Ten Model Cases of the People's Courts' Assistance in the Construction of a Unified National Market Published by the Supreme People's Court

最高人民法院发布十起人民法院助力全国统一大市场建设典型案例

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(July 25, 2022)

（2022年7月25日）

Contents

目录

[Basic Facts]

【基本案情】

In 2011, the plaintiff, Villagers' Committee of Damazhuang Village, Liyuan Town, Tongzhou District, Beijing (hereinafter referred to as the “Villagers' Committee”) and the defendant, Beijing Qianyushunda Breeding Co., Ltd. (hereinafter referred to as “Qianyushunda Company”) entered into a House Leasing Contract, under which the Villagers' Committee leased a collectively owned four-story building with a construction area of 13,000 square meters to Qianyushunda Company for 20 years. Qianyushunda Company subleased the house in dispute to a party who was not a party to the case for operation of hotels, gymnasiums, beauty salons, etc. On February 9, 2022, the Villagers' Committee instituted an action with the court against Qianyushunda Company on the grounds that “it is stipulated in the contract that if the rent has not been paid in full for three months, Party A has the right to terminate the contract,” requesting the termination of the House Leasing Contract and requesting Qianyushunda Company to pay the occupancy expenses and liquidated damages. Qianyushunda Company argued that the hotels, gymnasiums, beauty salons, etc. operated in the houses in dispute were greatly affected by the epidemic situation, and the lack of funds led to delay in paying rent; and the houses in dispute involved many enterprises and operators, and if the contracts were terminated, the vital interests of many micro, small and medium-sized enterprises would be affected.

2011年，原告北京市通州区梨园镇大马庄村村民委员会（以下简称村委会）与被告北京市前榆顺达养殖有限公司（以下简称前榆顺达公司）签订《房屋租赁合同》，村委会将集体所有一栋建筑面积13000平米四层建筑物出租给前榆顺达公司，租期20年。前榆顺达公司将涉案房屋转租给案外人，用于经营宾馆、健身房、美容院等。2022年2月9日，村委会以“合同约定逾期三个月未足额交纳租金，甲方有权解除合同”为由，将前榆顺达公司起诉至法院，要求解除《房屋租赁合同》，前榆顺达公司支付占用费及违约金。前榆顺达公司辩称涉案房屋经营宾馆、健身房、美容院等受疫情冲击大，资金紧张导致迟延支付租金；涉案房屋涉及到多家企业和经营者，若解除合同，将影响众多中小微企业切身利益。

After trial of this case, to fully understand the use of the houses in dispute and the operating conditions of Qianyushunda Company, the judge handling the case went to conduct investigation and inspection on the spot. According to the court trial and on-site inspection, the handler carried out mediation work on the spot in a targeted manner, and finally facilitated both parties' mediation and completed the performance on the spot.

本案经开庭审理后，为充分了解涉案房屋使用情况、前榆顺达公司经营状况，承办法官至现场进行调查勘验。根据庭审及现场勘验情况，承办人有针对性地在现场开展调解工作，最终促成双方调解并当场履行完毕。

After the end of the mediation, both parties expressed their understanding of each other. Qianyushunda Company donated 50,000 yuan of epidemic prevention materials on the spot, and expressed gratitude to the Villagers' Committee for their hard work in the normalized epidemic prevention work.

调解结束后，双方均表示理解对方，前榆顺达公司现场捐助5万元防疫物资款，感谢村委会在常态化防疫工作中辛苦付出。

[Adjudication]

【裁判结果】

This case involved the judgment and determination of the breach of contract by micro, small and medium-sized enterprises affected by the epidemic situation. According to the contract between the two parties, the Villagers' Committee already enjoyed the right to terminate the contract. Whether Qianyushunda Company had been affected by the epidemic situation and whether it could confront the Villagers' Committee's exercise of the right to terminate the contract is the focus of the dispute in this case. It was found through on-site visits and investigations that the occupancy rate of the hotel in dispute was extremely low, the doors of the gymnasium were closed, and the business of the beauty salon was bleak, and the dispute over the leasing contract between the Qianyushunda Company and the sub-lessee was also in the court process, showing severe economic hardship of Qianyushunda Company. During the on-site inspection process of this case, on-site mediation was conducted based on the fact that Qianyushunda Company was affected by the epidemic situation, which ultimately urged the two parties to reach a mediation agreement and completed enforcement in a timely manner.

本案涉及受疫情影响的中小微企业违约行为判断认定问题。根据双方合同约定，村委会已然享有合同解除权。前榆顺达公司是否受到疫情因素的影响，能否对抗村委会行使合同解除权是本案争议焦点。经现场走访调查发现，案涉宾馆入住率极低、健身房大门紧闭、美容院生意惨淡，前榆顺达公司与次承租人的租赁合同纠纷也在法院审理过程中，前榆顺达公司确实遭遇严重经济困难。本案在现场勘验过程中立足于前榆顺达公司受到疫情影响进行现场调解，最终促使双方达成调解协议，并及时履行完毕。

The two parties reached a mediation agreement as follows: 1. Both parties would continuously perform the House Leasing Contract and the supplementary agreement; 2. The annual rent standard in 2022 would be adjusted to 4,603,366 yuan, and Qianyushunda Company would pay 2,301,683 yuan (fulfilled) to the Villagers' Committee before March 25, 2022 and pay 2,301,683 yuan before June 15, 2022; and future rent increments would be based on the annual rent amount adjusted in this clause for 2022, in accordance with the methods and standards agreed in the supplementary agreement.

双方达成调解协议如下：一、双方继续履行《房屋租赁合同》及补充协议；二、2022年年度租金标准调整为4 603 366元，前榆顺达公司于2022年3月25日前支付村委会2 301 683元（已履行完毕），于2022年6月15日前支付2 301 683元；以后租金的递增以本条款调整的2022年度租金金额为基数，按照补充协议约定的方式和标准递增。

[Significance]

【典型意义】

The first was accurately evaluating the breach of contract by micro, small and medium-sized enterprises affected by the epidemic situation, and judiciary assistance in the sound development of micro, small and medium-sized enterprises. The existence of the leasing contract in this case was a major event related to the survival and development of a defendant company. The people's court implemented the Guiding Opinions of the Supreme People's Court on Fully Maximizing the Role of Judicial Functions to Boost the Development of Micro, Small and Medium-Sized Enterprises, on the basis of the fact that Qianyushunda Company was greatly affected by the epidemic situation, facilitated reconciliation between the two parties and fulfilled it in a timely manner, having effectively protected Qianyushunda Company' survival and strongly solved the difficulties for the development of micro, small and medium-sized enterprises.

一是准确评价受疫情影响的中小微企业违约行为，司法助力中小微企业健康发展。本案租赁合同存续是关乎被告公司生存发展的重大事件。人民法院贯彻落实最高人民法院《关于充分发挥司法职能作用助力中小微企业发展的指导意见》，立足前榆顺达公司受疫情影响较大，促成双方和解并及时履行，有效保护前榆顺达公司生存大计，强力为中小微企业发展解忧纾困。

The second was to comprehensively and equally protect the legitimate rights and interests of economic entities of different systems of ownership in accordance with the law, insisting on the equal treatment of various market entities, protecting the legitimate rights and interests of grass-roots mass autonomous organizations and private enterprises in accordance with the law, and reducing the costs of dispute resolution. After the case was opened, the court hearing and on-site inspection were organized in a timely manner, and during the on-site inspection, the opportunity was seized to facilitate mediation. It took 45 days from opening to closing of this case, having resolved disputes in a timely and efficient manner.

二是全面依法平等保护不同所有制经济主体的合法权益。坚持对各类市场主体平等对待，依法保护基层群众性自治组织和民营企业的合法权益，降低纠纷解决成本。本案立案后，及时组织开庭审理、现场勘验，并在勘验现场过程中，抓住时机，促成调解。本案从立案到结案，用时45天，及时高效化解纠纷。

The third was to gather positive energy to mediate to assist in enterprises and the epidemic situation. Opponents became friends, from tit-for-tat to mutual understanding to mutual concessions, which made social relations be no longer so cold, and the mediation results reflected the temperature of the times. Disputes had become public interests. In the context of epidemic prevention and control, an enterprise could fully understand the epidemic prevention work, contribute its own strength to the epidemic prevention work, and jointly fight against the epidemic situation, having demonstrated the core socialist values of harmony and friendliness.

三是汇聚正能量，调解助企又助疫。对手变朋友，从针锋相对到互相理解再到互让一步，让社会关系不再那么冰冷，调解结果折射出时代温度。纠纷变公益，在疫情防控的大背景下，作为企业能充分理解防疫工作，力所能及为防疫工作贡献自己的力量，携手抗疫，展现和谐、友善的社会主义核心价值观。

II. Case of Judgment of Acquittal Rendered upon Retrial of Zhang Wenzhong Who Was Charged with Committing Fraud, Offering Bribes to an Entity, and Embezzling Funds

二、张文中诈骗、单位行贿、挪用资金再审改判无罪案

[Basic Facts]

【基本案情】

The Intermediate People's Court of Hengshui City, Hebei Province held in the first instance that: 1. Defendant Zhang Wenzhong constituted a crime of fraud. At the beginning of 2002, Zhang Wenzhong learned that the state implemented the policy of subsidized treasury bonds for key enterprises and key projects, and that the batch of funds of subsidized treasury bonds for technological transformation projects were mainly used to support the technological transformation projects of state-owned enterprises, and Wumart Group, as a private enterprise, did not fall under the scope supported by funds of subsidized treasury bonds for technological transformation projects. Therefore, after discussing with the defendant Zhang Weichun in the same case, he decided to file applications in the name of a subsidiary of Chengtong Company, a state-owned enterprise. After the logistics project and information technology project for which Zhang Wenzhong filed applications were approved by the former State Economic and Trade Commission, Wumart Group did not implement the project, and obtained a loan amounting to 130 million yuan for the company's routine operation by entering into false contracts and issuing false invoices. On October 29, 2003, the Ministry of Finance allocated 31.9 million yuan of funds of subsidized treasury bonds for technological transformation projects to Chengtong Company, and then Chengtong Company remitted the funds to Wumart Group's account, and Wumart Group used the funds to repay the company's loan. 2. Defendant Zhang Wenzhong constituted the crime of offering bribes to an entity. In 2002, Wumart Group acquired 50 million shares of Taikang Company held by China International Travel Service. Zhao, and Zhao A, director of the office of China International Travel Service, actively coordinated and offered assistance. Afterwards, Zhang Wenzhong arranged for Zhang AA to pay Zhao A 300,000 yuan. In the same year, Wumart Group acquired 50 million shares of Taikang Company held by Guangdong Utrust Investment Holding Co., Ltd., hoping to get help from Liang A, general manager of Guangdong Utrust Investment Holding Co., Ltd., and Zhang Wenzhong arranged for Zhang AA to pay Liang A 5 million yuan. 3. Defendant Zhang Wenzhong constituted the crime of embezzling funds. In March 1997, Zhang Wenzhong and Chen AA, chairman of Taikang Company, agreed to embezzle Taikang Company's 40 million yuan of funds to apply for new stocks for profit. Zhang Wenzhong instructed Zhang AA to transfer 40 million yuan from Taikang Company to subscribe for new stocks, having made profits of more than 10 million yuan. Afterwards, Zhang AA returned 40 million yuan to Taikang Company. The Intermediate People's Court of Hengshui City, Hebei Province rendered first-instance judgment on October 9, 2008, determining that Zhang Wenzhong was guilty of fraud, offering bribes to entities, and embezzling funds, and sentencing him to an imprisonment of 18 years and a fine of 500,000 yuan by applying joinder of penalties for plural crimes; and recovering illegal income and turning over to the state treasury. Concurrently, Wumart Group and Zhang Weichun were also sentenced to corresponding penalties. After the first-instance judgment was pronounced, Zhang Wenzhong, Zhang Weichun and Wumart Group appealed. The High People's Court of Hebei Province rendered a second-instance judgment on March 30, 2009, determining that Zhang Wenzhong was guilty of fraud, offering bribes to entities, and embezzling funds and was sentenced to an imprisonment of 12 years and a fine of 500,000 yuan by applying joinder of penalties for plural crimes. After the judgment came into force, Zhang Wenzhong refused to accept it and appealed to the Supreme People's Court. The Supreme People's Court made a retrial decision on December 27, 2017, and retried this case.

河北省衡水市中级人民法院一审认定：1.被告张文中构成诈骗罪。2002年初，张文中得知国家对重点企业、重点项目实行国债贴息补贴政策，且该批国债技改贴息资金主要用于支持国有企业技术改造项目、物美集团作为民营企业不属于国债技改贴息资金支持范围，遂与同案被告人张伟春商量决定以国有企业诚通公司下属企业的名义进行申报。张文中申报的物流项目和信息化项目获得原国家经贸委审批后，物美集团未实施项目，并以签订虚假合同和开具虚假发票为手段，获得1.3亿元贷款，用于公司日常经营。2003年10月29日，财政部将3190万元国债技改贴息资金拨付到诚通公司，后诚通公司将该款汇入物美集团账户，物美集团将该款用于偿还公司贷款。2.被告张文中构成单位行贿罪。2002年物美集团收购国旅总社持有的泰康公司5000万股股份，国旅总社办公室主任赵某积极协调帮助，事后张文中安排张某某给付赵某30万元。同年，物美集团收购粤财公司持有的泰康公司5000万股股份，希望得到粤财公司总经理梁某帮助，事后张文中安排张某某给付梁某500万元。3.被告张文中构成挪用资金罪。1997年3月，张文中与泰康公司董事长陈某某商定挪用泰康公司的4000万元资金申购新股谋利。张文中指使张某某从泰康公司转出4000万元用于申购新股，盈利1000余万元。事后，张某某归还泰康公司4000万元。河北省衡水市中级人民法院于2008年10月9日作出一审判决，认定张文中犯诈骗罪、单位行贿罪、挪用资金罪，数罪并罚，判处有期徒刑十八年，并处罚金五十万元；违法所得予以追缴，上缴国库。同时，对物美集团、张伟春也判处了相应刑罚。一审宣判后，张文中、张伟春、物美集团不服，提出上诉。河北省高级人民法院于2009年3月30日作出二审判决，认定张文中犯诈骗罪、单位行贿罪、挪用资金罪，数罪并罚，改判有期徒刑十二年，并处罚金五十万元。判决生效后，张文中不服，向最高人民法院申诉，最高人民法院于2017年12月27日作出再审决定，提审本案。

[Adjudication]

【裁判结果】

In the retrial, the Supreme People's Court held that: When Wumart Group applied for technological transformation projects with subsidized treasury bonds, the policies of subsidized treasury bonds for technological transformation projects have been adjusted, private enterprises were qualified to file applications, and the logistics project and information technology project applied by Wumart Group were key supporting targets of subsidized treasury bonds for technological transformation projects and conformed to the national economic development situations and industrial policies at that time. In the process of project application, although, Zhang Wenzhong and Zhang Weichun, violated regulations, they neither committed any fraudulent act by making up facts and concealing the truth for defrauding subsidized treasury bonds for technological transformation projects nor had the subjective intent of illegally occupying the funds of subsidized treasury bonds for technological transformation projects amounting to 31.90 million yuan, which did not satisfy the constitutive requirements for the crime of fraud. Therefore, the original judgment was erroneous in the fact-finding and application of law for determining that the acts of Zhang Wenzhong and Zhang Weichun constituted fraud and it should be corrected according to the law. After purchasing the shares of Taikang Company held by the China International Travel Services, Wumart Group offered Zhao A 300,000 yuan as reward for go-between, which was not for seeking illegitimate benefits, was not a serious circumstance, and did not satisfy the constitutive requirements for a crime of offering bribes to an entity; after purchasing the shares of Taikang Company held by Guangdong Utrust Investment Holding Co., Ltd., Wumart Group paid Li AA Company 5 million yuan as claimed thereby, Wumart Group did not have the subjective intent of offering bribes for seeking illegitimate benefits, and Wumart Group's act did not satisfy the constitutive requirements for a crime of offering bribes to an entity. Therefore, Wumart Group's act did not constitute a crime of offering bribes to an entity. As the directly responsible person in charge of Wumart Group, Zhang Wenzhong should not be held criminally liable for the crime of offering bribes to an entity. The original judgment was erroneous in the fact-finding and application of law for determining that the acts of Wumart Group and Zhang Wenzhong constituted a crime of offering bribes to an entity and it should be legally corrected. The facts that Zhang Wenzhong conspired with Chen AA and Tian AA, and took advantage of Chen AA's position to transfer 40 million yuan of funds of Taikang Company where Chen AA works to the stock trading account of Custer Investment Consulting Center for profit-making activities were clear, and the evidence was sufficient. The original judgment had unclear facts and insufficient evidence in determining that Zhang Wenzhong embezzled funds for personal use and gain. Therefore, the original judgment was erroneous in the fact-finding and application of law for determining that Zhang Wenzhong's act constituted a crime of embezzling funds and it should be legally corrected. On May 30, 2018, the Supreme People's Court rendered a retrial judgment, set aside the first-instance and second-instance judgments. Zhang Wenzhong, Zhang Weichun, and Wumart Group were acquitted in the judgment rendered upon retrial and the fine that had been enforced and the property that had been recovered in the original judgment should be returned in accordance with the law.

最高人民法院再审认为，物美集团在申报国债技改贴息项目时，国债技改贴息政策已有所调整，民营企业具有申报资格，且物美集团所申报的物流项目和信息化项目均属于国债技改贴息重点支持对象，符合国家当时的经济发展形势和产业政策。张文中、张伟春在物美集团申报项目过程中，虽然存在违规行为，但未实施虚构事实、隐瞒真相以骗取国债技改贴息资金的诈骗行为，并无非法占有3190万元国债技改贴息资金的主观故意，不符合诈骗罪的构成要件。故原判认定张文中、张伟春的行为构成诈骗罪，属于认定事实和适用法律错误，应当依法予以纠正。物美集团在收购国旅总社所持泰康公司股份后，给予赵某30万元好处费的行为，并非为了谋取不正当利益，亦不属于情节严重，不符合单位行贿罪的构成要件；物美集团在收购粤财公司所持泰康公司股份后，向李某某公司支付500万元系被索要，且不具有为谋取不正当利益而行贿的主观故意，亦不符合单位行贿罪的构成要件，故物美集团的行为不构成单位行贿罪，张文中作为物美集团直接负责的主管人员，对其亦不应以单位行贿罪追究刑事责任。原判认定物美集团及张文中的行为构成单位行贿罪，属于认定事实和适用法律错误，应当依法予以纠正。张文中与陈某某、田某某共谋，并利用陈某某职务上的便利，将陈某某所在泰康公司4 000万元资金转至卡斯特投资咨询中心股票交易账户进行营利活动的事实清楚，证据确实。但原判认定张文中挪用资金归个人使用、为个人谋利的事实不清、证据不足。故原判认定张文中的行为构成挪用资金罪，属于认定事实和适用法律错误，应当依法予以纠正。2018年5月30日，最高人民法院作出再审判决，撤销原一、二审判决，改判张文中、张伟春、物美集团无罪，原审判决已执行的罚金及追缴的财产，依法予以返还。

[Significance]

【典型意义】

Since the 18th National Congress of the Communist Party of China (“CPC”), the CPC Central Committee, with Comrade Xi Jinping as the core, practiced the people-oriented development philosophy, vigorously strengthened the protection of property rights, and attached great importance to the correction of wrongful cases involving property rights. The retrial of Zhang Wenzhong's case and the acquittal of Zhang Wenzhong fully reflected the strong determination of the CPC Central Committee to equally protect the economic property rights of various systems of ownership, including non-public economy, in accordance with the law, resolutely eliminate the constraint of the policy, legal and institutional obstacles and traditional concepts that affect the survival and development of private enterprises, unswervingly encourage, support and guide the development of the private economy, and strive to create a business environment governed by the rule of law; and also fully demonstrated the assumption of responsibilities by the people's court to fully maximize their judicial functions, effectively strengthen judicial protection of property rights, and insisting on correcting mistakes whenever discovered. For cases involving property rights that have been appropriately handled in accordance with the law, the legal principles of no punishment without a law, evidentiary adjudication, and no punishment in doubtful cases shall be strictly followed. It is strictly forbidden to treat economic disputes as economic crimes, and treat general violations of laws and regulations as criminal crimes, to effectively protect the legitimate rights and interests of entrepreneurs and promote the sustainable and sound development of the economy and society, which has benchmark and great practical significance.

党的十八大以来，以习近平同志为核心的党中央践行以人民为中心的发展思想，大力加强产权保护，高度重视涉产权冤错案件的纠正工作。张文中案启动再审并改判无罪，充分体现了党中央依法平等保护包括非公有制经济在内的各种所有制经济产权，坚决消除影响民营企业生存发展的政策、法律和体制性障碍以及传统观念的束缚，毫不动摇地鼓励、支持、引导民营经济发展，努力打造法治化营商环境的坚强决心；也充分彰显了人民法院充分发挥审判职能作用，切实加强产权司法保护，坚持有错必纠的责任担当。对于依法妥善处理历史形成的涉产权案件，严格遵循罪刑法定、证据裁判、疑罪从无等法律原则，严禁把经济纠纷当作经济犯罪，把一般违法违规当作刑事犯罪来处理，切实保护企业家合法权益，促进经济社会持续健康发展，具有标杆性和重大现实意义。

III. Yanbian Branch of Yibin Fengyuan Salt Industry Co., Ltd. v. Dunhua City Salt Administration of Jilin Province (case of administrative compulsion)

[Basic Facts]

Yibin Fengyuan Salt Industry Co., Ltd. (hereinafter referred to as "Yibin Company") had the table salt wholesale license issued by the competent department of salt industry of Sichuan Province. On July 24, 2018, Yibin Company formed Yanbian Branch of Yibin Fengyuan Salt Industry Co., Ltd. (hereinafter referred to as "Yanbian Branch") in Dunhua City, Jilin Province. Its business scope was wholesale and sale of various salt products. Yibin Company notified the Jilin Provincial Salt Administration of the relevant information, and Yanbian Branch also underwent the recordation formalities with the Dunhua City Salt Administration of Jilin Province (hereinafter referred to as the "Dunhua Salt Administration") for its business license, food business license, identification of the person in charge, etc. In August 2018, Yanbian branch conducted wholesale of table salt from Yibin Company, and then sold them in batches to many local retail stores, and issued invoices and sales and distribution orders in the name of the branch. On September 11, 2018, the Dunhua Salt Administration made a Written Decision of Seizure (Detainment) in accordance with the relevant provisions of the Administrative Compulsion Law of the People's Republic of China on the grounds that Yanbian Branch was suspected of engaging in salt wholesale business without a table salt wholesale license and violating the Measures for Monopoly of Table Salt, to seal up and detain the table salt stored by Yanbian Branch. On November 2, 2018, the Dunhua Salt Administration removed the administrative compulsory measures and returned the seized property. Yanbian branch instituted an action, requesting the court to confirm that the Written Decision of Seizure (Detainment) issued by the Dunhua Salt Administration was illegal.

[Adjudication]

The effective judgment of the people's court held that Yibin Company had legally obtained the table salt wholesale license issued by the competent department of salt industry of Sichuan Province and the sale of table salt across provinces by Yanbian branch with the administrative license of the head office did not violate the relevant provisions of the Measures for Monopoly of Table Salt, and also complied with the Notice by the State Council of Issuing the Plan for the System Reform of the Salt Industry (No. 25 [2016], State Council) and other relevant spirit for system reform of the salt industry. The Dunhua Salt Administration took the administrative compulsory measures on the grounds that Yanbian Branch did not obtain the sales license from the local competent department of salt industry, which was lack of factual and legal basis. Therefore, the judgment confirmed that the Written Decision of Seizure (Detainment) issued by the Dunhua Salt Administration was illegal.

[Significance]

三、宜宾丰源盐业有限公司延边分公司诉吉林省敦化市盐务管理局行政强制案

【基本案情】

宜宾丰源盐业有限公司（以下简称宜宾公司）具有四川省盐业主管部门颁发的食盐批发许可证。2018年7月24日，宜宾公司在吉林省敦化市设立宜宾丰源盐业有限公司延边分公司（以下简称延边分公司），经营范围为多品种盐的批发、销售等。宜宾公司向吉林省盐务管理局告知了相关信息，延边分公司也将其营业执照、食品经营许可证、负责人身份证明等向吉林省敦化市盐务管理局（以下简称敦化市盐务局）报备。2018年8月间，延边分公司从宜宾公司批进食盐，此后向当地多家零售商店批量销售，并以该分公司名义开具发票和销售配送单。2018年9月11日，敦化市盐务局以延边分公司涉嫌无食盐批发许可证从事食盐批发业务，违反《食盐专营办法》为由，根据《中华人民共和国行政强制法》的相关规定，作出《查封（扣押）决定书》，对延边分公司存储的食盐予以查封扣押。2018年11月2日，敦化市盐务局解除行政强制措施，将查封扣押财物退还。延边分公司提起诉讼，请求确认敦化市盐务局作出的《查封（扣押）决定书》违法。

【裁判结果】

人民法院生效裁判认为，宜宾公司已经合法取得四川省盐业主管部门颁发的食盐批发许可证，延边分公司以总公司的行政许可跨省销售食盐不违反《食盐专营办法》的相关规定，亦符合《国务院关于印发盐业体制改革方案的通知》（国发〔2016〕25号）等有关盐业体制改革的精神。敦化市盐务局以延边分公司未取得当地盐业主管部门的销售许可为由作出被诉行政强制措施，缺乏事实和法律依据，故判决确认敦化市盐务局作出的《查封（扣押）决定书》违法。

【典型意义】

Since 2014, the state has issued a series of policies to carry out major institutional reforms on production, transportation, and sales administrative licensing of table salt. On April 22, 2016, the State Council issued the Notice by the State Council of Issuing the Plan for the System Reform of the Salt Industry, specifying the requirements for releasing the market vitality and abolishing the regional restrictions on the production and sale of table salt. The relevant documents issued by the National Development and Reform Commission and the Ministry of Industry and Information Technology further clarified: from January 1, 2017, the existing provincial table salt wholesale enterprises, China Salt Industry Corporation and designated table salt production enterprises that had obtained table salt wholesale licenses could carry out independent operation across provinces (autonomous regions and municipalities directly under the Central Government), and table salt wholesale enterprises could conduct table salt sales business in the form of cross-regional "self-formed branches." The Notice by the State Council of Issuing the Plan for the System Reform of the Salt Industry is a policy document of the state on the system reform of the salt industry, which is consistent with the legislative purpose of the Measures for Monopoly of Table Salt. The Measures for Monopoly of Table Salt and other regulations does not explicitly require table salt production and wholesale enterprises to sell table salt through cross-regional "self-formed branches," and they must obtain administrative license separately issued by the local competent department of salt industry. In this case, Yibin Company held a valid salt wholesale license. The Written Decision of Seizure (Detainment) issued by the Dunhua Salt Administration was lack of factual and legal basis, and was also contrary to the direction of the state for the system reform of the salt industry. Based on the overall national situation of the system reform of the salt industry, the people's court correctly understood the spirit of the Notice by the State Council of Issuing the Plan for the System Reform of the Salt Industry, accurately applied the Measures for Monopoly of Table Salt, supervised market regulatory law enforcement, and removed regional barriers in the salt industry, which was conducive to continuously optimizing the law-based business environment and improving the efficient and smooth flow of the unified market.

自2014年起，国家出台了一系列政策，对食盐生产、运输、销售行政许可等进行重大体制改革。国务院于2016年4月22日颁布的《国务院关于印发盐业体制改革方案的通知》，明确提出要释放市场活力，取消食盐产销区域限制。国家发展和改革委员会、工业和信息化部配套下发的相关文件进一步明确：从2017年1月1日开始，现有省级食盐批发企业、中国盐业总公司和取得食盐批发许可证的食盐定点生产企业可以开展跨省（自治区、直辖市）自主经营，食盐批发企业可以通过跨区“自建分公司”的形式进行食盐销售业务。《国务院关于印发盐业体制改革方案的通知》系国家有关盐业体制改革的政策文件，与《食盐专营办法》的立法宗旨一致。《食盐专营办法》等未明确要求食盐生产批发企业通过跨区“自建分公司”的形式进行食盐销售业务时，必须取得当地盐业主管部门另行颁发的行政许可。本案中，宜宾公司持有有效的食盐批发许可证。敦化市盐务局作出《查封（扣押）决定书》缺乏事实和法律依据，亦与国家盐业体制改革方向相悖。人民法院立足国家盐业体制改革大局，正确领会《国务院关于印发盐业体制改革方案的通知》精神，准确适用《食盐专营办法》，监督市场监管执法，破除盐业区域壁垒，有利于持续优化法治化营商环境，促进统一市场高效畅通。

IV. Rugao Jinding Real Estate Co., Ltd. and Ye Hongbin v. Wu Lianghao and Other Persons (case of disputes over the confirmation of qualifications as shareholders)

四、 如皋市金鼎置业有限公司、叶宏滨与吴良好等股东资格确认纠纷案

[Basic Facts]

【基本案情】

Rugao Jinding Real Estate Co., Ltd. (hereinafter referred to as "Jinding Company") was a limited liability company (joint venture between Taiwan, Hong Kong, Macao and the Mainland), and its business scope was real estate development. In 2013, Jinding Company held a shareholders' meeting and formed the Minutes of Jinding Company's Shareholders' Meeting to confirm actual shareholders and equity of Jinding Company, i.e., the actual shareholders and equity ratios of Jinding Company's industrial and commercial registration in the name of Ye Hongbin and Dadi Company were: Ye Hongbin accounted for 52.5% and Wu Haohao accounted for 20%..... Ye Hongbin agreed to transfer the equity of Jinding Company registered in his name to Wu Haohao and other actual shareholders according to the proportion confirmed at the meeting. As Ye Hongbin and Jinding Company did not handle registration of alteration of equity, Wu Haohao instituted an action, requesting Ye Hongbin to register 20% of the equity of Jinding Company in his name.

如皋市金鼎置业有限公司（以下简称金鼎公司）为有限责任公司（台港澳与内地合资），经营范围为房地产开发。2013年，金鼎公司召开股东会，形成《金鼎公司股东会议纪要》，对金鼎公司实际股东及股权进行确认，即金鼎公司工商登记在叶宏滨和大地公司名下股权的实际股东及股权比例为：叶宏滨占股52.5%、吴良好占股20%……。叶宏滨同意将登记在其名下的金鼎公司股权，依照会议确认的比例分别转让给吴良好等实际股东。因叶宏滨、金鼎公司未办理股权变更登记，吴良好提起诉讼，要求叶宏滨将金鼎公司20%股权变更登记至其名下。

[Adjudication]

【裁判结果】

The Intermediate People's Court of Nantong City, Jiangsu Province held in the first instance that the equity transfer between Ye Hongbin and Wu Haohao was valid. Jinding Company was a joint venture. Although according to the provisions of the Law of the People's Republic of China on Chinese-foreign Equity Joint Ventures prior to revision, the alteration of equity of Jinding Company should come into force after being reported to the examination and approval authority for approval, the revised Law of the People's Republic of China on Chinese-foreign Equity Joint Ventures stipulated that if the formation of a joint venture did not involve the implementation of special access management measures stipulated by the state, recordation management should apply. The joint venture in dispute was not in the negative list, so the alteration of equity involved in the case only needed to be subject to recordation with the relevant department, and it did not require the approval of the examination and approval authority before it came into force. Ye Hongbin and Jinding Company should change the owner of the equity held by Ye Hongbin to Wu Haohao. Ye Hongbin and Jinding Company refused to accept the first-instance judgment and appealed. The High People's Court of Jiangsu Province held in the second instance that although the Minutes of the Shareholders' Meeting of Jinding Company was formed before the Foreign Investment Law of the People's Republic of China came into force, Jinding Company did not fall under the management scope of the negative list for foreign investment. Under the circumstance that all shareholders had confirmed the identity of Wu Haohao as the actual investor and agreed that Ye Hongbin would cooperate with the registration of alteration, Ye Hongbin and Jinding Company should change the owner of the equity held by Ye Hongbin to Wu Haohao. Therefore, the appeal should be dismissed and the original judgment should be sustained.

江苏省南通市中级人民法院一审认为，叶宏滨与吴良好之间的股权转让行为有效。金鼎公司系合资企业，虽然根据修订前的《中华人民共和国中外合资经营企业法》规定，金鼎公司的股权变更需报经审批机关批准后方才生效，但修订后的《中华人民共和国中外合资经营企业法》规定，举办合营企业不涉及国家规定实施准入特别管理措施的，适用备案管理。涉案合资企业不在负面清单内，故案涉股权变更仅需向有关部门备案即可，并非经审批机关批准后才生效，叶宏滨、金鼎公司应当将叶宏滨持有的股权变更到吴良好名下。叶宏滨和金鼎公司不服一审判决，提起上诉。江苏省高级人民法院二审认为，虽然《金鼎公司股东会议纪要》形成于《中华人民共和国外商投资法》实施之前，但是金鼎公司并不属于外商投资负面清单的管理范围。在全体股东已确认吴良好的实际出资人身份，且约定叶宏滨配合办理变更登记的情形下，叶宏滨、金鼎公司应当将叶宏滨持有的股权变更到吴良好名下，故判决驳回上诉，维持原判。

[Significance]

【典型意义】

In this case, the provisions of the Foreign Investment Law of the People's Republic of China on “pre-access national treatment plus the negative list management,” as well as “administration under the principle of consistency between domestic and foreign investment” for fields other than those specified in the negative list were applied, mutatis mutandis, and the following rules were specified: although the relevant investment behavior occurred before the Foreign Investment Law of the People's Republic of China came into force, if the foreign-invested enterprise did not fall under the management scope of the “negative list,” the people's court should, under the principles of “granting national treatment” and “consistency between domestic and foreign investment,” not be required to obtain the approval of the foreign investment approval authority for entry into force. This case has a positive effect on unifying the application of relevant laws on foreign investment, equally protecting the legitimate rights and interests of investors, and promoting the optimization of the investment environment.

本案参照适用《中华人民共和国外商投资法》有关“准入前国民待遇加负面清单管理”的规定，以及有关对负面清单以外的领域“按照内外资一致的原则实施管理”的规定，明确以下规则：虽然相关投资行为发生在《中华人民共和国外商投资法》实施之前，但是外商投资企业不属于“负面清单”管理范围的，人民法院应当依照“给予国民待遇”和“内外资一致”原则，不需要征得外商投资审批机关同意才生效。本案对于统一外商投资相关法律适用，平等保护投资者合法权益，促进优化投资环境，具有积极作用。

V. Application of Skyline International Corp. for Arrest of “M/V NERISSA”

五、天际国际集团公司（Skyline International Corp.）申请扣押“尼莉莎”轮（M/V NERISSA）案

[Basic Facts]

【基本案情】

Since the Singapore shipowner sold one ship to two buyers, which was breach of contract, the Liberian applicant, Skyline International Corp., filed an application for arrest of the oil tanker “M/V NERISSA” of over 300,000 tons (Marshall Islanders) with the Qingdao Maritime Court before it instituted an arbitration in London and requested the Qingdao Maritime Court to order the ship owner to provide a guaranty of USD 5 million. The Qingdao Maritime Court arrested the ship at the Qingdao Port. According to the original schedule, after the discharge of over 130,000 tons of crude oil at the Qingdao Port, the ship would sail to the Tianjin Port for discharging the remaining over 150,000 tons of crude oil. If the ship failed to arrive at the Tianjin Port for discharge of crude oil on schedule, the demurrage charge of USD 30,000 per day would be incurred and delivery delay and plant shutdown would be caused. For the purposes of avoiding further losses and preventing serial disputes, the Qingdao Maritime Court flexibly applied provisions of Article 27 of the Special Maritime Procedure Law of the People's Republic of China and permitted the arrested foreign ship to be discharged at the Tianjin Port.

因新加坡船东违约一船两卖，利比里亚申请人天际国际集团公司于伦敦仲裁前向青岛海事法院申请扣押约30万吨马绍尔群岛籍油轮“尼莉莎”轮，请求责令提供500万美元担保。青岛海事法院依法将该轮扣押于青岛港。该轮原定计划于青岛港卸下13万多吨原油后，继续前往天津卸剩余的15万多吨，如无法如期前往天津卸货，将产生滞期费3万美元/天，且将导致交付迟延、工厂停产。为避免损失扩大，防止引发连环纠纷，法院灵活适用《中华人民共和国海事诉讼特别程序法》第二十七条规定，准许被扣押外轮前往天津港卸货。

[Adjudication]

【裁判结果】

On March 11, 2019, the Qingdao Maritime Court entered a civil ruling (No. 108 [2019], Property Preservation, 72, of the Qingdao Maritime Court, Shandong) that (1) the application of maritime claim for preservation raised by Skyline International Corp. should be granted; (2) the ship "M/V NERISSA" (Marshall Islanders) berthing at the Qingdao Port (anchorage) owned or operated by the owner and/or bareboat charterer of the ship "M/V NERISSA" should be arrested; (3) the ship owner and/or the bareboat charterer should be ordered to provide a cash guaranty of USD 5 million or other reliable guaranty; and (4) Skyline International Corp. should, within 30 days, institute an action or arbitration; otherwise, the Qingdao Maritime Court would lift the maritime claim for preservation. On the same day, the Qingdao Maritime Court issued an order on the arrest of the ship (No. 108 [2019], Property Preservation, 72, of the Qingdao Maritime Court, Shandong) and the ship was arrested at the Qinhuangdao Port.

2019年3月11日，青岛海事法院作出（2019）鲁72财保108号民事裁定，裁定如下：一、准许天际国际集团公司提出的海事请求保全申请；二、扣押“尼莉莎”轮船舶所有人和/或光船承租人所有或经营的停泊于青岛港（锚地）的马绍尔群岛籍“尼莉莎”轮；三、责令船舶所有人和/或光船承租人提供美元500万元的现金担保或其他可靠担保；四、天际国际集团公司应当在三十日内提起诉讼或者仲裁，逾期不起诉或者仲裁的，本院将解除海事请求保全。青岛海事法院于当日发出（2019）鲁72财保108号扣押船舶命令，将该轮扣押于青岛港。

On April 9, 2019, the Qingdao Maritime Court entered a civil ruling (No. 108 A [2019], Property Preservation, 72, of the Qingdao Maritime Court, Shandong) that (1) The ship "M/V NERISSA" (Marshall Islanders) owned by Offshore Holding Company Pte. Ltd. should be permitted to continue its operation and complete the voyage (from Qingdao Port to Qinhuangdao Port via Tianjin Port in the People's Republic of China); (2) The ship "M/V NERISSA" (Marshall Islanders) owned by Offshore Holding Company Pte. Ltd. should continue to be arrested at the Qinhuangdao Port. On the same day, the Qingdao Maritime Court issued an order on the arrest of the ship (No. 108 A [2019], Property Preservation, 72, of the Qingdao Maritime Court, Shandong) and on April 20, 2019, the ship continued to be arrested at the Qinhuangdao Port. Afterwards, the Qingdao Maritime Court organized all parties to reach a smooth settlement.

2019年4月9日，青岛海事法院作出（2019）鲁72财保108号之一号民事裁定书，裁定如下：一、准许离岸控股私人有限公司（Offshore Holding Company Pte.Ltd.）所有的马绍尔群岛籍“尼莉莎”轮继续营运，完成自中华人民共和国青岛港经天津港至秦皇岛港的航次；二、将离岸控股私人有限公司所有的马绍尔群岛籍“尼莉莎”轮继续扣押于秦皇岛港。青岛海事法院于当日发出（2019）鲁72财保108号之一号扣押船舶命令，并于2019年4月20日将该轮继续扣押于秦皇岛港。后法院组织各方当事人调解成功。

[Significance]

【典型意义】

In this case, before the party planned to institute an arbitration in London for dispute over the contract for the sales of the ship, it filed an application with the Chinese maritime court for arrest of the ship in dispute. Based on the actual situations of the cargoes carried by the ship, the Qingdao Maritime Court permitted the ship to continue its sailing to the destination port to complete discharge of such cargoes and successfully facilitated the parties to reconcile and continue to perform the original ship sales contract. The parties eventually abandoned the London arbitration and settled all disputes in one package. The smooth handling of this case had avoided huge losses of the parties and the cargo owner, the charterer, the mortgager, and other interested persons in Greece, Singapore, India, Dubai, Brazil, China, and other countries along the "Belt and Road" and BRICS countries, dissolved serial litigation risks. This case had embodied the judicial philosophy of Chinese maritime courts to actively promote the governance of the source of conflicts and disputes, to strive to build a market-oriented and legalized international business environment, and to equally protect the legitimate rights and interests of the parties in accordance with the law. After the contract for sale of the ship in dispute was fulfilled under the mediation of the court, the new owner specially renamed the oil tanker to "RESPECT" to give great respect to Chinese judges and China's rule of law. The smooth handling of this case has fully displayed the good international image of China's maritime justice to the international community and demonstrated the international credibility and influence of Chin's maritime justice.

本案系当事人拟就船舶买卖合同纠纷在伦敦提起仲裁前，向我国海事法院申请扣押船舶的案件。青岛海事法院根据船载货物的实际情况，准许该轮继续到目的港完成卸货，并成功促成当事人和解，继续履行原船舶买卖合同。当事人最终放弃伦敦仲裁，一揽子解决所有纠纷。该案的成功处理，为来自希腊、新加坡、印度、迪拜、巴西、中国等“一带一路”沿线国家、金砖国家的当事人和货主、租船人、抵押人等利害关系人避免了巨额损失，化解了连环诉讼风险。该案体现了我国海事法院积极推进矛盾纠纷源头治理、着力构建市场化法治化国际化营商环境、依法平等保护当事人合法权益的司法理念。案涉船舶买卖合同在法院调解下得以履行后，新船东特意将船名更名为“尊重”（RESPECT），向中国法官和中国法治致以崇高的敬意。该案的成功处理，向国际社会充分展现了中国海事司法的良好国际形象，彰显了中国海事司法的国际公信力和影响力。

VI. Case of Judicial Reorganization of Lifan Industrial (Group) Co., Ltd. and Its 10 Wholly-Owned Subsidiaries

六、力帆实业（集团）股份有限公司及其10家全资子公司司法重整案

[Basic Facts]

【基本案情】

Lifan Industry (Group) Co., Ltd. ("Lifan Group"), formed in 1997, went public on the Shanghai Stock Exchange in 2010, and was the first private passenger vehicle company in China which had gone public on the A-shares market. Lifan Group and its 10 wholly-owned subsidiaries formed a multinational enterprise group mainly engaged in the production and sale of motor vehicles, motorcycles, and engines, and Lifan Group had been selected as one of the top 500 Chinese enterprises 10 times and ranked first in terms of the value of exports in Chongqing for many consecutive years. However, due to the in-depth transformation of the motor vehicle and motorcycle industries, affected by comprehensive factors such as strategic investment losses and internal poor management, the enterprises under the banner of Lifan gradually fell into an operating and debt crisis from 2017, mortgaging and pledging major assets, with its main business basically at a standstill. From June to July 2020, the creditor applied to the Fifth Intermediate People's Court of Chongqing Municipality against Lifan Group and its 10 wholly-owned subsidiaries for reorganization on the grounds that they could not pay off the debts due and the assets were insufficient to pay off all the debts or they were obviously incapable of paying off the debts. The Fifth Intermediate People's Court of Chongqing Municipality ruled to accept the applications for reorganization, and respectively appointed the liquidation team for enterprises under the banner of Lifan as the trustee. As of the assessment base date in 2020, the assessed value of Lifan Group's total assets was more than 3.84 billion yuan. As of November 2020 of the same period, the total amount of creditors' claims declared by creditors was more than 11.67 billion yuan. Under assumption of bankruptcy and liquidation, Lifan Group's ordinary debt settlement rate was 12.65 %.

力帆实业（集团）股份有限公司（简称力帆股份）成立于1997年，2010年在上海证券交易所上市，是中国首家在A股上市的民营乘用车企业。力帆股份及其持有的10家全资子公司已形成主营汽车、摩托车及发动机产销的跨国性企业集团，曾十度入选中国企业500强，连续多年出口金额位居重庆市第一。然而，因汽车、摩托车行业深度转型，同时受战略投资亏损、内部管理不善等综合因素影响，力帆系企业自2017年起逐渐陷入经营和债务危机，主要资产被抵押、质押，主营业务基本处于停滞状态。2020年6月至7月，债权人以不能清偿到期债务且资产不足以清偿全部债务或明显缺乏清偿能力为由，向重庆市第五中级人民法院申请对力帆股份及其10家全资子公司实施重整。重庆市第五中级人民法院裁定受理了重整申请，并分别指定力帆系企业清算组为管理人。截至2020年评估基准日，力帆股份资产评估总值为38.4亿余元，同期截至2020年11月，债权人申报债权共计116.7亿余元，在假定破产清算状态下，力帆股份普通债权清偿率为12.65%。

[Adjudication]

【裁判结果】

In order to maintain the operating value of the enterprises, after accepting the reorganization applications, the Fifth Intermediate People's Court of Chongqing Municipality decided that Lifan Group and its 10 subsidiaries would continue to conduct business, began to guide the trustee to issue a reorganization investor solicitation announcement from August 2020, and after rigorous examination, finally determined the consortium formed by the state-owned investment platform Chongqing Liangjiang Equity Investment Fund Management Co., Ltd. and the private enterprise Geely Maijie Investment Co., Ltd. as the strategic investor. In November 2020, the meeting of Lifan Group and its capital contributors and the meetings of creditors of its 10 wholly-owned subsidiaries adopted the draft reorganization plan by a high proportion of favorable vote. The Fifth Intermediate People's Court of Chongqing Municipality approved the reorganization plan. In February 2021, the Fifth Intermediate People's Court of Chongqing Municipality rendered a ruling confirming the full execution of the reorganization plan, terminating the reorganization procedure.

为维持企业营运价值，重庆市第五中级人民法院在受理重整申请后，决定力帆股份及10家子公司继续营业，同时从2020年8月开始，指导管理人发布重整投资人招募公告，经过严格审查，最终确定国有投资平台重庆两江股权投资基金管理有限公司和民营企业吉利迈捷投资有限公司组成的联合体，作为战略投资人。2020年11月，力帆股份及其出资人会议以及10家全资子公司债权人会议，均高票通过重整计划草案。重庆市第五中级人民法院批准重整计划。2021年2月，法院作出裁定，确认重整计划执行完毕并终结重整程序。

[Significance]

【典型意义】

The case of judicial reorganization of enterprises under the banner of Lifan was a case of judicial reorganization of the first domestic listed company in the motor vehicle and motorcycle industries. The judicial reorganization resolved the crisis faced by the enterprises as a whole, protected the lawful interests of more than 60,000 small and medium investors and more than 5,700 employees, and safeguarded the normal production and operation of more than 1,000 enterprises in the upstream and downstream industry chain. In this judicial reorganization case, the Fifth Intermediate People's Court of Chongqing Municipality maximized the role of the “government and court” coordination mechanism, and introduced a strategic investor by innovative adoption of the mode of “financial investor plus industry investor,” generating dual “driving forces” that promoted the rebirth of the enterprises, to wit: It not only provided financial support for the development of enterprises, but also introduced new technologies and new formats through leading enterprises in the industry, upgraded the traditional automobile and motorcycle manufacturing industry to a new ecology of intelligent new energy automobile industry, assisted the industrial transformation and upgrading of Lifan Group, and promoted the high-quality development of private enterprises. Afterwards, the Shanghai Stock Exchange canceled delisting risk warning and other risk warnings with respect to Lifan Group (601777). Lifan Group and its 10 subsidiaries also achieved a profitability turnaround, fully resolved difficulty, and revived.

力帆系企业司法重整案，是国内首家汽摩行业上市公司司法重整案。通过司法重整，整体化解了企业危机，维护了6万余户中小投资者、5700 余名职工的合法利益，保障了上下游产业链千余家企业的正常生产经营。重庆市第五中级人民法院在该案的司法重整中，充分发挥“府院”协调机制作用，创新采用“财务投资人＋产业投资人”的模式引入战略投资，形成推动企业重生的双重“驱动力”：既为企业发展给予资金支持，又通过行业龙头企业导入新技术、新业态，将传统汽摩制造业升级为智能新能源汽车产业新生态，助力力帆股份产业转型升级，推动了民营企业高质量发展。之后，上海证券交易所撤销了对力帆股份（601777）退市风险警示及其他风险警示。力帆股份及10家子公司也都实现了扭亏为盈，全面实现企业脱困重生。

VII. Case of Manipulating the Futures Market by Yuanda Petrochemical Co., Ltd. and Wu Xiangdong

七、远大石化有限公司、吴向东操纵期货市场案

[Basic Facts]

【基本案情】

Defendant Wu Xiangdong was board chairman and legal representative of the defendant entity, Yuanda Petrochemical Co., Ltd. The defendant entity, Yuanda Petrochemical Co., Ltd., decided at a meeting convened by defendant Wu Xiangdong to transform capital advantage into position advantage by continuous open long position in large amount at the market price through the 18 accounts actually controlled by it from May 24 to August 31, 2016. Concurrently, through direct purchase, purchase and holding on a commissioned basis, after-sale repurchase, etc., a large number of polypropylene stocks were hoarded, creating an atmosphere of strong demand for polypropylene, to adversely affect the futures market and manipulate the price of PP1609 across the futures and spot markets. The defendant entity, Yuanda Petrochemical Co., Ltd., earned a total of more than 436 million yuan of illegal income, and defendant Wu Xiangdong earned total illegal income of more than 4.87 million yuan, and illegal income earned in the other 11 accounts involved in the case totaled more than 100 million yuan. After the case was exposed, the defendant entity, Yuanda Petrochemical Co., Ltd., returned the illegal gains.

被告人吴向东时任被告单位远大石化有限公司董事长、法定代表人。被告单位远大石化有限公司经被告人吴向东召集会议决定，于 2016年5月24日至8月31日间，利用其实际控制的18个账户通过以市场价大量连续买入开仓的手法，将资金优势转化为持仓优势。同时通过直接购买、代采代持、售后回购等方式大量囤积聚丙烯现货，制造聚丙烯需求旺盛氛围，以反作用影响期货市场，跨期货、现货市场操纵PP1609价格。被告单位远大石化有限公司违法所得共计人民币4.36亿余元，被告人吴向东违法所得共计人民币487万余元，涉案其他11个账户违法所得共计人民币1亿余元。案发后，被告单位远大石化有限公司退缴违法所得。

[Adjudication]

【裁判结果】

The Intermediate People's Court of Fushun City, Liaoning Province held that the defendant entity, Yuanda Petrochemical Co., Ltd., manipulated the futures market by hoarding spot goods to affect the market conditions of futures products, the circumstances were particularly serious, and its act had constituted a crime of manipulating the futures market; and defendant Wu Xiangdong was directly liable person in charge, whose behavior also constituted a crime of manipulating the futures market, and who should be punished according to the law. The defendant entity, Yuanda Petrochemical Co., Ltd., was able to actively cooperate with the investigation and actively refunded the illegal income, so it could be given a lighter punishment. Defendant Wu Xiangdong was able to truthfully confess his crime, which constitutes a confession, so he could be given a lighter punishment. Accordingly, the defendant entity, Yuanda Petrochemical Co., Ltd., was sentenced to a fine of 300 million yuan, and the defendant Wu Xiangdong was sentenced to imprisonment of five years and a fine of 5 million yuan for a crime of manipulating the futures market in accordance with the law; and illegal income of more than 400 million yuan of the defendant entity, Yuanda Petrochemical Co., Ltd. was recovered according to the law, illegal income of more than 4.8 million yuan of the defendant Wu Xiangdong was recovered according to the law, and the illegal income in the other 11 accounts involved in the case was continuously recovered. After the first-instance judgment was pronounced, the defendant entity, Yuanda Petrochemical Co., Ltd., and the defendant, Wu Xiangdong, both appealed. The High People's Court of Liaoning Province rendered a second-instance ruling that the appeal should be dismissed and the original judgment should be sustained.

辽宁省抚顺市中级人民法院认为，被告单位远大石化有限公司通过囤积现货影响期货品种市场行情等手段操纵期货市场，情节特别严重，其行为已构成操纵期货市场罪；被告人吴向东系直接负责的主管人员，其行为亦构成操纵期货市场罪，均应依法惩处。被告单位远大石化有限公司能够积极配合调查，并积极退缴违法所得，可以从轻处罚。被告人吴向东能够如实供述自己的罪行，构成坦白，可以依法从轻处罚。据此，依法以操纵期货市场罪对被告单位远大石化有限公司判处罚金人民币三亿元，对被告人吴向东判处有期徒刑五年，并处罚金五百万元；依法追缴被告单位远大石化有限公司违法所得人民币四亿余元，依法追缴被告人吴向东违法所得四百八十万余元，继续追缴涉案的其他11个账户违法所得。一审宣判后，被告单位远大石化有限公司及被告人吴向东均提出上诉。辽宁省高级人民法院作出二审裁定，驳回上诉，维持原判。

[Significance]

【典型意义】

Manipulating securities and futures markets and other crimes seriously damage the legitimate rights and interests of investors, seriously undermine the management order of the securities and futures markets, and endanger national financial security and the soundness and stability of the capital market. In this case, the defendant entity hoarded spot goods through direct procurement, purchase and holding on a commissioned basis, after-sale repurchase, and other methods, which affected the market conditions of futures varieties, and used multiple futures accounts under actual control to concentrate funds to continuously trade futures contracts and manipulate futures contract prices, the circumstances were particularly serious and it should be severely punished in accordance with the law. The court rendered the aforesaid judgments according to the facts, nature, circumstances and social harm of the defendant entity and the defendant according to the law, which fully implemented the criminal policy of combining leniency with leniency, fully demonstrated the people's court's “zero tolerance” attitude and stance on crimes in the financial sector, and played an important warning and educational role in enhancing the legal awareness of various entities and investors in the capital market and preventing illegal crimes.

操纵证券、期货市场等犯罪，严重损害广大投资者合法权益，严重破坏证券、期货市场管理秩序，危害国家金融安全和资本市场健康稳定。本案中，被告单位通过直接采购、代采代持、售后回购等多种方式囤积现货，影响期货品种市场行情，并利用实际控制的多个期货账户，集中资金优势连续交易期货合约，操纵期货合约价格，情节特别严重，应依法严惩。法院根据被告单位、被告人的犯罪事实、性质、情节和社会危害程度，依法作出上述判决，充分贯彻宽严相济的刑事政策，也充分表明人民法院对金融领域犯罪“零容忍”的态度和立场，对增强资本市场各类主体和投资者法治意识、预防违法犯罪具有重要警示教育作用。

VIII. Case of Disputes over the Horizontal Monopoly Agreement on “Associated Company in the Form of Driving School”

八、“驾校联营”横向垄断协议纠纷案

[Basic Facts]

【基本案情】

15 automobile driving training entities in Luqiao District, Taizhou City, Zhejiang Province signed a pooling agreement and a self-regulatory pact, agreeing to jointly contribute capital to form an associated company, Taizhou Luqiao District Zhedong Driver Training Service Co., Ltd. (hereinafter referred to as "Zhedong Company"), fix the price of driving training services, restrict the flow of trainer vehicles and teachers between driving training institutions, enable Zhedong Company to uniformly provide auxiliary services (such as registration, health examination, and card making) previously scattered among the 15 driving training institutions involved in the case at the same site for service fee of 850 yuan. Article 3 of the pooling agreement specifically stipulated the registered capital and equity structure of the associated company. Among the 15 driving training entities involved in the case, Taizhou Luqiao Jili Motor Vehicle Driving Training Co., Ltd. (hereinafter referred to as "Jili Company") and Taizhou Luqiao District Chengrong Driver Training Co., Ltd. (hereinafter referred to as "Chengrong Company") sued in court, claiming a confirmation of the invalidity of the pooling agreement and the self-regulatory pact, on the grounds that the 15 driving training entities conducted monopolistic operations.

浙江省台州市路桥区15家汽车驾驶培训单位签订联营协议及自律公约，约定共同出资设立联营公司即台州市路桥区浙东驾驶员培训服务有限公司（以下简称浙东公司），固定驾驶培训服务价格、限制驾驶培训机构间的教练车辆及教练员流动，涉案15家驾培单位原先分散的辅助性服务（如报名、体检、制卡等）均由浙东公司统一在同一现场处理，浙东公司收取服务费850元。联营协议第三条具体约定了联营公司设立的注册资本与股本结构。涉案15家驾培单位中的台州市路桥吉利机动车驾驶培训有限公司（以下简称吉利公司）、台州市路桥区承融驾驶员培训有限公司（以下简称承融公司）以该15家单位构成垄断经营为由，诉至法院，请求确认联营协议及自律公约无效。

[Adjudication]

【裁判结果】

The court of first instance only confirmed the invalidity of the clauses in the pooling agreement and the self-regulatory pact involved in the case that constituted a horizontal monopoly agreement in its first-instance judgment, on the grounds that Zhedong Company facilitated the improvement of service quality, reduction of costs, and increase in efficiency by uniformly providing previously scattered auxiliary services, that it was not improper for Zhedong Company to charge service fee of 850 yuan, and that anti-monopoly exemption might apply to the clauses related to equity structure and the service fee in accordance with the law. Jili Company et al. filed an appeal with the Supreme People's Court, claiming a modified judgment to confirm the invalidity of the equity structure clause and service fee clause of the pooling agreement. The Supreme People's Court held at second instance that if a business that had entered into a monopoly agreement claimed the application of anti-monopoly exemption, it should provide sufficient evidence of its compliance with the relevant statutory circumstances, and should not be presumed to have an anti-monopoly exemption defense based solely on general speculation or imagination, without supporting evidence; and that contract clauses in violation of the provisions of the Anti-Monopoly Law of the People's Republic of China on horizontal monopoly agreements, closely related to the clauses of horizontal monopoly agreements, or serving the implementation of horizontal monopoly agreements should be invalid, and otherwise it was insufficient to eliminate and reduce the risk of monopolistic conduct. The Supreme People's Court entered a second-instance judgment, setting aside the first-instance judgment, confirming the invalidity of the pooling agreement and the self-regulatory pact involved in the case in whole.

一审法院认为，浙东公司统一处理原先分散的辅助性服务，可提高服务质量、降低成本、增进效率，其收取服务费850元并无不当，有关股本结构条款和服务收费条款可以依法适用反垄断豁免，故一审判决仅确认涉案联营协议及自律公约中构成横向垄断协议的条款无效。吉利公司等不服，向最高人民法院提起上诉，请求改判确认联营协议中股本结构条款和服务收费条款无效。最高人民法院二审认为，达成垄断协议的经营者主张适用垄断豁免的，应当提供充分证据证明其符合有关法定情形，不得在缺乏证据支持的情况下仅仅依据一般性推测或者抽象推定垄断豁免抗辩成立。违反《中华人民共和国反垄断法》关于横向垄断协议规定的合同条款，与横向垄断协议条款紧密联系的条款，以及服务于横向垄断协议行为实施的条款均应属无效，否则不足以消除和降低垄断行为风险。最高人民法院二审判决，撤销一审判决，确认涉案联营协议及自律公约全部无效。

[Significance]

【典型意义】

This case is a typical horizontal dispute. The Supreme People's Court clarified the standards for the application of the causes of exemption with respect to horizontal monopoly agreements through its adjudication, and explained the general principle that a horizontal monopoly agreement in violation of the Anti-Monopoly Law of the People's Republic of China should be invalid and that what was invalid included not only the clauses of the horizontal monopoly agreement, but also clauses closely related to it, having little significance alone, or serving the commission of horizontal conduct. The adjudication on this case which effectively maintained the order of fair competition in the market is conducive to preventing monopolistic conduct at the source.

该案是典型的横向垄断纠纷案件。最高人民法院通过裁判澄清了横向垄断协议豁免事由的适用标准，阐明了违反《中华人民共和国反垄断法》的横向垄断协议应归于无效的一般原则，且无效范围不限于横向垄断协议条款本身，还包括与之具有紧密关联、缺乏独立存在意义的条款和服务于横向垄断协议行为实施的条款。该案裁判有力维护了市场公平竞争秩序，有利于从源头上制止垄断行为。

IX. Dandong Tianmao Gas Co., Ltd. v. Liaoning Provincial Market Regulation Administration for Administrative Penalty and the State Administration for Market Regulation for Administrative Reconsideration

九、丹东天茂气体有限公司诉辽宁省市场监督管理局行政处罚及国家市场监督管理总局行政复议案

[Basic Facts]

【基本案情】

On April 11, 2018, the Liaoning Provincial Market Regulation Administration issued a Written Decision of Administrative Penalty to Dandong Tianmao Gas Co., Ltd. (hereinafter referred to as "Tianmao Company"), confirming that the company participated in a gathering organized by another gas company in the Dandong City on July 29, 2017. At the gathering, the participating gas companies discussed the Market Sales Standards of the Dandong Gas Industry Association and reached consensus on the market sales price of 40-liter bottled industrial oxygen. Since August 2, 2017, the company notified clients of adjusting the price of 40-liter bottled industrial oxygen and implementing collusion prices for related products by issuing a Price Adjustment Notice, directly notifying sales staff members, and other methods. The 10 related gas companies manipulated the market price of 40-liter bottled industrial oxygen in Zhen'an District, Zhenxing District, Yuanbao District, and Donggang City under the jurisdiction of Dandong City through price collusion, resulting in a general rise in the price of industrial oxygen in related regions. The company's behavior violated the provisions of Article 14 of the Price Law of the People's Republic of China, so the company was ordered to immediately correct the aforesaid price violations, and was subject to a fine of 120,000 yuan. The company refused to accept it and applied for administrative reconsideration to the State Administration for Market Regulation. On July 26, 2018, the State Administration for Market Regulation issued a Written Decision of Administrative Reconsideration to maintain the aforesaid decision on punishment. The company instituted an action, requesting revocation of the aforesaid Written Decision of Administrative Penalty and Written Decision of Administrative Reconsideration.

2018年4月11日，辽宁省市场监督管理局对丹东天茂气体有限公司（以下简称天茂公司）作出《行政处罚决定书》，认定该公司于2017年7月29日参加了丹东市另一气体有限公司组织的聚会，与会气体企业对《丹东市气体行业协会市场销售标准》进行了讨论，就40升瓶装工业氧气市场销售价格达成一致意见。自2017年8月2日开始，该公司采取下发《调价通知单》、销售人员直接告知等形式，通知客户调整40升瓶装工业氧气价格，实施相关产品的串通价格。相关10家气体企业通过相互价格串通，在丹东市所辖振安区、振兴区、元宝区、东港市范围内共同操纵了40升瓶装工业氧气的市场销售价格，造成相关地域工业氧气价格普遍上涨。该公司的行为违反了《中华人民共和国价格法》第十四条的规定，故责令该公司立即改正上述价格违法行为，并决定罚款12万元。该公司不服，向国家市场监督管理总局申请行政复议。2018年7月26日，国家市场监督管理总局作出《行政复议决定书》，维持上述处罚决定。该公司提起诉讼，请求撤销上述行政处罚决定及行政复议决定。

[Adjudication]

【裁判结果】

The effective judgment of the people's court held that, in accordance with the provisions of Articles 6, 7, 8 and item 1 of Article 14 of the Price Law of the People's Republic of China, except the application of government-guided prices or government-fixed prices, operators should have independent pricing power for the commodities that they operate. When independently fixing prices, operators should follow the principles of fairness, legality and good faith, and be based on production and operation costs and market supply and demand conditions. They should not collude with each other, manipulate market prices, or damage the legitimate rights and interests of other operators or consumers. In this case, Tianmao Company participated in a gathering organized by another gas company in Dandong city. The participating companies discussed the prices of the gas product in dispute and reached a consensus, and the fact that the prices of the gas products in dispute was raised after the gathering did exist. The company colluded with nine other gas companies, resulting in a general increase in the prices of the gas products in dispute. The company's act violated the provisions of item 1 of Article 14 of the Price Law of the People's Republic of China and should be punished according to the law. The Written Decision of Administrative Penalty and Written Decision of Administrative Reconsideration respectively made by the Liaoning Provincial Administration for Market Regulation and the State Administration for Market Regulation were clear in determining facts, correct in applying laws, and legal in procedures. Therefore, Tianmao Company's claim was dismissed.

人民法院生效判决认为，依照《中华人民共和国价格法》第六条、第七条、第八条及第十四条第一项的规定，除适用政府指导价或者政府定价外，经营者对其所经营的商品具有自主定价权。经营者自主定价，应当遵循公平、合法和诚实信用原则，以生产经营成本及市场供求状况为据进行。不得相互串通，操纵市场价格，损害其他经营者或者消费者的合法权益。本案中，天茂公司参加了丹东市另一气体有限公司组织的聚会，与会企业讨论涉案气体产品价格并形成一致意见、会后上调涉案气体产品价格等事实存在。该公司与其他9家气体企业串通，导致当地涉案气体产品价格普遍上涨。该公司的行为违反了《中华人民共和国价格法》第十四条第一项的规定，依法应予处罚。辽宁省市场监督管理局作出的行政处罚决定及国家市场监督管理总局作出的行政复议决定认定事实清楚、适用法律正确、程序合法，故判决驳回天茂公司的诉讼请求。

[Significance]

【典型意义】

This case was a model case of the people's court for supporting the market regulation department in strengthening unified market regulation and law enforcement in accordance with the law. The gas in dispute was flammable and explosive, had hazardous property, and required special vehicles for the transportation of dangerous goods. A number of administrative approval formalities required to be undergone. The number of operators was limited, the barriers of market access were high, and the localization characteristics were obvious. The number of local operators of gas products in dispute was limited. The price collusion between Tianmao and nine other gas companies directly led to a general rise in the prices of the gas products in dispute, disrupted the market competition order, and damaged the legitimate rights and interests of gas users. During the handling of the case, the people's court comprehensively investigated the facts, applied laws accurately, and supported the market regulation department in investigating and punishing acts of monopoly and fair competition in accordance with the law, which was conducive to maintaining the order of market competition and promoting the smooth flow of commodity resource elements in the unified large market.

本案系人民法院依法支持市场监管部门强化统一市场监管执法的典型案例。涉案气体易燃易爆，具有危化属性，需危险货物专用车辆运输，且需办理多项行政审批手续，经营者数量有限、市场进入壁垒高及本地化特征明显。当地的涉案气体产品经营者数量者有限。天茂公司与其他9家气体企业实施价格串通，直接导致当地涉案气体产品价格普遍上涨，扰乱市场竞争秩序，损害气体用户的合法权益。人民法院在案件办理中，全面查清事实、准确适用法律，依法支持市场监管部门查处垄断及妨碍公平竞争行为，有利于维护市场竞争秩序，促进商品资源要素在统一大市场畅通流动。

X. Case of Judgment of Acquittal Rendered upon Retrial of *** for Conviction of Illegal Business Operation)

十、王力军非法经营再审改判无罪案

[Basic Facts]

【基本案情】

The Linhe District People's Court of Bayan Nur City, Inner Mongolia Autonomous Region held in the first instance that, from November 13, 2014 to January 20, 2015, defendant *** illegally purchased corn, without a grain purchase permit or the confirmation, registration and issue of a business license by the administration for industry and commerce, and sold the corn so purchased to the grain depot, garnering illegally sales of 21,8288.6 yuan and an illegal profit of 6,000 yuan. The court of first instance held that defendant *** illegally purchased corn in violation of the laws and administrative regulations of the state, without the permission of the competent department of grain or the confirmation, registration and issue of a business license by the administration for industry and commerce, and garnered considerable illegal sales of 21,8288.6 yuan, and his conduct constituted the crime of illegal business operation. Given that defendant *** surrendered to the public security authority after the case was exposed, voluntarily handed over all the illegal income and showed signs of repentance for the crime and that the application of probation in favor of him gave rise to no further harm to society, the court of first instance decided to impose lighter punishment and apply probation in favor of defendant ***. On April 15, 2016, the court entered the Criminal Judgment (No. 54 [2016], First, Criminal Division, 0802 Inner Mongolia), sentencing *** to an imprisonment of one year with a two-year suspension of execution and a fine of 20,000 yuan for committing a crime of illegal business operation. After the sentence was pronounced, neither *** nor the procuratorate appealed, and the judgment became effective.

内蒙古自治区巴彦淖尔市临河区人民法院一审认定，2014年11月13日至2015年1月20日，被告人王力军未办理粮食收购许可证，未经工商行政管理机关核准登记并颁发营业执照，违法收购玉米卖给粮库，非法经营数额218288.6元，非法获利6000元。一审法院认为，被告人王力军违反国家法律和行政法规规定，未经粮食主管部门许可及工商行政管理机关核准登记并颁发营业执照，非法收购玉米，非法经营数额218288.6元，数额较大，其行为构成非法经营罪。鉴于王力军案发后主动到公安机关投案自首，主动退缴全部违法所得，有悔罪表现，对其适用缓刑确实不致再危害社会，决定对王力军依法从轻处罚并适用缓刑。该院于2016年4月15日作出（2016）内0802刑初54号刑事判决，以王力军犯非法经营罪，判处其有期徒刑一年，缓刑二年，并处罚金人民币二万元。宣判后，王力军未上诉，检察机关未抗诉，判决发生法律效力。

***'s purchase of corn caused controversy after he was sentenced for committing a crime of illegal business operation. The Supreme People's Court took the initiative to review the case, and made a retrial decision in accordance with the provisions of paragraph 2 of Article 243 of the Criminal Procedure Law of the People's Republic of China, ordering the Intermediate People's Court of Bayannaoer City, Inner Mongolia Autonomous Region to retry this case.

王力军收购玉米被以非法经营罪判刑后，引起了舆论争议。最高人民法院主动对本案进行了复查，并依照《中华人民共和国刑事诉讼法》第二百四十三条第二款之规定作出再审决定，指令内蒙古自治区巴彦淖尔市中级人民法院对本案进行再审。

[Adjudication]

【裁判结果】

The Intermediate People's Court of Bayan Nur City, Inner Mongolia Autonomous Region held upon retrial that the fact found in the original judgment that defendant *** traded corn without a grain purchase permit or a business license from November 2014 to January 2015 was clear and that as his conduct was a violation of the state's relevant administrative rules of grain circulation in force at that time, which was not as harmful as the serious disruption of the market order nor equivalent to the crime of illegal business operation as provided in Article 225 of the Criminal Law in terms of social harm and necessity of criminal punishment, instead of a crime of illegal business operation. The original judgment that *** was found guilty of illegal business operation was erroneous in the application of law. The court made a retrial judgment on February 14, 2017, revoking the criminal judgment (No. 54 [2016], First, Criminal Division, 0802 Inner Mongolia) rendered by the Linhe District People's Court of Bayan Nur City, Inner Mongolia Autonomous Region, and acquitting ***.

内蒙古自治区巴彦淖尔市中级人民法院再审认为，原判决认定的原审被告人王力军于2014年11月至2015年1月期间，没有办理粮食收购许可证及工商营业执照买卖玉米的事实清楚，其行为违反了当时的国家粮食流通管理有关规定，但尚未达到严重扰乱市场秩序的危害程度，不具备与《中华人民共和国刑法》第二百二十五条规定的非法经营罪相当的社会危害性和刑事处罚必要性，不构成非法经营罪。原审判决认定王力军构成非法经营罪适用法律错误。该院于2017年2月14日作出再审判决，撤销内蒙古自治区巴彦淖尔市临河区人民法院（2016）内0802刑初54号刑事判决，改判王力军无罪。

[Significance]

【典型意义】

The Supreme People's Court proactively ordered retrial of this case, which presented the people's court's active protection of citizens' rights, and had promoted the revision of relevant laws and regulations through the trial of the case. On September 14, 2016, the State Administration of Grain issued the Measures for the Administration of Examination and Verification of Grain Purchase Qualifications, stipulating that farmers, grain brokers, and grain traders in farmers' markets were not required to apply for grain purchase qualifications to carry out grain purchase activities. This case was of great significance for removing the obstacles of the local grain circulation system, encouraging farmers and other diversified market entities to enter the market to purchase grain, promoting the solution of the problem of farmers' "difficulty in selling grain" under the background of increase in grain production in some localities in consecutive years, effectively protecting farmers' interests and market stability, and serving the supply-side structural reform of agriculture in accordance with the law. This case was selected as one of the "Top 10 Cases for Promoting the Rule of Law in 2017."

本案由最高人民法院依职权主动指令再审，表明人民法院对公民权利的积极保护，并通过案件审理推动了相关法规的修订，2016年9月14日国家粮食局印发《粮食收购资格审核管理办法》，规定农民、粮食经纪人、农贸市场粮食交易者等从事粮食收购活动，无需办理粮食收购资格。本案对破解地方粮食流通体制障碍，鼓励农民等多元市场主体入市收购粮食，推动解决一些地方粮食连年增产背景下农民"卖粮难"问题，切实保障农民利益和市场稳定，依法服务农业供给侧结构性改革都具有重要意义。本案入选"2017年推动法治进程十大案件"。