZHANG Xinchuan sums up the characteristic of ship financial leasing cases based on the summarization of current cases and analyzes the outstanding issues, such as the registration of ship financial leasing, bona fide acquisition issue arising from the disposition of ship, the judgment of the lessee’s fundamental breach and the way to remedy. In addition, the issue of how to judge the financial leasing legal relationship is discussed through the analysis on the cases in practice and the judicial interpretation for financial leasing is also discussed.

孔令刚和丁梦娟的《船舶融资租赁中的租金问题研究》，通过对船舶融资租赁的主要特征、船舶融资租赁中租金的性质和组成、承租人租金支付义务的理论基础以及承租人租金支付义务的绝对性进行分析探讨，并结合《最高人民法院关于审理融资租赁合同纠纷案件适用法律问题的解释（征求意见稿）》的规定，对船舶融资租赁中租金问题进行深入剖析。

“Research on the Issue of Hire in Ship Financial Leasing” by KONG Linggang and DING Mengjuan analyzes the main character of ship financial leasing, the nature and composition of the hire, the theoretical basis of the lessee’s obligation to pay hire and the absoluteness of the lessee’s obligation to pay the hire and combines the regulation of *Supreme People’s Court’s Interpretation on Application of Law in the Trial of Ship Financial Leasing Contract Dispute (draft)* to have a more profound understanding of the hire issue in ship financial leasing.

杨大明和陈晓山的《船厂延长还款保函有效期的义务——“（1）Wuhan Ocean Economic & Technical Cooperation Company Limited （2）Nantong Huigang Shipbuilding Co Ltd v Schiffahrts-Gesellschaft ‘HANSA MURCIA’ MBH & Co KG [2012] EWHC 3104”案的分析》，以（1）Wuhan Ocean Economic & Technical Cooperation Company Limited （2）Nantong Huigang Shipbuilding Co Ltd v Schiffahrts-Gesellschaft “HANSA MURCIA” MBH & Co KG [2012] EWHC 3104 案为出发点，从该案主要法律问题、仲裁、上诉、默示条款、是否构成根本违约以及进一步探讨这几个方面分析英国法下船厂延长还款保

函有效期的义务。

“The Yard’s Obligation to Extend the Validity of Refund Guarantee – Discussion on (1) *Wuhan Ocean Economic & Technical Cooperation Company Limited* (2) *Nantong Huigang Shipbuilding Co Ltd v Schiffahrts-Gesellschaft ‘HANSA MURCIA’ MBH & Co KG* [2012] EWHC 3104” by Ernest YANG and CHEN Xiaoshan analyses the yard’s obligation to extend the validity of refund guarantee under English law by discussing the main legal issues, arbitration, appeal, implied terms, fundamental breach and further discussion of the cases of (1) *Wuhan Ocean Economic & Technical Cooperation Company Limited* (2) *Nantong Huigang Shipbuilding Co Ltd v Schiffahrts-Gesellschaft ‘HANSA MURCIA’ MBH & Co KG* [2012] EWHC 3104.

Clare Calnan 等的《有关造船业的最新有代表性的判例》，介绍了英国法院和挪威法院公布的一系列有代表性的案例，主要涉及以下内容：如何区分一般保函和见索即付保函；当一方当事人违反合同义务时，无过错方如何保护和有效行使终止合同的权利；NSF 1993 仍未排除二手船卖方应交付符合满足要求的和合同目的的标的物这一义务；因引航员不具备足够的安全驾驶船舶的知识，引航员的所有过错造成的损失均由船舶所有人承担；强调了《卢加诺公约》在解决国际争端中“管辖权与执行”这一问题的重要性。

“The Latest Typical Cases on the Shipbuilding Industry” by Clare Calnan *et al.* introduces a series of typical cases published by the Britain courts and the Norwegian courts, which mainly involves the following contents: how to distinguish between guarantees and on-demand bonds; when a party breaches contract obligations, what should the innocent party do to protect and effectively exercise the right of terminating the contract; NSF 1993 has not been ruled out of this obligation that the seller of second-hand vessel shall delivery the subject matter conformed with satisfactory requirements and the purpose of the contract; even when the pilot does not have sufficient knowledge of safe driving the ship, all losses caused by pilot faults shall be borne by the ship owner; emphasize the importance of *Lugano Convention* in settling “jurisdiction and implementation” of international disputes.

第二篇：“船舶抵押与登记”共收录 6 篇论文。

Part II: “Ship Mortgage and Registration” collects 6 articles in total.

邱浩的《关于海事审判中适用实现担保物权程序的思考》，通过分析实现担保物权程序的由来及实务操作，指出《海商法》上规定的船舶抵押权、船舶留置权及海运货物留置权的实现均可以适用新《民事诉讼法》的规定，从而大大降低船舶担保物权人实现权利的成本，也为海运承运人实施商事留置权提供切实的程序支持，将进一步促进海事审判效率的提升。

“Reflections on the Adaption of Procedure for Realizing Real Rights for Security in Maritime Trial” by QIU Hao analyzes the derivation of the procedure for realizing real rights for security and its specific operation in practice to make the point that the procedure under *Civil Procedure Law* also applies to the maritime mortgage, possessory lien on ship and cargo stipulated in the *Maritime Law*, which could reduce the costs for the security holder to realize the right, provide procedure support for the shipping carriers to enforce commercial possessory lien and further promote the efficiency of maritime trial.

林江的《在实践与法律中艰难前行：论中国〈物权法〉下预付款还款保函的替代品》，探讨在《物权法》颁布前后，实践中两种预付款还款保函的替代性融资方式——在建船舶抵押和“台州模式”，两者境遇的对比，并建议由工商管理局与海事局建立磋商协作机制以实现浮动抵押，呼吁我国司法机关对《物权法》相关规定作出司法指导。

“Gingerly Stepping between Law and Practice: Implications of the *Real Right Law of China* on the Alternatives of Shipbuilding Refund Guarantee” by LIN Jiang analyzes two alternatives to the shipping refund guarantee taken in practice – construction mortgage and the “Taizhou Model” and contrast the two means pre and under the *Real Right Law of China* and suggests the SAIC and MSA establish a consultation and cooperation mechanism to realize the “floating charge”, and hope judicial guidelines will be worked out.

吴勇奇的《新〈民事诉讼法〉视野下实现船舶担保物权问题探析》，分析了新《民

民事诉讼法》新增的申请实现担保物权程序,并提出如果船舶担保物权适用《民事诉讼法》的规定,将面临一般法与特别法的适用、案件的管辖、船舶优先权的实现程序等一系列问题。因此应将船舶担保物权的实现作为适用新《民事诉讼法》所规定的申请实现担保物权程序的例外,船舶担保物权可根据《海事诉讼特别程序法》所规定的船舶扣押和拍卖等程序予以拍卖实现。

“Analysis on the Realization of Real Rights for Security of Ship under the New *Civil Procedure Law*” by WU Yongqi analyzes the procedure of application for realization of real rights for security under the 2012 revision of the *Civil Procedure Law* and puts forward that if the *Civil Procedure Law* applies to the procedure, a series of problems, such as confliction between application of the general law and special law, jurisdiction and the procedure of realizing maritime liens will raise. Thus, the realization of the real rights for security of ship should be regarded as an exception to the application of the new *Civil Procedure Law* and should be realized by auction according to the arrest and auction procedure as provided in the *Special Maritime Procedure Law*.

Roger Heward 等的《船舶抵押权人和承租人的利益冲突以及船舶抵押的设定程序及执行》,分析了船舶的抵押权人和承租人的商业/经济利益冲突,并介绍了中国的船舶登记程序。

“Conflicts of Interests between Mortgagees and Charterers and the Procedure for Establishing Mortgage on a Ship and Its Enforcement” by Roger Heward *et al.* analyzes the conflicting business/economic interests between the mortgagee and the charterer of the ship and introduces the ship registration procedure in China.

李连君和刘洋的《香港船舶登记与相关问题评述》,从《商船(注册)条例》的规定出发,立足香港船舶登记的实践与相关问题,系统全面的评述了香港的船舶登记制度。首先,只有具备条件的船舶才可予以登记,并且需要提供一系列文件。其次,船舶登记有不同的方式由此登记的内容也会有所不同。最后,对于在香港船舶注册处登记的船舶在船舶抵押登记以及登记船舶在安全、船员配备、费用等各方面均存在相应的规定。

“A Review on Registration of Ships and Some Related Issues in Hong Kong” by LI Lianjun and LIU Yang introduces the ship registration system in Hong Kong under certain important practical aspects and related issues under the *Merchant Shipping (Registration) Ordinance*. First, it is only eligible vessels can be registered, and a series of documents are needed. Second, there are various types of ship registration, thus details noted on the register will be different. Finally, for a vessel registered on the Hong Kong Shipping Register, some relevant regulations will exist in ship mortgages, relevant requirements on safety, manning and fees.

申晗的《从船舶融资向航运融资立体转变的思考——兼论我国当前船舶融资方式的问题与对策》，提出了为加快航运业的发展，需转变当前航运融资方式单一、简单化的模式，建立多元航运融资体系，规避航运保险分散融资风险，并发挥金融服务机构对航运融资的保护作用。

“Reflections on the Transformation from Ship Finance to Shipping Finance – And the Question and Strategy to Current Ship Finance Mode” by SHEN Han puts forward that in order to promote the development of shipping industry, the current single and simple mode of shipping finance need to be changed to establish a diversified shipping finance system, the shipping insurance need to be avoided to spread the finance risk and the finance service organs need to be used to protect shipping finance.

第三篇：“新型航运融资方式”共收录 8 篇论文。

Part III: “New Shipping Finance Means” collects 8 articles in total.

顾欣怡的《人民币远期运费协议市场探讨》，分析了远期运费协议的重要作用，并介绍了上海浦东发展银行与上海清算所、波罗的海航运交易所联合开发的人民币计价的远期运费协议。

“Discussion on RMB-denominated Forward Freight Agreement Market” by GU Xinyi analyzes the importance of forward freight agreement and introduces the RMB-denominated Forward Freight Agreement jointly developed by Shanghai Pudong

Development Bank, Shanghai Clearing House and the Baltic Exchange.

林江的《发展离岸银行服务,促进中国航运企业发展——以上海浦东为研究对象》,全面分析了中国航运企业对离岸银行服务的具体要求,通过深入探讨在中国的资金困难来核实在上海浦东地区是否有适宜的环境开展这项业务,并提出了帮助中国航运企业发展离岸银行服务的意见。

“Exploration of the Offshore Banking Services to Facilitate the Chinese Shipping Enterprises – A Probe into the Development in Pudong, Shanghai” by LIN Jiang comprehensively analyzes the special requirements for offshore banking services of Chinese shipping enterprise, examines the feasible environment of exploring the field in Pudong, Shanghai in view of a thorough discussion of financial hardship in China and puts forward suggestions with regards to the issue on the ground of development of offshore banking services that devoting to the help of the Chinese shipping enterprises.

常中彦和刘善超的《从提单质押看提单的性质》,分析了提单的物权凭证性质,并通过提单质押及其实现,对提单的性质予以进一步分析。

“Analysis on the Nature of B/L from the perspective of B/L Pledge” by CHANG Zhongyan and LIU Shanchao analyzes the B/L’s nature of document of title and further analyzes the nature of B/L by discussion of the B/L pledge and its realization.

Jonathan Silver 等的《新的船舶融资方式的出现以及中国融资租赁业的发展前景》,分析了因银行业受经济不景气的影响,借贷日益谨慎,世界范围内的船舶和船舶融资业举步维艰。船厂和船舶所有人很难获得银行贷款,只好寻求其他的融资方式。为适应这一市场需求,自 2009 年初中国内地的银行推出了一系列的融资新方式,但 2010 年中后期,银行贷款急剧下降,融资成本大幅度上升,中国已不再是其他国家所认为的低成本融资国家,内陆船厂不得不寻求其他融资方式。相应地,政府也在船舶融资方面的法律与政策上作出了相应的调整。

“The Emergence of New Ways of Ship Financing and the Prospect of the Development of Chinese Financial Leasing” by Jonathan Silver *et al.* analyzes

that as affected by the recession, bank loans becoming increasingly cautious, worldwide shipping industry and ship financing are struggling. It is very difficult to get bank loans for shipyards and ship owners, so they have to seek other ways of financing. In order to adapt to the market demand, the mainland Banks launched a series of new ways of financing since the beginning of 2009, but in the mid-to-late 2010, a sharp drop in bank lending, a sharp rise in the cost of financing, China is no longer a low-cost financing country as other countries have thought, making inland shipyards have to seek other financing ways. Accordingly, the government also has made some corresponding adjustment of laws and policies related to ship finance.

王功荣、曾诚和胡正伟的《航运企业在“海陆仓”融资方式中的法律风险及防范》,介绍了“海陆仓”融资方式,并结合航运实践,通过介绍可行的防范途径,为航运企业更好地开展“海陆仓”业务提供帮助。

“Legal Risk of Offshore/In-transit Inventory Financing Mode for Shipping Enterprises and the Prevention” by WANG Gongrong, ZENG Cheng and HU Zhengwei introduces the offshore/in-transit inventory financing and combines the shipping practice, the feasible way to prevent legal risks is introduced so as to provide better help to shipping enterprises with offshore/in-transit inventory financing.

Peter Measures 的《伊斯兰法域船舶融资新方式》,围绕伊斯兰法域的融资,对其中最常见的各类融资结构进行研究,结合实践经验对其中的 *Murabaham* 和 *Ijara and ijara wa iqtina* 两种融资结构作出详细分析,包括具体融资流程、可能存在的其他结构形态以及其他细节内容。另外,还对伊斯兰融资中存在的伊斯兰教法与合同选择适用的准据法之间的法律冲突提出建议,保障在伊斯兰国家船舶融资的顺利进行。

“Shari’a Compliant Methods for the Financing of Ships” by Peter Measures examines some of the most common forms of Shari’a-compliant financing structures around the Islamic finance. Combining with practical experience, a detailed analysis, including financial process and other relevant forms, as well as other details, will be gave for *Murabaham* and *Ijara and ijara wa iqtina*, such two typical structures.

Meanwhile, for the special conflict of law issue existing between *Shari'a* law and governing law parties choose, this article will give advices and to ensure the smooth operation of the ship finance in Islamic countries.

陈琦的《国际海盗新动向引发的海上保险条款再审视》，在厘清国际海盗发展新动向及对比各国对海盗的界定基础上在海上保险法框架下对海盗进行界定，并进一步分析海盗险的承保，海盗赎金的性质及其保险赔付。

“Research on the Marine Insurance Terms Arised from New Changes of the International Piracy” by CHEN Qi defines piracy under the framework of marine insurance law in consideration of the new trend of the international piracy and comparison of the definition of piracy in many countries. The issues of pirate insurance underwriting, the nature and insurance payments of piracy ransoms are also discussed.

蒋圣力的《海盗赎金的保险理赔问题研究》，分析了当前我国关于海盗风险的各项保险条款在适用于对海盗赎金进行保险理赔时存在的实践上的缺陷，并提出有必要制定更为恰当有效的、专门针对海盗赎金的保险条款以应对这一难题，以此丰富和完善我国海上保险的内容体系。

“Research on the Insurance Claim for Piracy Ransoms” by JIANG Shengli analyzes the practical latent exist in the current insurance terms as to the specific application of insurance claim for piracy ransoms and puts forward that it is necessary to set out more efficient and professional insurance terms for piracy ransoms to deal with this issue and enrich and improve our marine insurance system.

第四篇：“航运法治”共收录 2 篇论文。

Part IV: “Shipping Legalization” collects 2 articles in total.

秦男的《论上海国际航运中心航运金融服务的法治化发展》，分析了上海航运金融服务的法治化发展应当解决三个问题：一是航运金融服务的合理范畴之要素之何在；二是对这些要素进行法治化检视后，上海航运金融服务的发展现状与困境

之何如；三是结合其他国际航运中心的法治化发展经验，上海航运金融服务的发展路径与完善对策之何解。

“Research on the Legalization Development of Shipping Finance Service in the Construction of Shanghai International Shipping Center” by QIN Nan analyzes three issues need to be solved for the legalization development of Shanghai shipping finance service: where are the factors within reasonable category in the shipping finance services; what is the current situation and dilemma of Shanghai shipping finance service; how to develop and promote Shanghai shipping finance service.

柯永宏和唐沁的《航运金融运作与海事司法规制——以船舶融资租赁为视角》，首先详细地分析了船舶融资中存在的法律关系并明确法律关系中当事人的权利和义务关系；然后结合司法实践，全面探讨了现今船舶融资租赁中案件定性、出租人融资租赁权保障、船舶扣押等方面存在的主要问题与疑问以及产生的原因。由此，分析总结船舶融资租赁在实践中的各种信用履约、操作等方面的风险并在此基础上有针对性的提出切实可行之法予以应对。

“Shipping Finance Operation and Maritime Judicial Regulation - From the Perspective of Ship Financial Leasing” by KE Yonghong and TANG Qin firstly analyzes the legal relationship exists in ship finance to clarify the parties' rights and obligations, then discusses the main issues and questions existed in the determination of the nature of case, the protection of lessor's rights in ship finance and the arrest of ship in combination with judicial practice and finally analyzes and summarizes the risks on credit performance and operation in practice on ship financial leasing and in the meanwhile, bring out a series of feasible solutions.

本书由上海国际航运研究中心航运政策与法律研究所^①副所长、上海海事大学^②法学院副教授林江组织并负责编著。上海国际航运研究中心外国专家、上海

① www.sisi-smu.org/institute.asp?id=5/.

② www.shmtu.edu.cn/.