

国际航运中心建设前沿丛书 / 於世成主编

上海市“十二五”重点图书

上海高校知识服务平台建设项目资助 (编号: ZF1209)

2014 航运金融 法律评论

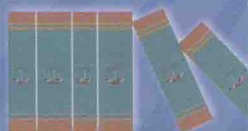
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Shipping Finance Law Review 2014



上海浦江教育出版社

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序 言

Preamble

由上海国际航运研究中心创办的《航运金融法律评论》系列已连续出版《2012 航运金融法律评论》和《2013 航运金融法律评论》。此次我们向您敬献《2014 航运金融法律评论》，以期对相关领域的从业者、研究人员初步构建交流合作的平台。

The *Shipping Finance Law Review* founded by Shanghai International Shipping Institute (SISI) has continuously and successfully published the *Shipping Finance Law Review 2012* and the *Shipping Finance Law Review 2013*. Now, we present the *Shipping Finance Law Review 2014* to you for the purpose of providing an exchange and cooperation platform for practitioners and researchers in relevant fields.

在 2014 年,我国不断推动航运保险、船舶融资、资金结算和运价衍生品的发展,其中“两个中心意见”中推动航运保险发展的政策使我国航运保险市场迅速发展。根据 IUMI 数据统计,我国已是全球第一大船舶险市场以及第二大货运险市场。近年来我国航运保险新产品相继出现,除了传统的船舶保险、货运保险之外,还包括码头财产与责任保险、保赔保险等产品。2014 年我国进出口贸易额为 264 300 亿元,而船货险保费收入仅为 150.56 亿元,若按 0.1% 的综合渗透率计算,航运险保费的收入大约为 264.3 亿元,仍存在着巨大的发展空间。

In the past year of 2014, China continues to promote the development of shipping insurance, ship finance, capital settlement and freight derivatives. The policy to promote the development of shipping insurance contained in the *Proposals of the State Council for Pushing Shanghai to Speed up the Development of Modern Service and Advanced Manufacture and to Build It into an International Financial Center and an International Shipping Center* makes the

rapid development of China's shipping insurance market. According to the statistics of IUMI, China has become the largest hull insurance market and the second largest cargo insurance market in the world. In recent years, new products of shipping insurance products follow one after another, including the traditional hull insurance and cargo insurance, as well as wharf property and liability insurance and P&I insurance. In 2014, the value of import and export of China is RMB 26,430 billion, but the premium income of hull insurance and cargo insurance of China is only RMB 15.056 billion. So, if calculated by 0.1% comprehensive permeability, the premium income of shipping insurance is about RMB 26.43 billion, which has great prospects for development.

船舶融资方面,我国银监会制定的《关于金融租赁公司在境内保税地区设立项目公司开展融资租赁业务有关问题的通知》为船舶金融租赁服务体系的建设奠定了制度基础。相比项目类贷款,船舶抵押贷款、船舶出口融资等银行新开展的业务在管理上更为细致和具有针对性。运价衍生品方面,上海航运运价交易有限公司于2011年3月揭牌,正式推行上海航运运价衍生品交易运作;上海航运交易所相继推出了新版上海出口集装箱运价指数(SCFI)、集装箱运价掉期协议(CFSA)、中国沿海煤炭运价指数(CBCFI)、中国新造船价格指数(CNPI),这意味着航运金融中国影响力的开始。由此可见,我国在航运金融的发展和航运金融中心的建设方面已取得了很多成效,但也存在很多不完善之处。

In respect of ship finance, the *Notice of the China Banking Regulatory Commission on Issues concerning Financial Leasing Companies' Establishment of Project Companies in Domestic Bonded Zones to Carry Out Financial Leasing Business* provides the foundation for the construction of the ship financial leasing service system. In comparison with project loan, the new businesses carried out by the bank, such as ship mortgage loan and ship export financing, are more detailed and targeted. In respect of freight derivatives, Shanghai Shipping Freight Exchange Co., Ltd. (SSEFC) was set up in March 2011 and formally implemented the trading operation of Shanghai shipping freight derivatives. Since the establishment of SSEFC, it successfully launched the new SCFI, CFSA, CBCFI and CNPI, which indicated the start of China's influence

on shipping finance. In view of above, China has obtained some achievements in the development of shipping finance and the construction of shipping financial center, but there is much space to improve.

在此背景下,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、新技术以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。

Under such circumstances, we hope that this book (series of book) 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 24 篇,分列 4 个篇章。

This book collects 24 articles in total and is divided into 4 parts.

第一篇 “船舶融资租赁”共收录 7 篇论文。

Part I “Ship Financial Leasing” collects 7 articles in total.

张颖的《论船舶融资租赁出租人特殊风险之防范——以对租赁物的强制措施为视角》提出我国《海商法》关于船舶优先权、船舶留置权的规定使船舶融资出租人面临由于船舶特有法律制度带来的特殊风险。通过分析实践中争议较大的法律问题“当事人是否可以申请对自己名下的船舶采用强制措施”,指出船舶融资租赁出租人可将租赁物作为财产保全请求或者海事保全请求的担保财产请求法院扣押相关证书,防止租赁物被拍卖变更产权的风险。

“On the Prevention of Special Risks for the Lessors in Ship Financial Leasing: From the Perspective of the Coercive Measures over the Leasehold” by ZHANG Jie puts forward that the special legal system for ships, in particular the provisions concerning maritime liens and possessory lien in the *Maritime Law* brings special risks to ship financial lessors. By analyzing the controversial

legal issue of whether the party concerned is entitled to apply for coercive measures against the ship under its ownership, the article points out that the ship financial leasers could apply to the court for detention of relevant certificates with the leasehold as the guarantee property for property preservation claims or maritime preservation claims, in order to prevent the risk of the leasehold being auctioned to change the property rights.

宁波海事法院温州法庭课题组的《船舶多层次投资纠纷及其法律应对》介绍了浙江民营资金在造船、航运方面的投资,指出因造船、航运业市场的持续低迷,船舶多层次投资引起的纠纷屡有发生,且由于投资不规范、认识不一致、裁判不统一等问题的存在加大了纠纷解决难度。通过梳理宁波海事法院近几年来审理的船舶多层次投资纠纷,以期理清投资法律关系,寻求法律应对措施。

“Ship Multi-level Investment Disputes and Legal Measures” by Research Group of Wenzhou Dispatched Tribunal of Ningbo Maritime Court introduces the private investment in shipbuilding and shipping of Zhejiang Province, points out that under the circumstance of downturn in shipping market, disputes over multi-level investment of ship occur frequently and tend to increase. Non-standardized investment, inconformity of knowledge and disunity in rules of adjudication make the disputes even harder to solve. By summarizing the cases tried by Ningbo Maritime Court in recent years concerning the disputes over multi-level investment of ship, the Research Group made this article in order to clarify the legal relations of investment and seek legal measures.

徐春月和马菲菲的《融资租赁公司船舶资产证券化运作分析》根据我国融资租赁公司的发展现状,对船舶资产证券化这一融资模式进行阐释分析,结合我国当前的宏观政策和制度背景,以期为我国融资租赁公司进行船舶资产证券化运作提供有效借鉴及指导。

“Analysis on the Operation of Financial Leasing Company’s Ship Assets Securitization” by XU Chunyue and MA Feifei analyzes the financing mode of ship assets securitization in combination with the current development situation of Chinese financial leasing company and in the background of the current macro policy and

system in China in order to provide effective reference and guidance for financial leasing company to operate ship assets securitization in China.

徐爽、陈继红、邹晶和汪涛的《自贸区政策下船舶融资租赁服务发展对策研究》通过对船舶融资租赁服务的作用及其发展的政策背景进行梳理,分析目前我国船舶融资租赁服务面临的主要问题,并结合我国船舶融资的实际情况分析中国(上海)自由贸易试验区政策下未来船舶融资发展面临的重要机遇和政策利好,提出船舶融资租赁服务发展的相关对策建议。

“A Study on Development Strategy of Ship Financial Leasing Service under the Policy of Free Trade Zone” by XU Shuang, CHEN Jihong, ZOU Jing and WANG Tao introduces the function of ship financial leasing service, summarizes the policies concerning the development of ship financial leasing service, analyzes the important opportunity and advantaged policy for the development of ship finance in the future under the policy of China (Shanghai) Pilot Free Trade Zone in combination with the actual situation of the ship finance in China and puts forward some suggestions for the development of ship financial leasing service.

张智勇、赵月林和衡向东的《船舶融资中让与保函的法律实践》介绍了让与担保的定义及法律适用,结合司法与实践分析了让与担保的效力,探讨了融资银行在开展船舶融资业务时是否能够通过让与担保获得保障,并以《最高人民法院关于审理民间借贷案件适用法律若干问题的规定》第24条为视角讨论让与担保在我国司法实践中的最新发展,为融资银行在面对让与担保这一担保形式时提出相关建议。

“The Law and Practice of Alienation Guarantee in Ship Finance” by ZHANG Zhiyong, ZHAO Yuelin and HENG Xiangdong introduces the definition and the applicable laws of the alienation guarantee, analyzes the effect of alienation guarantee in combination with justice and practice, discusses whether financing banks can be protected by virtue of alienation guarantee in ship finance business, studies the latest development of alienation guarantee in Chinese judicial practice from the perspective of Article 24 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Private Lending Cases* and provides suggestions for financing

banks when faced with alienation guarantee.

李诚容的《贷款文件中重大不利变更条款之援引》介绍了重大不利变更或影响,并着眼于重大不利变更条款的订立磋商,探讨援引此条款时存在的主要问题。

“Invoking Material Adverse Change (MAC) Clause in Loan Documentation” by LI Chengrong introduces the material adverse change or effect. This article looks on one hand, at the points to consider in negotiating the MAC provisions, and on the other hand, the key issues to be considered when invoking them.

欧阳天健的《我国船舶融资租赁税收法律问题研究》指出我国税收立法技术尚待提高,与船舶融资租赁相关的税收政策有待于进一步的落实和细化。通过对融资租赁行业税收法律制度介入的重要性进行分析,从流转税、关税、企业所得税这三个层面出发,剖析制度不足及其产生的根源,对未来船舶融资、租赁税收、法律制度构建的路径进行规划。

“Research on Taxation Legal Issues of Ship Financial Leasing in China” by OUYANG Tianjian points out that the taxation legislation of China remains to be improved, moreover, the tax-related policies concerning ship financial leasing need to be further implemented and refined. By analyzing the importance of establishing a tax legal system in financial leasing industry, the article dissects the defects of system and the cause thereof from the aspects of circulation tax, custom duty and corporate tax; and finally makes a proposal for further development of ship finance, tax on leasing and legal system.

第二篇 “造船合同和保函”共收录 6 篇论文。

Part II “Shipbuilding Contract and Refund Guarantee” collects 6 articles in total.

Ian Gaunt 的《与中国造船合同项下银行保函有关的几个问题——三个近期英国判例》分析了还款保函的条款,保函银行付款义务的性质以及与提交英国的仲裁相关的在中国进行的平行诉讼,最终得出三个结论:一是依据特定事实是否构成根本违约可由法院决定,二是银行承担第一性还是第二性付款义务的审查要点,三是英国法院承认中国法院作出的决定或裁定,但这并不必然解除中国银行承担的

付款义务。

“Some Issues concerning Guarantees Given in Connection with Shipbuilding Contracts in China: 3 Recent English Cases” by Ian Gaunt analyzes the clauses of refund guarantee, the nature of the payment obligation of guarantee banks and the parallel proceedings in China of dispute referred to arbitration in England. Three conclusions have been arrived at as follows: whether a breach is repudiatory on particular facts can be determined by the courts; factors of test in deciding whether a guarantee is a secondary guarantee or performance bond; and English courts will recognize decisions and order of Chinese courts but this may not prevent Chinese banks being forced to pay on refund guarantees.

Simon Milnes 的《影响造船合同和钻井平台建造合同解除的若干问题——还款、违约、信赖利益损失及赔偿》分为预付款返还、违约及信赖利益损失三部分,通过不同案件中仲裁庭所采取的分析方法,讨论合同解除的情形,关于解约日的争议,返还预付款的条件,并阐述违约救济中信赖利益损失的赔偿。

“Some Complex Issues Affecting Termination of Ship-building and Oil-rig Building Contracts: Refunds, Repudiation, Reliance-based Damages and Restitution” by Simon Milnes is divided into three parts, including refund, repudiation and reliance damages. The author discusses the termination of building contract, the dispute over cancelling date, the conditions to refund the prepaid instalments and relief of reliance damages through different analytical approaches adopted by tribunals.

马瑞和林江的《伦敦仲裁的中国造船纠纷——中国平行诉讼的风险:后果及可能性选择》回顾了中国海事法院审理的一些已经提交伦敦仲裁的造船纠纷案件,探讨这些案件产生的原因,介绍预付款还款保函所涉问题,分析中国船厂转而在中国寻求平行诉讼救济的原因,介绍中国法院对阻止利用在中国提起平行诉讼以解决造船纠纷做出的积极尝试,并提出应解决中国船厂试图规避伦敦仲裁程序的根本原因。

“PRC Shipbuilding Disputes in London Arbitration: The Threat of Parallel Proceedings in China - The Consequences and Possible Alternatives” by Peter

MURRAY and John LIN reviews the cases tried by Chinese maritime courts in respect of the cases of dispute having been referred to arbitration in London, explores the reasons why they have come about, introduces the issues concerning refund guarantee, analyzes the reasons for commencing parallel proceedings in China, introduces the positive and welcome step forward taken by Chinese courts and puts forward that it would be better to deal with the root cause of the yards' attempts to circumvent the London arbitration process.

梁赞的《论造船合同项下物的瑕疵损害赔偿——兼评 NEWBUILDCON 35(b) 条款》为辨析造船合同的性质,从德、日民法和中国《合同法》中规定的承揽瑕疵担保责任入手,探讨大陆法系中物的承揽瑕疵担保责任之定位,指出造船合同项下物的瑕疵担保责任构成要件,包括建造之船舶必须存在瑕疵、瑕疵在风险转移给买方时已经存在、买方是善意的且无重大过失以及买方及时履行通知义务等。比较不同法系下物的瑕疵损害赔偿范围,包括大陆法系下物的瑕疵损害赔偿范围与普通法下损害赔偿的方法和范围,并对 NEWBUILDCON 35(b) 条款展开评析。

“Implications of the Compensation for Damages of Defects under Shipbuilding Contract: Comments on Clause 35 (b) of NEWBUILDCON” by LIANG Yun analyzes the nature of shipbuilding contract and discusses the liability for warranty against defects in the civil law system from the perspective of the liability for warranty against defects in the contract of work provided in the laws of Germany and Japanese and the Chinese *Contract Law*. It is pointed out that the constitutive elements of liability for warranty against defects under the shipbuilding contract generally include the following conditions: the subject-matter ship has defects and the defects shall occur before the risks are transferred to the buyer, the buyer is in good faith and is not guilty of gross negligence, and the buyer has timely fulfill the obligation to notify. The article compares the means and scope of compensation for damages of different legal systems including the civil law and the common law, and comments on Clause 35 (b) of NEWBUILDCON.

郑蕾的《造船合同中预付款还款保函的担保范围》在阐述造船合同还款保函的担保范围及造船合同解除的基础上,比较分析了CSTC、上海格式、NEWBUILDCON等3种常见造船合同中还款保函担保范围的规定,归纳总结出在CSTC造船合同和上海格式合同下,只有在买方根据造船合同的明确约定解除合同时,担保银行才承担还款保函下的担保责任;NEWBUILDCON合同赋予买方更多解除合同的权利和机会,担保银行承担担保责任的条件应扩大到买方根据法定解约权解除合同的情形。在实务中,银行应重视还款保函担保范围的区别,慎重选择文本。

“The Guaranteed Scope of Refund Guarantee under Shipbuilding Contract” by ZHENG Lei, on the basis of elaborating the guaranteed scope of refund guarantee under shipbuilding contract, compares and analyzes the provisions on the guaranteed scope of refund guarantee of the CSTC Shipbuilding Contract, the Shanghai Form and the NEWBUILDCON; and draws a conclusion that under the CSTC Shipbuilding Contract and the Shanghai Form, the guarantee bank shall undertake the responsibility for security where the buyer discharges the shipbuilding contract according to the express provisions therein, and under the NEWBUILDCON, the buyer has more rights and chances to discharge the shipbuilding contract, and the conditions that the guarantee bank shall undertake the responsibility for security are expanded to the circumstance where the buyer discharges the shipbuilding contract according to the statutory right of termination. In practice, banks should pay attention to the differences between the guaranteed scope of refund guarantees and prudently select the form of shipbuilding contract.

林江和王亚男的《英国法下造船合同变更对预付款还款保函的影响》提出了船舶建造合同应尽可能在合同及预付款还款保函中加入“债权债务发生变更后保证人仍继续承担保证责任”的条款,以有效控制保函风险。举例说明在预付款还款保函下,对于船舶建造合同双方而言,无论合同中是否加有“anti-discharge”条款(债权债务发生变更后,保证人仍继续承担保证责任),只要船舶建造合同发生变更,即便是看似细小的变更,也应事先通知船厂银行并获得其书面同意;如变更已经发生,且未获得船厂银行同意,则需立即联系船厂银行,争取其追认。

“The Influence of Variation of Shipbuilding Contract on Refund Guarantee under English Law” by John LIN and Jane WANG puts forward that it is better to include a “the guarantor shall continue to assume the responsibility for guarantee after the rights and obligations vary” clause in the shipbuilding contract and refund guarantee in order to control risks effectively. In recent years, China’s shipbuilding enterprises need to open all kinds of guarantees for financing, the potential risks are worth paying attention to and prevent. For example, whether there is a “anti-discharge” clause in the shipbuilding contract (the guarantor continues to assume the responsibility for guarantee after the rights and obligations vary), for the parties thereto, as long as the shipbuilding contract varies, even a seemingly small variation, should be notified to the shipyard’s bank in advance for written consent; if a variation without the consent of shipyard’s bank has occurred, then an immediate confirmation is needed.

第三篇 “船舶物权”共收录 6 篇论文。

Part III “Real Rights of Ship” collects 6 articles in total.

荣璞珉的《中国法下船舶抵押权之批判性分析》主要介绍了中国法下的船舶抵押权。通过介绍船舶抵押权的历史起源,分析《物权法》《担保法》及《海商法》的相关规定,梳理船舶抵押权的定义和特点,详细阐述中国法下船舶抵押权的设立、执行、转让及消灭。通过简述一个复杂的案例,阐明中国的司法观点,最后提出修改《海商法》对船舶抵押权的规定,以完善我国船舶抵押权制度,促进船舶融资,及充分维护各方当事人的利益。

“Ship Mortgage under Chinese Law: A Critical Analysis” by RONG Pumin mainly introduces the ship mortgage under Chinese law. By introducing the history and origin of ship mortgage, the article summarizes the definition and characteristics of ship mortgage through analysis on relevant provisions of the *Real Right Law*, the *Security Law* and the *Maritime Law*; expounds the establishment, enforcement, transfer and extinction of ship mortgage under Chinese laws; elaborates Chinese judicial perspectives by a brief introduction of a complex case; and finally puts forward amendments of the *Maritime Law* on ship mortgage to improve the ship

mortgage legal system, facilitate ship financing and provide adequate protection for the interests of the parties concerned.

吴胜顺和黄寿锋的《船舶抵押权设立与实现：现状和问题——以温州市船舶抵押信贷业为背景》通过对宁波海事法院尤其是该院温州法庭近几年来处理的船舶抵押纠纷进行分析，梳理出银行船舶抵押贷款业务和诉讼中普遍存在的一些问题，并分析原因，旨在为银行业规范船舶抵押贷款业务、海事审判妥善处理船舶抵押纠纷提供借鉴。

“The Creation and Realization of Ship Mortgage: Present Situation and Existing Problems: In the Background of Ship Mortgage Credit Industry in Wenzhou City” by WU Shengshun and HUANG Shoufeng analyzes the cases of dispute over ship mortgage tried by Ningbo Maritime Court, especially by Wenzhou Dispatched Tribunal in recent years; summarizes some common issues in the ship mortgage loan business of banks and litigation; and discusses the causes with a view to regulating the ship mortgage loan business of banks and providing reference for maritime trial of disputes over ship mortgage.

郑蕾的《中国法下船舶所有权变动的交付生效要件与特约例外》为探讨 2012 年 3 月 31 日最高人民法院发布的《最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释》（以下称《解释》）第 10 条规定中存在的相关问题，根据我国《海商法》和《物权法》船舶所有权变动的规定，阐述《解释》第 10 条第 1 款和第 3 款规定在适用中可能产生的问题，指出：为避免引起歧义，有必要进一步明确，该第 10 条的解释应不适用于一船多卖下的某一买方根据船舶买卖合同约定的条件已合法取得船舶所有权的情况。当该买方已根据买卖合同的约定合法取得船舶所有权，依据物权主张权利时，请求权应当优先于其他买方的债权请求权。这样的解释符合私法自治的精神，也更有利于保护交易安全，鼓励船舶贸易的发展。

“Delivery Effectiveness Conditions and Agreement Exceptions in Ship Ownership Transfer under PRC Law” by ZHENG Lei discusses the relevant issues arising from the provisions of Article 10 of *Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in Trial of Disputes over Contracts on Purchase and Sale* (hereinafter referred to as *Interpretation*)

issued on 31 March 2012 by the Supreme People's Court, the possible issues are elaborated arising from the application of provisions 1 and 3 of Article 10 of the *Interpretation* by reference to the pertinent provisions regarding the transfer of ship ownership under *Maritime Law* and *Property Law* of PRC. To avoid any doubt, it is suggested to make it clear that Article 10 of the *Interpretation* shall not be applicable to the scenario where a buyer in multiple sale transactions of a ship has already duly obtained the ownership of the ship pursuant to the conditions agreed in the ship purchase and sale contract. If the buyer has already duly obtained the ownership of the ship pursuant to the conditions agreed in the ship purchase and sale contract, the buyer's real right shall have priority over the obligatory rights of other buyers in multiple sale transactions of the ship. Such interpretation will be in compliance with the principle of autonomy of private law, and can better protect the safety of transactions and encourage the development of ship purchase and sale business.

孙思琪的《中国法下创设船舶用益物权制度可行性之研究——以物权法定主义及域外法观察为中心》提出了创设船舶用益物权是我国海商法学界争议颇多的问题之一。基于《物权法》第5条规定的物权法定主义,中国法下不存在以船舶为客体的用益物权,也不允许当事人设立以船舶为客体的用益物权,但是允许通过修改《海商法》规定以船舶为客体用益物权。国外虽然不存在以“船舶用益物权”或“船舶用益权”命名的物权,但是却存在允许以船舶为客体的用益物权,即用益权;即使在没有用益权的国家,也有相对完善的占有制度。航空器使用权是对于航空器占有、使用、收益的权利,具有用益物权的性质,对于创设船舶用益物权有一定的参照意义。

“Study on the Feasibility of Creation of Ship Usufruct System under Chinese Law: Based on the Legalism of Jus in Re and the Observation of Foreign Laws” by SUN Siqi puts forward that the creation of ship usufructus right is one of the disputable issues discussed in Chinese maritime academic circle. According to “legalism of jus in re” provided in Article 5 of the *Real Right Law*, neither right of usufructus with ships being the object of usufruct exists, nor would such right of usufructus be allowed to created. However, it is allowed to create right of usufructus

pertaining to ships via revising the *Maritime Law*. Although there is no real right named as ship rights of usufructus or usufruct of ship in other countries, but rights of usufructus created on ships are allowed, i.e. usufruct. Even if in the countries which have no provisions on rights of usufructus, there is relatively sound possession system. The right to use the aircraft refers to rights to possess, use and benefit from aircraft, which has the characteristics of rights of usufructus, it may have a reference for the creation of ship usufructus rights.

王淑敏、杨欣和李瑞康的《上海自由贸易区实施“国际船舶登记制度”的法律问题研究》指出我国范围内现行的船舶登记制度并不适用于上海自由贸易区。借鉴特案免税登记制度和上海洋山、天津东疆保税港区对于船舶登记制度的探索经验,以及建设国际航运中心所需,上海自由贸易区应摒弃严格船舶登记制度和开放船舶登记制度,实行国际船舶登记制度。根据上海自贸区发展现状,国际船舶登记制度应在以下几个方面创新:对登记条件实行有条件的开放、解除单船融资租赁公司资本限制、完善配套法律法规、简化登记手续和降低船舶登记税费。

“Study on Legal Issues of the Implementation of International Ship Registration System in Shanghai Free Trade Zone” by WANG Shumin, YANG Xin and LI Ruikang points out that the current ship registration system for nationwide cannot be applied in Shanghai Free Trade Zone. Considering the practice of special tax-free case registration system, experience of Yangshan Free Trade Port Area and the Dongjiang Free Trade Port Zone of Tianjin on exploring the ship registration system, and the need to construct international shipping center, Shanghai Free Trade Zone should abandon strict ship registration system as well as open ship registration system and should implement the international ship registration system. According to the present situation of the development of Shanghai Free Trade Zone, the international ship registration system should be innovated from the following aspects: conditional opening the conditions for registration, relaxing the capital limitation of single ship financial leasing company, improving the supporting laws and regulations, simplifying the registration procedures and reducing the ship registration tax.

许俊强和陈永灿的《论实现船舶抵押权的非诉程序》提出了船舶抵押权的实现途径直接关系到实现船舶抵押权的时间成本。《中华人民共和国民事诉讼法》规定的实现担保物权非诉程序,适用于船舶抵押权的实现,改变了船舶抵押权通过诉讼程序解决的传统模式。就船舶抵押权适用担保物权实现程序涉及的主体资质、管辖权、受理与审查等相关问题加以分析。

“Research on Non-litigious Procedure for the Realization of Ship Mortgage” by XU Junqiang and CHEN Yongcan puts forward that the time consumed to realize the right of ship mortgage is directly influenced by the procedures on realization of the right of ship mortgage. The non-litigious procedure on realization of real rights for security as stipulated in the *Civil Procedure Law of the People's Republic of China* is applicable to the realization of ship mortgage and brings a change on the traditional model that the ship mortgage was realized through litigious procedure. The article analyzes the capacity as a subject, the jurisdiction and the acceptance and examination of cases concerning application of the procedure on realization of real rights for security to the right of ship mortgage.

第四篇 “海上保险”共收录 5 篇论文。

Part IV “Marine Insurance” collects 5 articles in total.

朱作贤的《论船舶融资面临的海上保险法律难题:中国法的缺失及完善》指出我国船舶融资业的发展遭遇一系列海上保险法律难题,凸显了我国当前的保险法律应对这一专业领域的缺失与不足,亟待立法完善。从理论与实证两个角度,对实践中涌现的崭新法律难题进行分析、研究与论证,充分借鉴各国经验,提出具体可行的法律解决路径。

“The Difficult Issues of Marine Insurance Law Regarding Ship Finance: Defect of Chinese Law and Its Improvement” by ZHU Zuoxian points out that many difficult issues of marine insurance law has occurred during the development of ship finance in China. It demonstrates that there are legislative blank and flaws with respect to Chinese law, which cannot deal with the matters of ship finance effectively and should be rectified. From the theoretical