CHINA DISPUTE RESOLUTION

NEWS LETTER



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FEATURES

1 U.S. Ninth Circuit Affirms Confirmation of Beijing Arbitration Commission Award and Clarifies Presence-Based Jurisdiction

2 English High Court Recognizes and Enforces Dalian Court Judgment

3 Federal Court of Australia Enforces Beijing Arbitration Commission Award

4 Hong Kong High Court Recognizes Unregistered Mainland Judgments in Winding-Up Proceedings

5 Macao Explores to Establish an International Arbitration Platform for China and Portuguese/Spanish-Speaking Countries

6 Guangzhou Maritime Court Mediates Foreign Vessel Collision Dispute with No Substantial Connection to China

7 Nanning International Commercial Court Uses AI to Facilitate Cross-Border Dispute Resolution

NEWS ALERT

1. **U.S. Ninth Circuit Affirms Confirmation of Beijing Arbitration Commission Award and Clarifies Presence-Based Jurisdiction**

   On 3 August 2026, the U.S. Court of Appeals for the Ninth Circuit affirmed a Southern District of California judgment confirming a Beijing Arbitration Commission award in *Shenzhen Zehuijin Investment Center, Limited Partnership v. Liu Yingkui* (No. 24-6215). The dispute arose from a RMB 160 million loan, with the BAC awarding the lender approximately RMB 150 million after Liu failed to repay it. In the recognition and enforcement proceeding, Liu argued that his domicile was not in California and that he was not properly served. The Ninth Circuit rejected both arguments. As to jurisdiction, Liu's voluntary physical presence in California supported presence-based general jurisdiction. As to service, the court held that Liu had waived this defense under Rule 12(b)(5) by failing to raise it in his motion to dismiss; it therefore had no need to decide whether service strictly complied with the applicable rules. The court noted, however, that the papers were left with an adult cotenant at Liu's residence and thereafter sent to him by mail and email, and that Liu admitted receiving actual notice.

2. **English High Court Recognizes and Enforces Dalian Court Judgment**

   On 24 July 2026, the High Court of England and Wales held in Wei & Anor v Junhong [2026] EWHC 1892 (Comm) that a Chinese judgment for US$2,129,116 plus interest was enforceable in England. Wang opposed enforcement on two grounds: that the judgment was not "final and conclusive" because her application for procuratorial supervision could lead to a retrial, and that the proceedings breached natural justice because the Chinese court failed to address an audit report submitted with her retrial application. The Court rejected both defences. A Chinese judgment remains final unless execution is suspended, and Wang's application was itself dismissed. As to natural justice, the Court stated that a trial is not a dress rehearsal; Wang bore the consequences of choosing not to submit the audit report when it was available before the Chinese court rendered its decision. The decision confirms that a pending extraordinary review process does not, without more, preclude enforcement of a final Chinese money judgment in England.

3. **Federal Court of Australia Enforces Beijing Arbitration Commission Award**

   On 27 July 2026, the Federal Court of Australia enforced a Beijing Arbitration Commission award in *Zhejiang Lishui Mengxiang Education Development Co Ltd v Pan* [2026] FCA 992. Acting under section 8(3) of the *International Arbitration Act 1974* (Cth), the Court entered judgment against four individual respondents, jointly and severally, for the outstanding CNY 93,018,143.30 or its Australian-dollar equivalent at the time of payment. The application was heard *ex parte*. The Court was satisfied that the award was a foreign award, the underlying commercial dispute was arbitrable and the statutory evidentiary requirements had been met. It also noted that none of the respondents had challenged the award or applied to set it aside at the seat. Because the orders were made *ex parte*, the Court stayed them for approximately six weeks and required the applicant to notify each respondent by text message, email and letters to addresses in China, giving them an

opportunity to apply to set the orders aside. The decision illustrates the Federal Court's two-stage approach to *ex parte* enforcement: prompt entry of judgment combined with a temporary stay and notice safeguards.

4. **Hong Kong High Court Recognizes Unregistered Mainland Judgments in Winding-Up Proceedings**

On 6 July 2026, Hong Kong's Court of First Instance confirmed that an unregistered Mainland judgment may be recognised at common law and relied on for winding-up purposes. In *China Financial Services Holdings Ltd v Zou Muxin* [2026] HKCFI 3837, the creditor served a statutory demand for RMB 7,885,102.46 based on two Beijing Higher People's Court judgments. The company sought an injunction restraining the creditor from presenting a winding-up petition, arguing that registration under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) was required and that the judgments were not final because retrial remained available. The Court rejected both arguments. The Court held that non-registration does not preclude common-law recognition and that the statutory restriction on debt-recovery proceedings does not extend to winding-up. The availability of retrial did not, on the facts, defeat finality because it does not stay enforcement, and the company's application for retrial was ultimately dismissed. Although the debt had been paid and the proceedings had become academic, the creditor was treated as the effective winner and awarded costs. The decision confirms that non-registration alone does not prevent a Mainland judgment from supporting winding-up proceedings in Hong Kong.

5. **Macao Explores to Establish an International Arbitration Platform for China and Portuguese/Spanish-Speaking Countries**

In July 2026, the China-Portuguese (Spanish)-Speaking Countries Economic and Trade Services Centre, which was jointly established by Macau and the Executive Committee of the Guangdong-Macao In-Depth Cooperation Zone in Hengqin in April 2025, announced plans to promote the establishment of an international arbitration platform for trade and investment cooperation between China and Portuguese/Spanish-Speaking countries. It will also explore cooperation with existing arbitration institutions in Macau to establish a dedicated arbitration center, responding to growing demand for cross-border dispute resolution services. Although the proposal remains at the research stage, it signals Macau's policy direction of leveraging its role as a platform between China and Portuguese/Spanish-Speaking countries to develop cross-border arbitration services. For Chinese enterprises engaged in trade and investment with Portuguese/Spanish-Speaking countries, Macau may in the future offer an additional dispute resolution forum combining bilingual capabilities with convenient links to Mainland China. The institutional structure, arbitration rules and coordination with the Hengqin warrant continued attention.

6. **Guangzhou Maritime Court Mediates Foreign Vessel Collision Dispute with No Substantial Connection to China**

In August 2026, the Guangzhou Maritime Court successfully mediated an international vessel collision dispute arising from a collision between an Antigua and Barbuda-flagged vessel and a Liberia-flagged vessel in the Strait of Hormuz near UAE waters. Neither vessel was owned by a Chinese entity, and the collision had no substantive connection with China. While the Liberia-flagged vessel was undergoing repairs in Shenzhen, the owner of the Antigua and Barbuda-flagged

vessel applied to the Guangzhou Maritime Court for its arrest. The parties subsequently agreed to submit the dispute to the jurisdiction of the Guangzhou Maritime Court and apply Chinese law, with their claims totalling approximately RMB 180 million. During the proceedings, the Guangzhou Maritime Court held four pre-trial conferences and appointed maritime technical investigators to reconstruct the collision based on preserved key evidence, enabling the facts to be established efficiently. On 27 July 2026, the parties reached a settlement with the assistance of the Guangzhou Maritime Court. On 31 July, the Guangzhou Maritime Court further facilitated the distribution of the maritime liability limitation fund. The case demonstrates the increasing accessibility of Chinese maritime courts for international shipping disputes and provides a practical reference for international shipping participants considering China as a forum for maritime dispute resolution.

7. **Nanning International Commercial Court Uses AI to Facilitate Cross-Border Dispute Resolution**

In July 2026, in a dispute arising from an international sale of goods contract concerning durians between a Chinese entity and a Vietnamese entity, the Nanning International Commercial Court of the China-ASEAN Free Trade Area deployed the China-ASEAN Legal Consultation AI Agent to facilitate the determination of Vietnamese law. The AI tool rapidly searched, compared and translated relevant Vietnamese legal provisions and generated legal reference materials, which assisted the Court in mediating the dispute. The parties subsequently entered into a settlement agreement providing for payment by instalments totaling RMB 620,000. The case reflects Chinese courts' growing use of AI tools in foreign-related disputes to reduce the time and costs associated with ascertaining foreign law and overcoming language barriers. It also demonstrates the potential of AI-assisted legal research to facilitate more efficient resolution of China-ASEAN cross-border disputes.

US$1.8 Billion at Risk:

Hong Kong's Cross-Border Asset Preservation

Power in the Zong Family Trust Dispute

Ping Zhao, Stella Lu, Ice Zhang, Tianning Jiang

Abstract

On 21 July 2026, the Hong Kong Court of Appeal, in *Jacky Zong & Ors v Kelly Fuli Zong & Anor* [2026] HKCA 1292, dismissed the renewed application by Kelly Fuli Zong and Jian Hao Ventures Limited for leave to appeal against the preservation order concerning approximately US$1.8 billion in assets held in an HSBC Hong Kong account, and refused to continue the stay of part of the disclosure order. The Court of Appeal confirmed that section 21M of the Hong Kong High Court Ordinance is not confined to traditional *Mareva* injunctions. Where proceedings outside Hong Kong seek specific performance, transfer of property, or other relief that may directly affect particular assets, the Hong Kong courts may preserve those assets to safeguard the practical effectiveness of any eventual judgment of the foreign court; such preservation does not necessarily require the applicant to establish a real risk of dissipation. The Court of Appeal further held that an applicant's failure first to seek similar preservation relief from the Mainland court does not constitute a jurisdictional bar, and that disclosure of historical asset movements may be ordered as an ancillary measure to ensure the effectiveness of the preservation order. Against this background, this article analyses the distinction between preservation orders under section 21M and *Mareva* injunctions, the respective functions of the Hong Kong and Mainland courts, and the proper scope of ancillary disclosure orders, and offers practical guidance on coordinating substantive proceedings, asset preservation and enforcement strategy in cross-border family wealth disputes.

Main Text

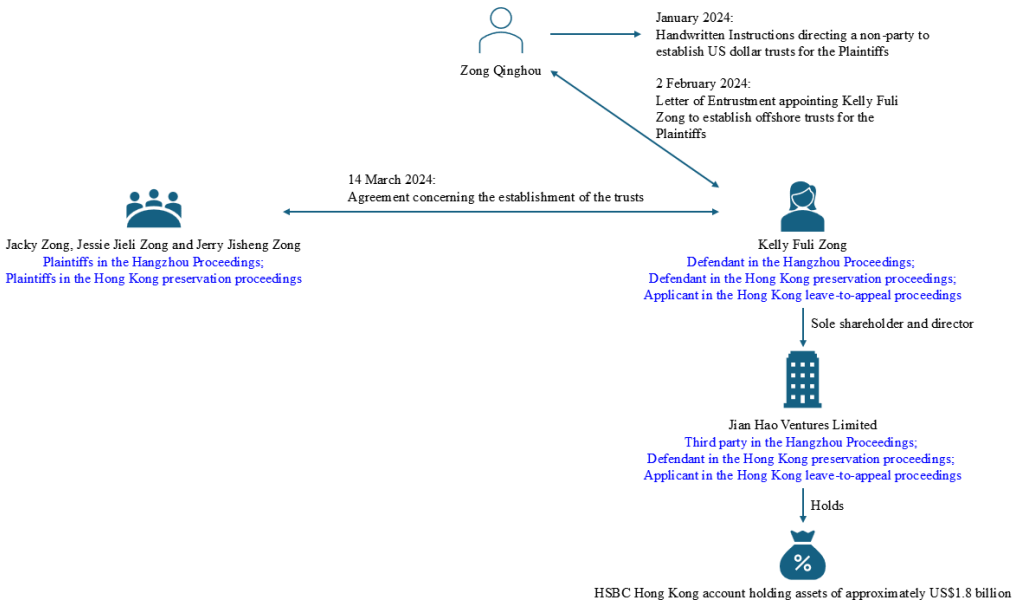
One of the most challenging situations in cross-border family wealth disputes arises where the substantive rights are adjudicated by a court in one jurisdiction, while the key assets are located in another. Must an applicant first seek preservation relief from the court hearing the substantive proceedings? Can the court where the assets are located freeze those assets without determining their ultimate ownership? If the applicant cannot establish the real risk of dissipation required for a traditional freezing injunction, must the application for preservation necessarily fail?

The Hong Kong Court of Appeal recently addressed these questions in *Jacky Zong & Ors v Kelly Fuli Zong & Anor* [2026] HKCA 1292[1]. In that case, three children of the late Zong Qinghou[2] had commenced proceedings in Hangzhou, contending that, pursuant to documents executed by Zong Qinghou during his lifetime and an agreement subsequently entered into by Kelly Fuli Zong, she was required to establish offshore trusts for their benefit, to be funded from assets held in an HSBC Hong Kong account in the name of Jian Hao Ventures Limited, and to perform the related obligations. The Hong Kong court had previously made a preservation order and a disclosure order in respect of approximately US$1.8 billion in assets in the account under section 21M of the High Court

Ordinance. The Court of Appeal ultimately dismissed the defendants' renewed application for leave to appeal.

The Hong Kong court did not determine whether the trusts had been established or that ownership of the assets had been resolved. On the contrary, the Court of Appeal repeatedly emphasised that the disputes concerning the trusts, the Agreement and the parties' interests in the assets remained matters for determination in the Hangzhou Proceedings. What the case does confirm is that, before any substantive judgment has been rendered, where the proceedings in other jurisdictions raise serious issues to be tried and the relief ultimately granted may directly affect assets located in Hong Kong, the Hong Kong court may invoke section 21M to preserve those assets and may order such disclosure as is necessary to ensure the effectiveness of the preservation measures. In cross-border trust, succession and family business disputes, substantive proceedings and asset preservation should therefore be planned as part of an integrated strategy from the outset.

I. Case Overview



(A) Family Trust Arrangements and the Hangzhou Proceedings

The assets in dispute are held by Jian Hao Ventures Limited ("Jian Hao"), a BVI company. As at 31 May 2024, Jian Hao's account with HSBC Hong Kong (the "HSBC Account") had a net asset value of approximately US$1.8 billion, consisting primarily of bonds, other fixed income assets, cash and time deposits (the "HSBC Account Assets"). Kelly Fuli Zong became Jian Hao's sole shareholder on 2 February 2024. Following Zong Qinghou's death on 25 February 2024, she also became the company's sole director, replacing Zong Qinghou.[3]

According to the Hong Kong judgments, Jacky Zong, Jessie Jieli Zong, Jerry Jisheng Zong and Kelly Fuli Zong are all children of Zong Qinghou by different mothers. The three plaintiffs rely on three documents. The first is an undated handwritten document (the "Handwritten Instructions"), allegedly written by Zong Qinghou to a third party in late January 2024, which sets out his intention to establish three trusts of US$700 million each. The second is a letter of entrustment (the "Letter of

Entrustment") executed by Zong Qinghou, to which Kelly Fuli Zong confirmed her agreement on 2 February 2024 by way of a confirmation letter, providing for the establishment of the three offshore trusts. The third is an agreement (the "Agreement") entered into on 14 March 2024 between Kelly Fuli Zong and the three plaintiffs, in which Kelly Fuli Zong undertook to establish the trusts using the HSBC Account Assets.[4] On that basis, the plaintiffs contend that Kelly Fuli Zong was subject to contractual and fiduciary obligations to establish the trusts and to hold and manage the relevant assets, and allege that she failed to establish the trusts, failed to provide complete information regarding the account, and disposed of part of the assets. Kelly Fuli Zong disputes the validity of the Handwritten Instructions, whether any trust or fiduciary relationship arose, and the nature of the transactions in question.[5]

The three plaintiffs have commenced proceedings in Hangzhou, which are being heard by the High People's Court of Zhejiang Province. They seek orders requiring Kelly Fuli Zong to perform the relevant agreement, pay the income generated by the relevant assets, and compensate them for losses arising from the unauthorised disposal of assets.[6] Whether those substantive claims are made out, whether the relevant documents give rise to trust or contractual obligations, and the ultimate ownership of the assets in the account are all matters to be determined in the Hangzhou Proceedings.

(B) Hong Kong Asset Preservation and Appeal Proceedings

As the key assets were located in Hong Kong, the three plaintiffs applied to the Hong Kong Court of First Instance on 30 December 2024 for interim relief under section 21M of the High Court Ordinance. On 1 August 2025, the Court of First Instance granted a preservation order restraining Kelly Fuli Zong and Jian Hao from withdrawing or encumbering the HSBC Account Assets, and extending the preservation to the substitute or traceable proceeds of assets transferred out of the account on or after 2 February 2024. The Court also ordered the defendants to disclose the latest balance of the account, the whereabouts of assets disposed of or transferred on or after 2 February 2024, and the movements of assets, income and expenditure in respect of the account.[7]

On 15 August 2025, the defendants applied for leave to appeal and sought a stay of part of the disclosure order. On 26 September 2025, the judge dismissed the application for leave to appeal but granted an interim stay of part of the disclosure obligations pending the defendants' renewed application to the Court of Appeal.[8] The defendants subsequently renewed their application for leave to appeal on 9 October 2025. On 21 July 2026, the Court of Appeal dismissed the renewed application and the application for a stay of the disclosure order, and ordered the defendants to pay the plaintiffs' costs in the sum of HK$250,000.[9]

II. Issues in Dispute

The defendants argued that, although the plaintiffs sought a preservation order under section 21M, the relief sought was in substance a *Mareva* injunction. Accordingly, the plaintiffs should have been required to establish a good arguable case and a real risk of dissipation. The core issues in the case may be grouped into three categories. First, Grounds 1, 3 and 4 concerned the nature and the applicable standards of the preservation order under section 21M, including whether the order should be characterised as a traditional *Mareva* injunction or as a preservation order directed at specific assets that may be directly affected by the outcome of the Hangzhou Proceedings; whether the existing documentary evidence was sufficient to establish serious issues to be tried; and whether the

applicants were required to establish a real risk of dissipation. Second, Ground 2 concerned whether the applicants' failure first to seek asset preservation relief from the Mainland court precluded them from applying directly to the Hong Kong court for relief under section 21M. Third, Ground 5 concerned whether the court could, for the purpose of ensuring the effectiveness of the preservation order, require the respondents to disclose historical transactions and asset movements, and whether such disclosure would improperly intrude upon the substantive issues in the Hangzhou Proceedings.

The Court of Appeal was not determining a full substantive appeal, but rather a renewed application for leave to appeal. The question before the Court was whether the intended appeal had a reasonable prospect of success or whether there was some other reason in the interests of justice why it should be heard.[10] Accordingly, the decision provides important guidance on the application of section 21M, but does not displace the Hangzhou court's determination of the substantive issues concerning the trusts and ownership of the assets.

III. Court's Analysis

(A) Nature and the Applicable Standard of the Section 21M Preservation Order

The first issue to be determined was whether the relief sought by the plaintiffs under section 21M was, in substance, a traditional *Mareva* injunction. The judge observed that a *Mareva* injunction may restrain a defendant from disposing of or dealing with assets over which the plaintiff asserts no proprietary claim, and therefore has a more extensive effect than a preservation order directed at specific assets in dispute. It is this broader effect that warrants the application of a higher threshold to *Mareva* injunctions.[11] A traditional *Mareva* injunction is principally designed to prevent a defendant from dissipating general assets so as to frustrate the enforcement of a future monetary judgment. As summarised by the Privy Council in *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, an applicant will ordinarily be required to establish: (i) a good arguable case, for a judgment or order for the payment of a sum of money that is or will be enforceable through the process of the court; (ii) that the respondent holds assets against which the judgment may be enforced, and (iii) a real risk that, unless the injunction is granted, the respondent will deal with such assets otherwise than in the ordinary course of business.[12]

The interim relief available under section 21M[13], however, is not confined to *Mareva* relief. There is an essential distinction between a *Mareva* injunction and a preservation order. As observed in *Narian Samtani v Chandersen Tikamdas Samtani* [2012] 4 HKLRD 872, the former restrains the defendant from disposing of assets over which the plaintiff asserts no proprietary claim, to secure satisfaction of a money judgment.[14] The judge held that the latter preserves the specific property that is the subject matter of the dispute.[15] Where proceedings outside Hong Kong may result in an order for specific performance, transfer of property, or other relief directly affecting particular assets, the Hong Kong court may preserve those assets so as to safeguard the practical effectiveness of the eventual judgment.[16] In such circumstances, the order is directed at the specific property that forms the subject matter of the dispute, rather than at the defendant's general ability to satisfy a judgment. The applicant is therefore not necessarily required to satisfy all of the requirements applicable to a *Mareva* injunction.

The Hangzhou Proceedings include both monetary claims and a claim seeking performance of the obligations under the Agreement, the latter of which may directly affect the HSBC Account Assets.

The Court of Appeal therefore treated the Hong Kong order as one preserving specific assets to which the potential substantive relief was directed. The relevant focus was accordingly whether there were serious issues to be tried in the foreign proceedings, rather than mechanically requiring proof of both a good arguable case and a real risk of dissipation.[17]

Applying that approach, the Handwritten Instructions, the Letter of Entrustment and the subsequent Agreement did not enable the Hong Kong court, at the interim stage, to determine that the trusts had been established. They did, however, give rise to genuine issues requiring determination in the Hangzhou Proceedings. Even leaving aside the trust claims, the plaintiffs' claim for breach of the Agreement and the potential order for specific performance were sufficient to justify preservation of the specific assets.[18] The court could also take into account matters such as the scale of the assets, movements in the account, the extent of disclosure, and whether damages would provide an adequate remedy when assessing whether there was a practical need to preserve the property.[19] The case therefore establishes only that there were issues warranting trial and a sufficient need to preserve the assets; it does not establish that the plaintiffs had already acquired beneficial interests under a trust or that the assets in the account belonged to them.

(B) Failure First to Seek Relief from the Mainland Court Is Not a Bar to Relief

The defendants argued that the plaintiffs should first have sought preservation relief from the Hangzhou court, and that the judge had failed to give sufficient consideration to the relief available in the Mainland proceedings. The Court of Appeal held that the judge had considered the expert evidence concerning whether Mainland courts could grant preservation orders in respect of assets outside their jurisdiction, as well as the plaintiffs' explanation for not having sought preservation relief in the Mainland. The judge held that, although Mainland courts possess the jurisdiction to issue preservation orders regarding overseas assets, such orders are rarely issued in a matter of practice and policy.[20] There was no serious basis for suggesting that the judge's evaluation of the evidence or factual findings was plainly wrong.[21]

This does not mean that an applicant may disregard the relief potentially available from the court hearing the substantive proceedings. Whether similar relief has already been sought in the foreign court, whether that court can make an effective order in respect of assets located in Hong Kong, whether there is a risk of duplicative relief, and whether orders made in the two jurisdictions may conflict can all remain relevant to the Hong Kong court's exercise of discretion. However, section 21M does not make a prior application to the foreign court a jurisdictional prerequisite to relief in Hong Kong. Where the key assets are located in Hong Kong and need to be directly restrained by the Hong Kong court, an applicant may seek relief directly under section 21M, provided that the need for such relief and the proposed coordination between the proceedings are properly explained.

(C) Disclosure Orders as Ancillary Measures to Preservation Orders

The defendants argued that disclosure of historical transactions and asset movements since 2 February 2024 overlapped with certain substantive relief sought in the Hangzhou Proceedings and therefore amounted to premature intervention by the Hong Kong court in the merits of the dispute. The Court of Appeal rejected that argument. Section 21N(2) of the High Court Ordinance[22] empowers the court to make such ancillary orders as are necessary to ensure the effectiveness of an order granted under section 21M. The fact that the disclosure sought may overlap to some extent

with relief sought in the foreign proceedings does not of itself constitute a jurisdictional bar.[23]

The preservation order in this case covered not only the assets remaining in the account, but also assets transferred out after the relevant date, together with their substitute or traceable proceeds. Without historical transaction records, it would be difficult for the applicants and the court to identify the whereabouts of the preserved assets or to determine whether the order had been complied with. Accordingly, requiring disclosure of the account balance, transaction counterparties, the whereabouts of transferred assets, and records of asset movements, income and expenditure was directly connected with the enforcement of the preservation order. The Court of Appeal held that there was no proper basis for appellate intervention in the judge's decision to make the disclosure order.[24]

That said, the case does not suggest that disclosure under section 21M may be sought without limit. The scope of disclosure should remain proportionate to the assets preserved, the relevant tracing period, and the needs of enforcing the order, and should not be used as a means of obtaining broad discovery unrelated to asset preservation. Applicants should explain how each category of information assists in identifying or tracing assets or monitoring compliance with the order. Respondents, in turn, may propose more targeted and proportionate alternatives by limiting matters such as the relevant period, categories of assets, persons entitled to receive the information, and confidentiality arrangements.

IV. Practical Considerations

(A) Coordinating Substantive Proceedings, Asset Preservation and Enforcement from the Outset

In cross-border wealth disputes, asset investigations should not be deferred until after a favourable judgment on the merits has been obtained. At the outset of the case, parties should identify the relevant accounts, holding companies, trustees, investment managers, asset locations and control relationships, and keep that information updated as investigations and proceedings progress. They should also assess separately the relief available from the court hearing the substantive proceedings, the courts where the assets are located, and the courts of the jurisdictions in which relevant companies are incorporated. For specific assets located in Hong Kong, it is important to consider at an early stage whether the foreign proceedings may result in a judgment enforceable in Hong Kong, and whether that judgment may require payment, delivery of property, performance of an agreement or restoration of specific assets. These distinctions may directly affect the availability of relief under section 21M and the focus of any application.

The form of asset preservation sought should depend on the substantive relief claimed in the foreign proceedings and the assets that may ultimately be affected by the resulting judgment. The relief should not first be characterised generically as a "freezing injunction" and then assessed by reference to the corresponding requirements. Where the foreign proceedings seek to establish rights in, or restore, specific assets held in an account, the application should clearly link the underlying claim, the target assets and the obligations that may arise from the eventual judgment, and explain why preservation of those assets is necessary to prevent the substantive relief from being rendered ineffective. By contrast, where the principal objective is to secure enforcement of a general monetary judgment, the application should be approached on *Mareva* principles, addressing the existence of a

good arguable case, a real risk of dissipation, an appropriate undertaking in damages and the proportionality of the order. This approach helps avoid the application of an incorrect legal threshold and allows the scope, amount and duration of any Hong Kong order to be appropriately tailored.

(B) Preparing Evidence on Procedural Coordination When Applying Directly for Section 21M Relief

An applicant may apply directly to the Hong Kong court for relief under section 21M without first seeking preservation relief from a Mainland court or another court hearing the substantive proceedings. The application materials should nevertheless explain fully how the proceedings in the two jurisdictions are to be coordinated. The evidence should address what interim relief is available from the court hearing the substantive proceedings, whether such relief can effectively control assets located in Hong Kong, why it is necessary to seek relief directly in Hong Kong, and whether orders made in the two jurisdictions may overlap or conflict. Where appropriate, expert evidence on foreign law should be adduced, together with an explanation of whether the Hong Kong proceedings have been, or will be, disclosed to the court hearing the substantive proceedings. The more specifically these matters are addressed, the better placed the Hong Kong court will be to assess the need for its assistance and to address concerns regarding comity, duplicative proceedings and forum shopping.

The terms of the order should also be tailored to the nature of the assets concerned. For a securities portfolio held in a Hong Kong account and requiring ongoing management, the order may specifically prohibit withdrawals, transfers, encumbrances and other acts that would remove assets from the control of the account, rather than imposing a blanket prohibition on all "dealings" or any "reduction in value". Ordinary investment management, payment of expenses and transactions carried out in compliance with any applicable notice requirements may instead be carved out as exceptions. Applicants should also consider proposing in advance an appropriate monetary cap, specified exceptions, notice mechanisms and periodic reporting arrangements, so that the court can strike an appropriate balance between preserving the assets and allowing the account to continue operating in the ordinary course.

(C) Aligning the Scope of Disclosure with Asset Tracing and Enforcement of the Order

The scope of any disclosure request should be limited to what is necessary for the enforcement of the preservation order and should not be used as a means of conducting a general investigation into the other party's assets. A more appropriate approach is to identify, by reference to the account or assets already subject to preservation, matters such as the account balance, relevant transaction period, recipients, substitute assets, proceeds and persons exercising control, and to explain how each category of information assists in identifying assets, tracing their movements, verifying compliance with the order or preventing circumvention. Where the preservation order extends to assets transferred after a specified date, the application should also explain the connection between the starting date, the chain of transactions and the property sought to be traced, rather than seeking historical materials merely on the basis that they may be relevant.

The necessity for disclosure and the manner in which disclosure is to be given should be considered together. Applicants may proactively propose limits on the relevant period, restrictions on the use of documents, tiered access arrangements, confidentiality undertakings and appropriate redactions, and may distinguish between core information to be disclosed in the first instance and supplementary

information to be sought only if justified by the results of the tracing exercise. Respondents who consider an order to be too broad should likewise do more than raise objections in principle: they should identify specifically which materials are unrelated to the preserved assets, which information is subject to third-party confidentiality obligations, and what narrower alternative could achieve the same enforcement purpose. This approach can both improve the practical enforceability of a disclosure order and demonstrate to the court that the application is not an attempt to use interim proceedings to obtain general evidence in advance of the substantive proceedings.

V. Conclusion

The *Jacky Zong* case did not resolve the substantive dispute over the ownership of the US$1.8 billion in assets, but it clearly confirms a core function of the Hong Kong courts in cross-border disputes: where a judgment in foreign proceedings may directly affect specific assets located in Hong Kong, section 21M allows the court to preserve those assets without prejudging the parties' substantive rights, and to order such disclosure as is necessary to ensure the effectiveness of the preservation order. In cross-border family trust and succession disputes, what parties need to plan is not merely how to secure a favourable judgment in a single jurisdiction, but the entire path from substantive claims and control of assets through to ultimate enforcement. The case also serves as a reminder to high-net-worth families that the founder's intentions, the intended trustee's acceptance, the actual transfer of assets and the relevant governance arrangements should, wherever possible, be fully documented during the founder's lifetime. Otherwise, preservation measures in subsequent litigation can do no more than maintain the status quo of the assets; they cannot eliminate the underlying uncertainty as to whether a trust was validly established or to whom the assets ultimately belong.

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1 JACKY ZONG, JESSIE JIELI ZONG and JERRY JISHENG ZONG v KELLY FULI ZONG and JIAN HAO VENTURES LIMITED [2026] HKCA 1292 (July 21, 2026) <https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=182998&currpage=T>.

2 References in this article to "the three children of Zong Qinghou" and similar descriptions are based solely on the relationships between the parties as recorded in the Hong Kong judgments, and do not constitute any independent determination as to kinship, succession rights or substantive trust rights.

3 *Supra* note 1, para. 3.

4 *Supra* note 1, paras. 3-4.

5 *Supra* note 1, paras. 4-5, 7.

6 *Supra* note 1, para. 6.

7 JACKY ZONG, JESSIE JIELI ZONG and JERRY JISHENG ZONG v KELLY FULI ZONG and JIAN HAO VENTURES LIMITED [2025] HKCFI 3355 (August 1, 2025); *Supra* note 1, paras. 8-9.

8 JACKY ZONG, JESSIE JIELI ZONG and JERRY JISHENG ZONG v KELLY FULI ZONG and JIAN HAO VENTURES LIMITED [2025] HKCFI 4525 (September 26, 2025); *Supra* note 1, paras. 10-11.

9 *Supra* note 1, paras. 12, 32-34.

10 *Supra* note 1, para. 13.

11 *Supra* note 7, paras. 42-43.

12 See Broad Idea International Ltd v Convoy Collateral Ltd / Convoy Collateral Ltd v Cho Kwai Chee [2021] UKPC 24, paras. 89, 101.

13 High Court Ordinance (Cap. 4)

21M. Interim relief in the absence of substantive proceedings

(1)Without prejudice to section 21L(1), the Court of First Instance may by order appoint a receiver or grant other interim relief in relation to proceedings which—

(a)have been or are to be commenced in a place outside Hong Kong; and

(b)are capable of giving rise to a judgment which may be enforced in Hong Kong under any Ordinance or at common law.

(2)An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court of First Instance thinks just.

(3)Subsection (1) applies notwithstanding that—

(a)the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or

(b)the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in Hong Kong.

(4)The Court of First Instance may refuse an application for appointment of a receiver or interim relief under subsection (1) if, in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the Court to grant the application.

(5)The power to make rules of court under section 54 includes power to make rules of court for—

(a)the making of an application for appointment of a receiver or interim relief under subsection (1); and

(b)the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.

(6)Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.

(7)In this section, interim relief includes an interlocutory injunction referred to in section 21L(3).

14 Narian Samtani v Chandersen Tikamdas Samtani [2012] 4 HKLRD 872; *Supra* note 7, para. 42.

15 *Supra* note 8, para. 8.

16 *Supra* note 1, para. 17.

17 *Supra* note 7, para. 47; *Supra* note 1, para. 18.

18 *Supra* note 1, paras. 22-23.

19 *Supra* note 1, paras. 26-27.

20 *Supra* note 7, paras. 76, 79.

21 *Supra* note 1, paras. 19-20.

22 High Court Ordinance (Cap. 4)

21N. Supplementary provisions as to interim relief in the absence of substantive proceedings

(1)In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is—

(a)ancillary to proceedings that have been or are to be commenced in a place outside Hong Kong; and

(b)for the purpose of facilitating the process of a court outside Hong Kong that has primary jurisdiction over such proceedings.

(2)The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong.

23 *Supra* note 1, paras. 28-30.

24 *Supra* note 1, para. 31.

Legal Principles of Permanent Termination of Payment under Independent Guarantees by Chinese Courts: A Review of Chinese Law and Supreme Court Cases (Part One)

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Abstract

The 2016 Judicial Interpretation on Independent Guarantees formulated and promulgated by the Supreme People's Court of China stipulates strict preconditions for permanent termination of payment under independent guarantees that are irrevocably payable upon presentation of documents. Examining how these conditions are actually applied, especially in the actual litigation cases handled by the Supreme People's Court itself, particularly exploring the analysis opinions and analytical thinking of judges in the judgments of real cases, and summarizing this promptly, is necessary for guiding international and domestic commercial and banking practices. It also provides extremely beneficial guidance for the handling of similar cases by courts and judges at all levels in China. This article is the part one.

0, General: The Supreme Court's Clear Position: Chinese Courts Cannot Arbitrarily Issue Stop-Payment Orders Against Independent Guarantees.

0.1 Supreme Court Rejects Misuse of Stop Payment Orders Against Independent Guarantees (Interim Rulings Suspending Payment and Final Judgments Terminating Payment)

After the Judicial Interpretation of Independent Guarantees was adopted and came into effect by the Supreme Court, President Zhang Yongjian and Judge Shen Hongyu, who were responsible for drafting the Judicial Interpretation, wrote in the article "*Correct Understanding and Application of the Judicial Interpretation of Independent Guarantees*", stating that the Chinese court, when addressing the issue of the abuse of an interim ruling suspending payment under an independent guarantee, clearly emphasized that:[1]

> "*... In judicial practice, the situation of arbitrary suspension of payment under independent guarantees is more serious, which has affected the circulation of independent guarantees issued by financial institutions in China among countries. Therefore, strict regulation of interim payment-suspension procedures for independent guarantees is the top priority of the Regulations. Firstly, Articles 13 and 16 of the Provisions specify that the nature of the payment-suspension ruling is an act of preservation. Still, compared with the general act preservation stipulated in the Civil Procedure Law of China, it has its own particularity, which has the characteristics of both procedural review and substantive review. In addition to meeting the conditions for taking preservation measures in the Civil Procedure Law, the people's court must preliminarily examine whether there is substantive grounds for suspension of payment. Therefore, Article 16 stipulates that the people's court's ruling suspending payment must include the facts preliminarily ascertained and the reasons for granting the*

application for suspension of payment."

"*... Secondly, Article 14 of the Provisions sets extremely strict conditions for ordering suspension of payment from the procedural point of view. Judicial interpretation strictly regulates the procedures and conditions for suspending payment, which not only curbs the abuse of rights by beneficiaries but also avoids the abuse of payment-suspension procedures, effectively guarantees the transaction security of independent guarantees, protects the legitimate rights and interests of the parties and legitimate expectations, and safeguards the unity of procedural justice and substantive justice.*"

0.2 The Chinese Court Shall Maintain a Precise Balance Between the Independence of the Independent Guarantee and the Fraud Exception and the Exception of the Fraud Exception.

The more challenging aspect of judicial practice is maintaining a balance between the basic principles of the legal system of independent guarantees, such as the principle of independence, the principle of document transaction, and the principle of strict compliance, and to prevent the beneficiaries of independent guarantees from abusing their claim rights or even engaging in fraud. That is to say, while maintaining the vitality of the independent guarantee as a commercial and financial instrument, it will not allow those who use the independent guarantee to cheat or abuse their claim rights, and at the same time, it will encourage more bona fide third parties to participate in the transaction of the independent guarantee to get appropriate protection. Therefore, the Judicial Interpretation of Independent Guarantees maintains a delicate balance between Articles 3 and 5, Articles 6 and 9, Articles 12 and Articles 13 plus 20. In my lectures on independent guarantee law, I often say that the institutional arrangements of Articles 1 to 10 of the Judicial Interpretation of Independent Guarantees are the rules of the game of "turning paper into gold". In contrast, the Articles 11 to 20 are the rules of the game of "turning gold into paper".[2]

0.3 The Analysis and Conclusions of This Paper Are Also Applicable to Standby Letters of Credit.

After the Supreme People's Court's final first-instance judgment and ruling on the application for retrial in the case of "Australia and New Zealand Banking Group Limited, Manila Branch v. Bank of Jiangsu Co., Ltd.", the standby letter of credit based on ISP98 is similar to the independent guarantee because of its nature of "standby but not used" guarantee function. Therefore, it is decided that fraud and suspension or termination of payment under the standby letter of credit in this case shall ultimately be governed by the Provisions of Supreme People's Court on Several Issues Relating to the Hearing of Disputes over Independent Letter of Guarantee formulated and promulgated by the Supreme People's Court. Therefore, the analysis and conclusions of this paper are also applicable to standby letters of credit.

1. One of the Legal Principles: the Defendant of the Standby Letter of Credit (independent Guarantee), Interim Payment-Suspension Proceedings and Final Payment-Termination Proceedings, namely the Beneficiary of the Standby Letter of Credit (independent Guarantee), Makes a Fraudulent Claim Under the Standby Letter of Credit (independent Guarantee).

1.1 Provisions of Judicial Interpretation of Independent Guarantees

Article 20 of the judicial interpretation of the independent letter of guarantee stipulates: "I*n the trial*

of an independent letter of guarantee fraud or dispute case, where a People's Court, upon eliminating reasonable doubts, rules that the case constitutes an independent letter of guarantee fraud and that the circumstances set out in the third paragraph of Article 14 of these Provisions do not exist, the People's Court shall order that the issuer should terminate payment of the amount demanded under the independent letter of guarantee."

Article 12 of the judicial interpretation stipulates: "*Under any of the following circumstances, the People's Court shall deem that the case constitutes an independent letter of guarantee fraud: (1) the beneficiary has conspired with the applicant for the letter of guarantee or any other person to carry out a fictitious underlying transaction;(2) the third party documentation submitted by the beneficiary is forged, or contains false contents;(3) the court ruling or arbitration award has determined that the debtor of the underlying transaction is not liable for payment or compensation;(4) the beneficiary has confirmed that the debt of the underlying transaction has been fully performed, or that the triggering event for payment as provided in the independent letter of guarantee has not occurred; or(5) any other circumstances where the beneficiary is aware that it has no right to demand payment and yet still abuses such right*."

Article 14 stipulates: "*When a People's Court rules that payment of the amount under the independent letter of guarantee shall be suspended, all the following criteria shall be satisfied: (1) the evidence submitted by the applicant for suspension of payment is able to prove that it is highly probable that the circumstances set out in Article 12 of these Provisions exist;(2) the situation is urgent, and failure to forthwith adopt measures to suspend payment will cause irreparable harm to the legitimate rights and interests of the applicant; and(3) the applicant for suspension of payment has provided sufficient security for damages which may be suffered by the respondent due to the suspension of payment. Where the applicant for suspension of payment claims suspension of payment on the ground that the beneficiary has defaulted in the underlying transaction, the People's Court shall not support the claim. Where the issuer has made payment out of good will under the independent letter of guarantee issued in accordance with an instruction, the People's Court shall not rule suspension of payment with respect to an independent letter of guarantee which guarantees the issuer's right of recourse.*"

The above provisions demonstrate that the intent and bad faith of the beneficiary's claim under the standby letter of credit (independent guarantee) to commit fraud or abuse of the right to claim is a prerequisite for suspending or terminating payment. General disputes and controversies under the underlying contract are not fraud and abuse. Furthermore, when there is a bona fide third party, payment suspension is absolutely prohibited.

1.2 The Supreme Court's Authoritative Case: the Beneficiary's Claim Under the Independent Guarantee (Standby Letter of Credit) Must Be "malicious Fraud" or "fraudulent Intent" or Malicious Abuse of the Right to Claim Under the Independent Guarantee to Suspend or Terminate Payment

1.2.1 Supreme Court "ANZ Bank Case": Standby Letter of Credit Fraud Must Prove "Subjective Bad Faith" or "Intent" of Fraud in Beneficiary's Claim

In the latest and most authoritative standby letter of credit case of the Commercial Court of the Supreme Court, Australia and New Zealand Banking Group Limited, Manila Branch v. Bank of

Jiangsu Co., Ltd., the Supreme People's Court has made the following detailed explanations on the intention of fraud stipulated in the judicial interpretation of the independent guarantee:

> *" (2) Whether Australia and New Zealand Banking Group Limited, Manila Branch has committed fraud as stipulated in Item 5 of Article 12 of the Provisions on Independent Guarantees."*

The fifth item of Article 12 of the Provisions on Independent Guarantee stipulates: "*any other circumstances where the beneficiary is aware that it has no right to demand payment and yet still abuses such rights*." According to this article, if the beneficiary's request for payment is made with the knowledge that there is no right to claim for payment, it is an abuse of the right to claim for payment and constitutes fraud. The Court holds that, although strictly speaking, in the case of fraud in which the right to claim for payment is abused, the time point for judging the subjective bad faith of the beneficiary should also be limited to the time when the claim is made, in practice, there is indeed a change in the subjective informed state of the beneficiary. If he believes in good faith that he has the right to claim for payment at the time of claim but later knows that the right to claim for payment has been lost but nevertheless insists on not withdrawing the claim, which can be considered to constitute fraud, because at this time, he has no legal interest that should be protected. However, the situation in this case is that the Bank of Jiangsu should have paid US$22,979,687.50 under the Counter Guarantee Standby Letter of Credit based on the claim of ANZ Manila Branch. Still, it only paid US$7,313,543.30. The right of the ANZ Manila Branch to claim payment from Jiangsu Bank has not been extinguished. D.M. Consunji, Inc. and ANZ Manila Branch signed the Settlement Agreement on May 11, 2017. They issued the Letter of Abandonment/Certificate on September 13, 2017, promising to cancel the claim under the Standby Letter of Credit and acknowledging that the Standby Letter of Credit has expired and is no longer valid. The right of ANZ Manila Branch to claim payment under the Counter Guarantee Standby Letter of Credit shall not be affected. Because the Settlement Agreement resolves the claim of the Standby Letter of Credit rather than the Counter-Guarantee Standby Letter of Credit, and the Settlement Agreement stipulates that ANZ Manila Branch should pay $6 million to Consunji. The claim letters under the Standby Letter of Credit involved in the case and the Standby Letter of Credit of China National Technical Import & Export Corporation were returned to Consunji with the seal of "cancellation", and Consunji unconditionally and irrevocably released the claims, liabilities and lawsuits against ANZ Manila Branch under the two Standby Letters of Credit after receiving US $6 million. That is to say, Consunji's promise to waive the claim against the ANZ Manila Branch is based on the premise that the ANZ Manila Branch pays the consideration of US $6 million. In essence, the claim amount is reduced to US $6 million, and the remaining unpaid part of the claim is withdrawn. The US $6 million paid by the ANZ Manila Branch does not fall within the scope of the withdrawal of the claim. As the Counter Guarantee Standby Letter of Credit is independent of the Standby Letter of Credit, the payment obligation of Jiangsu Bank under the Counter Guarantee Standby Letter of Credit is not extinguished by the repayment arrangement of the Standby Letter of Credit.

In this case, the Supreme Court required the plaintiff to prove the beneficiary's "subjective bad faith" or intent to defraud in the standby letter of credit claim.

1.2.2 The Supreme Court clarified the fact determination standard of "fraud exception" in the second instance judgment and retrial ruling of "Luoyang Aviation Construction Case" in its

second instance and retrial.

In this case, the Supreme Court emphasized that[3]:

The fifth item of Article 12, relevant to this case, is a general clause addressing the obvious abuse of the right to claim for payment. This occurs when the beneficiary knows that he does not have the right to claim for payment, intentionally conceals the facts, and still issues and submits documents that appear to be consistent with the terms of the guarantee, such as the request for payment and the declaration of breach of contract, to induce the issuer to pay by mistake. Hence, the abuse of the right to claim payment constitutes fraud in the guarantee. In this case, UBAF did not receive a complying demand from Hyundai Engineering & Construction Co., Ltd. On the one hand, it refused to pay the Advance Payment Guarantee to Hyundai Engineering & Construction Co., Ltd. on the grounds of nonconformity. On the other hand, it concealed the facts, violated the integrity of commercial banks, and falsely submitted the claim, which was apparently in conformity with the provisions of the Counter-Guarantee Advance Payment Guarantee. This conduct fit the situation described in Item 5 of Article 12 of the Provisions on Several Issues of Independent Guarantee, namely "any other circumstances where the beneficiary is aware that it has no right to demand payment and yet still abuses such right." This constitutes fraud under the independent guarantee, and the original trial has a factual and legal basis for this determination. In this case, UBAF itself was fraudulent and did not constitute a "bona fide payment." The Court holds that, since the issuer in the counter-guarantee has the status of "beneficiary," it has the right to request payment from the counter-guarantor. This right is the right of recourse, which requires two conditions: the beneficiary has the right to claim against the issuer under the independent guarantee, and the issuer has the right to claim against the counter-guarantor. Correspondingly, there are two cases of fraud in the counter-guarantee: one is that the issuer knows that the beneficiary is fraudulent, still pays the beneficiary, and then requests payment from the counter-guarantor under the counter-guarantee, which is called "double fraud"; secondly, the issuer does not take the beneficiary's fraud as the premise but independently claims fraud from the counter-guarantor based on its own identity as the "beneficiary" of the counter-guarantee, which should be applied to the general provisions of independent guarantee fraud and does not take "double fraud" as an element. In practice, counter-guarantee fraud is more common in the first case, but UBAF's claim in this case belongs to the second case.

1.2.3 The Supreme Court Clarified the Fact Determination Standard of "abuse of Independent Guarantee Claim" in Its Second Instance Judgment of "Changjiang Geotechnical Company V. China Construction Bank."

In that decision, the Supreme Court made clear that[4]:

In the case of Changjiang Geotechnical Company v. Zhongbo Company and Wenling Branch of China Construction Bank, the Intermediate People's Court of Taizhou City, Zhejiang Province, issued a judgment No.1355 that the project involved was unable to continue to perform due to the civil war in Libya, and that the contract could not be performed due to force majeure. There was no breach of contract by Zhongbo Company. Zhongbo Company has completed no less than 2.6695 billion yuan of work and has no obligation to repay the advance payment to Changjiang Geotechnical

Company. Based on the determination of the amount of work involved in the case in Judgment No.1355, the original judgment did not determine the amount of work involved in the case according to the construction contract and the contract, which was not improper. The claim of Changjiang Geotechnical Company's application for retrial that the amount of work involved in the case was determined incorrectly and that Zhongbo Company had breached the contract was contrary to the facts determined in Judgment No.1355. The original judgment, based on the facts identified in the effective judgment, did not support the payment claim of the Yangtze River Geotechnical Company. It conforms to the provisions of Article 12 (3) of the Judicial Interpretation of Independent Guarantees on "the court ruling or arbitration award has determined that the debtor of the underlying transaction is not liable for payment or compensation" and the provisions of Article 5 on "*any other circumstances where the beneficiary is aware that it has no right to demand payment and yet still abuses such right*".

2. The Second Legal Principle: There Is No Bona Fide Third Party in the Transaction of Standby Letter of Credit (independent Guarantee).

2.1 Provisions of Judicial Interpretation of Independent Guarantee

According to the third paragraph of Article 14 of the Judicial Interpretation of Independent Guarantees, it is emphasized that in the case of a bona fide third party, the Chinese court cannot even issue a ruling on a temporary injunction, which stipulates: *"Where the issuer has made payment out of good will under the independent letter of guarantee issued in accordance with an instruction, the People's Court shall not rule suspension of payment with respect to an independent letter of guarantee which guarantees the issuer's right of recourse.."* In this article, if the issuer of the independent guarantee has paid in good faith, it cannot be ordered to stop payment. At the same time, the Judicial Interpretation of Independent Guarantees is in Article 20. [5]It is emphasized again that when the court decides to terminate the payment of the independent guarantee, it must ensure that there is no bona fide third party to decide to terminate the payment. This article stipulates*: "In the trial of an independent letter of guarantee fraud or dispute case, where a People's Court, upon eliminating reasonable doubts, rules that the case constitutes an independent letter of guarantee fraud and that the circumstances set out in the third paragraph of Article 14 of these Provisions do not exist, the People's Court shall order that the issuer should terminate payment of the amount demanded under the independent letter of guarantee."* Once there is a bona fide third party in the transaction of the independent guarantee (standby letter of credit), even if fraud is found after a limited examination of the underlying contract, the payment of the independent guarantee (standby letter of credit) cannot be suspended or terminated.

2.2 Jurisprudence of the Supreme Court

2.2.1 Opinion of the Second Instance Judgment and Retrial Ruling of the Supreme Court in the Kamalanga Case

The Supreme Court has further clarified this important principle in a series of authoritative cases following the promulgation of the judicial interpretation, including the "Kamalanga Case" in the Supreme Court's second-instance and retrial proceedings.

During the retrial application, SEPCO submitted copies of the arbitration tribunal's Award on the

underlying contract involved in the case and the Statement of the parent company of the Energy Company, intending to prove that the Energy Company knew it had no right to claim payment and still abused that right. According to Article 12 of the Provisions on Several Issues of Independent Guarantee, a breach of the underlying contract does not necessarily constitute a fraudulent demand under the independent guarantee. Therefore, the above evidence is insufficient to conclude that the Energy Company's request for payment under the guarantee constitutes an abuse of the right of malicious demand, nor is it sufficient to overturn the original judgment.

2.2.2 The Supreme People's Court's Judgment on Retrial in the Yapı Kredi Case

The Supreme People's Court made it clear again in its retrial judgment in the Yapı Kredi case:[6]

"1. Understanding of" bona fide payment "stipulated in Article 14, paragraph 3, of the Provisions on Independent Guarantees.

The third paragraph of Article 14 of the Provisions on Independent Guarantees stipulates: 'Where the issuer has made payment out of good will under the independent letter of guarantee issued in accordance with an instruction, the People's Court shall not rule suspension of payment with respect to an independent letter of guarantee which guarantees the issuer's right of recourse.' Article 20 stipulates: 'In the trial of an independent letter of guarantee fraud or dispute case, where a People's Court, upon eliminating reasonable doubts, rules that the case constitutes an independent letter of guarantee fraud and that the circumstances set out in the third paragraph of Article 14 of these Provisions do not exist, the People's Court shall order that the issuer should terminate payment of the amount demanded under the independent letter of guarantee.'. The Court holds that in the case of transfer of guarantee, there are both a guarantee and a counter-guarantee, and the "bona fide payment" stipulated in Article 14, paragraph 3, of the Provisions on Independent Guarantee means that the beneficiary's claim under the guarantee has a high possibility of fraud or fraud, to protect the legitimate rights and interests of the issuer of the guarantee who pays in good faith. It also stipulates the balance of interests among the applicant for guarantee, the beneficiary of the guarantee, the issuer of the guarantee, and the issuer of the counter-guarantee. On the one hand, at the stage of deciding whether to issue an interim payment-suspension ruling, according to the application of the parties, when faced with the high possibility of fraud in the beneficiary's claim under the guarantee, as long as there is no evidence that the issuer of the guarantee is highly likely to participate in the fraud of the beneficiary of the guarantee, the issuer of the guarantee may not be involved in the fraud of the beneficiary of the guarantee. If there is no evidence showing that the issuer of the guarantee is highly likely to know that the beneficiary of the guarantee is fraudulent and still pays the beneficiary of the guarantee, the bona fide payment of the issuer of the guarantee shall be protected. The counter-guaranteeing the right of recourse of the issuer of the guarantee shall not be stopped because the beneficiary of the guarantee is fraudulent. On the other hand, when deciding whether to terminate the payment of the amount under the counter-guarantee without reasonable doubt that the beneficiary under the guarantee constitutes fraud, as long as there is no evidence that the issuer of the guarantee has committed fraud in his own claim under the counter-guarantee, there is no evidence that the issuer participated in the beneficiary's fraud. If there is no evidence to show that the issuer of the guarantee knows that the beneficiary of the guarantee is fraudulent and still pays the beneficiary of the guarantee, the bona fide payment of the issuer of the guarantee shall be protected. The payment under the counter-guarantee shall not be terminated.

2. The payment behavior of Yapı ve Kredi Bankası A.Ş., Esentepe Corporate Banking Center Branch to Rasen Stroy LLC is different from the situation stipulated in Article 14, paragraph 3, of the Independent Guarantee Provisions.

In this case, when the court of first instance decided to issue the interim ruling suspending payment, since the Yapı ve Kredi Bankası A.Ş., Esentepe Corporate Banking Center Branch had not yet paid the beneficiary Rasen Stroy LLC, there was no need to examine the issue of whether the payment was made in good faith as stipulated in Article 14, paragraph 3, of the Independent Guarantee Provisions. When considering whether to terminate the payment of the two counter-guarantees, Rasen Stroy LLC's claim to Yapı ve Kredi Bankası A.Ş., Esentepe Corporate Banking Center Branch on April 15, 2016, does not constitute fraud, nor does Yapı ve Kredi Bankası A.Ş., Esentepe Corporate Banking Center Branch's claim to China Construction Bank Corporation, Liaoning Branch on April 19, 2016, constitute fraud. It does not meet the conditions stipulated in Article 20 of the Provisions on Independent Guarantees tha*t "it can be determined beyond a reasonable doubt that it constitutes an independent guarantee fraud",* without considering another constituent element of this article, *"and there is no situation in the third paragraph of Article 14 of these Provisions". T*herefore, Shenyang Yuanda Aluminium Industry Engineering Co., Ltd. claims that the claim of Yapı ve Kredi Bankası A.Ş., Esentepe Corporate Banking Center Branch under the counter-guarantee letter of guarantee should be terminated because the payment behavior of Yapı ve Kredi Bankası A.Ş., Esentepe Corporate Banking Center Branch does not constitute the "bona fide payment" recognized in the third paragraph of Article 14 of the Independent Guarantee Provisions. The reason is untenable, and the Court does not support it.

2.2.3 Opinions of the Supreme People's Court in the Ruling on the Application for Retrial in the "Himalayan Bank Case."

In the "Himalayan Bank case" in which the Supreme People's Court ruled on the application for retrial, the Supreme Court made it clear that: [7]

In this case, China Railway 15th Bureau claimed that Himalayan Bank and Bank of Kathmandu constituted guarantee fraud, and should provide evidence to prove that Himalayan Bank and Bank of Kathmandu knew that the Melamchi Water Supply Development Board had independent guarantee fraud, but still violated the principle of good faith to pay, and then made a claim under the demand for an independent counter-guarantee letter as beneficiaries. According to the facts ascertained in the original examination, on the one hand, there is no evidence to prove that Himalayan Bank and Bank of Kathmandu knew that the claim of Melamchi Water Supply Development Board was fraudulent when they filed a counter-guarantee claim with Henan Branch of CCB in 2012; On the other hand, the Nepal Rastra Bank has deducted the corresponding amount under the independent guarantee from the accounts of Himalayan Bank and Bank of Kathmandu in 2015. The passive payment of Himalayan Bank and Bank of Kathmandu constitutes a bona fide payment. According to the third paragraph of Article 14 of the Provisions on Independent Guarantees: *"Where the issuer has made payment out of good will under the independent letter of guarantee issued in accordance with an instruction, the People's Court shall not rule suspension of payment with respect to an independent letter of guarantee which guarantees the issuer's right of recourse."* Based on this, the original judgment found that the 15th Bureau of China Railway claimed that the claims of Himalayan Bank and Bank of Kathmandu for the counter-guarantee issued by Henan

Branch of CCB constituted fraud with insufficient evidence, and that the facts and applicable laws were not improper. The reasons for the retrial application of the 15th Bureau of China Railway on the guarantee fraud of Himalayan Bank and Bank of Kathmandu can not be established.

3. The Third Legal Principle: There Is No Other Possible Judicial Remedy for the Plaintiff in the First Instance. If the Payment of the Standby Letter of Credit (independent Guarantee) Is Not Terminated, the Plaintiff Will Face "irreparable Losses".

3.1 Provisions of Judicial Interpretation of Independent Guarantee

Article 14 of the judicial interpretation of the independent letter of guarantee stipulates that "*When a People's Court rules that payment of the amount under the independent letter of guarantee shall be suspended, all the following criteria shall be satisfied: (1) the evidence submitted by the applicant for suspension of payment is able to prove that it is highly probable that the circumstances set out in Article 12 of these Provisions exist;(2) the situation is urgent, and failure to forthwith adopt measures to suspend payment will cause irreparable harm to the legitimate rights and interests of the applicant; and(3) the applicant for suspension of payment has provided sufficient security for damages which may be suffered by the respondent due to the suspension of payment. Where the applicant for suspension of payment claims suspension of payment on the ground that the beneficiary has defaulted in the underlying transaction, the People's Court shall not support the claim*."

Although the judicial interpretation of this article is a precondition for the suspension of payment of an independent guarantee issued by the court with a temporary injunction, in terms of procedure and entity, if the people's court is requested to make a judgment to permanently terminate the payment under the independent guarantee, in addition to the three conditions set in Article 20 (first, it constitutes the fraud of the independent guarantee; second, there is no bona fide third party; Third, to satisfy the burden and standard of proof "beyond reasonable doubt")[8]. It is also necessary to meet another key condition set in Article 14, that is, " *(2) the situation is urgent, and failure to forthwith adopt measures to suspend payment will cause irreparable harm to the legitimate rights and interests of the applicant.*" Suppose the plaintiff has obtained sufficient and effective judicial remedies under the basic contract or independent guarantee, such as monetary compensation. It will not be considered that there is an "urgent situation" in this case, and that the plaintiff's "legitimate rights and interests" in the first instance will face "irreparable damage" if the relief of the injunction is not provided.

Although Article 20 of the Judicial Interpretation does not specify this condition, because the traditional "injunction relief" derived from the common law system of the United Kingdom and the United States belongs to the "equity" relief, it is generally provided in cases where the monetary compensation relief cannot compensate for the personal relief (remedy in personam). Therefore, the preconditions for the court to grant injunctive relief are much stricter than the legal requirements and proof requirements for general monetary relief. Usually, one of the four test conditions for granting injunctive relief in common law is the so-called "balance of interest". Moreover, the purpose of the injunctive relief provided by the court in the field of letters of credit and independent guarantees is mainly to prevent the money under the letters of credit or independent guarantees from being transferred out of the jurisdiction of the court, so that the judgment of the future court to terminate the payment will not be enforced and ultimately undermine the authority of the court. Therefore,

although Article 20 of the Judicial Interpretation of Independent Guarantees is not listed again, Article 13 of the system design of the Judicial Interpretation has been included.[9]

4. The Fourth Legal Principle: Standby Letter of Credit (independent Guarantee) Must Follow the Principle of "Pay First, Dispute Later."

4.1 Provisions of Judicial Interpretation of Independent Guarantee

In the article Understanding and Application of the Provisions on Several Issues Concerning the Trial of Independent Guarantee Disputes by Zhang Yongjian and Shen Hongyu of the Supreme People's Court, it is stated that the original intention of designating this judicial interpretation is:

The third type is the dispute in which the applicant of the guarantee sues the court to suspend or terminate the issuer's payment under the independent guarantee, which mainly involves the nature of the injunction, the determination of the independence principle and exceptions of the independent guarantee, and the criteria for the determination of fraud.

How to determine the exceptions to the principle of independence and balance the interests of all parties involved in independent guarantee transactions is a difficult point in the formulation of the Provisions. On the one hand, we should respect the credit circulation function of independent guarantee as a substitute for cash guarantee, and maintain the contractual arrangement of "pay first, dispute later" of the parties; on the other hand, we should prevent and restrain the fraud and abuse of rights of the beneficiaries.[10]

4.2 Authoritative Jurisprudence of the Supreme Court

According to the No.109 Guidance Case "Anhui Foreign Economic Case" published by the Supreme Court “Kamalanga Case, " The breach of contract by the beneficiary under the underlying contract does not necessarily constitute fraud by the beneficiary under the independent guarantee.[11]

4.2.1 The Position of the Supreme Court in the Retrial Judgment of the "Anhui Foreign Economic Case."

The Supreme Court held that the beneficiary was entitled to claim the independent guarantee even if the arbitral award on the underlying contract had found that the beneficiary committed the prior breach. The judgment is quoted below： [12]

The independent guarantee is independent of the underlying transaction between the principal and the beneficiary. The bank issuing the independent guarantee is only responsible for examining whether the documents submitted by the beneficiary conform to the terms of the guarantee and has the right to decide whether to pay or not. The payment obligation of the guarantee bank is not affected by the right of defense under the underlying transaction between the principal and the beneficiary. When Dongfang Real Estate Company, as the beneficiary, submits preliminary evidence to prove the existence of project quality problems, even if it does not initiate any dispute resolution procedures such as litigation or arbitration and confirms the breach of contract by the opposite party through the above procedures, it will not affect the realization of its guarantee rights. Even if an ongoing litigation or arbitration is proceeding under the underlying contract, the realization of the beneficiary's guarantee rights will not be affected as long as the relevant dispute resolution procedure has not made a final determination that the debtor of the underlying transaction has not paid or is

liable for compensation. Furthermore, even if the effective judgment or arbitral award determines that the beneficiary constitutes a breach of contract under the basic contract, the existence of the fact of breach of contract is not necessarily a sufficient and necessary condition for the "fraud" of the guarantee. (Emphasis added by the appellant)

4.2.2 Position of the Supreme People's Court in the Kamalanga Case

The judgment in that case is quoted below.[13]:

> *During the application for retrial, SEPCO submitted copies of the Award made by the arbitration tribunal on the underlying contract involved in the case and the Statement of the parent company of the Energy Company, intending to prove that the Energy Company knew that it had no right to claim payment and still abused the right. According to Article 12 of the Provisions of Supreme People's Court on Several Issues Relating to the Hearing of Disputes over Independent Letter of Guarantee, the breach of the underlying contract does not necessarily constitute a fraudulent demand under the independent guarantee. Therefore, the above evidence is not enough to conclude that the energy company's request for payment of the guarantee is an abuse of the right of malicious demand, nor is it enough to overturn the original judgment. (Emphasis added by author.)*

4.2.3 The Retrial Case of "Sinohydro Engineering Bureau 4 Co., Ltd. V. China CAMC Engineering Co., Ltd. Letter of Credit Fraud Dispute" Made by the Supreme People's Court

In the Supreme Court. In the case of retrial, the Supreme Court once again made clear the clear position of the former "Anhui Foreign Economic Case":[14]

.. IV. Whether the beneficiary has a breach of contract under the basic contract does not necessarily affect their exercise of the right to claim for guarantee. On December 14, 2017, the Court retried the applicant Dongfang Real Estate Co., Ltd. and the respondent Anhui Foreign Economic Construction (Group) Co., Ltd., the third party of the original trial, Banco de Costa Rica The principle established in the civil judgment (2017) Supreme Fa Min Zai No.134 made by Anhui Branch of China Construction Bank Corporation in the case of guarantee fraud dispute is that the breach of contract by the beneficiary under the basic contract does not necessarily affect its right to submit documents and claim payment in accordance with the provisions of the independent guarantee. Upon the issuance of an independent guarantee, the guarantee applicant shall be deemed to have waived its defense against the guarantee beneficiary's breach of contract under the underlying relationship. Therefore, whether there is a breach of contract under the basic contract of this case, and its causal relationship, does not affect the exercise of guarantee rights by China CAMC. The claim of Sinohydro Bureau 4 that there is a logical causal relationship between the breach of contract of China CAMC in the performance of the basic contract and the facts on which the guarantee involved in the case is based, and that the claim of China CAMC for this reason constitutes a fraudulent claim under the independent guarantee cannot be established, and the Court does not support it. (Emphasis added by the author)

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1 Understanding and Application of the Provisions on Several Issues Concerning the Trial of Independent Guarantee Dispute Cases, Zhang Yongjian and Shen Hongyu of the Supreme People's Court. Source: People's Justice (Application), No.1, 2017. Link to this article:https://www.faxin.cn/lib/flwx/FlqkContent.aspx?gid=F497876 President Zhang Yongjian was a member of the Supreme People's Court at that time and is currently a judge of the Singapore International Commercial Court. Shen Hongyu's position at that time is currently the president of the Fourth People's Court of the Supreme People's Court.

2 For the English common law expression of the proximity of an independent guarantee to cash in hand, see Jin Saibo and Li Jian, Law of Letters of Credit, p. 115. Law Press, first edition, March 2003. For a detailed discussion of the legal principle that "fraud nullifies everything", see Op. CIT., p. 208.

3 On February 1, 2021, the Supreme People's Court issued (2020) Supreme Fa Min Shen No.6923 Civil Ruling on Retrial Review and Trial Supervision of Letter of Credit Fraud Dispute between United Arab and French Bank (Hong Kong) Limited and Kaimai (Luoyang) Aviation Protective Equipment Co., Ltd., collegial panel: Wang Zhaohui, Jia Jinsong, Zhang Daien. On May 6, 2020, the Supreme People's Court issued the civil judgment of the second instance of the letter of credit fraud dispute between United Arab and French Bank (Hong Kong) Limited

and Kaimai (Luoyang) Aviation Protective Equipment Co., Ltd. (2018) No.1216. Collegial panel: Ma Dongxu, Guo Zaiyu and Chen Hongyu.

4 On August 7, 2020, the Supreme People's Court issued (2020) Supreme Fa Min Shen No.2578 Civil Ruling on Retrial Review and Trial Supervision of Letter of Credit Disputes between Changjiang Geotechnical Engineering Corporation and Wenling Branch of China Construction Bank Corporation. Collegial panel: Sun Xiangzhuang, Guo Zhonghong, Wang Zhaohui. On June 28, 2019, the Supreme People's Court issued (2019) No.302 Civil Ruling on Retrial Review and Trial Supervision of Letter of Credit Disputes between Changjiang Geotechnical Engineering Corporation and Wenling Branch of China Construction Bank Co., Ltd. Collegial panel: Wang Shumei, Ma Dongxu, Guo Zaiyu.

5 Paragraph 3 of Article 14 of the Judicial Interpretation of Independent Guarantees: Where the issuer has paid in good faith under the independent guarantee issued in accordance with the instructions, the people's court shall not rule to stop the payment of the independent guarantee that guarantees the issuer's right of recourse.

6 On August 26, 2020, the Supreme People's Court issued the (2020) Supreme Fa Min Zai No.265 "Civil Judgment on Retrial of Letter of Credit Fraud Dispute between China Construction Credit Bank Co., Ltd. Esentepe Corporate Banking Center Branch and Shenyang yuanda Aluminum Engineering Co., Ltd.", collegial panel: Ma Dongxu, Li Guishun, Guo Zaiyu.

7 On December 1, 2023, the Supreme People's Court, Case No.: (2023) Supreme Fa Min Shen No.1393, China Railway 15th Bureau Group Co., Ltd.) and China Construction Bank Corporation Henan Branch, Himalayan Bank Co., Ltd., Bank of Kathmandu Co., Ltd., Melamchi Water Supply Development Committee Independent Guarantee Fraud Dispute Retrial Civil Ruling, Collegial panel: Ma Dongxu, Chen Hongyu, Shen Jia.

8 Article 20 If the people's court, after hearing a dispute over the fraud of an independent guarantee, can determine beyond reasonable doubt that it constitutes a fraud of an independent guarantee and that there is no circumstance in the third paragraph of Article 14 of these Provisions, it shall decide that the issuer shall terminate the payment of the amount requested under the independent guarantee.

9 For a detailed discussion of the four tests of injunctive relief in Anglo-American law, see Jin Saibo and Li Jian's Law of Letters of Credit, Law Press, March 2003, first edition. See Chapter 8, "Fraud and Injunction on Letters of Credit," beginning at p. 488. Section 7, "On the Extent and Determination of Fraud in Letters of Credit and the 'Security Test' in the Granting of Injunctive Relief for Fraud," at 574. And Section 11, "Common Law and Equitable Principles Granting Injunctive Relief to Letter of Credit Fraud in Common Law". See page 620. Section 12, "Conditions for Applying to Court for Injunctive Relief in Common Law Claims of Letter of Credit Fraud," at p. 632. See, in particular, Section 13, "Reasons for Anglo-American Courts' Refusal to Grant Injunction," at p. 660. "The applicant cannot prove that he will face irreparable harm if he does not grant an injunction" under subsection 13.1.3 or "irreparable harm" under subsection 13.1.7. For relevant cases in English law, see Mr. Yang Liangyi's book Letter of Credit, China University of Political Science and Law Press, 1998, pp. 175-181, citing precedents in letter of credit cases. The provisions of American law are set forth in Title V, Section 109b, of the United States Commercial Code (UCC). 5-109 (B) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer ; (2) a beneficiary , issuer , or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and(4) on the basis of the information submitted to the court, the applicant is more likely

than not to succeed under its claim of forgery or material fraud and the person demanding Honor does not qualify for protection under subsection (a) (1). "Where the applicant claims that the documents are forged/materially fraudulent or that payment will encourage material fraud on the part of the beneficiary against the issuing bank/applicant," The court may issue a temporary/permanent stop-payment order only if the following four conditions are met at the same time: (1) the relief does not violate the law applicable to the accepted bill of exchange or the deferred debt of the issuing bank; (2) the beneficiary, the issuing bank and the nominated bank who may be injured are fully guaranteed for the loss; (3) the petitioner has satisfied all injunctive preconditions (e.g., warranty, jurisdiction) under the law of this state; and (4) the court finds that the petitioner has a greater than 50% chance of success and that the person requesting payment is not a bona fide protected subject. (Section 5-109 (a) (1)). The earliest case of injunction of a letter of credit in New York State, USA, for example: The Sztejn precedent. Subsequent series of state cases have emphasized these statutory provisions and court precedents in Title V of the UCC.

10 Understanding and Application of the Provisions on Several Issues Concerning the Trial of Independent Guarantee Dispute Cases, Zhang Yongjian and Shen Hongyu of the Supreme People's Court. Source: People's Justice (Application), No.1, 2017. Link to this article:https://www.faxin.cn/lib/flwx/FlqkContent.aspx?gid=F497876 President Zhang Yongjian was a member of the Supreme People's Court at that time and is currently a judge of the Singapore International Commercial Court. Shen Hongyu's position at that time is currently the president of the Fourth People's Court of the Supreme People's Court.

11 On April 7, 2020, the Supreme People's Court issued (2019) No.513 "Civil Judgment of Second Instance on Foreign Guarantee Fraud Dispute between GMR Kamalanga Energy Company of India and State Bank of India Bangalore Branch", with Presiding Judge Ma Dongxu, Judges Li Guishun and Guo Zaiyu.

On December 29, 2020, the Supreme People's Court issued (2020) Supreme Fa Min Shen No.6776 "Civil Ruling on Retrial Review and Trial Supervision of Letter of Credit Fraud Disputes between Shandong Electric Power Construction Co., Ltd. of China Power Construction Group and Kamalanga Energy Company of India", with presiding judge Guo Zhonghong, judges Sun Xiangzhuang and Wang Zhaohui.

12 On December 14, 2017, the Supreme People's Court issued (2017) Supreme Fa Min Zai No.134 "Civil Judgment on Retrial of Guarantee Fraud Dispute between Dongfang Real Estate Co., Ltd. and Anhui Foreign Economic Construction (Group) Co., Ltd.". Presiding Judge Chen Jizhong, Judges Yang Honglei and Yang Xingye.

13 On April 7, 2020, the Supreme People's Court issued (2019) No.513 "Civil Judgment of Second Instance on Foreign Guarantee Fraud Dispute between GMR Kamalanga Energy Company of India and State Bank of India Bangalore Branch", with Presiding Judge Ma Dongxu, Judges Li Guishun and Guo Zaiyu. On December 29, 2020, the Supreme People's Court issued (2020) Supreme Fa Min Shen No.6776 "Civil Ruling on Retrial Review and Trial Supervision of Letter of Credit Fraud Disputes between Shandong Electric Power Construction Co., Ltd. of China Power Construction Group and Kamalanga Energy Company of India", with presiding judge Guo Zhonghong, judges Sun Xiangzhuang and Wang Zhaohui.

14 On August 28, 2019, the Supreme People's Court issued (2019) No.349 "Civil Judgment of Second Instance of Letter of Credit Fraud Dispute between China Water Conservancy and Hydropower Fourth Engineering Bureau Co., Ltd. and China Engineering International Engineering Co., Ltd.", collegial panel Yang Xingye, Li Guishun and Chen Hongyu.

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