

**上海市高级人民法院
涉外、涉港澳台商事审判白皮书
(2017-2021)**

**Shanghai High People's Court
White Paper on Foreign-related
Commercial Trials
(2017-2021)**

上海市高级人民法院

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上海市高级人民法院涉外、涉港澳台商事审判白皮书 (2017-2021)

Shanghai High People's Court White Paper on Foreign-related Commercial Trials (2017-2021)

当前，我国正处于坚持开放创新、不断发展壮大、日益走近世界舞台中央的重要时期。与此同时，国际环境不稳定性、不确定性也明显上升，世界百年未有之大变局加速演变。以习近平同志为核心的党中央，统筹国内国际两个大局，提出全面推进“一带一路”建设、海洋强国战略和长江经济带等重大发展战略，开启了我国全方位对外开放新格局。服务和保障国家重大战略实施，是人民法院义不容辞的责任。上海是改革开放排头兵，创新发展先行者，在“一带一路”建设、海洋强国战略、长江经济带建设、“五个中心建设”、“自贸区建设”战略推进过程中，新情况、新问题不断涌现，对涉外商事审判工作提出新的挑战。五年来，上海法院牢固树立大局意识，以高度的责任感和使命感，充分发挥审判职能，切实为国家战略实施和上海深化改革开放提供优质司法服务和保障。现将2017年至2021年上海法院涉外、涉港澳台商事案件审判情况通报如下：

China now enters an important period of continuous opening-up and innovation, robust development and getting closer to the center of world stage. However, the world's uncertainty also rises remarkably. The major shift that has never been seen in a century in the world landscape is gathering momentum. The CPC Central Committee with General

Secretary Xi Jinping as the core has coordinated both the domestic and international development and proposed the Belt and Road Initiative, the sea power strategy and the Yangtze River Delta strategy, which lays out the new pattern of China's all-round opening-up. It is the people courts' responsibility to serve and safeguard the implementation of national development strategies. Shanghai has been the pioneer in reform and opening-up and the trailblazer in innovation. In the Belt and Road Initiative, the sea power strategy, the Yangtze River Delta development, the construction of Shanghai into five hubs and the free trade zone development, a lot of new situations and issues continue to emerge, which have posed challenges to the foreign-related commercial trial. In the past five years, Shanghai courts have firmly established a thinking in big-picture terms and kept the sense of responsibility to give play to the judicial trial to provide quality judicial service and safeguard for the implementation of national strategies and the deepened reform and opening-up in Shanghai.

The commercial trials involving other countries, Hong Kong, Macau and Taiwan¹ from 2017 to 2021 are hereby reported.

¹ Unless otherwise specified, the term "foreign-related" also include Hong Kong, Macau and Taiwan.

一、涉外、涉港澳台商事案件审判基本情况

I. General Description

(一) 收案数量总体均衡，审判质效良性运行

(I) Case Acceptance: General Balance with Quality and Efficient Trial

2017 年-2021 年,上海法院共受理一、二审涉外、涉港澳台商事案件 4,202 件, 审结 4,294 件。总体而言, 案件收、结量均保持稳中有升、总体均衡的趋势, 五年平均同期结案率 102.20% (见图 1、2)。反映出上海涉外、涉港澳台案件司法需求逐年上升, 商事交易秩序较为稳定, 市场规则以及法律解决争端的可预期性较明晰, 公开、公正的法治化营商环境逐步显现。

Between 2017 and 2021, Shanghai courts have accepted 4,202 first-and second instance foreign-related commercial cases, and closed 4,294. The case acceptance and closing have maintained a steady increase in a general balance trend. The average five-year closing rate is 102.2% (See Figures 1 and 2). Such a trend also shows that the judicial demands in foreign-related commercial trials are on the increase, the business order is stable, the market rules and the predictability of legal dispute settlement are clear, and an open and fair law-based business environment gradually emerges.

经统计, 2017 年-2021 年共审结一审涉外、涉港澳台商事案件 3,673 件、二审涉外、涉港澳台商事案件 621 件。在审结的二审案件中, 维持原判 342 件, 维持率 55.07%; 改判 64 件, 改判率 10.31%; 发回重审 32 件, 发回重审率为 5.15%; 其他方式结案 183 件, 占 29.47%

(见图 3)。五年来，上海法院审判质效数据指标保持良性运营。上海法院始终公正高效审理和执行每一起涉外、涉港澳台商事案件，有力保障了上海经济建设发展大局。

According to statistics, 3,673 first-instance and 621 second-instance foreign-related cases were closed. In the 621 closed second instance cases, 342 of the total 621 cases were sustained, accounting for 55.07%; 64 were revised (10.31%), 32 were ordered for retrial (5.15%). There are also 183 cases resolved in other means, which takes up 29.47% (See Figure 3). In the past five years, Shanghai courts have maintained a good set of index on the quality and efficiency of the foreign-related commercial trials. Through impartial and efficient trial and enforcement, Shanghai courts have made due contribution to local economic development.

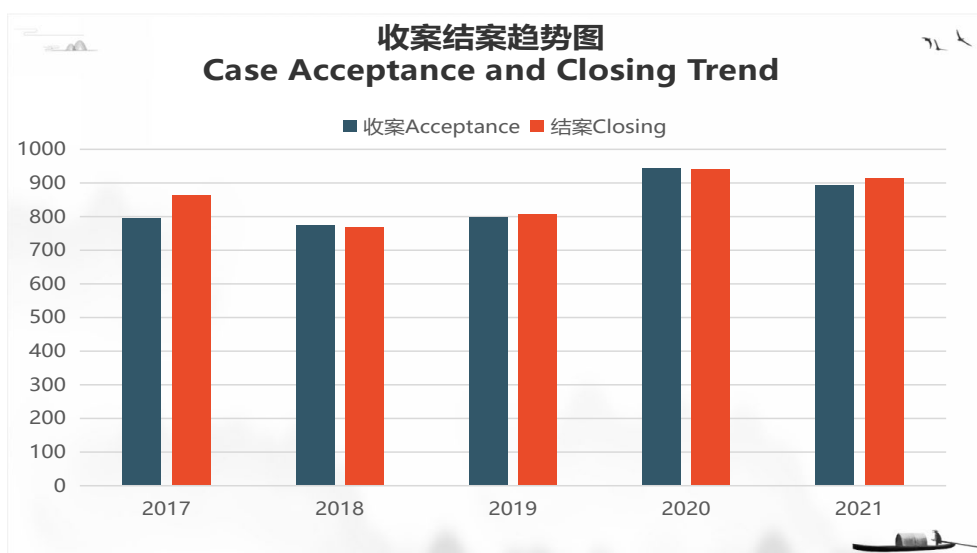


图 1：涉外涉港澳台收结案趋势图

Figure 1: Case Acceptance and Closing Trend

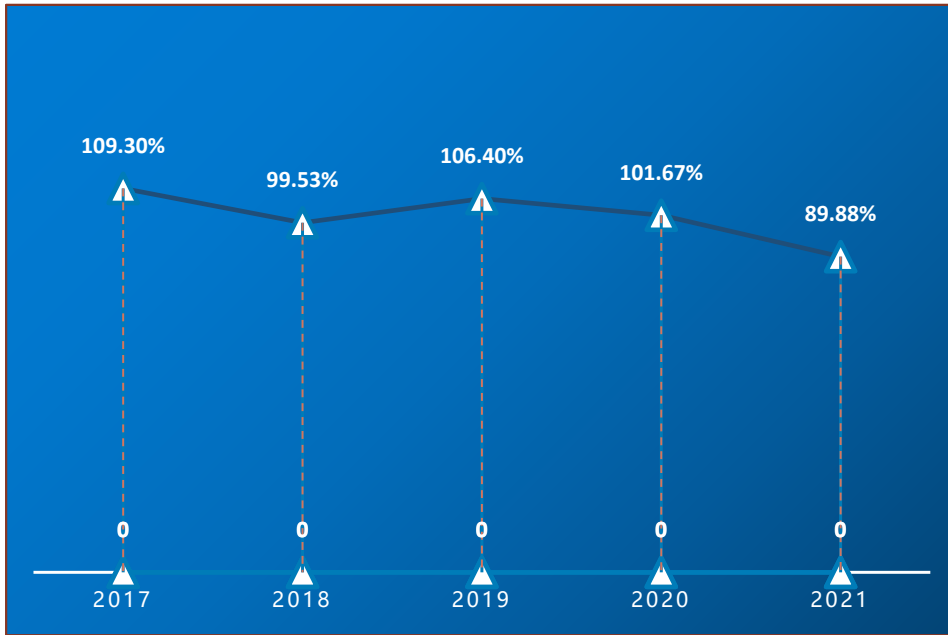


图 2：涉外涉港澳台商事案件同期结案率表

Figure 2: Closing Rate of Foreign-related Commercial Cases

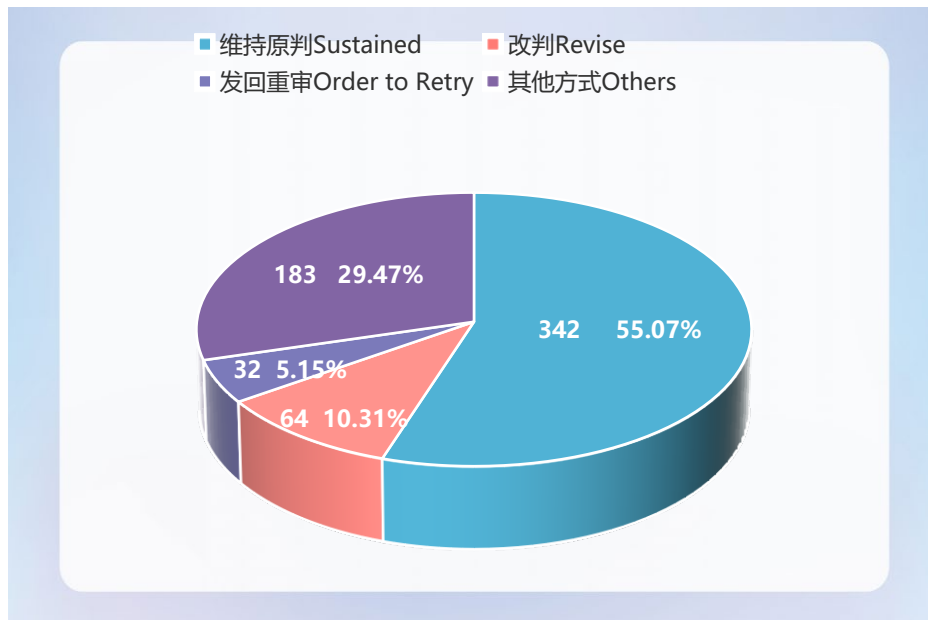


图 3：涉外涉港澳台二审改发案件统计图表

Figure 3: Revised and Order to Retry Cases

(二) 结案方式趋向多元，调解撤诉比例增高

(II) Methods of Case Closed: Diverse dispute resolutions within increasing proportion of mediation and case withdrawing

2017年-2021年，上海法院涉外、涉港澳台商事案件的结案方式虽仍以判决为主，但多元化趋势明显。具体而言：以判决方式结案2,125件，占比49.49%；以调解方式结案597件，占13.90%；以撤诉（含按撤诉处理）方式结案960件，占22.36%；以裁定驳回起诉或驳回上诉方式结案共计284件，占6.61%；以裁定移送或指定其他法院方式结案138件，占3.21%；其他方式结案190件，占4.43%（见图4）。调解、撤诉比例有较大提高，多元纠纷化解机制成效明显。

Between 2017 and 2021, the cases are mainly resolved by court judgment, but more diverse dispute resolution methods are adopted. In terms of the cases concluded during this period, 2,125 cases are settled through court judgments (49.49%), 597 cases through mediation (13.90%), 960 cases withdrawn (including the cases deemed to be withdrawn, 22.36%), 284 cases dismissed (6.61%), 138 cases were ruled to transfer to or designated to other competent jurisdictions (3.21%) and 190 cases resolved in other means (4.43%) (see Figure 4). The mediation and withdrawal have been widely adopted, and a diverse dispute resolution mechanism has been highlighted.

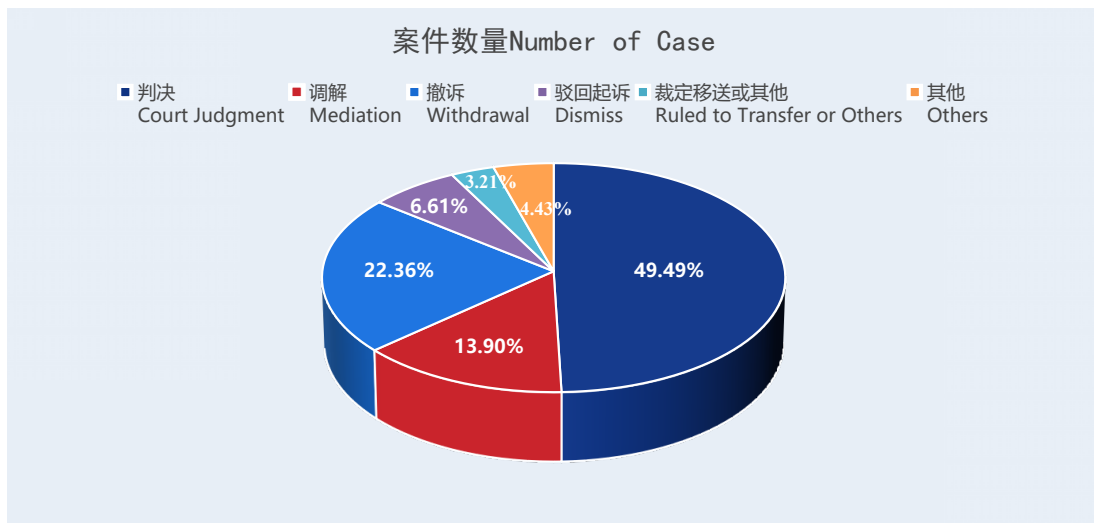


图 4：结案方式分布图

Figure 4: Methods of Closing A Case

(三) 标的金额分布均衡，大标的案件数量稳定

(III) Amount of Claims: balanced distributed with large amount of claims in a steady trend

2017 年-2021 年，上海法院受理的涉外、涉港澳台商事案件总标的为 92,063,143,722.77 元。标的额在 20 万元以下的案件共 1,357 件，占 32.30%；标的额在 20 万元—100 万元的案件共 867 件，占 20.63%；标的额在 100 万元—1,000 万元的案件共 1,216 件，占 28.94%；标的额在 1,000 万元以上的案件共 762 件，占 18.13%（见图 5）。五年来，1,000 万以上的大标的额涉外、涉港澳台案件收案数量稳定，呈均衡趋势，具体而言：2017 年 116 件，占比 14.59%；2018 年 159 件，占比 20.57%；2019 年 155 件，占比 19.45%；2020 年 171 件，占比 18.13%；2021 年 161 件，占比 18.01%（见图 6）。

Between 2017 and 2021, the total value of all the cases amount to 92,063,143,722.77 yuan. According to a classified analysis, 1,357 cases

are under 200 thousand yuan in terms of the amount of claims (32.30%); 867 cases between 200 thousand and 1 million yuan (20.63%); 1,216 cases between 1 million and 10 million yuan (28.94%); and 762 cases over 10 million yuan (18.13%) (See Figure 5). The proportion of large amount of claims cases (over 10 million yuan) in the past five years is in a balance, from 116 cases in 2017 (14.59%), 159 cases in 2018 (20.57%), 155 cases in 2019 (19.45%), 171 cases in 2020 (18.13%) and 161 cases in 2021 (18.01%) (See Figure 6).

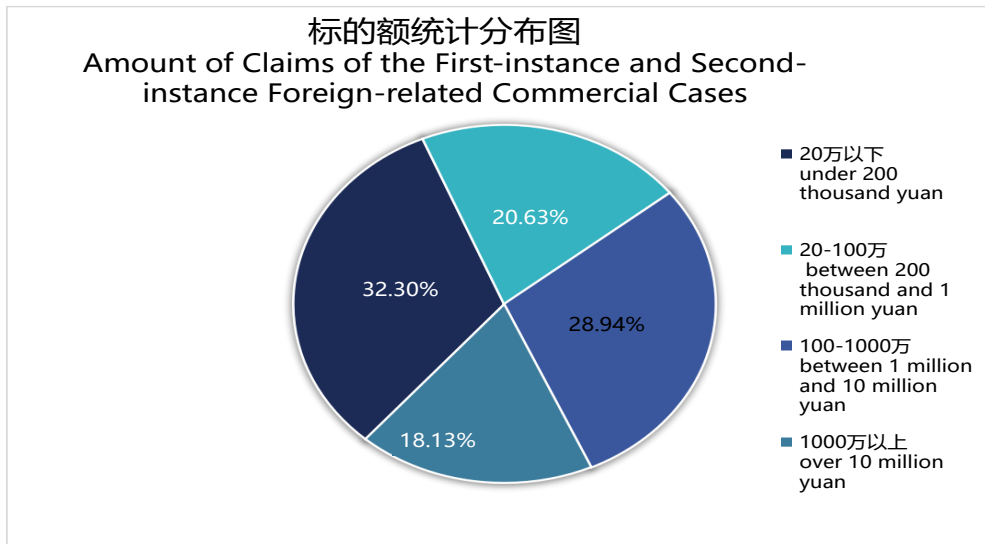


图 5：一、二审涉外、涉港澳台案件标的额

Figure 5: Amount of Claims of the First-instance and Second-instance Foreign-related Commercial Cases

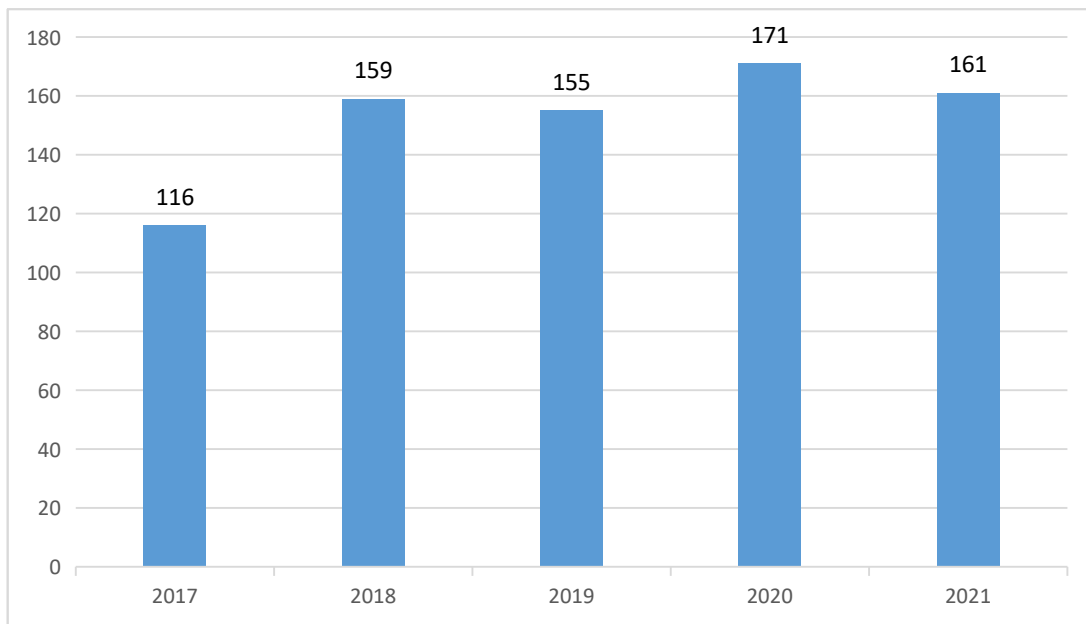


图 6：五年大标的案件分布变化图

Figure 6: Trend of Large Amount of Claims Cases

(四) 案件类型总体集中，公司类纠纷相对多样

(IV) Causes of Action: generally distributed while more types of corporate disputes

2017 年-2021 年，上海法院一审涉外、涉港澳台商事案件收案数量占前三位的类型为借款类纠纷（包括金融借款合同纠纷、民间借贷纠纷及其他借款合同纠纷）、买卖合同纠纷、股权转让纠纷，共计 1,430 件，占 40.33%。其他相对较多案件类型及收案数为服务合同纠纷、合伙合同纠纷、损害公司利益责任纠纷。从收案类型上看，涉外、涉港澳台商事案件中涉及公司融资、对外交易、股权结构等传统纠纷案件数仍占较大比重，但案由呈现多样化趋势。公司类纠纷前五名案由为损害公司利益责任纠纷、其他与公司有关的纠纷、公司解散纠纷、公司增资纠纷、请求变更公司登记纠纷（见图 7），体现了近五年来涉外、涉港澳台商事案件中涉及公司治理问题的纠纷相对集中。

In the past five years, the cases concerning the disputes in lending (including loan contract disputes, private lending cases and other lending contract disputes), sales and equity transfer have ranked the top three of the first instance foreign-related commercial cases. This figure amounts to 1,430, accounting for 40.33%. Other common disputes include service contract, partnership contract and damage to corporate interests. The cases on corporate financing, foreign trade and equity and other traditional disputes still take a larger proportion, though the causes of action may be diverse. The top five causes of action in the corporate disputes are damage to corporate interests, other corporate matters, dissolution, capital increase and registration change application(See Figure 7). The corporate governance issue has become an acute issue in the past five years' foreign-related commercial disputes.

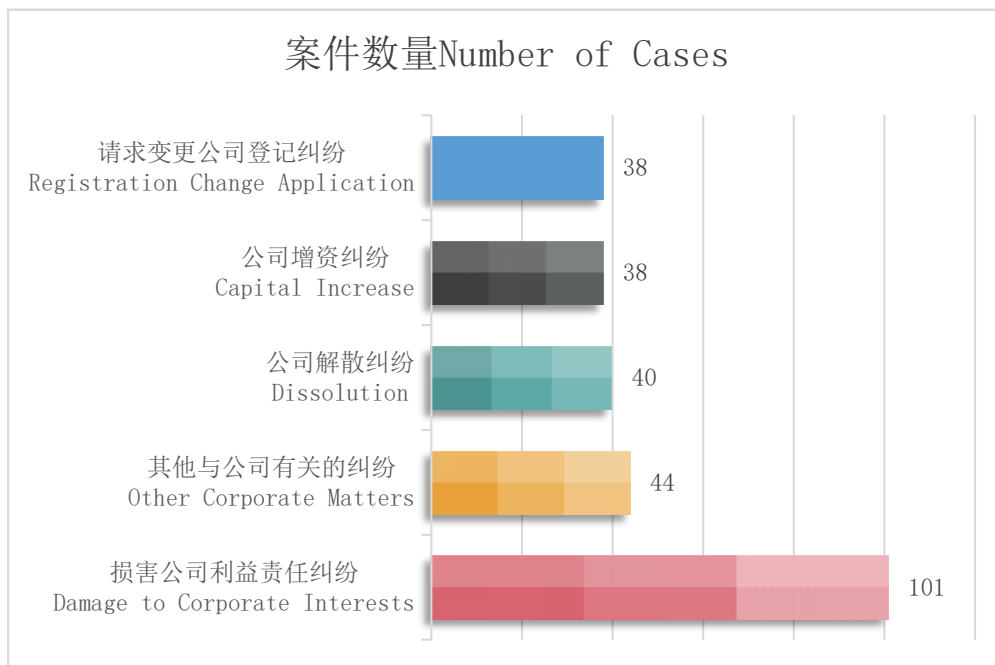


图 7： 公司类案件前五名分布案由

Figure 7: Top 5 Causes of Action in Corporate-related Cases

(五) 主体地域分布广泛，涉“一带一路”国家案件增多

(V) Geographical features: widely distributed with a rising number of Belt and Road cases

2017年-2021年，上海法院受理的涉外商事案件共计2,989件，当事人涉及76个国家和地区，其中超过半数涉及美国、日本、加拿大等传统贸易伙伴国，收案数量为1,503件，占比50.28%。按当事人所涉国别及地区统计，前十名为：美国305件、日本136件、加拿大130件、韩国122件、英国122件、新加坡122件、澳大利亚90件、德国70件、法国35件、马来西亚30件（见图8）。涉“一带一路”国家案件数量增长明显，收案数量464件，占涉外国当事人案件收案比例15.52%；且所涉国别范围增多，共涉及国家44个，包括文莱、塔吉克斯坦、巴基斯坦、新加坡、菲律宾、沙特阿拉伯、奥地利、塞浦路斯、厄瓜多尔、南非、阿尔及利亚等多个国家。其中，韩国、新加坡、马来西亚等“一带一路”国家收案量已跻身涉外国当事人前十位。

Between 2017 and 2021, 2,989 foreign-related commercial cases are accepted, and the parties to the foreign-related commercial cases come from 76 countries and regions, in which China's traditional trade partners including the US, Japan and Canada take the lead, accounting for 50.28% of all the case accepted (1503 cases accepted). According to the statistics based on the top ten countries of the parties concerned, there are 305 cases related with the parties from the US, 136 cases from Japan, 130 cases from Canada, 122 cases from South Korea, 122 cases from the UK, 122 cases from Singapore, 90 cases from Australia, 70 cases from

Germany, 35 cases from France and 30 cases from Malaysia (See Figure 8). The accepted cases involving parties from the Belt and Road countries increased by 15.52%, amounting to 464, the countries of which included Brunei, Tajikistan, Pakistan, Singapore, the Philippines, Saudi Arabia, Austria, Cyprus, Ecuador, South Africa and Algeria. Of all the Belt and Road cases, South Korea, Singapore and Malaysia have climbed to the top ten origin countries of the parties to the foreign-related commercial cases.

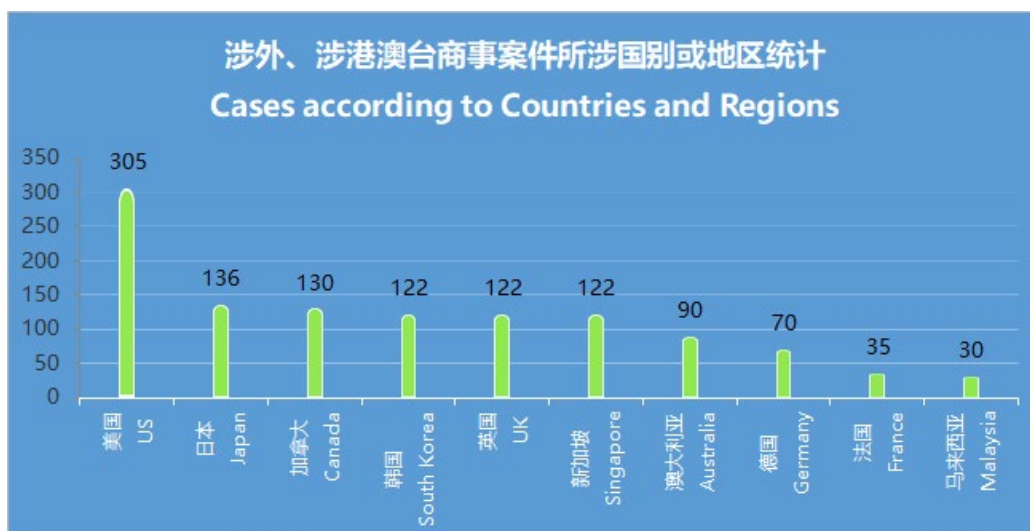


图 8：涉外国案件所涉国别和地区统计表

Figure 8: Cases according to Countries and Regions

五年来，上海法院受理的涉港澳台当事人案件共计 1,213 件，其中涉香港地区当事人案件 731 件；涉澳门地区当事人案件 34 件；涉台湾地区当事人案件 448 件。（见图 9）

During the past five years, there are 1,213 cases related with Hong Kong, Macau and Taiwan. Specifically, there are 731 cases related with

Hong Kong, 34 cases with Macau and 448 cases with Taiwan (See Figure 9).

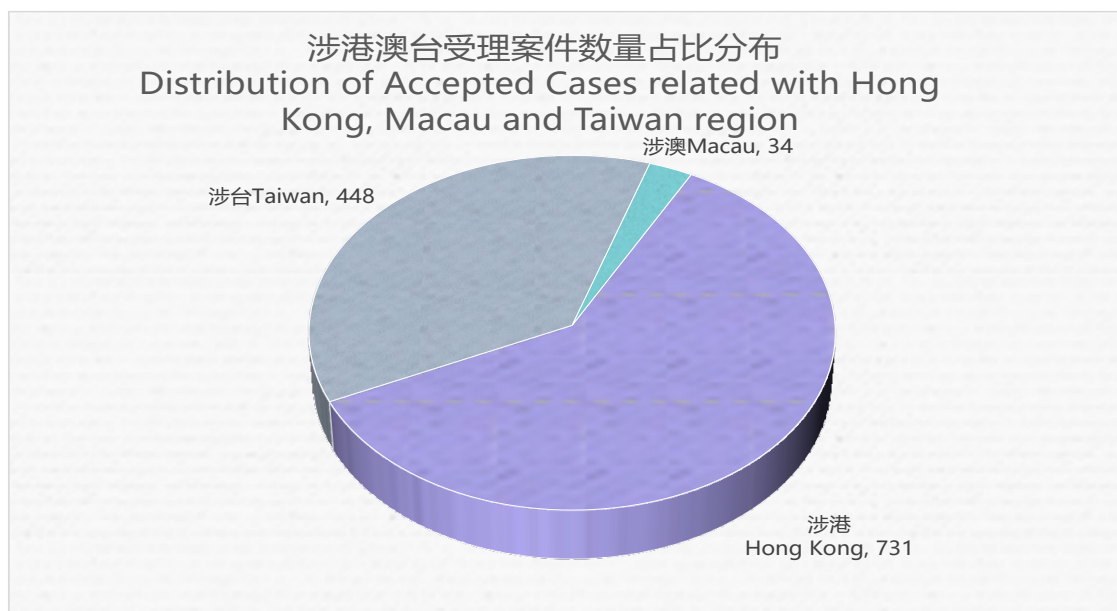


图 9：涉港澳台受理案件数量占比分布

Figure 9: Distribution of Accepted Cases related with Hong Kong, Macau and Taiwan region

(六) 精品意识不断强化，案件影响力逐步提升

(VI) Quality trial with increasing international and domestic influence

五年来，上海法院牢固树立审判精品意识，把审理好涉外、涉港澳台商事案件作为打造上海法治化营商环境和提升中国司法形象的重要抓手，精心审理了一批具有国际、国内影响力的典型案件，如大成产业气体株式会社等诉普莱克斯（中国）投资有限公司申请确认仲裁协议效力纠纷案，本案系上海市受理并审结的首例当事人约定由

外国仲裁机构在上海仲裁的仲裁协议效力确认案件，将对我国仲裁法修订中仲裁机构的界定、仲裁裁决的国籍籍属立法等方面提供借鉴和指引。上海法院通过及时公正审理涉外、涉港澳台商事纠纷案件，明晰商事裁判规则，合理引导市场预期，有效维护市场秩序和交易安全，树立了中国司法的国际公信力。

In the past five years, the courts at all levels in Shanghai have firmly established the awareness of quality trial, treated the foreign-related commercial cases as an important cornerstone for creating a law-based business environment and enhancing China's international judicial image, and carefully adjudicated a number of typical cases with international and domestic influence. For example, the Daesung Industrial Gases Co., Ltd. vs. Praxair (China) Investment Co., Ltd. over the validity of arbitration agreement, in which the parties agreed to be arbitrated by a foreign arbitration institution in Shanghai, is the first case accepted and concluded in Shanghai. It will be a good reference case for defining arbitration institution when revising China's arbitration laws and the legislation on the nationality of an arbitration award. With a timely response to and impartial trial of the foreign-related commercial cases and reasonable orientation of market expectations, Shanghai courts have clarified a number of adjudication rules on commercial trial, effectively maintained the market order and security, and established the international credibility of Chinese judiciary.

二、涉外、涉港澳台商事案件主要特点

II. Features

(一) 市场主体参与度广，案件类型全面多样

(I) Varying types of cases and comprehensive participation of market entities

五年来，涉外、涉港澳台商事案件类型多样，显示涉外、涉港澳台市场主体对上海投资、金融、贸易等领域全面参与。一是金融商事、投资贸易、公司等多种纠纷类型并存，反映出上海经济环境的国际化程度高，市场主体参与投资领域广。二是涉外金融借款、民间借贷等纠纷呈增长趋势，反映出相关市场主体因扩大经营、生产投入等原因对跨境融资的需求不断增长。三是投资贸易纠纷类型多样，显示市场主体在更广领域、更深层次参与投资、贸易活动。

In the past five years, the types of foreign-related commercial trial vary and these foreign-related entities have fully participated in Shanghai's investment, finance and trade. First, a variety of cases on financial, trade and investment and corporate disputes coexist, a significant indicator of the international development of economic environment and the wide range of foreign investment in Shanghai. Second, the increase in disputes over foreign-related lending and private lending indicates the growing demand for cross-border financing from relevant foreign-related market entities due to business expansion and production investment. Third, the various types of foreign-related investment and trade disputes demonstrate the wider and deeper participation of foreign-related market entities in investment and trade activities in Shanghai.

(二) 经济形态新颖性高，交易模式日益精细

(II) New business models emerge and more area-specific and specialized business activities

涉外、涉港澳台商事案件类型涉及行业领域广、种类多，国内商事交易的主要类型在其中均有体现，涉外、涉港澳台商事案件所涉案由从 2014 年的 14 类逐年增长为 2015 年的 33 类、2016 年的 39 类、2017 年的 44 类且此后稳定于 40 类左右。涉及高新技术、网络科技、投资咨询、医疗科技、文化传媒、餐饮服务等多个产业，也涵盖了货物贸易、服务贸易、加工贸易等不同贸易类型，贸易业态更多地趋向于多样化、精细化。

The types of the foreign-related commercial cases involve a wide range of industries and businesses. The disputed areas in domestic commercial cases can also be found in the foreign-related commercial cases. The causes of action of the foreign-related commercial cases increase from 14 types in 2014 to 33 types in 2015, 39 types in 2016 and 44 types in 2017. Now it is maintained in about 40 types, which involve the high-tech, Internet technology, investment consultation, medical technology, culture and media, and catering industries, and also cover different types of trade such as trade in goods and services and the processing trade. The business activities involved are more area-specific and specialized.

(三) 投资者保护需求强，公司治理问题凸显

(III) Strong demand of investment protection and corporate governance problems highlighted

从案件类型上看，涉及公司权益及股东权益纷争的新类型投资案件及因投资企业内部治理问题而引发的纠纷增多，如股东、高管损害公司利益责任纠纷、股东资格确认纠纷、公司决议纠纷等案件数量较五年前大幅增加。

In terms of case types, the foreign-related commercial disputes over the company and the shareholders' rights and interests and the disputes over the corporate government of foreign-invested companies are in a surge. For example, compared with five years ago, the number of the disputes over the shareholder and executive's liability for damaging the corporate interests, the confirmation of shareholder qualification and the company's resolution has increased significantly.

在公司资本认缴制改革、上海自贸试验区外商投资负面清单等一系列制度改革的探索推进过程中，上海自贸试验区内涉及企业因报批、报备等手续转换引发的股权代持、股权转让、债转股协议、协议控制等有关合同效力或合同履行的纠纷频发。2020年，上海市浦东新区人民法院作出了《中华人民共和国外商投资法》施行后全国首例境外自然人股东资格确认纠纷案的判决，以标的公司的经营领域不属于外商投资负面清单范围内，且变更登记符合《中华人民共和国公司法》的相关规定为由，对外资隐名股东显名的诉请予以确认，社会效果良好。

In exploring institutional reforms such as the corporate capital

subscription system and the promulgation of foreign investment negative list in Shanghai FTZ, there are more disputes concerning the validity or performance of contracts such as equity substitution, transfer, debt-to-equity agreements and VIE control arising from the report, filing for record and other changes within Shanghai FTZ. In 2020, the Pudong New Area People's Court issued the China's first judgment in which the foreign natural person pleaded to confirm the shareholder's qualification after the Foreign Investment Law of the People's Republic of China was adopted. In this case, the business areas of the company in dispute did not fall within the negative list and the registration change was in compliance with relevant provisions of the Company Law. Such person's request to confirm the dormant shareholders was supported. This case has brought out favorable social impact.

三、涉外、涉港澳台商事审判工作成效

III. Major Achievements

(一) 切实提高政治站位，服务保障国家战略实施

(I) To improve political stance and actively safeguard the implementation of national strategies

五年来，上海法院紧紧围绕国家战略实施，主动作为，积极探索，以司法体制改革为契机，立足执法办案第一要务，不断加强司法能力建设，充分发挥审判职能作用。上海法院着力推进上海自贸试验区国际化、法治化、便利化营商环境建设，支持保障临港新片区的制度创新和市场创新，为上海深化改革开放提供有力的司法服

务和保障。

In the past five years, Shanghai courts have closely focused on the implementation of national strategies, taken the initiative and made proactive actions. To take the judicial system reform as an opportunity, Shanghai courts, apart from the daily adjudication tasks, pay particular attention to strengthening judicial capability, and giving full paly to the role of adjudication in a bid to promote an international, law-based and convenient business environment in Shanghai FTZ, safeguard the institutional and market innovation in Shanghai FTZ and Lin-gang Special Area, and provide strong judicial support for Shanghai's deepening reform and opening-up.

1. 强化制度建设，为上海自贸试验区及临港新片区法治环境顺畅运行提供司法制度供给

1. To improve institutional construction to ensure the smooth operation and implementation of the reform measures for Shanghai FTZ and Lin-gang Special Area

上海自贸试验区设立之初，上海市高级人民法院就及时制定了《上海法院服务保障中国（上海）自由贸易试验区建设的意见》，全方位、系统性地为全市法院服务保障上海自贸试验区工作明确理念、统领方向。上海市第一中级人民法院、上海市第二中级人民法院、上海海事法院、上海市浦东新区人民法院则分别从统一法律适用、支持保障仲裁机制创新、创新完善审判机制等角度，各自出台了专门服务保障上海自贸试验区建设发展的司法文件，为涉外案件受理、审理、裁判以及执行工作提供具体明确的指引。

As soon as the Shanghai FTZ was established, Shanghai High People's Court promptly formulated the Opinions of Shanghai Courts on Serving and Safeguarding the Construction of China (Shanghai) Pilot Free Trade Zone. It defined the principles and orientation of judicial services of courts at all levels for the construction of Shanghai FTZ in a comprehensive and systematic way. The Shanghai First Intermediate Court, the Shanghai Second Intermediate Court, Shanghai Maritime Court and the Pudong New Area People's Court have issued separate documents on the uniform application of law, support for arbitration mechanism innovation and the innovation and improvement of adjudication mechanism and provides specific guidelines on the acceptance, trial, judgement and enforcement of foreign-related cases.

2019年8月20日，中国（上海）自由贸易试验区临港新片区挂牌成立。上海市高级人民法院对服务保障临港新片区建设发展高度重视，统筹协调，指导全市法院合力提供全方位的司法服务保障。2019年12月30日，上海市高级人民法院制定发布了《上海法院服务保障中国（上海）自由贸易试验区临港新片区建设的实施意见》。该意见对标国际上公认竞争力最强的自贸区成功经验，从营造国际一流法治化营商环境、强化司法政策的开放性和包容度、完善司法体制机制、加强人才队伍建设等5个方面提出21项举措，涉及30余项具体工作任务。

On August 6, 2019, the CPC Central Committee with General Secretary Xi Jinping as the core decided to establish the Shanghai FTZ Lin-gang Special Area. The party committee of Shanghai High People's

Court attached great importance to serving and safeguarding the construction and development of Lin-gang Special Area, and through coordinated efforts, guided the courts at all levels to work together to provide a full range of judicial service guarantees. On December 30, 2019, Shanghai High People's Court issued the Implementation Opinions of Shanghai Courts on Serving and Safeguarding the Construction of Shanghai FTZ Lin-gang Special Area ("Implementation Opinions"). By referring to the successes of the internationally recognized and strongly competitive free trade zones, these Opinions proposed 21 initiatives, divided into over 30 tasks, which cover the work on building international law-based business environment, reinforcing the opening and inclusiveness of judicial policies, improving the judicial institutions and mechanisms and strengthening talent training.

为回应临港新片区及辐射长三角一体化发展的功能定位，针对临港新片区案件特征，上海市高级人民法院指导上海市浦东新区人民法院于 2019 年 10 月 19 日挂牌成立上海市浦东新区人民法院自由贸易区法庭和自由贸易区知识产权法庭临港新片区审判站，开展涉外商事等案件巡回审判，精心审理涉临港新片区案件，为境内、外商事主体提供零距离、全方位的诉讼服务。上述审判站自挂牌设立起至 2021 年 12 月底，共受理各类涉临港新片区民商事案件 2,555 件。上海市浦东新区人民法院依托上述审判站，与临港新片区管理委员会在前瞻研究、信息共享、机制共建等方面展开合作，不断优化临港新片区建设的司法制度供给。

In response to Lin-gang Special Area's function and position as the

leading role in the integrated development of Yangtze River Delta, Shanghai High People's Court after considering the features of disputes in this area, guided Pudong Court to set up the court stations of FTZ Court and the FTZ Intellectual Property Court ("court stations"), which conduct circuit trials of foreign-related commercial cases, especially in Lin-gang New Area, and provide convenient and full range of litigation services for domestic and foreign entities. Until December 2021, the court stations have accepted 2,555 foreign-related civil and commercial cases. Based on the court stations, Pudong Court cooperated with the Lin-gang Special Area Administration in prospective research, information sharing and mechanism innovation to make better the supply of judicial services for Lin-gang Special Area construction.

2. 创新司法举措，积极回应上海自贸试验区及临港新片区建设国际化营商环境的司法需求

2. To carry out judicial innovation to meet demands of the law-based business environment in Shanghai FTZ and Lin-gang Special Area

上海法院充分利用上海自贸试验区先行先试的优势，不断创新工作方法，着力破解涉外、涉港澳台民商事诉讼管辖、送达、法律适用等难题，确保案件的公正高效审理。如上海市浦东新区人民法院自由贸易区法庭通过建设中英文互联网站，为当事人提供双语诉讼服务，推进司法信息公开；运用信息技术手段，通过微信多方视频通话功能当庭进行跨国调查，探索破解境外证据审查认证难问题；克服全球新冠疫情影响，跨境在线庭审审理方式得到充分采用，至 2021 年

12月底有33起案件采用了跨境在线方式进行谈话、庭审等诉讼活动，涉及美国、加拿大、新加坡等国家和我国港澳台地区，推进了上海自贸试验区营商环境的国际化发展。

Shanghai courts make full use of the advantages in the pilot Shanghai FTZ to innovate their work and strive to resolve the problems in jurisdiction, service and application of law in the foreign-related civil and commercial cases to ensure impartiality and efficiency. For example, the FTZ Court launched a Chinese-English website to provide bilingual judicial services and make information public, carried out cross-border investigations through Wechat video conferencing to resolve the problem in cross-border evidence review and recognition, and conducted online court trials to overcome the difficulties caused by COVID-19. Until December 2021, 33 cases were adjudicated online across the countries and regions including the US, Canada, Singapore, Hong Kong, Macau and Taiwan. Such efforts have promoted an international business environment within the FTZ.

3.创新审判模式，确保公正高效审理涉上海自贸试验区及临港新片区案件

3. To innovate adjudication mechanisms to ensure impartiality and efficiency

一是上海市浦东新区人民法院自由贸易区法庭率先推进以审判权为中心、以审判管理权和审判监督权为保障的审判权力运行机制改革，探索法官主导下的审判团队工作模式，有效夯实公正司法的队伍基础。

First, the Shanghai FTZ Court took the lead in promoting the judicial mechanism reform which centers on the adjudication power and is safeguarded by adjudication management and supervisory powers, and explored a collaboration mode of adjudication chaired by judge to effectively consolidate the foundation of justice.

二是针对上海自贸试验区内投资贸易、金融类案件新颖性高、专业性强的特点，上海法院实行了跨审判专业调配法官组成合议庭的工作机制，并引入国际金融、保险、海关及国际贸易等领域专家担任陪审员，充分发挥法官法律思维以及相关专家技术专业思维的优势合力。

Second, as the cases related with investment, trade and financing in Shanghai FTZ are original which require special expertise, the judges from various areas are convened to set up a collegial bench and the experts in international finance, insurance, customs and trade are appointed as assessors, which fully plays the role of law in the judge's part and the professional thinking in the expert's part.

三是选任陪执员参与执行工作。上海市第一中级人民法院制定了《关于涉上海自贸试验区执行案件聘请陪执员参与执行的实施预案》，聘请了陪执员，深化执行公开，增强了涉上海自贸试验区案件执行工作的透明度。

Third, the people participating in the enforcement of judgements are selected and appointed. The Shanghai First Intermediate Court issued the Implementation Plan on the Appointment of People Participating in

Enforcement of Judgement in Shanghai FTZ, and then appointed such people. The new measure improves the disclosure of enforcement and the transparency of Shanghai FTZ's work on enforcement of judgments.

四是积极优化司法服务保障临港新片区建设的各项机制。2020年3月25日，上海市浦东新区人民法院与临港新片区管委会签署合作协议，就信息共享、创新支持、监管协同和日常联络四个方面14项内容达成共识，并发布了《关于落实临港新片区管委会与上海浦东法院合作协议的十项举措》。

Fourth, the mechanisms to provide judicial safeguard for the construction of Lin-gang Special Area are improved. In March 25, 2020, Pudong Court signed an agreement with Lin-gang Special Area Administration which covered 14 items including information sharing, support for innovation, coordinated supervision and liaison. At the same day, the Ten Measures for the Implementation of the Agreement between Lin-gang Special Area and Pudong Court was also issued. Last, the working rules on international judicial assistance were formulated. In recent years, the requests from foreign courts to investigate and collect evidence in civil and commercial cases have witnessed a remarkable increase. The Shanghai FTZ Court issued the Working Rules on International Judicial Assistance on March 2021, which further clarified the provisions of international conventions and treaties to which China is a signatory or a participator and Chinese laws, regulations and judicial interpretations on international judicial assistance for commercial cases,

and would improve the efficiency and regulate the work on international assistance requests.

五是制定司法协助工作规范。近年来外国司法机关在民商事案件中请求我国法院代为调查取证的请求数量增多，上海市浦东新区人民法院自由贸易区法庭于 2021 年 3 月制定《涉外司法协助工作规范》，进一步强化落实我国缔结或参加的国际公约、条约以及我国法律、法规、司法解释中关于民商事国际司法协助调查的规定，高效、规范办理国际司法协助调查取证工作。

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(二) 强化审判机制创新，不断推进司法公信建设

(II) To strengthen adjudication mechanism innovation to improve the judicial credibility

为适应经济社会发展要求，更好地服务上海“五个中心”建设，

上海市三级法院通过优化资源配置，完善审判工作机制、加强案件管控等多种措施，不断提高涉外、涉港澳台商事案件审理水平。

To respond to the social and economic development needs and better serve the construction of Shanghai into five international hubs, Shanghai courts optimize the resource allocation, improve the adjudication mechanism, and strengthen the management and control over the cases and other measures to improve the management on the foreign-related commercial cases.

1. 强化审判管理，切实提升审判质效

1. To enhance management on adjudication to improve trial quality and efficiency

为狠抓执法办案第一要务，切实提高基层法院的涉外案件审判质量和办案效率，上海高院专门制定下发了《涉外案件质量管控规定》《关于涉外商事案件审限管理办法（试行）》等文件，将一审涉外商事案件从立案直至审结的一系列关键环节和重要节点纳入质量监控范围，加强审理流程节点管理。

To emphasize the trial as the first priority and improve the quality and efficiency in foreign-related trials of the primary courts, Shanghai High People's Court issued the Regulations on the Management and Control of Foreign-related Cases and the Measures for the Administration of Time Limit for Foreign-related Commercial Trials (Trial Implementation), which take into quality control the key procedures and important periods of time from acceptance to closure of the first instance

foreign-related commercial cases to strengthen the procedural administration.

2. 加强类案评查，确保法律适用统一

2. To strengthen the review of similar cases to ensure uniform application of law

一是为确保法律适用统一，2020年上海高院组织资深涉外法官，结合上海涉外审判实践修订了《上海涉外商事审判程序指引》，作为涉外商事审判工具书下发全市涉外商事条线。

First, to ensure uniform application of law, in 2020 Shanghai High People's Court organized senior judges specialized in foreign-related cases to revise the Guidelines of Shanghai on Foreign-related Commercial Trial Procedures based on the practices of Shanghai courts, and then issued it to all the Shanghai courts engaged in foreign-related commercial trials.

二是上海法院高度重视涉外、涉港澳台案件的类案重点评查工作，通过定期讲评发改瑕疵案件、下基层抽查案件、座谈等方式，对基层法院审结的一审涉外、涉港澳台商事案件进行专项评查；此外，上海高院还通过不定期对基层法院“门对门”巡回实地指导答疑的做法，及时发现适法不统一的问题，并针对性地给予指导，起到良好效果。

Second, Shanghai courts attach great importance to the review of similar cases, regularly discuss and evaluate the defective cases and carry out special review of the first instance foreign-related commercial trials

concluded by the primary courts through random inspection and seminars. In addition, Shanghai High People's Court would provide guidance and answer the questions raised by the primary courts through on-site "door-to-door" inspections, so as to discover the problems of inconsistent application of law in a timely manner and give specific guidance. These reviews have produced favorable outcomes.

3. 强化域外法查明，提升法律适用水平

3. To improve the proof of law mechanism to improve the application of law

针对长期困扰涉外、涉港澳台商事案件审判工作的“域外法查明难”的问题，上海市高级人民法院与华东政法大学从 2015 年起即建立合作，利用该校外国法查明研究中心的教学科研优势，建立了委托查明域外法的工作机制。2019 年，在前期实践的基础上双方又协商制定了《上海市高级人民法院与华东政法大学外国法查明专项合作机制操作指引》，进一步优化了域外法查明合作机制，细化操作流程。合作机制建立以来，迄今已有二十余起案件通过该机制进行域外法的查明，为涉外、涉港澳台商事案件准确适用法律提供有力支持。

To resolve the difficulty in proof of foreign law, Shanghai High People's Court started cooperation with East China University of Political Science and Law, and established a working mechanism on the proof of foreign law by taking advantage of its Center for Proof of Law. In 2019, based on the past experience, both parties negotiated and issued the Operation Guidelines for the Special Cooperation Mechanism for Proof

of Foreign Law. The guidelines optimize the mechanism and specify the procedures for proof of foreign law. Since its establishment, it has helped settle over 20 cases and provided strong support for the accurate application of law in foreign-related commercial trials.

2021 年 8 月，双方召开“涉外法治建设与域外法查明专题研讨会”，就涉外商事纠纷中的域外法查明实践与涉外法治人才培养机制等议题展开广泛讨论，并将进一步形成合作成果。

In October 2021, Shanghai High People's Court and ECUPL Center for Proof of Foreign Law held the Seminar on International Rule of Law and Proof of Foreign law, whose topics centered on the proof of foreign law, the international law talent training and other matters. The seminar is hoped for more fruitful results.

4. 促进沟通协调，保障外商投资权益

4. To strengthen communication and coordination to protect the lawful rights and interests of foreign investors

为全面落实最高人民法院《关于外商投资企业纠纷案件若干问题的规定（一）》规定，上海市高级人民法院与上海市商务委员会联合制订了《关于进一步加强外商投资企业股权纠纷处理与合作机制的会议纪要》，进一步协调理顺外商投资纠纷领域司法权与行政权的关系，细化了法院与审批机关之间在处理外资企业股权纠纷领域的实务衔接流程，增强了司法解释的可操作性。至 2021 年止，已有上海市松江区人民法院、上海市奉贤区人民法院等 30 起涉外资股权确认案件按《纪要》规定完成了审核操作，确保了相关纠纷的顺利审理，维护

了外方投资者的合法权益。

To implement the Provisions of the Supreme People's Court on Several Issues concerning the Trial of Disputes involving Foreign-invested Enterprises (I), the Shanghai High People's Court cooperated with Shanghai Municipal Commission for Commerce to jointly issue the Meeting Minutes on Further Strengthening the Mechanism and Cooperation for Handling Corporate Equity Disputes of Foreign-invested Enterprises. The Minutes further clarify and coordinated the relationship between judicial and administrative power with respect to foreign investment disputes, refine the procedures for the courts and the approval departments to handle the equity disputes involving foreign-invested enterprises, and improve the practicability of judicial interpretations. Until 2021, over 30 cases involving foreign equity confirmation heard by Songjiang and Fengxian district courts have confirmed the claimed equity according to the Minutes, which guarantee the dispute settlement and protect the lawful rights and interests of foreign investors.

5. 加强司法调研，及时发布审判白皮书

5. To carry out more research on legal practice and regularly issue white papers

一是 2017 年上海市高级人民法院发布五年“涉外涉港澳台商事审判白皮书(2012-2016)”及“十大涉外涉港澳台商事审判典型案例”，并通过召开新闻发布会的形式向媒体及社会公众予以公布，受到社会

各界广泛关注；2022 年，上海法院涉外商事条线法官共同编纂出版了《上海法院涉外、涉港澳台商事审判典型案例选》（中英文），宣传相关商事审判成果。

First, in 2017 Shanghai High People's Court issued the white paper on the foreign-related commercial trial (2012-2016) and the top ten typical cases, and made the media and public known through press conference, which also attracted wider public attention. In 2022, the judges engaged in foreign-related commercial trial co-edited and published the Selection of Typical Cases of Commercial Trials Involving Foreign Countries, Hong Kong, Macau and Taiwan by Shanghai Courts (Chinese-English edition) to publicize the achievements in this field.

二是在最高人民法院民四庭的直接指导和支持下，上海市第一中级人民法院、上海财经大学等单位共同合作成立“自由贸易区司法研究中心”，截至 2020 年，双方已共同组织开展了 67 项自贸区法律适用课题研究；2018 年 4 月，上海市第一中级人民法院编撰的《中国（上海）自由贸易试验区法律适用精要》正式出版。这是全国法院系统内首部由一线法官撰写的涉上海自贸试验区案件法律适用专著，系统梳理和分析了涉上海自贸试验区案件各类法律问题。上海市浦东新区人民法院连续八年公开发布《上海市浦东新区人民法院涉自贸试验区审判工作白皮书》、《上海市浦东新区人民法院涉外商事审判白皮书》，系统总结司法服务保障涉外、涉港澳台商事审判各方面工作，并通报相关典型案例。2020 年，上海市黄浦区人民法院以《中华人民共和国外商投资法》《中华人民共和国外商投资法实施条例》施行

为契机，发布《外商投资企业涉诉案件审判白皮书》，对规范和完善外商投资企业提出对策和建议。

Second, under the direct guidance and support of the Four Civil Division of the Supreme People's Court, the Shanghai First Intermediate Court and Shanghai University of Finance and Economics co-established the Judicial Research Center for Free Trade Zone. Until 2020, both parties have completed 67 projects on the application of law in FTZ. In April 2018, the Shanghai First Intermediate Court edited the Essentials for Application of Law in China (Shanghai) Pilot Free Trade Zone. It was the first book on the application of law in cases involving the Shanghai FTZ written by the judges. Pudong Court has published the White Paper on the Judicial Trials in FTZ and the Pudong Court White Paper on Foreign-related Commercial Trial for eight consecutive years, which summarize the work on the foreign-related commercial trial and publish the typical cases. In 2020, Huangpu People's Court issued the White Paper on the Trials Involving Foreign-invested Enterprises by taking advantage of the implementation of Foreign Investment Law and the Regulations on Implementing the Foreign Investment Law, which provides suggestions for regulating and improving foreign investment.

(三)着力推进多元化解，有效拓宽纠纷解决路径

(III) To actively promote the diversified dispute resolution mechanisms

1.建立横向联动机制保障多元化解纠纷

1. To establish a horizontal collaborative mechanism for dispute resolution

近年来，上海法院加快推进与行政监管部门、行业协会、仲裁机构、专业调解组织的合作机制建设，建立起联动机制，实现多方合力化解矛盾纠纷，取得了良好成效。一是上海市高级人民法院与中国国际贸易促进会上海分会签署《关于规范涉外涉港澳台商事纠纷委托调解的会议纪要》，建立委托该会上海调解中心调解涉外、涉港澳台商事案件的工作机制。二是上海市高级人民法院与上海市政府侨务办公室签署了《关于加强上海侨商投资合法权益保护建立商事审判和行政协调合作机制的座谈会纪要》，开拓了涉侨民商事纠纷委托侨办调解的新渠道。三是上海市高级人民法院与上海市政府台湾事务办公室签署了《加强涉台民商事纠纷化解和协调工作机制建设意见》，确立了定期沟通、诉调对接，以及上海市政府台湾事务办公室协同法院做好涉台案件调处工作等新机制。2018年3月，双方就建立涉台商事纠纷委托调解工作机制事宜，进一步达成了《关于深化涉台商事纠纷委托调解工作机制建设的意见》，为涉台商事调解工作的深化和执行明确了细则和执行依据。

In recent years, Shanghai courts have accelerated the establishment of cooperation mechanisms with administrative regulatory departments, industrial associations, arbitration agencies and professional mediation

agencies to resolve financial disputes in joint efforts, which has achieved favorable results. First, Shanghai High People's Court signed the Meeting Minutes on Regulating the Mediation on the Foreign-related Commercial Disputes with the Shanghai Branch of China Council for the Promotion of International Trade, which established a working mechanism in which the Shanghai Mediation Center affiliated with the Shanghai Branch was entrusted to mediate the foreign-related commercial disputes. Second, Shanghai High People's Court signed with the Overseas Chinese Affairs Office of the Municipal Government the Symposium Minutes on Establishing Cooperation Mechanism on Commercial Trial and Administrative Coordination to Strengthen the Protection of the Lawful Rights and Interests of Overseas Chinese Investors in Shanghai, from which the overseas Chinese commercial disputes could be entrusted to the Overseas Chinese Affairs Office for mediation. Third, Shanghai High People's Court signed with the Municipal Taiwan Affairs Office the Opinions on Strengthening the Establishment of the Working Mechanism for Resolving and Coordinating Taiwan-related Civil and Commercial Disputes, which established the mechanisms on regular communication, coordinating litigation with mediation and the Office's support for Taiwan-related cases. On March 2018, both parties issued the Opinions on Deepening the Establishment of Mediation Mechanism for Taiwan-related Commercial Disputes, which clarified the rules and basis for deepening and implementing the Taiwan-related commercial dispute

resolution mechanism.

上海法院也结合各自收案特点和实际情况，积极推动涉外、涉港澳台商事纠纷的多元化解决。如上海市第一中级人民法院与上海经贸商事调解中心合作建立了自贸区商事纠纷委托调解机制，根据当事人自愿原则，将符合条件的涉诉案件交该调解机构进行调解，积极探索商事调解与司法衔接的路径；上海市第二中级人民法院制定了《关于委托中国国际贸易促进委员会（中国国际商会）上海调解中心调解商事纠纷的操作细则（试行）》，在此基础上开展委托调解工作。

Courts at all levels also actively promote the diversified resolution of foreign-related commercial disputes. For example, Shanghai First Intermediate Court cooperated with Shanghai Commercial Mediation Center to establish a mediation working mechanism for commercial disputes in FTZ in which the parties may choose to submit their litigation-eligible cases to the Center for mediation, a new channel to coordinate litigation with mediation. Shanghai Second Intermediate Court issued the Regulations on Entrusting Shanghai Mediation Center of China Council for the Promotion of International Trade to Mediate Commercial Disputes (Trial Implementation).

2.建立涉外商事纠纷一站式解决机制

2. To establish a one-stop foreign-related dispute resolution mechanism

为了贯彻落实最高人民法院关于营造市场化、法治化、国际化营商环境的要求，形成涉外商事纠纷便利、高效的多元解决体系，上海

市高级人民法院于 2019 年建立了涉外商事纠纷诉讼、调解、仲裁多元化解决一站式工作机制（以下简称“涉外商事纠纷一站式解决机制”）。上海法院在涉外商事纠纷立案、审理过程中，引入或对接调解组织、仲裁机构及法律服务机构等社会资源，明确引导当事人选择适宜的途径解决涉外商事纠纷，根据不同类型纠纷的实际情况，在诉讼、调解、仲裁程序之间顺畅转换，推动了涉外商事纠纷的实质化解决。

In order to implement the Supreme People's Court's requirements of creating a market-oriented, law-based and international business environment and building a convenient and efficient diversified foreign-related dispute resolution system, in 2019 Shanghai High People's Court established a one-stop foreign-related dispute resolution mechanism that incorporated litigation, mediation and arbitration. The courts at all levels introduces the mediation and arbitration agencies and legal service institutions into the case filing and court proceedings of foreign-related commercial disputes, and guide the parties to choose appropriate ways to settle their disputes. The way to resolve the foreign-related disputes can switch between litigation, mediation and arbitration according to the reality of the cases, which has promoted the substantial settlement of disputes.

为落实上述机制，2019 年 9 月上海市浦东新区人民法院自由贸易区法庭涉外商事“诉讼、调解、仲裁”一站式解纷工作室成立，引入 5 家第三方调解机构、2 家仲裁机构、5 家法律服务机构入驻。自

成立以来，工作室在涉外诉讼与仲裁的工作对接和效力衔接上取得重大进展，其中涉及新加坡国际仲裁中心“先裁后审”的仲裁协议效力在上海被首次予以承认，体现了上海法院对涉外仲裁鼓励与支持的态度。2020年5月两会期间，上海市浦东新区人民法院自由贸易区法庭办理的诉讼与仲裁程序转换案件被中央媒体“法治天下”栏目予以特别报道。2020年9月全国高级法院院长座谈会上，上海市浦东新区人民法院院长在工作室现场连线向最高人民法院周强院长汇报了相关情况，得到了肯定和广泛关注。五年来，上海市浦东新区人民法院自由贸易区法庭“一站式”纠纷解决平台共妥善化解526件涉外商事纠纷，同时上海市浦东新区人民法院自由贸易区法庭因“有效提升一站式服务水平，为对外开放提供有力司法保障”而入选2021年9月最高人民法院发布的“新时代人民法庭建设典型案例”。

To implement this mechanism, in September 2019 Shanghai FTZ Court set up a workshop that engages in litigation, arbitration and mediation of foreign-related commercial disputes, and introduced five third-party mediation agencies, 2 arbitration agencies and 5 legal service institutions. Since its establishment, the workshop has made remarkable progress in coordinating litigation with arbitration in terms of procedures and validity recognition. Particularly, the arbitration agreement on arbitration before litigation clause in the cases involving SIAC were identified as valid. In May 2020, the cases converting from litigation to arbitration handled by Shanghai FTZ during the National People's Congress and the Chinese People's Political Consultative Conference

were reported by Global Law, a special daily program on prominent cases co-produced by the Supreme People's Court and China Education Television. In the National Symposium for Presidents of High Courts held in September 2020, the reports made live in the one-stop workshop by the President of Pudong Court to Zhou Qiang, President of Supreme People's Court have been affirmed and attracted widespread attention. In the past 5 years, the workshop has resolved 526 foreign-related commercial cases, which was listed as the Typical Case of People's Court in the New Area issued by the Supreme People's Court in September 2021.

(四) 加强仲裁司法审查，大力支持仲裁事业发展

(IV) To strengthen judicial review of arbitration to safeguard the operation of arbitration

对仲裁进行司法监督，是法律赋予人民法院的重要审判职责。多年来，上海法院依法履行法律赋予的职能，通过对仲裁协议、仲裁裁决效力等案件的审理，在依法监督的同时，更好地支持仲裁事业的发展创新和国际化发展。

The judicial supervision of arbitration is an important part of the people's court duty assigned by law. Over the past years, Shanghai courts have fulfilled this duty and carefully handled the cases on arbitration agreements and the validity of arbitration awards to better support the innovation and international development of arbitration.

1.依法审理仲裁司法审查案件

1.To conduct judicial review of arbitration according to law

五年来,上海法院共受理仲裁司法审查案件 1,982 件(不含保全), 审结仲裁司法审查案件 1,942 件, 平均结案率 97.98%。申请确认仲裁协议效力案件共审结 610 件, 其中确认协议无效案件占比 2017 年为 25.62%、2018 年为 22.35%、2019 年为 17.86%、2020 年为 16.95%、2021 年为 9.59%, 否定率平均为 18.36%, 呈逐年下降趋势; 申请撤销仲裁裁决案件共审结 1080 件, 其中撤销仲裁裁决案件占比 2017 年为 0、2018 年为 0.58%、2019 年为 1.29%、2020 年为 0.43%、2021 年为 0.32%, 平均为 0.56%; 申请不予执行国内仲裁裁决或不予执行抗辩案件共审结 214 件; 申请承认和执行域外(涉外、涉港澳台)仲裁裁决案件共审结 38 件, 其中除来宝资源国际私人有限公司与上海信泰国际贸易有限公司申请承认仲裁裁决案外, 均支持了当事人的申请, 对涉案仲裁裁决予以承认和执行。审结申请仲裁保全案件共 10,456 件, 平均结案率为 113.43%。上海法院依法履行法律赋予的职能, 在依法监督的同时, 支持仲裁事业的发展创新和国际化发展。

In the past five years, Shanghai courts have accepted 1,982 arbitration judicial review cases (excluding arbitration preservation), and concluded 1,942 of them, accounting for 97.98%. Of these cases, 610 cases applying for confirmation of arbitration agreement validity were closed, among which the number of cases for invalidating arbitration agreements accounts for 25.62% in 2017, 22.35% in 2018, 17.86% in 2019, 16.95% in 2020, and 9.59% in 2021. The average rate for invalidating is 18.36%, a downward trend. On the other hand, 1,080

cases applying for revocation of arbitration awards, among which the number of arbitration award revocation cases accounts for 0 in 2017, 0.58% in 2018, 1.29% in 2019, 0.43% in 2020, 0.32% in J 2021, with an average rate of 0.56%. There are 214 closed cases applying for challenging China's arbitration awards or refusing enforcement of demur. A total of 38 applications for recognition and enforcement of foreign arbitration awards were supported except for the arbitration recognition dispute between the Noble Resources International Pte Ltd. and Shanghai Xintai International Trade Co., Ltd. A total of 10,456 arbitration preservation applications were accepted, 113.43% of which were concluded. Shanghai courts have performed its duty to conduct judicial review of arbitration to better support the innovation and international development of arbitration.

2.积极支持仲裁制度发展创新

2. To provide active support for the institutional arbitration innovation

上海自贸试验区深化改革方案提出“优化自贸试验区仲裁规则……加快打造面向全球的亚太仲裁中心。”上海市第二中级人民法院针对开放名册、临时措施、友好仲裁等自贸区仲裁制度的创新，及时作出司法回应，制定了《关于适用〈中国（上海）自由贸易试验区仲裁规则〉仲裁案件司法审查和执行的若干意见》，对构建法治化、国际化营商环境、打造具有国际影响力的商事仲裁中心等起到重要推动作用。上海市第一中级人民法院在最高人民法院《关于为自由贸易试验区建设提供司法保障的意见》发布后，及时对《涉中国（上海）自

由贸易试验区案件审判指引》进行修订，在尊重当事人意思自治的基础上，对自贸区注册企业之间约定在内地特定地点、按照特定仲裁规则、由特定人员对有关争议进行仲裁的做法作出相应审查规定，为自贸区仲裁制度创新发展提供有效支持。2018年11月，上海市高级人民法院与上海仲裁委员会、上海国际经济贸易仲裁委员会、中国海事仲裁委员会上海分会就进一步加强民商事纠纷诉讼与仲裁对接工作，达成了《上海法院与仲裁机构诉讼与仲裁工作对接机制建设合作备忘录》，就上海仲裁司法审查的工作原则和具体合作方法达成了共识，更好地支持仲裁事业的发展创新和国际化发展。

The Notice of the State Council on Printing and Distributing the Plan for Further Deepening the Reform and Opening-up of the China (Shanghai) Pilot Free Trade Zone has proposed “[to] improve the arbitration rules in the pilot free trade zone...and accelerate the establishment of it as an Asia-Pacific arbitration center that opens its door to the world”. The Shanghai Second Intermediate Court responded to the needs for new arbitration institutions in Shanghai FTZ with regard to list of opening-up areas, interim measures and convenient arbitration, and issued the Several Opinions on the Application of China (Shanghai) Pilot Free Trade Zone Arbitration Rules, which has become an important impetus for promoting a law-based international business environment and the establishment of internationally influential arbitration center. After the Supreme People’s Court issued the Opinions on Providing Judicial Guarantee for the Construction of Pilot Free Trade Zones,

Shanghai First Intermediate Court revised the Guidelines for the Trial of Cases involving China (Shanghai) Pilot Free Trade Zone. In order to provide effective support for the innovation and development of the arbitration system in Shanghai FTZ, these guidelines stipulate the rules on conducting arbitration review between the Shanghai FTZ enterprises which agreed to a designated location, arbitration rules and arbiters. In November 2018, Shanghai High People's Court signed the Memorandum on Enhancing Cooperation in Establishing the System for Coordinating Litigation with Arbitration in Civil and Commercial Disputes between Shanghai Courts and Arbitration Agencies with Shanghai Arbitration Commission, Shanghai International Economic and Trade Arbitration Commission, and Shanghai Branch of the China Maritime Arbitration Commission. The Memorandum is a consensus on the working principles and rules on judicial review of arbitration in Shanghai, which aims to better support the innovation and international development of arbitration.

(五) 强化审判队伍建设，有效提升商事审判效能

(V) To improve professional expertise in judicial trial to improve the commercial trial efficiency and capabilities

目前上海三级法院均建立了专项涉外商事审判合议庭。截至2021年底，全市从事涉外商事审判的专业法官共270余人，其中具有硕士、博士学历者占比70%以上，相当比例的法官具有海外留学学历背景，基本形成了一支相对稳定、具有较高业务能力的涉外商事审判专业法

官队伍。

The three-tiered Shanghai courts have set up the collegial benches specialized in foreign-related commercial trial. As of 2021, there have been over 270 judges engaged in the foreign-related commercial trial, and 70% have master or doctor degrees. A considerable part of these judges ever studied overseas. Now in Shanghai courts a stable, able and professional judge team specialized in foreign-related commercial trial is in place. In addition, Shanghai courts have been dedicated to enhancing the expertise training through a variety of effective measures.

同时，上海法院采取多种举措，加强涉外商事法官队伍的专业化建设：

Meanwhile, these courts have also adopted various measures to improve the professional expertise of judges in commercial trial.

一是上海法官学院针对改革开放深化带来的对外投资、贸易政策变化快、创新举措多等特点，增设了外资政策、互联网金融、第三方支付以及自贸区新发展、新政策等改革开放前沿领域的课程，优化法官知识结构，开拓国际视野。

First, the Shanghai Branch of National Judges College have opened a lot of courses about frontier issues such as foreign investment, Internet financing, third-party payment and free trade zone to respond to the needs brought by the changing nature and innovation-dependent characteristics of foreign investment and trade policies. These courses have improved the judges' knowledge structure and broaden their global horizons.

二是以司法改革为契机，大力加强涉外商事审判专业合议庭建

设，定期选拔培养一批外语能力强、既精通国内法，又熟悉国际商事通行规则和贸易惯例的复合型法官，培养成效显著。2020年，上海市浦东新区人民法院自由贸易区法庭涉外法官首次尝试在诉讼活动中全程以英语在线审理涉意大利籍当事人案件，对于与纠纷解决相关的法律规定、程序要求、诉讼权利义务、在线解纷流程等事项，以英语告知外国当事人，有效推动案件进程。

Second, by taking the judicial reform as an opportunity, Shanghai courts has strengthened the construction of professional collegial benches for foreign-related commercial trial, and selected and trained the judges who are proficient in foreign languages and familiar with both domestic law and international commercial rules and trade practices. In 2020, the Shanghai FTZ Court explored to use English throughout the online court proceedings in the case concerning an Italian party, which facilitated the progress of court trial. During the trial, the Italian was informed in English of the legal provisions, procedural requirements, rights and obligations and the procedures for online dispute resolution.

三是为进一步提升涉外商事审判效能，各院也结合自身实际积极探索。2021年，上海市高级人民法院商事庭牵头组织全市法院法官设立“涉外商事审判兴趣小组”。上海市浦东新区人民法院自由贸易区法庭大胆尝试，组建涉外商事专家委员会，与上海地方高校共同合作设立涉外商事司法研习社，加强涉外商事审判的实践和理论探索。

Third, Shanghai courts have also made effective explorations to improve the efficiency of foreign-related commercial trial. In 2021, the Commercial Tribunal of Shanghai High People's Court took the lead in establishing interest groups in foreign-related commercial trial for the

judges from all the courts. In a further attempt, the Shanghai FTZ Court established an expert committee of foreign-related affairs and cooperated with local universities to set up study clubs on foreign-related commercial trial to improve its practice and theoretical explorations.

四、涉外、涉港澳台商事审判工作目标

IV. Working Objectives

(一) 持续提高政治站位，坚持服务国家大局

(I) To continue improving political instance and provide safeguard for the implementation of major national strategies

为服务保障“一带一路”国家重大战略实施和上海自贸试验区及临港新片区建设的深入推进，进一步贯彻落实中共中央、国务院对于上海浦东新区打造社会主义现代化建设引领区的要求，上海法院坚持以习近平法治思想引领涉外、涉港澳台商事审判工作，紧盯涉外法治建设中的突出问题，通过准确适用国际条约、国际惯例和域外法律，积极行使司法管辖权，切实履行司法协助协定，为维护中外当事人合法权益提供高效、快捷的司法救济。同时，上海法院积极探索总结可复制、可推广的司法服务保障机制和经验，扩大司法审判的辐射效应，营造国际一流法治化营商环境，努力构建与开放型经济新体制相适应的涉外、涉港澳台商事审判工作新格局。

In order to serve the Belt and Road Initiative, the FTZ and Lin-gang Special Area construction, and to further meet the requirements of the CPC Central Committee and the State Council for the Pudong New Area to building a pioneer area for socialist modernization, Shanghai courts

have used Xi Jinping's Thoughts on the rule of law to guide the foreign-related commercial trial, paid close attention to the prominent problems on the foreign-related legal practices. In addition, Shanghai courts have actively pursued the exercise of jurisdiction by accurately applying the international treaties, practices and foreign laws to implement the provisions on international judicial assistance agreements and provide efficient and convenient judicial remedy to protect Chinese and foreign parties' lawful rights and interests. Moreover, Shanghai courts have made proactive explorations in promoting replicable and widely applicable judicial service mechanism and extending the effect of the foreign-related commercial trials to build a law-based international business environment and strive to draw a new pattern for foreign-related commercial trial compatible with an open economic system.

(二) 继续创新司法保障，完善审判体制机制

(II) To continue innovating judicial guarantees and improve the adjudication institutions and mechanisms

随着司法改革的逐步深化，以司法责任制为重心的审判权力运行机制改革全面推进。上海法院涉外商事审判贯彻落实司法改革要求，以提升审判质效为目标，继续完善审判权、审判管理权和审判监督权的运行机制，合理配置司法资源，积极探索符合涉外、涉港澳台审判规律的工作机制和方法，继续加强涉外专项合议庭建设，强化案件质量管控，以推进精品战略为抓手，加强对精品案例的培育指导，充分发挥精品案例在相关行业规范化建设和预防减少纠纷方面的引导作

用, 进一步提升上海法院涉外、涉港澳台商事审判水平和国际影响力。

As judicial reform deepens, the institutional reform of the exercise of the power to adjudication which centers on the judicial accountability system has been promoted in full swing. Guided by the requirements of carrying out judicial reform, Shanghai courts focus on improving the quality and efficiency of the foreign-related commercial trial and continue to improve the operating mechanism between the power to adjudication, the management power and the supervisory power. Under a reasonable distribution of judicial resources, Shanghai courts have taken proactive measures to explore the working methods and mechanisms that conform to the principles of judicial trial. The courts carry on the establishment of foreign-related specialized collegial benches, the case quality control and the selection and guidance of exemplary quality cases to give full play to these cases in relevant industries' regulation and dispute prevention, which will further improve the foreign-related commercial trial of Shanghai courts and its international influence.

(三) 创新多元纠纷化解, 完善一站式解纷平台

(III) To innovate diversified dispute resolution and improve one-stop dispute resolution platform

针对涉外商事交易范围持续扩大, 法律关系愈加复杂、专业技术不断增强及矛盾纠纷日趋多元化的特点, 上海法院继续推进多元化纠纷化解机制的完善, 以上海市浦东新区人民法院自由贸易区法庭、上海市青浦区人民法院西虹桥(进口博览会)法庭为载体, 持续优化诉

讼与调解、仲裁等程序的衔接转换，促进涉外、涉港澳台商事纠纷的专业、高效解决：一是进一步深化与行政机关的横向沟通，就涉外、涉港澳台商事审判领域出现的新模式、新业态等相关法律问题加强协调，促进涉外、涉港澳台商事案件非诉讼化解渠道的形成和拓展。二是进一步加强与行业组织、人民调解组织等各方面社会力量的合作，不断拓宽委托调解案件范围，努力推动构建完善的诉讼与非诉讼相衔接的矛盾解决机制。三是进一步加强与仲裁机构的沟通协作，推动仲裁制度完善和创新，满足中外投资者对国际经贸商事纠纷多元化解决的需求，为上海打造“面向全球的亚太仲裁中心”提供司法支持。

As the scope of foreign-related commercial activities expands, the legal relationships are increasingly complex, the dispute resolution requires more expertise and the types of such disputes are more varied. The diversified dispute resolution mechanism needs to be promoted and improved. With FTZ Court and West Hongqiao Tribunal of Qingpu District People's Court as the experimental fields, Shanghai courts continue to optimize the coordination between and conversion from litigation to mediation or arbitration to promote professional and efficient resolution of foreign-related commercial disputes. First, to deepen communication with administrative departments. Shanghai courts will strengthen the communication with the administrative departments about legal issues on new business models and sectors discovered in foreign-related commercial trial to facilitate and expand the channels for non-litigation resolution of these cases. Second, Shanghai courts will enhance cooperation with industrial associations, people's mediation

organizations and other social forces to expand scope of entrusted mediation cases and strive to promote the mechanism that coordinates litigation with non-litigation dispute resolution approaches. Third, Shanghai courts will enhance cooperation and collaboration with arbitration agencies to facilitate the refinement and innovation of arbitration institutions, meet the demands of both Chinese and foreign parties for diversified international economic and trade dispute resolution, and provide judicial support for establishing Shanghai as an Asia-Pacific arbitration center that opens its door to the world.

(四) 继续拓展国际化视野，加快专业化人才培养

(IV) To broaden international horizon and accelerate the professional talents fostering

上海法院将进一步加强涉外、涉港澳台商事审判的实践和理论探索，加快涉外法治人才培养，锻炼一支通晓国际法律规则、熟悉相关国家法律法规、善于处理涉外事务的复合型国际化法治人才队伍；依托高等院校，充分借鉴域外经验，打造域外法查明和适用的创新高地；坚持问题导向，树立前瞻思维，加强对涉外、涉港澳台商事审判中平行诉讼、跨境破产、跨境数据流动、主权豁免等国际法前沿问题的信息收集、研究；注重培养和储备国际化法律人才，为国家战略和法治建设提供理论支撑和人才储备。

Shanghai Courts will further strengthen the explorations of practice and theories of foreign-related commercial trial, accelerate the training of

foreign-related legal talents, and build a team of legal talents well-versed in international legal rules, foreign laws and good at handling foreign-related affairs. Shanghai courts will make use of universities' advantages and draw on the foreign experience to innovate the proof of foreign law and the application of the identified laws. Shanghai courts will pay close attention to the real problems, improve foresight and strengthen the information collection and research on the frontier issues of international law involved in foreign-related commercial trial such as parallel proceedings, cross-border bankruptcy, cross-border data flows and sovereignty exemption. Moreover, Shanghai courts will pay attention to the training and development of international legal talent pool for the implementation of national strategies and the construction of rule of law.

(五) 积极推动共建合作，提升司法审判公信力

(V) To actively promote cooperation and improve credibility of judicial trial

上海法院将秉持开放共享的理念，加强与行政部门的沟通，发挥涉外、涉港澳台商事审判的司法能动性：一是创建司法大数据系统，加强与政府间的风险反馈和协同治理。对大标的案件及涉及改革创新重点领域及相关产业的案件数据进行收集分析，并与相关监管机构形成数据平台对接，分析风险并及时预警，提升司法协同治理效能。二是继续与行政机关建立信息交流、信用促进机制，共推市场诚信体系建设。在为上海航运交易所提供航运企业涉诉、败诉、失信信息，以

及与上海自贸试验区市场监督管理局在固定送达地址、失信企业纳入异常经营名录等方面合作基础之上，持续扩大司法延伸服务内容，防范和化解重大法律风险，提升涉外、涉港澳台商事审判公信力。

Shanghai courts will unswervingly uphold the conception of openness and sharing, increase communication with administrative departments and play the proactive role of foreign-related commercial trial. First, to build a judicial big-data system to improve risk feedback and collaborative governance with the government. Shanghai courts will collect and analyze the data on the cases that may involve large amount of claims or the key areas and sectors subject to reform. Such data will be synchronized with the data platforms of relevant regulatory departments for risk analysis and timely warning to improve the efficiency and performance of judicial collaboration. Second, Shanghai courts will continue to establish information sharing and credit promotion mechanisms with administrative departments to improve the credit system of market entities. Shanghai courts provide Shanghai Shipping Exchange with the information on shipping enterprises' involvement in lawsuits, losing the lawsuits and discredit and, apart from fixing service address and incorporating discredit enterprises into abnormal business operation list, further the cooperation with the Market Supervisory Administration of Shanghai FTZ to extend judicial services to prevent and resolve major legal risks and improve the credibility of foreign-related commercial trial.