

海南省高级人民法院  
优化营商环境白皮书

中英文对照本

White Paper of Hainan Court  
on Optimizing Business Environment



海南省高级人民法院  
*High People's Court of Hainan*

2022.10

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# 前 言

“潮平两岸阔，风正一帆悬”。按照中央部署，海南要努力成为中国新时代全面深化改革开放的新标杆，以供给侧结构性改革为主线，建设自由贸易试验区和中国特色自由贸易港，着力打造成为中国全面深化改革开放试验区、国家生态文明试验区、国际旅游消费中心、国家重大战略服务保障区。如果说海南在“一带一路”国家总体规划中起到的是“支点”作用，那么“海南自由贸易港”在国家深化对外开放战略中发挥的就是“引擎”作用。

人民法院是司法机关更是政治机关，为党分忧、为国担当、为民司法是人民法院首要的政治任务。最高人民法院在《关于人民法院为海南自由贸易港建设提供司法服务和保障的意见》中要求人民法院应深刻认识海南自由贸易港建设在更高水平开放型经济新体制中的重大意义，准确把握国内国际形势，从贯彻新发展理念、构建新发展格局、推动高质量发展的战略高度，充分发挥审判职能，不断提升司法能力，以公正高效的司法服务和保障，推动建设高水平的中国特色自由贸易港。

新时代新使命，新担当新作为。海南法院顺应时代要求，紧跟党和国家战略部署，坚持以习近平新时代中国特色社会主义思想

义思想为指导，深入贯彻习近平法治思想，坚定“四个自信”，树牢“四个意识”，坚定捍卫“两个确立”，坚决做到“两个维护”，以为“海南自由贸易港”建设提供优质的法律服务和有力的司法保障为目标，改革创新、担当作为，借鉴国际法治有益经验的基本原则，通过审理一批具有典型意义的商事案件、环境资源案件、破产案件、知识产权案件，分析审判工作的基本态势、常见的争议关系现状特征，梳理当前审判工作中反映的突出问题，提出相关建议意见，服务于推动制度集成创新和构建与高水平自由贸易港相适应的政策制度体系，为加快建设具有中国特色高水平的自由贸易港提供司法服务和保障。

琢之磨之，玉汝于成。海南法院系列审判白皮书分别从知识产权审判、环境资源审判、破产审判和营商环境审判等方面向社会各界呈现了我们在化解矛盾、定分止争上的法律依据、所持态度、裁判标准。白皮书对社会公众是释法析理的普法教育，对全省各级法院法官是示范蓝本。白皮书承载了海南法院人的希望，凝结着办案法官的智慧，挥洒着编辑人员的汗水，希望全省各级法院不断提升服务和保障中国特色自由贸易港的司法能力，为优化海南营商环境、服务海南高质量发展贡献法院人的力量！

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# 海南法院

## 优化营商环境服务自贸港建设白皮书

两年来，海南法院为贯彻落实习近平总书记关于海南的重要讲话、重要指示精神和党中央重大决策以及省委省政府的部署，凝聚起“国家战略、海南担当，海南振兴、必有我功”的思想共识，主动扛起司法服务保障自贸港建设的责任担当，坚持“法治是最好的营商环境”理念，把优化法治化营商环境工作作为重要任务，在司法实践中坚持政治效果、法律效果和社会效果的统一以及“合目的性、合规则性、合理性”三性统一，积极延伸司法服务，扎实推进改革创新，努力营造稳定、公开、透明、可预期的法治化营商环境，为海南自贸港建设提供坚强有力的司法保障。

### 一、构建现代化诉讼服务体系，提高诉讼便利度，提升司法治理能力

海南法院蹄疾步稳推进司法治理体系和能力现代化建设，积极参与共建共治共享的“四位一体”社会治理新格局建设工作，参与构建具有海南特色的社会治理新模式，推动建设更高



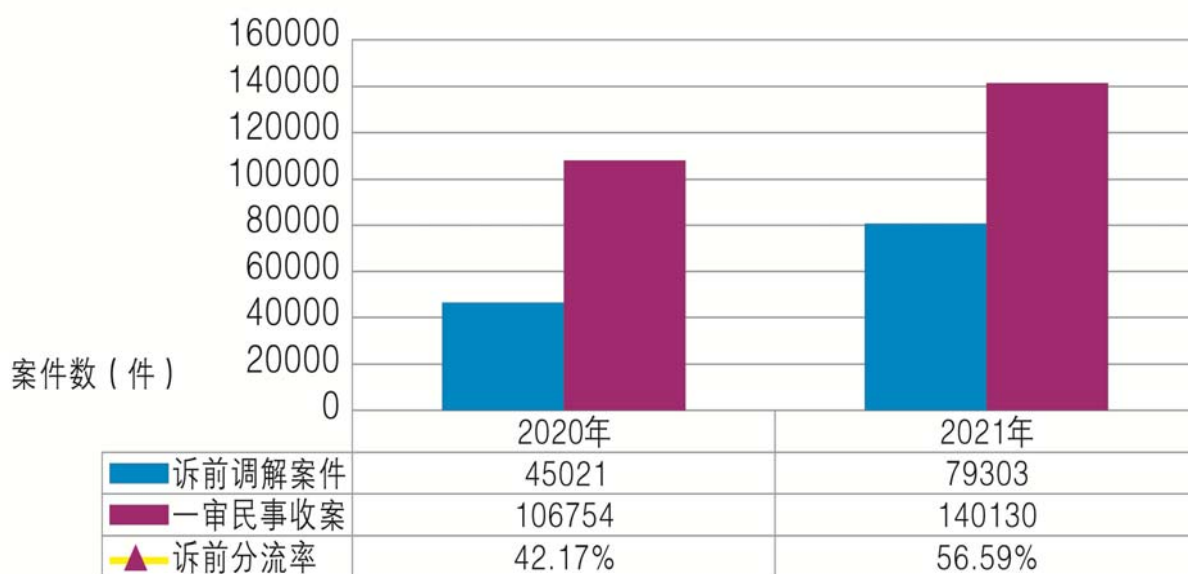
水平平安海南、法治海南，为优化自贸港营商环境提供坚实可靠的基础社会条件。

### **（一）主动融入党委领导下的诉源治理格局，凝聚一站式多元解纷合力**

#### **1. 坚持党委、政府主导**

海南法院主动融入党委领导、政府主导的齐抓共管诉源治理格局。省高院积极参与省人大常委会、省委政法委主导的《海南省多元化解纠纷条例》制定工作，认真落实《最高人民法院关于加快推进人民法院调解平台进乡村、进社区、进网格工作的实施意见》，指导 48 家人民法庭全部入驻人民法院调解平台，并加强与基层自治组织对接，组织推动包括村“两委”成员、网格员、基层干部在内的基层治理单位 179 家入驻平台，充实基层多元解纷力量。在省高院的部署安排下，各级法院深入贯彻落实习近平总书记“把非诉讼纠纷解决机制挺在前面，从源头上减少诉讼增量”的指示精神，主动融入党委领导下的诉源治理，积极对接相关单位，推动海南法院构建全覆盖诉调对接机制。2021 年，海南法院诉前调解案件 79303 件，比 2020 年增长 76.15%；诉前分流率为 56.59%，诉前分流率与 2020 年相比，增长 14.4 个百分点。通过诉前调解化解掉大量纠纷，多元化解成效初显，大大促进执行合同指数提升。

图 1 2021 年与 2020 年全省法院诉前调解情况对比图



(图表一)

海南法院争取各方支持，形成矛盾纠纷多元化解的强大合力。省高院积极主动与省证监局、省总工会、省工商联等 13 家机构达成了诉前多元解纷协议，并于 2021 年 6 月 29 日与省公安厅、省司法厅及海南银保监局联合下发《关于在全省开展道路交通事故损害赔偿纠纷“网上数据一体化处理”工作的实施意见》，海南法院的诉前联动纠纷解决机制更加完善。

为贯彻落实最高人民法院关于加快推进八家“总对总”在线诉调对接机制有关要求，在已经与七家单位制定机制对接的基础上，省高院起草了《关于建立价格争议纠纷多元化解机制的实施意见（试行）》，并与海南省发展和改革委员会、省司法厅进行文件联合会签。

海口中院诉讼服务中心设立人民调解室、律师调解室，建成了多间具备互联网远程调解功能的多功能调解室，依托最高法院多元化纠纷解决机制信息化平台的建设（人民法院调解平台），实现审判系统与“人民法院调解平台”的诉非联动平台，在征求当事人意愿前提下，委托、委派特邀调解员或特邀调解组织在立案前先行调解，提升纠纷解决的效率。如在审理海南省琼海彬村山华侨农场与海南海生公司合同纠纷案中，在省人大常委会的监督推动下，省高院指导海口中院利用各种调解平台和方法协调该案，经组织当事双方反复沟通，最终达成一致意见，使持续近三年的土地纠纷问题得到圆满解决。以该案为蓝本，又陆续解决了五个华侨农场职工社保历史遗留问题。该案例因此入选全省“查堵点、破难题、促发展”活动十大典型案例。

## 2. 推进特色法庭建设

海南法院以旅游法庭、医疗法庭、金融法庭、物业法庭、道交法庭等特色法庭为依托，加强与旅游、医疗、金融、交警等单位合作，打造类型化、专业化的诉前解纷模式。以道交法庭为例，2021 年来全省通过道交一体化平台申请诉前调解案件 13918 件，已调解 13463 件，调解成功 11889 件，成功率 88.31%。三亚旅游巡回法庭调处绝大部分非诉旅游纠纷，旅游诉讼案件“断崖式”下降，打造无诉旅游新模式。

### 3. 建立和完善涉外民商事纠纷多元化解机制

一是建立跨区域的涉外民商事法庭，集中审理涉外民商事案件，实现立、审、执一体化，不断提升纠纷解决能力。2019年，为贯彻落实中共中央、国务院印发《关于支持海南全面深化改革开放的指导意见》中加快形成法治化、国际化、便利化营商环境和公平统一高效市场环境的要求，进一步整合涉外审判资源，集中力量服务自贸（区）港建设，省高院充分利用《最高人民法院关于为海南全面深化改革开放提供司法服务和保障的意见》中支持海南建立国际商事纠纷案件集中审判机制的政策，在全国率先设立了全域性的涉外民商事法庭。法庭实行“立、审、执”一体化运行模式，促进海南自贸港全域涉外民商事案件审判质效持续提升。“立、审、执”一体化运行有效解决了立案、审判、执行各个部门衔接不畅、法律认识不统一、移送效率不高的问题，除去司法协助送达、公告等案件，普通诉讼案件平均用时约 77 天，执行案件 45 天，审执效率大大提升。案件审理整体呈现案件审理呈现一高两低（调撤率高、上诉率低、发改率低）的良好态势。其中，调解工作尤其突出，调撤案件数量多、金额大、效果好，每年调撤案件数占已结诉讼案件的一半左右，2021 年，第一涉外民商事法庭调解案件涉案标的总金额近 10 亿，当事人 11 次以感谢信、送锦旗、舞狮等方式表达对法官化解纠纷的赞赏。该法庭的机制创新获得了

第一届“海南省改革和制度创新奖”二等奖并入选最高人民法院“人民法院服务保障自贸区建设亮点举措”。

二是积极推进一站式多元解纷平台建设，及时有效化解国际商事纠纷。建立健全调解前置、诉前调解免收案件受理费制度，大大降低了当事人诉讼的经济成本和时间成本，也有效节约了司法资源。第一涉外民商事法庭开发了 ODR（在线纠纷解决）平台，邀请国内外仲裁、调解机构入驻，通过互联网视频的方式解决纠纷。该平台上线运行至今，已与 15 家调解机构签订合作框架协议，目前调解员库中共有 321 名调解员，平台共收录 32270 部法律法规及 14683506 件案例，共收案 122 件，调解成功案件 88 件。该平台荣获 2020 政法智能化建设智慧法院优秀创新案例。在第一涉外民商事法庭运行成熟后，省高院向全省负有涉外审判职能的法院推广该平台，各法院均可利用该平台解决中外当事人纠纷，进一步便利当事人诉讼。如嘉兴某公司（外资独资）诉三亚某公司买卖合同纠纷一案，因新冠肺炎疫情暴发，三亚公司未能如期付款，遂成讼。法院引导双方当事人通过 ODR 在线解纷平台，选任特邀调解员进行调解。同时，法官也在线释明疫情暴发后的新的司法政策，通过多方努力，三亚某公司制定了分期支付的还款方案，得到了嘉兴某公司的认可，并撤诉。本案充分发挥了涉外多元解纷 ODR 调解平台优势，通过选任特邀调解员，在线向双方当事人介绍新冠

肺炎疫情对经济生活和法律实践的影响，再辅之以法官的法律释明，使案件得以有效化解，保障了受疫情影响企业的正常经营，亦维护了外资企业的合法权益，为企业发展营造了良好的法治环境。

三是省高院出台《海南省高级人民法院民商事纠纷引导、委派、委托调解工作规程》，作为建立和完善涉外民商事纠纷多元化解机制落实的制度。海南法院积极推行“三位一体”多元化解机制，有效分流案件，促进诉源治理，切实发挥调解、仲裁机构在诉源治理中的参与、推动作用，推动矛盾纠纷尤其是国际商事纠纷的源头化解。海南法院创新国际商事纠纷诉讼、调解、仲裁“三位一体”多元化解机制，将诉讼、调解、仲裁三种争议解决方式无缝对接，极大地便利外商、港澳台投资者纠纷解决。省高院与海南一中院等单位联合报送的国际商事纠纷“三位一体”多元化解机制入选 2021 年海南自由贸易港第十三批制度创新案例，获得第二届海南省改革和制度创新奖二等奖。

#### 4. 建立和完善知识产权纠纷多元化解机制

海南法院采取诉前委派调解与诉中委托调解相结合、线上调解与线下调解相结合的方式化解知识产权纠纷，促进多元解纷质效的提升。2021 年已与 3 家知识产权调解组织签订诉调对接协议，14 名调解员入驻法院调解平台，调解成功率 61.11%，

多元解纷效果凸显。

如九牧厨卫股份有限公司与海南潮君等 8 宗侵害专利权纠纷系列案，经法院调解，几被告与九牧公司在庭前达成调解协议，并主动履行完毕。海南自由贸易港知识产权法院自成立以来，全力为营造法治化、国际化、便利化的营商环境提供司法保护，在落实“简案快审，繁案精审”的同时，高度重视案件调解工作，不断完善知识产权纠纷多元化解决机制，善于总结知识产权案件的调解经验，找准切入点，灵活运用调解技巧，通过多元化解、案例指引、释法说理等方式，促进当事人换位思考，积极协商沟通，缩短诉求差距，及时达成和解。该八宗案件的处理，最大程度地维护了双方当事人的利益，解决了当事人的司法服务需求。

## **（二）加强智慧法院建设，进一步推进诉讼便利化**

海南法院通过打造“诉讼服务大厅、诉讼服务网、12368 热线、移动客户端、24 小时法院”多位一体的诉讼服务体系，实现一站通办、一网通办、一号通办、一次通办。强化跨域立案、网上立案、自助立案等信息化服务，打造立案“绿色通道”，当事人和律师可以通过移动微法院、律师诉讼服务平台进行在线立案、网上缴费、申请阅卷等，方便当事人参与诉讼，提升司法服务信息化水平。

### **1. 加强“24 小时法院”建设**

2019 年 12 月，海南省首家“24 小时法院”开始落户三亚，室内安装有诉讼服务自助终端、智能文书填写服务终端、庭审直播终端等设备，可实现 24 小时自助立案、跨域立案、自助查询案件信息、材料转交、预约阅卷、失信人查询等功能。目前为止已有 10 家 24 小时法院。

## 2. 推进巡回法庭远程视频庭审

海南法院探索适用人工智能、大数据等前沿技术，在全省探索引入智慧庭审系统提升庭审流畅度和效率。2021 年，海南法院通过借力互联网远程庭审系统，实现了在庭审中，法官在法院审判庭、检察官在检察院、被告人在看守所巡回法庭通过“云审判”进行隔空开庭，进一步提升了司法大数据利用率和司法效率。

## 3. 完善现代化诉讼服务体系

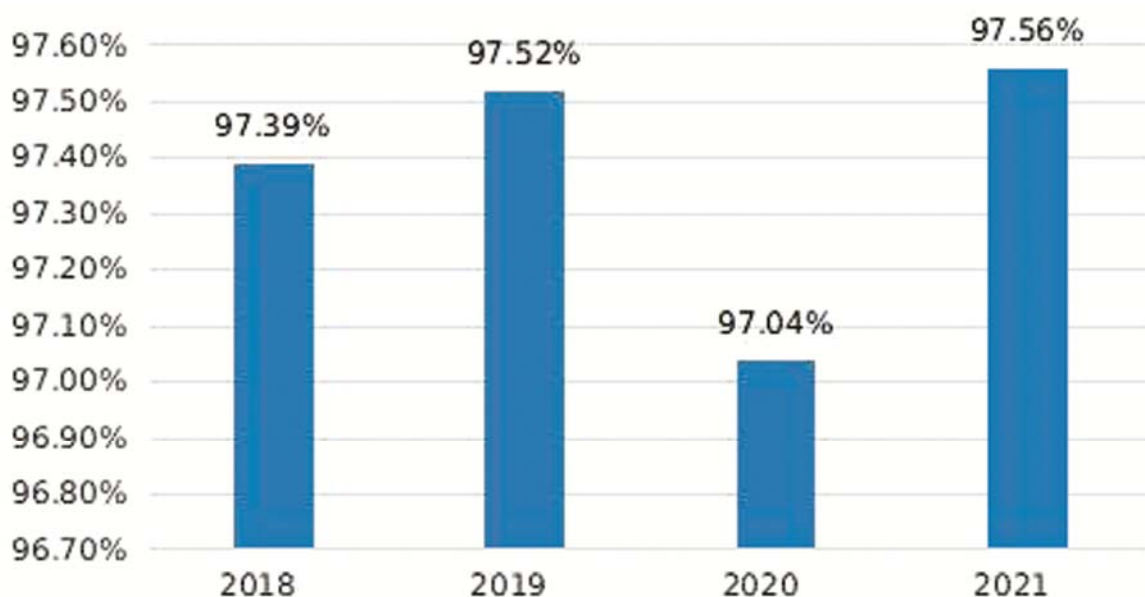
集约化、立体化、信息化的现代化诉讼服务体系框架搭建完毕。2021 年，海南法院上线运行并完善了移动微法院、人民法院调解平台、律师服务平台、送达平台等 10 个信息化服务平台，形成一中心十系统的信息服务系统，当事人足不出户即可远程办理包括立案、开庭等各类诉讼事务，目前，网上诉讼事务办理率已达 50%以上。12368 热线提供服务 14854 人次，生成报告并转办事项 1076 件，诉服热线已经成为倾听群众、当事人和律师意见建议的重要途径。



#### 4. 构建一站式诉讼服务中心

一站式诉讼服务中心建设取得实效，落实立案登记制改革工作。构建起“当场立、网上立、自助立、跨域立”四位一体的立案新格局。省高院指导协调各级法院做好跨域立案的移送、接收、审核等各项管理工作，建立违规通报机制，降低超期反馈、超期审核等发生率，确保跨域立案程序合法、操作合规、群众满意。一审立案时间平均缩短到十分钟以内，2018-2021 年当场登记立案率分别为 97.39%、97.52%、97.04% 和 97.56%。其中 2021 年网上立案 5764 件、跨区域立案管辖和协助各 1021 件。

2018-2021 年当场登记立案率



(图表二)

## 5. 创新一站式司法征信服务平台

省高院以“一键搜索全覆盖”为目标，自主研发上线投资者司法服务绿色通道，为来海南投资的中外朋友免费提供全天候、全方位、全领域的“一站式”司法征信服务。投资者司法服务绿色平台自2019年6月上线以来，平台已收录1.27亿份裁判文书、206万条审判执行信息、2.2万家企业信息，3万多条失信被执行人信息；发布涉及自贸港建设的司法资讯1954条、典型案例72篇、政策法规315项，并且所有信息均实现动态更新，实现快速检索，为投资者考量合作伙伴提供权威的司法数据参考，平台咨询量30余万人次。海南各级法院设立自贸港建设服务窗口和“司法专员”，立足一站式司法征信服务平台，向投资者提供全方位、全领域的专业化司法征信服务，积极发挥法院司法服务职能，通过落实司法征信服务“五大举措”，着力提供投资者关心的“投资风险”司法征信信息，增强投资者信心，切实维护好投资者特别是中小投资者合法权益。该案例入选2020年第一批海南自由贸易港制度创新案例。

## 6. 诉讼服务质效评估名列前茅

海南法院诉讼服务质效评估2.0版成效全面升级。诉讼服务质效评估体系是一站式建设成果的集中反映，是推动一站式建设跨越式发展的指挥棒。自2020年9月份以来，海南法院在诉讼服务质效体系（2.0）考评中，基本保持在全国前五名

以内。其中，省高院排名累计 212 天位列全国高院第一，海南法院综合排名累计 226 天位列全国前三名。

### 7. 着力推进司法助残服务

自 2020 年 5 月启动法律助残公益项目以来，海南法院均开通了残障人士诉讼绿色通道，创新培育“五个一”工程，即一个无障碍诉讼服务平台、一套无障碍诉讼设施标准清单、一个四位一体无障碍服务体系、一个全流程无障碍诉讼服务工作机制、一支无障碍诉讼服务队伍，为残疾人提供快速绿色立案 133 次，与省残联合作编写《残疾人权益保障手册》，聘请 31 名特邀调解员和 30 名手语翻译等，为残疾人士提供全方位法律服务。2021 年，海南法院受理涉残案件 575 件，其中调解 78 件、撤诉 19 件；缓交诉讼费 155770.92 元，减交诉讼费 7637.12 元，免交诉讼费 197926.28 元，发放司法救济金 2801935.34 元。

### （三）建立健全机制，提升审判效率

#### 1. 建立审判绩效态势分析机制

开展清理长期未结案件等专项活动。开展每月审判绩效态势分析，每月在海南法院工作动态中发布当月“海南法院审判执行态势分析”，以研判审判效率并加强审判管理。

#### 2. 优化机制，提升诉讼保全效率

制定《海南省高级人民法院关于集约财产保全工作的规定

（试行）》《海南法院关于进一步规范财产保全工作若干问题的暂行办法》。优化了诉前保全机制，提升民商事纠纷诉前保全效率。

### 3. 健全机制，提升送达效率

积极引导诉讼参与人提交电子诉讼材料，扩大电子文书送达范围，提高送达效率。进一步加大视频接访、远程提讯、在线立案、在线开庭、电子送达等信息化工具的使用力度，方便当事人参与诉讼提高审判执行工作效率。省高院与省市场监督管理局制定《关于推进企业等商事主体法律文书送达地址承诺确认工作的实施意见（试行）》，促进送达效率提升。海南法院正在推行全流程无纸化办案。该项工作正在稳步推进，目前已在 10 家法院进行无纸化办案工作试点。

## （四）深入破解执行难，提升执行效率

### 1. 构建切实解决执行难综合治理机制

凝聚合力，扎实推进综合治理执行难大格局机制化建设，加快推进彻底解决执行难，助力营造良好营商环境。2021 年 9 月 16 日，省高院组织召开全省执行工作联席会议，省公安厅、省住房公积金管理局、省自然资源和规划厅、省大数据管理局等执行工作联动单位相关负责同志参会，就进一步完善查人找物控财机制进行协商，并分别联合会签了《海南省高级人民法院、海南省住房公积金管理局关于建立住房公积金执行联动机

制的若干意见》《海南省高级人民法院、海南省公安厅关于依法加强和规范协助执行问题的意见》《海南省高级人民法院、国家税务总局海南省税务局关于建立法院执行与税费征缴协作机制的意见》《中共海南省纪律检查委员会、海南省监察委员会、中国海南省委组织部、海南省高级人民法院关于对党员、公职人员失信和妨碍执行等行为予以通报并移送违纪违法问题线索的办法》。

## 2. 推动政府机关带头守信

海南法院强化涉党政机关为被执行人案件执行力度，推进党政机关带头守信。省高院下发《海南省高级人民法院关于为做好“六稳”工作、落实“六保”任务提供司法服务与保障的意见》等系列文件，要求海南法院迅速摸清底数，建立案件台账，加大执行力度，提高执行质效，特别是对涉党政机关国有企业拖欠民营企业中小企业债务案件，积极协调当地党委政府、财政部门予以解决。为切实全面提升执行质效，贯彻海南省优化营商环境工作专班关于清理政府拖欠企业账款工作要求，省高院决定从2021年4月下旬至2022年2月底，在海南法院开展清理涉党政机关为被执行人案件专项执行行动，并下发专门工作方案，摸清党政机关拖欠民营企业中小企业执行债务底数，提升涉党政机关为被执行人案件的执行效率。2021年，海南法院共清理涉党政机关为被执行人案件485件，结案率

93.45%；执行到位金额 6.0387 亿元，执行到位率 64.75%。

### 3. 推进依法规范执行

一是对超标的查封和乱查封问题进行整治。省高院要求海南法院严禁超标的查封和乱查封，严禁违规采取拘留罚款措施，坚决防止因违法执行、过度执行影响企业正常运营，选择对被执行人生产经营影响较小的查封措施，能“活封”的不“死封”，释放查封财产的使用价值和融资功能。要求在处置相关财产时，做到认真调查、全面披露拍卖财产现状，保证买受人知情权，依法稳妥做好拍卖财产交接工作，保护买受人合法权益。二是对违规终本、终结执行和虚假结案问题进行整治。海南法院严格落实最高法院要求，对违规终本、终结执行和虚假结案问题进行了整治，经对 14922 件终本案件进行检查，发现违规终本问题案件 27 件，已纠正 27 件；对 4068 件终结案件进行检查，暂未发现违规结案案件；对 17158 件其他方式结案案件，发现问题案件 1 件，已纠正 1 件。三是开展“执行难”

“执行乱”专项整治活动。2021 年 3 月 30 日省高院印发了《海南省高级人民法院关于在海南法院范围内开展“执行难”“执行乱”专项整治活动的实施方案》，决定在海南法院范围内组织开展“执行难”“执行乱”专项整治活动。经过为期三个月、四个阶段的专项整治，共查摆、总结全省“执行难”“执行乱”十大突出问题，并及时进行了整改。该专项整治活动取得了预

期的成效，有力地配合了提升执行到位率专项攻坚、涉黑恶刑事案件财产执行攻坚、涉党政机关为被执行人案件专项执行三项专项行动的深入开展，为海南法院进一步规范执行行为、全面提升执行质效夯实了根基。

#### 4. 开展执行领域突出问题集中整治专项行动

从2021年3月至10月底，海南法院开展提高执行到位率专项攻坚行动，依法保障胜诉当事人及时实现权益，进一步促进公正善意文明执行，力争大幅提高海南法院执结率和实际执行到位率，进一步提升执行质效。经过省高院有效督导，2021年全省执行到位率指标有了较大幅度的提升。

根据《最高人民法院队伍教育整顿领导小组关于开展执行领域突出问题集中整治专项行动的通知》要求，海南法院从2021年9月中旬起至11月中旬开展关于执行领域突出问题集中整治专项行动。海南法院通过组织领导到位、思想动员到位、方案解读到位、统筹结合到位、督导检查到位等“五个到位”，推动新时代人民法院执行工作高质量发展。2021年11月18日海南法院开展执行案款集中发放活动，发放案款的总金额为5.4153亿元，涉及案件151件，到现场领取案款的当事人共有158名。

#### 5. 强化善意文明执行理念

海南法院在执行过程中，严格贯彻善意文明执行理念，加

大产权保护力度，强化执行创新。既不能使执行失之于软，又不能机械执行，要根据财产实际情况，以执行和解方式等尽可能多的方式，适当选择自行变卖、融资等灵活处理方式处置财产，帮助被执行企业走出困境，化解债务危机，恢复生产能力。海南法院探索建立网拍、直接交付、资产重组、委托经营等执行措施，加快财产处置效率，减少企业成本负担。

#### 6. 着力降低执行费用

海南法院严格执行最高人民法院《关于人民法院网络司法拍卖若干问题的规定》，充分发挥了网络拍卖“传播广、公开透明、广泛参与、便捷高效、溢价率高、成本低廉、零佣金”的特点，主要从降低评估费和拍卖费的角度，降低解决商业纠纷费。目前海南法院对被执行人财产处置，网络拍卖率达100%，实现了“零”拍卖费。海南法院严格执行《最高人民法院关于人民法院确定财产处置参考价若干问题的规定》，综合采取当事人议价、定向询价、网络询价、委托评估方式确定财产处置参考价，并优先采用当事人议价、定向询价、网络询价方式，改变了以往单一通过委托评估方式确定财产处置参考价的作法。节省了当事人的执行费用。

### **（五）降低诉讼费用，改进退费流程**

#### 1. 降低诉讼费收取标准

为降低海南法院诉讼费收取标准，省高院积极主动协调财



政厅等部门出台相关规定，统一标准，降低诉讼费用，降低人民群众维权成本，提升执行合同指标，优化自贸港营商环境。为了降低与法院相关的诉讼费用，省高院在国务院《诉讼费用缴纳办法》授权的框架内，经过调研向财政部门提出降低诉讼费用的建议。经省发改部门组织对降低标准进行价格审定，报省政府批复。省财政厅与发改委以“琼发改收费〔2022〕242号”联合发出《关于明确部分案件诉讼费具体交纳标准的通知》。该《通知》于2022年3月25日正式实施，省高院随即向全省法院发文执行。

## 2. 提高退费效率

省高院采取积极措施，推进退费制度改革，出台《海南省高级人民法院诉讼费用退费规程》，规范海南法院三级统一联动的退费标准流程，变当事人“申请退”为法院“主动退”。省高院以“三化”建设为抓手，推动退费工作提质增效，在全省诉讼服务中心开设收缴退还诉讼费用的窗口，海南法院联动同步实施，改变以前当事人需要提供退费申请、判决书、文书生效证明、预交诉讼费票据等材料来到法院申请，经法院内部层层审批后办理退费的方式，要求在裁判文书生效之日起15日内，人民法院应当主动及时为当事人办理退费手续，必须足额、一次性全部退还，15日应退尽退。同时，发布《海南省高级人民法院关于诉讼费退费有关事项的公告》，向社会公开承

诺自 2021 年 11 月 1 日后生效的民事、行政案件，需要当事人退还诉讼费用的，不需要当事人申请，法院自裁判文书生效之日起 15 日内主动退还有关当事人，应退尽退，接受群众监督。该诉讼费用退费规程的出台，切实解决了诉讼费用退费难题，真正实现“让数据多跑路、让群众少跑路”。自 2021 年 11 月 1 日至 12 月 31 日，海南法院主动发起退费 2366 笔，主动退还诉讼费共 3266 余万元，最短退费时长为 24 小时，全省平均退费时长为 6 天。诉讼费退费效率大大提高，为提高诉讼服务效率提供了司法保障，受到案件当事人和律师的广泛好评。

## **（六）推进司法公开，提升司法透明度**

### **1. 推进司法公开平台建设**

海南法院司法公开规范化、制度化、信息化水平显著提升，审判流程公开、庭审活动公开、裁判文书公开、执行信息公开四大平台全面建成运行，开放、动态、透明、便民的阳光司法机制已经基本形成，在保障人民群众知情权、参与权、表达权和监督权，促进提升司法为民、公正司法能力以及弘扬法治精神、讲好海南法治故事等方面发挥了重要作用。

### **2. 完善司法公开工作机制**

创新便利高效司法服务的机制体系，提升司法为民水平。对标营商环境相关指标，在各级法院互联网门户网站正在逐步设立常态化司法数据公开平台，实现与营商环境密切相关的各

类司法数据公开。

### 3. 推进裁判文书公开

海南法院 2021 年全年公开裁判文书总量 35464 件。规范裁判文书上网公开，细化裁判文书上网管理工作规定，建立裁判文书上网常态化审核机制，完善裁判文书质量管控长效机制，以中国裁判文书网二期改造为契机，全面加强对人民法院裁判文书上网的监督管理；对接了减刑假释系统和执行系统的文书公开数据，最终实现不同系统的裁判文书可以正常发送上网。通过审务督查和自查自纠，促进裁判文书质量整体上明显提升。

### 4. 推进庭审公开

海南法院 2021 年全年庭审直播 37797 场，较 2020 年的 32055 场增长了 17.9%，累计观看人次 1.17 亿人次，庭审直播量逐年稳定增长；新成立的海南自由贸易港知识产权法院已接入中国庭审公开网，并在年度内完成了民事、行政、刑事案件的直播；各级法院法官积极进行庭审直播，2021 年度共有六名法官被中国法院网评为优秀直播法官。

### 5. 司法透明度指标名列前茅

省高院与海口中院司法透明度在全国法院系统排名持续靠前（现融合在普法宣传中）。经依托评估对象的公开服务平台进行了数据采集，2022 年 3 月 16 日，中国社会科学院法学

研究所、社会科学文献出版社联合在北京发布了《法治蓝皮书·中国地方法治发展报告(2021)》(不含我国港澳台地区)。

《法治蓝皮书·中国地方法治发展报告(2021)》发布了首份《人民法院普法宣传第三方评估报告(2021)》。该报告发布各地法院指数排名,其中:省高院在全国32家高院中排名第五,海口中院在49家中院中排名第八。人民法院普法宣传评估指标包括法律法规规范性文件(占比20%)、诉讼指南(占比20%)、案件公开(占比30%)、普法形式与平台(占比15%)、司法数据(占比15%)五个一级指标。

## **二、发挥商事审判职能,促投资、保投资,促创新、保发展**

### **(一) 公正司法,保护中小投资者合法权益**

#### **1. 调整司法政策,完善裁判规则,促进民营经济发展**

省高院制定了《海南法院为民营经济高质量发展提供司法服务和保障的意见》《为“促投资、保投资”提供司法服务和保障的意见》《关于加强产权司法保护服务海南自由贸易港建设的意见》等制度文件,运用司法职能精准维护中小投资者合法权益。一是维护民营企业家人身、财产安全、营造民营企业和民营企业家在海南干事创业的优质环境,促进民营经济健康发展,服务海南经济社会发展大局和自贸港建设。二是积极落实纾困惠企司法政策措施,对于民营企业发展中的问题,有针

对性的提出司法保障措施。针对民营企业“融资难”的现象，省高院明确提出妥善审理涉及民营企业的金融借款、融资租赁、民间借贷等案件，支持民营企业多渠道融资。三是优先处理股东起诉管理层等相关案件，平衡股东与经营管理层之间的利益冲突，平等保护各方权益，指引各级法院依法妥善审理公司决议效力、股东知情权、利润分配权、优先购买权、股东代表诉讼等纠纷，依法保护、平等保护中小股东合法权益。

各级法院为贯彻落实上述规范制定了各项实施细则，如海口中院出台《海口市中级人民法院关于书证提出命令制度的工作指引（试行）》，充分保障当事人的证据搜集权益，增强当事人的举证能力，统一书证提出命令制度的法律适用与操作程序；制定《海口市中级人民法院关于证券纠纷示范判决机制的工作指引（试行）》，有利于妥善处理群体性证券纠纷，实现群体性证券纠纷的适法统一，提升审判质效，维护当事人的合法权益，促进纠纷的及时有效化解；制定贯彻实施《最高人民法院〈关于证券纠纷代表人诉讼若干问题的规定〉》的意见，以确保证券集体诉讼制度落到实处，高效化解证券类矛盾纠纷。

在上述规范性文件的指引下，海南法院妥善审理了金融借款、融资租赁、证券期货、民间借贷、房地产、公司、股东、投资等案件，强化调解，案件质量与效率得到有效提升，进一步发挥了服务和保障海南自贸港建设及海南经济社会发展大

局的司法职能作用。其中，共审结 38 宗中小投资者诉新大洲公司证券虚假陈述纠纷系列案。2019 年 1 月 12 日，新大洲公司发布《新大洲控股股份有限公司关于公司被中国证券监督管理委员会立案调查的风险提示公告》，首次向投资者公布因其涉嫌信息披露违法违规被中国证券监督管理委员会立案调查的消息。因新大洲公司未按规定披露其担保信息，被中国证券监督管理委员会海南监管局处罚，众多股民以新大洲公司存在虚假陈述行为造成其经济损失为由，要求新大洲公司承担赔偿责任。海南法院依法支持了股民的合理诉求，有效维护了中小投资者的合法权益。本案的认定及处理结果，树立了上市公司依法披露的信息，必须真实、准确、完整，不得有虚假记载、误导性陈述或者重大遗漏的规则，有利于进一步优化证券市场的投资环境，保护中小投资者的合法权益，促进法治化营商环境。

## 2. 完善各项商事纠纷多元化解工作机制

构建金融、证券纠纷诉调对接工作机制，进一步完善我省商事纠纷多元化解体系。2019 年 12 月，周强院长来海南调研时对海南一站式多元解纷和诉讼服务工作予以充分肯定，并作出重要指示要求海南法院“深入推进‘一站式’建设，为人民群众提供纠纷化解的菜单式服务”。该项与司法厅推出的机制入选海南省委深改委制度创新案例。

最高法院已与中国证监会共同推动“人民法院调解平台”

与“中国投资者网证券期货纠纷在线解决平台”实现数据交换、互联互通，建立协调联动、高效便民的证券期货纠纷在线诉调对接机制，海南法院予以落实。在办理新大洲控股股份有限公司证券虚假陈述责任纠纷系列案件中，海口中院在委托中证法律服务中心进行调解和损失核定的基础上，依法支持了中小投资者的部分诉求，保护了股民们的合法权益。

省高院与海南证监局联合出台了《关于建立证券期货纠纷诉讼与调解对接机制合作备忘录》，与人行海口中心支行、海南银保监局联合出台了《关于建立金融消费纠纷多元化解机制的意见》，建立了金融消费纠纷多元化解机制，进一步丰富了金融证券纠纷多元化解路径，系有效化解金融、证券矛盾纠纷的有力举措。海口中院与海南证监局、中证资本市场法律服务中心有限公司签订证券期货纠纷诉调对接合作协议，由中证法律服务中心接受海口市两级法院的委派、委托，负责海口证券期货纠纷调解工作，切实维护投资者合法权益。在此基础上，2021年9月海口中院分别与海南证监局、中国证券业协会、海南证券期货业协会签订证券期货纠纷诉调对接合作协议，拓展证券期货纠纷诉调对接的广度和深度。

### 3. 加强中小投资者普法工作力度

海南法院积极开展“法律七进”活动，坚持庭审网络直播常态化，认真落实裁判文书上网制度，推动“法院开放日”活

动常态化，以公开促公正。创新中小投资者普法宣传方式，构建网站、微博、微信“三位一体”的新媒体信息发布格局，实现门户网站与“两微一端”的良性互动。同时，及时向社会发布审判白皮书、保护中小企业投资者典型案例，以案说法、以案释法，开展深层次的普法宣传，帮助更好地定纷止争，促进矛盾的实质化解。2021年6月，海口中院与海南省证监局联合举办《股东来了》2021海南片区走进海口中院活动，就证券期货纠纷专业化审判、纠纷化解以及法律适用等问题进行了交流和探讨，有力提高中小投资者维权意识。海南法院加大宣传力度，引导市场主体在出现基金、证券纠纷以及其他商事纠纷时通过中证资本市场法律服务中心或海口国际商事调解中心在诉前解决纠纷。

## **（二）高效司法，提升办理破产便利度**

办理破产便利度是营商环境评价主要指标之一，海南法院积极对标评价指标，采取针对性措施，精确定位，努力提升该项指标指数。

### **1. 降低回收债权所需的时间和成本，提高回收率**

第一，建立简案快审制度。省高院制定出台《关于执行案件移送破产审查的若干意见（试行）》《关于“执转破”案件快速审理的若干意见（试行）》《企业破产案件程序指引》《关于企业破产清算案件快速审理的若干意见（试行）》等文件，深



化执行转破产制度改革，进一步完善海南法院破产审判机制，提升破产审判质量与效率。海口中院制定《关于适用简易程序快速审理企业破产清算案件的规定》，优化案件受理、送达等程序流程，全面落实简易程序的适用范围，压缩程序性节点与时间，实现无产可破“僵尸企业”的快速出清。

如“明光国际大厦”是海口明光大酒店有限公司破产清算案（“执转破”案件）债务人开发建设的项目，在该公司进入破产程序前有 258 户业主尚未取得不动产权证书，进入破产程序后，业主多次强烈要求解决产权证办理问题。海口中院积极践行“司法为民”理念，多次组织管理人与市税务局等政府职能部门沟通交流，找到了破解业主办证难题的路径。截至 2021 年 12 月 31 日，管理人已完成 60 户业主不动产权证书办理工作，其余 198 户业主的办证手续，正在积极推进中。

第二，借力信息化提速增效。一是依托人民法院破产重整平台、智慧法院系统和执行案件信息系统，完善债务人财产调查方式，在债务人企业财产网络查控、核实企业涉诉涉执行情况等方面为管理人行使调查权提供便利，有效解决破产企业财产查控难问题，极大的提高了管理人接管破产企业财产的效率。二是海口中院与海口市自然资源和规划局签署了《海口市“互联网+不动产登记”数据共享合作协议》，建立部门间信息共享集成机制，加强信息互联互通，提升办理破产效率。三

是提升债权人会议召开和表决效率，第一次债权人会议普遍采用现场方式或者线上方式召开，经第一次债权人会议决议通过，以后的债权人会议还可以采用非在线视频通讯群组等其他非现场方式召开。债权人会议除现场表决外，可以采用书面、传真、短信、电子邮件、即时通信、通讯群组等非现场方式进行表决。指导管理人通过微信群组、钉钉工作群等方式适时发布工作报告、在线答疑、征询异议，保障了债权人的知情权，提高了债权人会议的表决率。四是制定《关于破产程序中财产网络拍卖工作指引（试行）》，要求管理人在处置资产时首选网络拍卖方式，利用淘宝网、京东网等网络拍卖平台的优势，扩大拍卖信息的受众面，提升债务人财产变现率，降低财产处置成本，实现增效提速。

第三，注意控制破产成本。通过采用低成本方式估价、认可执行程序中的评估拍卖价格等方式最大限度控制破产成本。一是在具体案件中引导管理人采用询价、议价和债权人会议协商确定等成本较低的方式确定财产评估价格，降低破产费用。二是在执行转破产案件中，充分运用执行机构已经完成的财产查控结果、评估结论及处置结果，避免不必要的重复劳动。三是充分利用全国企业破产重整案件信息网发布案件流程节点、公告及法律文书，减少破产费用支出。

第四，充分发挥破产和解与重整功能优势。2019年12月

9 日，海口中院裁定受理旭丰汇公司破产清算案。经调解，债权人与债务人自愿达成并签署《和解协议书》。本案是海口中院首例破产和解案件，为原本濒临破产的企业带来了一线生机。破产程序并非只有清算一个终点，对有发展潜力但暂时遇到困难的企业，该程序起到了良好的保护作用，破产和解有效助力了濒危企业绝地重生，充分发挥了破产和解程序功能优势，有利于持续优化营商环境，为推动海南经济发展提供强有力的司法服务和保障。海航集团曾是以航空运输、机场运营、酒店管理、金融服务为主要业务的大型跨国企业集团，曾入选世界五百强，拥有境内外企业超 2000 余家。因经营失当、管理失范、投资失序，加之市场下行，海航集团于 2017 年底爆发流动性危机。2021 年 2 月 10 日，海南高院分别裁定受理海航集团及其关联企业重整案。经过大量细致的审理与协调工作，双方达成重整意向。2021 年 9 月 29 日，海南高院主持召开海航集团等 321 家公司重整案第二次债权人会议，会议表决通过了《海航集团有限公司等三百二十一家公司实质合并重整案重整计划（草案）》及《海航集团有限公司等三百二十一家公司出资人权益调整方案》。海南高院裁定批准该《重整计划》，并终止海航集团重整程序。通过重整，海航集团既化解了债务问题，又解决了上市公司合规问题，实现对业务、管理、资产、负债、股权的全方位重组，实现了法律效果、社会效果、经济

效果的统一，为大型集团企业风险化解、境内重整程序的境外承认与执行、关联企业实质合并重整、上市公司合规问题解决以及海南自贸港破产立法及司法提供了鲜活丰富的样本与素材。该案例入选 2021 年全国法院十大商事案件。

## 2. 提升破产法律框架质量

第一，参与出台破产法规，建立破产财税政策援助企业机制。一是省高院积极主动参与省人大常委会破产立法工作。2021 年 12 月 1 日，海南省第六届人大常委会第三十一次会议通过并公布了《海南自由贸易港企业破产程序条例》。该条例创新性规定了破产事务管理专门机构及其具体职责范围，将破产审判权与破产事务管理权进行分离；同时赋予了债权人在符合一定条件的情形下有权推荐管理人的权利。二是省高院经进行相关调研，报省财政厅和省政府办公厅审核，财政厅已复函设立破产费用保障资金。海口中院落实管理人援助资金制度，将破产资金的使用条件和使用范围从无产可破案件扩大至有产可破案件，明确无现金资产且实物资产处置难度大、处置周期长、破产费用支付难的案件，可以预先从援助资金中申请必要的费用，待财产变现后再从破产财产中优先扣还填补资金，使破产资金同时兼具“救难”和“救急”功能，有效解决了办理破产中的费用困难问题。2021 年海口中院共计向 4 件破产案件管理人拨付援助资金共计 90265 元。

第二，推动成立海口破产法庭，提升办理破产的专业化水平。一是在破产审判合议庭有效运行的基础上，省高院申请设立海口破产法庭。经最高人民法院批复、中共海南省委机构编制委员会办公室批准，在海口中院设立海口破产法庭，集中办理海口市市区级以上（含本级）市场监督管理机关核准登记公司（企业）的强制清算和破产案件和衍生诉讼案件，以及跨境破产案件。2021年12月27日，海口破产法庭挂牌成立，法庭按专业化、年轻化的高标准配备审判人员，志在打造适应海南自由贸易港“法治化、国际化、便利化”营商环境建设需要的高素质破产审判队伍，进一步提升法官办理破产的专业化水平。海口破产法庭是海南省第一家破产专门审判机构，是继成立涉外民商事法庭、知识产权法庭、海南自由贸易港知识产权法院之后，海南法院在深化制度集成创新、推进审判专业化方面取得的又一重大成果，也是推进海南法院审判体系和审判能力现代化的实践探索。二是为提升破产审判的专业化、职业化水平，根据强制清算与破产案件的审理特点，并结合破产案件审判工作实际，海口中院制定了《关于强制清算与破产案件的单独绩效考核办法（试行）》，明确了强制清算与破产案件具体考核办法。

第三，完善破产审判制度体系，为破产审判专业化建设提供坚实的制度基础。一是修订原有制度。结合破产审判工作实

际，海口中院完善《破产案件管理人援助资金管理和使用办法》《管理人报酬支付实施意见》等制度。二是创新审判方式，建立并探索实行预重整制度。在积极研究推进企业破产重整实践的同时，为了准确识别重整价值和重整可能、降低重整成本、提高重整成功率，省高院指导海口中院探索将法庭外重组与法庭内重组相结合，尝试建立预重整制度，制定了《破产案件预重整操作指引（试行）》，明确可以进入预重整的债务人范围、预重整的程序等。在建立制度的基础上，办案法官多次到某陷入经营困难的民营企业调研，研讨该企业进入预重整的可行性及路径，以期帮助企业脱离困境、实现重生。

第四，完善管理人的选任和监管机制，提升管理人履职能力与积极性。一是开展海南法院重新编制破产管理人名册工作。为推进破产案件管理人队伍的正规化与专业化，针对原海南法院管理人名册入册机构少、未分级分类管理、个别机构实际不参与办理破产工作等原有名册不能满足破产审判工作实际需要的情况，省高院开展重编海南省法院破产案件管理人名册工作。经入册机构公示阶段，新管理人名册已经公布。二是完善管理人监督与管理制度，加强对管理人履职情况的考核。如海口中院出台《海口市中级人民法院破产案件管理人管理规程（试行）》《海口市中级人民法院破产案件管理人考核办法（试行）》，以破产案件审理程序为线索，采取个案考核和年度

考核相结合的方式，对管理人的职业操守、执业能力、工作表现、工作绩效进行全面考核，并将考核结果作为向省高院建议管理人晋级、降级、淘汰的动态调整依据，建立了“能上能下、能进能出”的动态管理机制。2021年，海口中院对原12家入册管理人进行年度考核，评定海南天皓律师事务所等四家机构为优秀等次，有效激发了管理人工作积极性。

第五，进一步完善府院联动机制，提升办理破产便利度。一是在已建立的海口市企业破产处置工作联席会议制度的基础上，为构建府院联动点对点的联动机制，2021年9月，海口中院召集市自然资源和规划局、市税务局、市人社局、市场监督管理局及破产管理人召开办理破产府院联动联席会议，征集各管理人的意见和建议，找准破产审判存在的问题和症结，研讨办理破产涉税、涉不动产、涉企业登记，以及职工欠薪保障府院联动有关内容。二是为贯彻落实国家发改委、最高人民法院、财政部等十三家单位联合下发的《关于推动和保障管理人在破产程序中依法履职进一步优化营商环境的意见》，海口中院分别与市税务局、市自然资源和规划局会签《关于进一步解决破产程序中涉税问题的若干意见（试行）》《关于破产程序中涉不动产登记事项办理的意见》，进一步提高了办理破产便利度、强化了管理人履职保障。

### 3. 着力防范化解重大风险

强化组织领导，全省三级法院成立风险防控领导小组，各院院长亲自主抓。健全“三级法院统一联动、立审执一体化”风险防范处置机制，定期排查风险性案件，“三同步”处置全年有效管控风险案件 7418 件。省高院通过拼搏努力，在省委坚强领导下，在最高人民法院全力支持下，在省政府积极推动下，成功办理涉及金额高达万亿、债权人多达十万余人的海航集团破产重整案件，司法助力海航集团浴火重生、获得新的发展机遇，有效维护了自贸港经济安全和社会稳定。海航集团破产重整案件在国内外产生重要影响，比利时法院、中国香港高等法院承认和执行了海南法院的裁定，这是欧盟法域和中国香港法域首次承认并执行我国内地破产重整案件的裁判。最高人民法院周强院长称之为具有国际水准的标志性案例，省委、省政府主要领导也给予充分肯定。

### **（三）促进创新发展，加强知识产权司法保护力度**

海南法院积极对标营商环境评价指标，加强知识产权司法保护力度，保障自贸港创新发展。

#### **1. 高质量运行海南自由贸易港知识产权法院**

为推进海南自由贸易港建设，在最高法院、省委的大力支持下，全国人大常委会于 2020 年底审议同意设立了海南自由贸易港知识产权法院。该院成立后，以全省 11 个重点园区为抓手，在全国首创“1 个知识产权法院 + 5 个巡回办案点 + 11



个重点园区司法保护联系点”的司法服务保障工作机制，通过“就近服务、定期咨询、专场培训、诉调对接、强化保护”的职能定位，积极主动为南繁育种、医疗新科技、数字创意等重点企业，全球动植物种质资源引进基地、深海航天、知识产权交易中心等重大功能平台的推进建设提供司法服务和保障，将知识产权保护触角延伸到重点园区。在重点园区设立司法保护联系点，听取相关企业知识产权保护需求和建议，贴近提供知识产权司法保护。确定海南自由贸易港知识产权法院在重点园区司法保护联系点及市县“双打”工作包点联络人员，建立联络员及园区工作制度，包干负责巡回法律服务点具体工作事宜，开设专栏公示联络员基本信息。建立和落实联络工作机制，以线上接受咨询为主，线上运用法院工作平台实时在线视频咨询，实现不间断服务，帮助企业防范经营风险。定期召开会议交换意见。开展巡回审判，方便企业诉讼。构建企业与法院间沟通对接机制，畅通企业与法院之间沟通交流、问题协商机制。建立双向沟通交流机制，定期合作开展知识产权保护座谈、举办专题法治讲座等法治宣传活动，对园区企业常见的知识产权法律问题，积极建言献策，为园区企业的创新发展提供助力。

目前该院在三亚崖州湾科技城、海南生态软件园、文昌国际航天城司法保护联系点已挂牌。该院三亚崖州湾科技城知识产权特区审判庭已揭牌成立。最高人民法院民三庭与该院共同

设立“人民法院知识产权司法保护种质资源研究(海南)基地”，获得最高人民法院批准，以支持国家“南繁硅谷”种业基地建设。

## 2. 积极探索惩罚性赔偿机制

建立以尊重知识产权、鼓励创新运用为导向，以实现知识产权市场价值为指引，探索惩罚性赔偿的侵权损害赔偿机制。认真学习贯彻习近平总书记关于切实实施民法典的重要讲话精神，常态化抓好民法典及相关司法解释的学习培训，结合民法典立法精神和规定，准确适用民法典关于知识产权、数据权利保护等规定，依法全面平等保护各类产权，通过司法裁判依法服务科技创新和数字经济发展，促进和保障社会主义市场经济健康发展。

2020年5月，某亚华研究院在海南省三亚市崖州区发现张某利用“隆科638S”母本繁育隆两优水稻品种，遂投诉。经行政机关查处，涉案侵权种子样品系与“隆两优1377”极近似品种或相同品种；与“隆科638S”存在亲缘关系。某亚华研究院向法院起诉要求张某停止侵权行为，赔偿经济损失。经审理，人民法院支持了某亚华研究院的诉请。对种业的司法保护关系海南自贸港建设，国家“南繁硅谷”建设，更关系法治中国的建设。海南自由贸易港知识产权法院始终把加强知识产权司法保护作为服务保障自贸港建设，营造一流营商环境的重要抓

手，创新“审判+引导+宣传+研究”的司法保护模式，该案通过在4·26世界知识产权日公开开庭和在三亚崖州湾知识产权特区审判庭公开宣判的方式，充分发挥知识产权专门法院的审判职能作用，以案普法，展现了自贸港对植物新品种权的司法保护力度。该案例入选最高法院发布的《人民法院促进知识产权司法保护典型案例（第二批）》。

### 3. 构建一体化知识产权保护机制

加强知识产权保护相关单位间的沟通协作，积极推进制度集成创新中创新设立一体化知识产权保护机制，打造综合性的知识产权保护中心等任务的落实。海南自由贸易港知识产权法院以知识产权大保护格局构建为依托，注重加强与公安、检察机关及知识产权、市场监管、版权等主管部门的沟通协调，推进完善知识产权诉讼、仲裁、调解、公证工作机制，加强协同配合，优化资源配置，畅通纠纷解决渠道，强化知识产权全链条保护，以推动公共法律服务平台建设为引领，推进一体化知识产权保护机制建设。省高院、海南自由贸易港知识产权法院已与市场监督管理局、公检司、商事调解中心等单位共同签署了海口市、三亚市的知识产权协同保护框架协议，着力构建知识产权司法审判、商事仲裁、多元调解、法律服务、行业自律“五位一体”的知识产权大保护格局，打造综合性的知识产权保护中心的制度集成创新工作，并重点在海口国家高新区、三

亚崖州湾科技城形成“一南一北”“两翼齐飞”的布局。

#### 4. 建立知识产权案件快审机制

落实省委深改办提出的《关于做好第一批制度创新经验复制推广工作的通知》，建立知识产权类型化案件快审机制。建立健全知识产权案件分流制度，推进案件繁简分流机制改革。继续推动省级行政区内知识产权案件跨区域审理机制。已制定《关于重大案件公开审理的规定（试行）》，规范涉自贸港建设中海南新兴产业、重点领域、关键核心技术、植物新品种等重大案件公开审理工作，确保重大案件的法律效果和社会效果的统一。民事、行政、刑事典型案例的审理均引起社会公众的广泛关注。制定《知识产权类型化案件快审机制运行规定》《关于知识产权类型化案件简化裁判文书样式的规定（试行）》，推进知识产权民事案件快审机制和文书样式改革，着力提升知识产权案件的审判质效。以“诉讼要素表”和“应诉释明表”为指引，优化审理程序，提高审判效率，简化裁判文书。

#### 5. 积极推进知识产权法院“三合一”审判

经全国人大常委会批准，海南自由贸易港知识产权法院是全国唯一具有民事、行政、刑事“三合一”审判职能，集立案、审判、执行为一体的专门法院，该院认真学习贯彻《中华人民共和国海南自由贸易港法》《中共中央办公厅 国务院办公厅关于加强知识产权审判领域改革创新若干问题的意见》《最高人

民法院关于全面加强知识产权司法保护的意見》等，深入推进体制机制创新工作。率先推进知识产权刑事案件管辖，配合省高院出台《关于海南自由贸易港知识产权法院案件管辖衔接若干问题的意見》和《关于建立知识产权刑事案件指定管辖工作机制的意見（试行）》，明确知识产权刑事案件范围，建立公安、检察机关和人民法院沟通协调机制。2021 年受理知识产权刑事案件 5 件，其中公开开庭审理的涉销售假冒茅台商标产品的刑事案件，18 万网友在线旁听。

#### **（四）强化海商审判，助力海洋强国建设**

##### **1. 积极服务保障邮轮游艇产业发展**

一是出台《海口海事法院海事司法保障促进海南邮轮游艇产业发展的若干意見》，确立涉邮轮、游艇纠纷裁判规则，提升海事司法保障的针对性和实效性。二是在三亚凤凰岛邮轮母港等地设立邮轮游艇纠纷巡回审判点，设计制作填表式裁判文书模板，提供菜单式司法服务，创新开启就地“受案、审理、速裁”办案模式。《法制日报》对此进行了专题报道。三是启动邮轮旅游全时空海事司法服务机制，在“南海之梦”邮轮设立巡回审判法庭和法治服务点，通过随船巡回审判+线上远程解纷等方式，开启 24 小时全天候矛盾化解、法律咨询、法治宣传等海事司法服务。四是妥善审理邮轮游艇案件，依法公正高效审理涉及船舶建造、管理、租用、停泊、保险等邮轮游艇

全产业链案件 111 件。

## 2. 助力西部陆海新通道国际航运枢纽建设

一是充分发挥海口海事法院洋浦法庭区位优势，自 2020 年 6 月 1 日起，洋浦法庭受理案件 583 件，同比增长 420.54%。妥善审理了涉及港口建设、船舶融资金融、海员权益保护、港口仓储物流等海事案件，助力洋浦打造海南自贸港先行区示范区。二是与洋浦经济开发区管委会港航相关部门建立起顺畅的沟通协商机制，深入研判“中国洋浦港”船舶港建设过程中可能存在的国际船舶管理、国际船舶登记、航运金融、保税油供应、港口仓储物流等法律问题。妥善审理保税燃料油运输等相关纠纷。三是依法审理与大型基础设施建设相关的海洋开发利用纠纷，对相关案件中伪造证据妨害司法的两方当事人开出百万“诚信罚单”，凸显自贸港营商环境的“可预期”性。四是撰写《关于审理船舶物权纠纷案件的裁判指引》，统一与船舶物权有关的民商事纠纷案件的办案标准和裁判尺度，服务保障“中国洋浦港”国际船舶登记工作，促进海南自由贸易港船舶建造、登记、融资市场发展。

## 3. 强化海洋生态环境保护

一是打造海洋环资司法保护“共同体”。着眼自贸港与粤港澳大湾区联动，海事法院牵头与广州、北海海事法院签订海洋环保司法合作协议，发布典型案例。构筑起“跨域司法协作”

“环保联防联控”“公益诉讼支持”三大机制。二是发布2018-2020年度海洋环境资源审判白皮书和《关于审理海洋生态环境自然资源纠纷案件的裁判指引（试行）》，梳理海洋环境资源司法保护主要做法和审判经验，扩大海洋环境资源审判工作社会知晓度。三是打造海洋环资典型案例。由海事法院一审、省高院二审的一宗案例入选最高法院第31批指导性案例，该案例同时作为中国环境资源司法案例载于联合国环境规划署司法门户网站。三宗案例入选全国法院环境资源典型案例。

#### 4. 提升、巩固海商案件执行攻坚效果

一是全力打好“基本解决执行难”攻坚战，以“一五三”工作重点为抓手，强化文明执行理念，不断规范执行行为。近五年来，执行案件年均结案率95%以上，妥善处理涉民生、涉党政机关为被执行人案件，每年结案率均为100%。二是强化善意文明执行理念，妥善处理被执行人为行政机关的执行案件，及时为14户渔民追回286.92万元渔船补偿款；利用周末时间2天往返4010公里为20名浙江舟山籍船员追回薪酬100余万元。有力维护了14户渔民（申请执行人）的合法权益，也有效保障了粤海铁路南港码头的收尾工作。三是发挥执行职能，做好“六稳”工作、落实“六保”任务。依法执结涉博鳌乐城国际医疗旅游先行区，标的额达11亿余元的金融借款合同纠纷案，为自贸港重点园区建设顺利推进提供了法治保障。四是

创新工作方法，与海事局等部门建立联动办案机制，借助信息化手段查控船舶，实现 24 小时扣船、看管无缝对接。

#### 5. 强化诉前保全、海事强制令效能

一是持续推进“全天候”保全快速响应机制，确保节假日、8 小时工作时间外也能受理当事人保全申请并及时采取保全措施，紧急情况下 24 小时之内办理扣船手续；当事人申请解除扣押船舶提供担保符合条件的，24 小时内放船，以优于国际惯例的更高标准和效率兼顾船、货、码头各方利益。二是主动引导相关人员申请诉前保全、海事强制令，通过相关程序的适用，及时处理矛盾纠纷，保障当事人生产、生活的顺利开展。2021 年海口海事法院高效办结 18 件海事强制令案件。在一批强制令案件中，使被滞留的农资产品顺利流转，为农户劳作抢抓了时间，解决群众燃眉之急。

### 三、准确把握刑事司法政策措施，优化营商环境，保障各类主体合法权益

海南法院秉承宽严相济的司法理念，对严重影响社会秩序和营商环境的犯罪，加大打击力度；对经营中的改革创新采取宽容政策，推进平安海南建设，优化营商环境，促进经济发展。

#### （一）依法惩治刑事犯罪，维护安全稳定的营商社会环境

海南法院认真贯彻“罪刑法定”“疑罪从无”“宽严相济”“非法证据排除”等刑事政策和司法原则，2021 年审理各类刑



事案件 10586 件，依法判处刑罚 11903 人。持续开展扫黑除恶专项斗争，依法审结吴宗隆、邢孔泉 12 等黑恶案件 172 件 1301 人，涉“保护伞”案件 51 件 53 人，依法处置涉案黑财 20.37 亿元。深入推进新一轮禁毒三年大会战，打防结合，审结毒品犯罪案件 532 件 1017 人。紧盯自贸港建设新需求，依法打击走私、洗钱等跨境新型犯罪，依法审理新类型犯罪 833 件，切实维护自贸港投资、贸易安全。紧扣民生司法需求，加大对“两抢一盗”、电信诈骗、集资诈骗、生产销售伪劣食品药品、套路贷等违法行为的打击力度，审结相关案件 2163 件。

## **（二）坚持刑事谦抑原则，鼓励生产经营改革创新**

在刑事审判中，海南法院秉承的审判理念是：坚持各类市场主体一律平等，对国企民企、内资外资、大中小微企业一视同仁。坚持以发展眼光看待处理民营企业 and 企业家过去经营中的不规范行为，依法纠正涉产权冤错案件，坚持全错全纠，部分错部分纠，错到哪里纠到哪里。严格区分经济纠纷与经济犯罪、民事责任与刑事责任、合法财产与违法所得、公司财产与个人财产、正当融资与非法集资，对事实不清、证据不足的坚决无罪释放，保护企业家人身和财产安全。聚焦企业家人身财产安全，转变司法执法理念，打造最具安全感的发展环境。海南法院坚持“谦抑、审慎、善意、文明、规范”的司法执法理念，保护各类企业和企业家人身财产安全。依法慎重适用强制

措施，健全涉产权冤错案件有效防范和常态化纠错机制，让企业家专心创业、放心投资、安心经营。在办理各类案件中，各级法院做到客观看待企业经营不规范问题，准确把握利益平衡原则，保障企业健康发展；限制刑事司法权对民事纠纷干预，统一涉经济犯罪案件的裁判标准，明确了合同诈骗等犯罪的入罪标准。如杨某、曾某等三个案件审理，依法认定被告人不构成合同诈骗罪，取得了较好的法律和社会效果。严格区分刑事犯罪与违法经营的界限，释放了保护投资经验者的积极信号。

#### **四、实质化解行政纠纷，保障经营主体健康发展**

海南法院牢固树立司法为民理念，切实维护企业合法权益，实质化解行政争议，认真贯彻落实省委、高院党组工作部署，聚焦审判主业，践行“质量是根本、效率是保障”及必须坚持合目的性、合规则性、合理性的司法理念，办案质效稳中有升。

##### **（一）全面推行行政案件跨行政区域异地管辖改革**

海南法院自 2020 年 5 月 1 日起开展行政案件跨行政区域异地管辖改革。这是海南法院为服务海南经济社会发展大局的重要举措，对监督行政机关依法行政，保护行政相对人合法权益，维护司法公正，提高司法公信力，服务海南自贸港建设，具有极其重大的意义。2021 年以来，为全面掌握行政案件跨行政区划异地管辖改革实施情况，加强府院联动、院院联动、上

下沟通，及时解决改革实施中的新情况、新问题，妥善处理改革涉及的重大关系，积极争取党委政府支持，让群众切实感受到改革红利，确保各项措施落实落地落细，省高院多次到全省各市县开展实地调研，深入了解改革准备、实施情况，并进行现场指导答疑，同时与当地政府及国土、规划、法制、执法等部门及各中基层法院座谈，充分听取各方的意见建议，调研了解改革实施情况、遇到的问题，切实深入基层，了解异地管辖改革中存在的问题，为下一步科学评估异地管辖改革的质效，推广成功经验，提高改革的质效，提供坚实保障。

## **（二）大力加强案件纠纷实质性化解工作**

1. 高度关注串案、类案等疑难、敏感案件，争取做到矛盾纠纷就地化解。一是院领导带案下访，沟通协调重点案件。二是积极与反映问题的人大代表、政协委员沟通协调，效果显著。

2. 创新协调方式。对重大行政案件的处理，紧密依托党委、政府支持，协调相关部门积极配合，平等保护各方权益。

## **（三）推进行政机关负责人出庭应诉**

领导重视，府院共同发力，推进行政机关负责人出庭应诉。2020年，省高院会同省司法厅、资规厅对行政机关负责人出庭应诉情况进行调研，向省委进行专题汇报。针对原来行政机关负责人出庭应诉率普遍低于全国平均水平的问题，沈晓明书

记、冯飞省长、陈凤超院长（时任）高度重视，多次做出批示，省委、省政府于 2021 年 9 月 30 日印发《海南省法治政府建设实施方案（2021-2025）》（琼发〔2021〕22 号）明确提出，要落实“出庭应诉为原则、不出庭应诉为例外”的工作要求，建立行政机关负责人不出庭应诉审批管理制度。在省委大力支持下，省政府与省高院共同出台《行政机关负责人出庭应诉办法》，推动政府负责人出庭应诉。全省各级政府行政机关负责人共出庭应诉 1681 人次。2021 年全省行政机关负责人出庭应诉率达到 50%以上，该《办法》出台至 12 月 31 日，行政机关出庭应诉案件 1095 件，出庭应诉率 85.15%，行政机关负责人应诉率，有了翻天覆地的变化。最高法院周强院长批示总结推广我省经验。

## **五、下一步工作计划**

### **（一）对标先进地区，进一步健全机制**

对标上海、广东等先进地区优化营商环境相关机制，进一步完善海南法院优化营商环境工作机制，加强相互协作配合，进一步畅通工作机制，共同发力，提升人民群众对营商环境的获得感。

### **（二）对标办理破产指标，提升破产审判质效**

一是进一步开发全省统一适用的破产审判系统，提高办理破产的信息化水平。

二是进一步加强破产审判专业化的建设，推动破产府院联动机制常态化和实质化运行，为破产程序顺利运行提供外部保障。

三是进一步推动破产案件的繁简分流，实行简案快审、繁案简办。

四是进一步推动破产程序和执行查控系统的有效对接，推行网络查找财产、拍卖，降低财产调查和财产处置的成本。

五是制定关联企业实质性合并破产的制度。

六是进一步发挥破产保障资金的保障功能和推动作用。

七是加强破产审判的业务学习和调研交流，提升破产专业化水平。

### **（三）对标保护中小投资者指标，加大保护中小投资者力度**

一是建立健全公司纠纷、期货纠纷案件示范判决机制，继续推行代表人诉讼制度、书证提出命令制度。

二是健全证券期货纠纷多元化解机制，推动公司纠纷、证券期货纠纷案件委派调解或者委托调解机制建设，推动中证法律服务中心参与法院审理证券虚假陈述案件的损失核定工作。

三是依法加强对各类产权的平等保护。依法妥善处理涉产权经济纠纷案件，公正审理涉产权案件，审慎采取查封、扣押、冻结和处置财产等强制措施。正确区分经济纠纷与刑事犯罪的界限，审慎处理民营企业涉及合同纠纷罪与非罪的认定，

加强对企业家人身财产合法权益的保护。

四是进一步加强中小投资者的普法宣传力度。

#### **（四）对标执行合同指标，提升审判执行质效**

一是深入贯彻落实《海南省多元化解纠纷条例》，全面提升矛盾纠纷多元化解质效。继续推动将矛盾纠纷多元化解工作以及民事（行政）案件万人成诉率、诉前调解率等纳入综合治理目标考核范围，继续将矛盾纠纷多元化解工作与综治工作、平安建设工作相结合，继续推动从制度上保障各成员单位积极参与、主动作为，确保大量矛盾纠纷能够得到有效分流、妥善化解。

二是全面推行“多元调解+速裁”工作模式。对基本事实清楚、权利义务明确、法律关系单一、争议不大的简单案件，在依照法定程序、保障当事人诉讼权利、确保办案质量的前提下，通过构建多层次纠纷解决体系，科学配置审判资源、合理分流案件、简化工作流程、优化审理方式、推广表格式要素式裁判文书，大力降低前端速裁案件平均审理天数，规范速裁案件退出机制，严格程序转换管理和审批手续。

三是完善商事调解和诉讼对接机制。继续减少解决商业纠纷的耗时和费用；加强商事纠纷调解的宣传力度，提高市场主体对商事调解的知晓率，引导市场主体通过商事调解中心解决商事纠纷；对于达成调解协议并申请确认的，及时予以司法确

认。

四是进一步缩短立、审、执周期。积极引导和扩大网上立案、跨域立案、网上缴费案件范围，规范立案标准、简化立案手续，缩减立案环节耗时。严格审限管理，加强院庭长监督，规范延期开庭、规范委托鉴定，提高审判效率。规范案件移送工作，缩短管辖权异议上诉、不服一审判决上诉案件移送期间。做好法律文书送达工作，推广运用短信送达、微信送达、电子送达等送达方式，继续引导当事人填写送达地址确认书，提高送达效率和准确度，缩减立案、审判、执行全流程送达耗时。

五是提高退费效率。落实好省高院出台的《关于印发〈诉讼费用退费规程〉的通知》要求，为当事人提供更加高效便利的退费服务。同时，全面推进电子化办案，实现“案件全覆盖、流程全覆盖”。

六是切实推动建立健全解决执行难长效机制。提高查找财产的网络化程度，鼓励当事人以议价、网络询价等方式确定财产处置价格，推广使用网络拍卖，着力降低维权成本。加强与政府职能部门的信息联通，推动建设完善信息共享机制，加快推动全省法院执行工作的信息化发展。严格规范财产评估、拍卖流程，进一步压降执行时间成本，提高企业回收债权的效率。创新执行工作方式，探索新类型财产标的执行方法。

## **White Paper of Hainan Court on Optimizing Business Environment to Serve the Construction of Free Trade Port**

Over the past two years, in order to implement the important address and instructions of General Secretary Xi Jinping on Hainan, the great decisions of CPC Central Committee, and the deployment of Hainan Provincial Party Committee and Provincial Government, Hainan Court condensed the ideological consensus of “National Strategy, Hainan’s Courage, Hainan’s Revitalization, and Our Contribution”, took the initiative to undertake the duty to construct the free trade port with the judicial service guarantee, adhered to the concept that “rule of law is the best business environment”, made the optimization of law-based business environment as a vital task, insisted on the unity of political effect, legal effect and social effect as well as the integration of “purpose, regularity and rationality” in the judicial practice, positively extended judicial services, solidly pushed forward reform and innovation, strove to create a stable, open, transparent and predictable business environment with rule of laws, and provided a strong and forceful judicial guarantee for the construction of Hainan



Free Trade Port.

**I . We built a modern litigation system to improve the convenience of litigation and promote the ability to govern administration of justice**

Hainan Court advanced the modernization construction of judicial governance system and capacity in a rapid and stable way, actively made joint efforts to build, govern and share the construction of a new pattern for the “Four-in-One” social governance, took part in the establishment of a new model for social governance with Hainan characteristics, promoted the construction of a higher level of Hainan where is safe and governed by law, and provided a solid and reliable basic social conditions for the optimization of business environment of the free trade port.

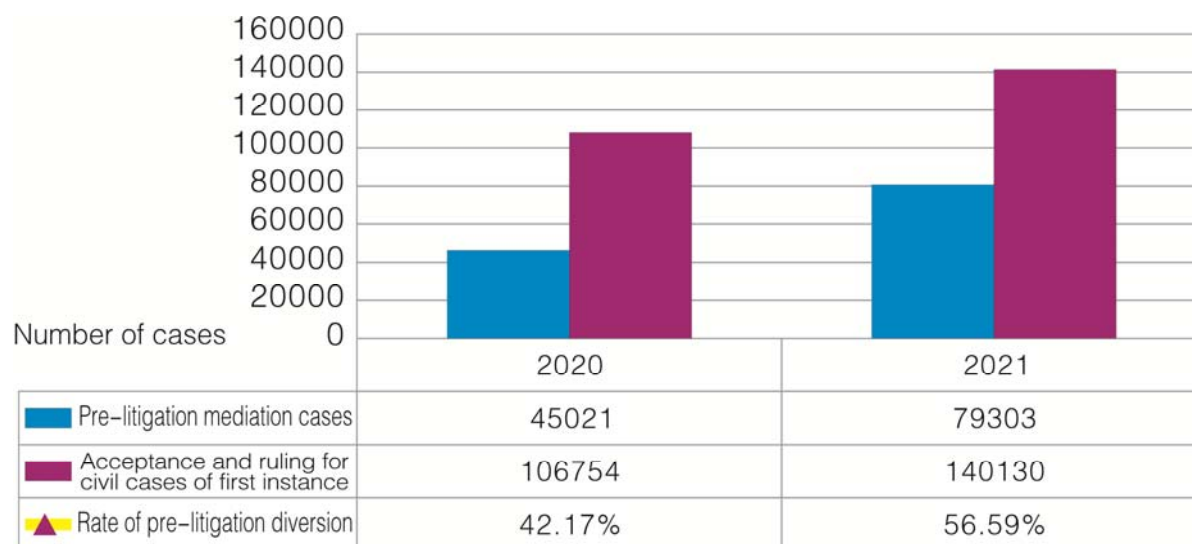
**( I ) We took the initiative to join the structure of litigation sources governance led by the Party Committee and gathered one-stop joint force for diversified resolutions of disputes**

**1. Adhere to the guidance of Party Committee and government**

Hainan Court took the initiative to join the structure of litigation sources governance that is jointly led by the Party Committee and the government. The Provincial High Court positively formulated the *Regulations on Diversified Dispute Resolutions in Hainan Province* led by the Standing Committee of Provincial People’s Congress and the

Politics and Law Committee of Provincial Party Committee, earnestly carried out the *Implementation Opinions of the Supreme People's Court on Accelerating the Mediation Platform of People's Court into Villages, Communities and Grids*, directed all 48 people's courts to join the mediation platform of the people's court, strengthened the connection with grass-roots autonomous organizations, and organized and promoted 179 grass-roots governance units including members of the village's "Two Committees", grid members and grass-roots cadres to join the platform to enrich the diversified dispute resolution forces at the basic level. Under the deployment of the Provincial High Court, courts at all levels deeply implemented General Secretary Xi Jinping's instructions to "put non-litigation dispute resolution mechanism in priority and reduce the litigation increase from the source", took initiative to join the litigation source governance under the leadership of the Party Committee, actively contacted with relevant units, and promoted Hainan Court to build a full-coverage docking mechanism for pre-litigation mediation. In 2021, there were 79,303 cases for pre-litigation mediation in Hainan Court, an increase of 76.15% over 2020; the rate of pre-litigation diversion was 56.59%, an increase of 14.4 percentage points compared with 2020. A large number of disputes have been resolved through pre-litigation mediation, and diversified resolutions have made preliminary success, which has greatly promoted the index to fulfill a contract.

**Comparison Chart of Pre-Litigation Mediation in Courts  
across the Province in 2021 and 2020**



(Chart 1)

Supported by all parties, Hainan Court has formed a strong joint force for diversified resolutions of contradictions and disputes. The Provincial High Court proactively reached an agreement on diversified pre-litigation resolutions of disputes with 13 institutions including the Provincial Securities Regulatory Bureau, the Provincial Federation of Trade Unions and the Provincial Federation of Industry and Commerce, and issued the *Implementation Opinions on Carrying out the “Online Data Integration Processing” for Road Traffic Accident Damage Compensation Disputes in the Province* together with the Provincial Department of Public Security, the Provincial Department of Justice and Hainan Banking and Insurance Regulatory Bureau on June 29, 2021, so that the pre-litigation linkage mechanism for dispute resolution has been improved by Hainan Court.

To implement the relevant requirements of the Supreme People's Court on accelerating the promotion of a docking mechanism for online litigation and mediation for the eight "Generals to Generals", the Provincial High Court drafted the *Implementation Opinions on Establishing a Diversified Resolution Mechanism for Price Dispute (Trial)* on the ground that it has enacted docking mechanism with seven units, and jointly countersigned documents with Hainan Development and Reform Commission and the Provincial Department of Justice.

In Litigation Service Center of Haikou Intermediate Court, a number of multi-functional mediation rooms with Internet remote mediation have been set up, such as people's mediation room and lawyers' mediation room. Relying on the construction of information platform for the Supreme People's Court's diversified dispute resolution mechanism (People's Court Mediation Platform), the non-litigation linkage platform between trial system and "People's Court Mediation Platform" has been implemented. On the premise of soliciting the wishes of the litigants, the specially-invited mediators or mediation organizations would be entrusted or appointed to conduct mediation before registration, so as to improve the efficiency of dispute resolution. Taking the contract dispute between Hainan Qionghai Bincunshan Overseas Chinese Farm and Hainan Haisheng Company as an example, the Provincial High Court, under the supervision and promotion of the Standing Committee of Provincial People's Congress, guided Haikou Intermediate Court to make use of various mediation

platforms and methods to coordinate the case. After organizing both parties to communicate repeatedly, they finally reached consensus, so that the land dispute that lasted for nearly three years was resolved satisfactorily. Based on this case, five issues left over from the history of social security for workers of overseas Chinese farms have been resolved one after another. As a result, this case was selected as one of the top ten typical cases in the provincial activities of “checking the blockage, defeating the difficulty, and promoting the development”.

## 2. Advance the construction of featured courts

Relying on the featured courts such as tourism court, medical court, financial court, property court and road traffic court, Hainan Court has strengthened cooperation with tourism, medical, financial, traffic police and other units to create a categorized and specialized pre-litigation model for dispute resolution. Taking the road traffic court as an example, there were 13,918 cases applied for pre-litigation mediation through the road traffic integration platform across the province since 2021, among which 13,463 cases have been mediated and 11,889 cases have been mediated successfully, with a success rate of 88.31%. Sanya Tourism Circuit Court is responsible for mediating and resolving the vast majority of non-litigation tourism disputes, so that the tourism cases have fallen off a “cliff”, creating a new model of non-litigation tourism.

## 3. Establish and improve a diversified resolution mechanism for foreign-related civil and commercial disputes

The first was to establish a cross-regional foreign-related civil and commercial court to focus on the trial of foreign-related civil and commercial cases, achieve the integration of registration, trial and execution, and continuously improve the ability to resolve disputes. In 2019, in order to implement the requirements of accelerating the formation of a legal, international and convenient business environment and a fair, unified and efficient market environment in the *Guidance on Supporting Hainan to Thoroughly Deepen the Reform and Opening-up* issued by the CPC Central Committee and the State Council, further integrate foreign-related trial resources and concentrate on serving the construction of free trade (zone) port, the Provincial High Court has taken the lead in setting up a regional foreign-related civil and commercial court in the country by fully use of the policy of supporting Hainan to establish a centralized trial mechanism for international commercial disputes in the *Opinions of the Supreme People's Court on Providing Judicial Services and Guarantees for Hainan to Thoroughly Deepen Reform and Opening-up*. This court is operated in the integrated model of “registration, trial and execution” to promote constant improvement of quality and efficiency for the trial of foreign-related civil and commercial cases throughout Hainan Free Trade Port. The integrated operation of “registration, trial and execution” has effectively solved the problems, such as poor connection between the departments of registration, trial and execution, inconsistent legal understanding and low transfer efficiency. Except for

judicial assistance delivery, announcement and other cases, the average time of ordinary litigation cases was about 77 days, and the execution time was 45 days, which greatly improved the efficiency of trial and execution. A good trend of One High and Two Low (high rate of mediation and withdrawal, low rate of appeal, and low rate of remand for a new trial and change of original sentence) appeared in the case trial, in which the mediation was particularly prominent. For the cases mediated and withdrew with large number, huge amount and good effect, the number accounted for about half of the closed litigation cases every year. In 2021, the First Foreign-related Civil and Commercial Court mediated cases in which the total amount of object involved was nearly RMB 1 billion yuan, and the parties expressed their appreciation to the judges for resolving disputes by means of letters of thanks, silk banners and lion dances 11 times. The innovative mechanism of this court won the second prize of the first “Hainan Reform and Institutional Innovation Award” and was selected by the Supreme People’s Court as the “Highlight Measures of the People’s Court to Serve and Guarantee the Construction of the Free Trade Zone”.

The second was to actively promote the construction of one-stop diversified dispute resolution platform, and timely and efficiently resolve the international commercial disputes. The establishment and improvement of system on mediation priority and exemption from case trial fees for pre-litigation mediation greatly reduced the economic cost

and time cost of the litigants, and also effectively saved judicial resources. The First Foreign-related Civil and Commercial Court has developed the Online Disputes Resolution (ODR) platform to invite domestic and foreign arbitration and mediation institutions to join and resolve disputes through Internet video. Since the platform was put into service, it has signed cooperation framework agreements with 15 mediation institutions. Currently, there are 321 mediators in the mediator database, a total of 32,270 laws and regulations and 14,683,506 cases recorded in the platform, a total of 122 cases interrogated, and 88 cases mediated successfully. The platform won the 2020 Excellent Innovation Case of Political and Legal Intelligent Construction of Smart Courts. After the First Foreign-related Civil and Commercial Court is matured, the Provincial High Court will promote the platform to the courts with foreign-related judicial functions in the province, and all courts can make use of the platform to resolve disputes between Chinese and foreign parties and further facilitate their litigation. Taking a company in Jiaxing (wholly foreign-owned) as an example, the company sued a company in Sanya for a dispute over a sales contract that it failed to pay on time due to the outbreak of COVID-19 epidemic, so a lawsuit was filed. The court selected specially invited mediators to mediate both parties through ODR platform. At the same time, the judge also explained the new judicial policies after the outbreak of COVID-19 epidemic online. Through efforts in every ways, the company in Sanya developed a plan for



repayment by installment, which was accepted by the company in Jiaxing, so the lawsuit was withdrawn. This case gave full play to the advantages of ODR platform for foreign-related diversified dispute resolutions. The court selected specially invited mediators to introduce the impact of COVID-19 epidemic on economic life and legal practice, and the judge also interpreted laws to both parties online, so that the case was effectively resolved, which ensured the normal operation of enterprises affected by the epidemic and also safeguarded the legitimate rights and interests of foreign-funded enterprises, creating a good legal environment for the development of enterprises.

The third was that the Provincial High Court issued *Rules of Hainan High People's Court for Guiding, Appointing and Entrusting Mediation of Civil and Commercial Disputes* as a system to establish and improve the implementation of a diversified resolution mechanism for foreign-related civil and commercial disputes. Hainan Court actively promoted the “Three-in-One” diversified resolution mechanism, diverted cases effectively, promoted the governance of litigation sources, feasibly played the role of mediation and arbitration institutions in the governance of litigation sources, and drove the resolution of conflicts and disputes, especially international commercial disputes from the source. Hainan Court innovated the “Three-in-One” diversified resolution mechanism of litigation, mediation and arbitration for international commercial disputes and seamlessly connected the three dispute resolutions, which greatly

facilitated the resolution of disputes between foreign investors, Hong Kong, Macao and Taiwan investors. The “Three-in-One” diversified resolution mechanism of international commercial disputes jointly submitted by the Provincial High Court and Hainan First Intermediate People’s Court was selected into the 13th Batch of Institutional Innovation Cases of Hainan Free Trade Port in 2021, and won the second prize of the Second Hainan Provincial Reform and Institutional Innovation Award.

4. Establish and improve a diversified resolution mechanism for intellectual property disputes

Hainan Court resolved intellectual property disputes and improved the quality and efficiency of diversified dispute resolution by combining the pre-litigation entrusted mediation with mid-litigation entrusted mediation, as well as the online mediation with the offline mediation. In 2021, it has signed connection agreements on litigation and mediation with 3 intellectual property mediation organizations, and 14 mediators have joined the court mediation platform with a mediation success rate of 61.11%, and the effect of diversified dispute resolution was outstanding.

Taking a series of 8 patent infringement disputes between JOMOO Kitchen and Bathroom Co., Ltd. and Hainan Chaojun as an example, several defendants reached a mediation agreement with JOMOO Company before the trial through the court mediation, and voluntarily fulfilled it. Since its establishment, the Intellectual Property

Court of Hainan Free Trade Port provided judicial protection for creating a legal, international and convenient business environment with all its strength. While implementing the principle of “quick trial for simple case and intensive trial for complex case”, it paid high attention to the case mediation, continued to improve the diversified resolution mechanism for intellectual property disputes, and was good at summarizing the mediation experience of intellectual property cases, so as to identify the starting point and flexibly use the mediation skills to promote the parties to have a trans-positional consideration by means of diversified resolution, case guidance and laws interpretation, positively negotiate and communicate, shorten the gap between appeals, and come to an accommodation in a timely manner. The settlement of the eight cases has safeguarded the interests of both parties to the greatest extent, and resolved the needs of parties for judicial service.

**（ II ） Strengthen the construction of smart court, and further advance the facilitation of litigation**

By building a comprehensive litigation service system integrating “litigation service hall, litigation service network, 12368 hotline, mobile client, and 24-hour court”, Hainan Court has achieved a unified settlement at one stop, one network, one number and one time. Hainan Court also strengthened informatization services such as cross-regional registration, online registration and self-service registration to create a “green channel” for case registration. Parties involved and lawyers can conduct online registration, online payment, and application for paper

examination through mobile micro court and lawyer litigation service platform, so as to facilitate parties' participation in litigation and improve the informatization level of judicial services.

### 1. Strengthen the construction of “24-hour court”

In December 2019, the first “24-hour court” in Hainan Province began to settle in Sanya, where is equipped with litigation self-service terminals, smart document filling service terminals, court trial live broadcast terminals and other equipment, with the functions of 24-hour self-service registration, cross-regional registration, self-service inquiry of case information, materials transfer, appointment for paper examination, and inquiry for people with poor credit. At present, there are ten 24-hour courts.

### 2. Promote remote video trials by circuit court

Hainan Court explored the application of cutting-edge technologies such as artificial intelligence and big data, and introduced smart trial system in the province to promote the smoothness and efficiency of court trials. In 2021, with the help of Internet remote court trial system, Hainan Court realized that the judge was in the trial division, the procurator was in the procuratorate, and the defendant was in the detention house during the court hearing, and the circuit court held a court session across the air through “Cloud Trial”, further improving the utilization rate of judicial big data and the judicial efficiency.

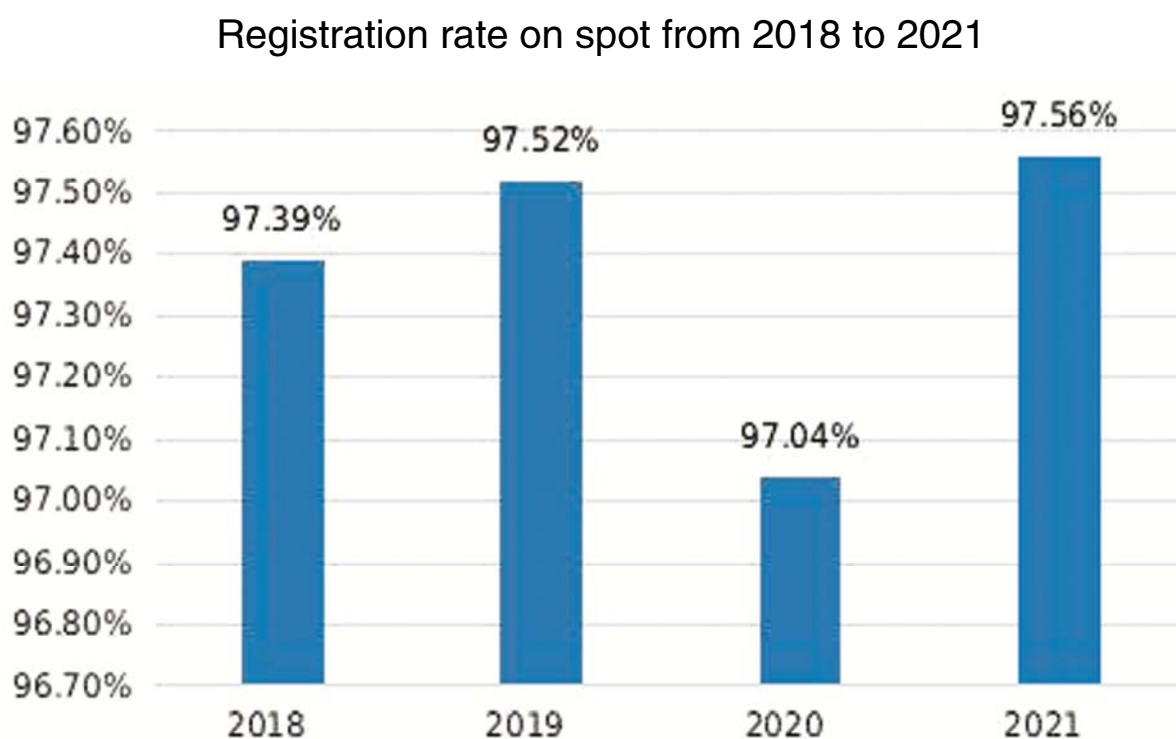
### 3. Improve modern litigation service system

An intensive, three-dimensional and informationized framework of modern litigation service system has been set up. In 2021, ten informationized service platforms, including mobile micro-court, people's court mediation platform, lawyer service platform and delivery platform, were launched and improved by Hainan Court, forming an information service system with one center and ten systems. The parties involved are allowed to remotely handle the registration, hold a court and various litigation affairs without leaving home. For the moment, the handling rate of online litigation has reached more than 50%. The 12368 hotline provided services for 14,854 people-times, generated reports and transferred 1,076 matters, which has become an important way to listen to the opinions and suggestions of the masses, parties involved and lawyers.

#### 4. Build a one-stop litigation service center

The one-stop litigation service center has achieved substantial results in its building, and implemented the reform of case registration system, where a new four-in-one pattern for the registration "on spot, online, by self-service and across region" has been established. The Provincial High Court guided and coordinated the courts at all levels to well manage the transfer, reception and audit of cross-regional registration, established a mechanism to notify the violation, and reduced the incidence of overdue feedback and overdue audit to ensure that the cross-regional registration has legal procedure, compliant operation and satisfaction from the masses. The registration time of the

first instance was shortened to less than 10 minutes on average. The case registration rates on spot were 97.39%, 97.52%, 97.04% and 97.56% from 2018 to 2021, respectively. Among them, 5,764 cases were registered online and 1,021 cases were registered and assisted across regions in 2021.



(Chart 2)

#### 5. Innovate a one-stop judicial credit service platform

With the goal of “one-click search and full coverage”, the Provincial High Court independently developed and launched a green channel for investor judicial services, providing all-day, all-round and all-field “one-stop” judicial credit services for Chinese and foreign friends who come to Hainan to invest for free. Since its launch in June

2019, the green platform for investor judicial services has included 127 million pieces of judgment documents, 2.06 million pieces of trial and execution information, 22,000 pieces of information about enterprises, and more than 30,000 pieces of information about dishonest persons subject to execution; released 1,954 pieces of judicial information, 72 articles of typical cases, and 315 clauses of policies and regulations concerning the contraction of free trade port. All the information is dynamically updated and quickly retrieved, providing an authoritative judicial data reference for investors to consider partners. The platform has been inquired by more than 300,000 people-times. The courts at all levels in Hainan have set up service windows and “judicial commissioners” for the construction of free trade port to provide investors with all-round and all-field professional judicial credit services based on a one-stop judicial credit service platform, actively play the judicial service function, focus on providing judicial credit information for “investment risk” that investors care about through the implementation of “five measures” in judicial credit services, increase investor confidence, and effectively protect the legitimate rights and interests of investors, especially small and medium investors. This case was selected as the first batch of Hainan Free Trade Port Institutional Innovation Cases in 2020.

6. Rank top for the quality and efficiency evaluation on litigation services

The quality and efficiency evaluation on Hainan Court's litigation service has been comprehensively upgraded to version 2.0. The system of quality and efficiency evaluation on litigation service reflects the one-stop construction results in a centralized way, which is the baton to promote the great-leap-forward development of one-stop construction. Since September 2020, Hainan Court has basically remained within the top five in the national evaluation on litigation service quality and efficiency system (2.0). Among them, the Provincial High Court ranked first in the national high courts for a total of 212 days, and the Hainan Court ranked among top three in the country for a total of 226 days.

#### 7. Focus on the promotion of judicial service for the disabled

Since the legal public welfare project for the disabled was launched in May 2020, Hainan Court has opened a green channel for litigation by the disabled, and innovated the "Five Ones" projects, namely a barrier-free litigation service platform, a standard list of barrier-free litigation facilities, a four-in-one barrier-free service system, a barrier-free litigation service mechanism in the whole process and a barrier-free litigation service team. It has also provided the disabled with 133 times of quick and green registration, compiled *Handbook for the Protection of the Rights and Interests of the Disabled* together with the Provincial Disabled Persons' Federation, and employed 31 specially invited mediators and 30 sign language interpreters to offer a full range of legal services for the disabled. In 2021, Hainan Court has accepted



575 cases involved the disabled, among which 78 cases were mediated and 19 cases were withdrawn; for the payment of litigation fees, RMB 155,770.92 yuan was delayed, RMB 7,637.12 yuan was reduced, RMB 197,926.28 yuan was exempted, and RMB 2,801,935.34 yuan was issued as judicial relief funds.

### **(III) Establish and improve the mechanism, and improve the trial efficiency**

#### **1. Establish a system on trial performance situation analysis mechanism**

Special activities have been carried out to clear long-term cases that were not closed. Monthly trial performance situation analysis was conducted, and “Hainan Court Trial execution Situation Analysis” of current month was published in work trend of Hainan Court every month, so as to study and judge the trial efficiency and strengthen the trial management.

#### **2. Optimize the mechanism, and promote the efficiency of litigation preservation**

The *Provisions of Hainan High People’s Court on Intensive Property Preservation (Trial)* and the *Interim Measures of Hainan Court on Several Issues Concerning Further Regulating Property Preservation* were formulated, so that the pre-litigation preservation mechanism was optimized to promote the efficiency of pre-litigation preservation for civil and commercial disputes.

### 3. Improve the mechanism, and promote the efficiency of delivery

Litigant participants were actively guided to submit electronic litigation materials, and the delivery scope of electronic document was expanded, so that delivery efficiency was improved. The use of information-based tools such as video reception, remote interrogation, online registration, online court hearing and electronic delivery was further increased to facilitate the parties' participation in litigation and improve the efficiency of trial and execution. The Provincial High Court formulated *Implementation Opinions on Promoting the Confirmation of the Address Commitment for Delivery of Legal Documents on Enterprises and Other Commercial Subjects (Trial)* with the Provincial Administration for Market Regulation to promote the delivery efficiency. Hainan Court is handling the case without paper during the whole process, which is progressing steadily. At present, pilot work for paperless case handling has been conducted in 10 courts.

### **(IV) Deeply conquer the difficulty in execution, and promote the efficiency of execution**

1. Construct a comprehensive governing mechanism to effectively solve the difficulties in execution

Joint forces were gathered to solidly promote the institutionalized construction of the overall pattern for difficulties in execution of the comprehensive governing, accelerate to thoroughly solve the difficulties in execution, and help create a good business environment.

On September 16, 2021, the Provincial High Court organized a joint conference on execution in the province, and relevant responsible comrades from the linkage units of execution such as the Hainan Public Security Department, Hainan Housing Provident Fund Administration, Department of Natural Resources and Planning of Hainan Province and Hainan Big Data Administration participated in the joint conference. To further improve the mechanism of investigating people, looking for things and controlling financial resources, they conducted negotiation and jointly signed the *Several Opinions of Hainan High People's Court and Hainan Housing Provident Fund Administration on Establishing a Linkage Mechanism for the Implementation of Housing Provident Funds*, the *Opinions of Hainan High People's Court and Hainan Public Security Department on Strengthening and Regulating Assistance in Execution in accordance with the Law*, the *Opinions of Hainan High People's Court and Hainan Taxation Bureau of the State Administration of Taxation on Establishing a Collaborative Mechanism for Court Execution and Tax Collection*, and the *Measures of Disciplinary Inspection Committee of the CPC in Hainan Province, Hainan Provincial Supervisory Committee, Organization Department of Hainan Provincial Party Committee of China, and Hainan High People's Court on Notifying the Dishonesty and Execution Obstruction of the Party Members and Public Officials and Transferring the Clues on Violations of Discipline and Law*.

2. Promote the governmental agencies to take the lead and keep promise

Hainan Court strengthened the execution of the cases involving Party and government agencies for the person to be enforced, and promoted them to take the lead and keep promise. The Provincial Higher Court issued a series of documents including the *Opinions of Hainan High People's Court on Providing Judicial Services and Guarantee for Completing the "Six Stability" and Implementing the "Six Guarantees"*, requiring Hainan Court to quickly find out the bottom number and establish case accounts, strengthen the execution, improve the quality and efficiency, and particularly for the cases involving Party and government agencies and state-owned enterprises that failed to pay the debts to the private enterprises and small and medium-sized enterprises, actively coordinate with local Party committees, governments and financial departments for resolution. In order to effectively and comprehensively improve the quality and efficiency of execution, and to implement the requirements of Hainan Special Work Team for Optimizing Business Environment on cleaning up the government's arrears of corporate accounts, the Provincial High Court has decided to carry out a special execution action in Hainan Court from late April 2021 to the end of February 2022 to clean up the cases involving Party and government agencies for the person to be enforced, and issued special work plans to find out the bottom number

of debts owed by the Party and government agencies to private enterprises and small and medium-sized enterprises, and improve the execution efficiency of the cases involving Party and government agencies for the person to be enforced. In 2021, Hainan Court has cleaned up a total of 485 cases involving Party and government agencies for the person to be enforced, with a closed rate of 93.45%; the amount to be executed in place was RMB 603,870,000 yuan, with a execution rate of 64.75%.

### 3. Advance the execution according to laws and regulations

The first was to rectify the problems of over-standard and arbitrary seizures. The Provincial High Court required Hainan Court to strictly prohibit the over-standard and arbitrary seizures, strictly prohibit the measures of detention and fines in violation of regulations, resolutely prevent illegal execution and excessive execution from affecting the normal operation of enterprises, choose seizure measures that have less impact on the production and operation of the person to be executed, and not to “seize rigidly” if “seizing flexibly” is possible, so as to release the use value and financing function of the seized property. It also required Hainan Court to carefully investigate and fully disclose the current situation of the auctioned properties when disposing of relevant properties, so as to ensure the buyer’s right to know, properly hand over the auctioned properties according to law and protect the legitimate rights and interests of the buyer. The second

was to rectify the problems of violated termination of this execution procedure, termination of execution and false settlement of cases. Hainan Court strictly implemented the requirements of Supreme Court, and rectified above problems. When examining 14,922 cases that terminated the execution procedure, 27 cases of violations were found, all of which have been corrected; when examining 4,068 cases that have been terminated, no cases of violations were found so far; for 17,158 cases closed by other means, 1 dubious case was found and 1 case has been corrected. The third was to carry out special rectification activities for “difficulty in execution” and “disorder in execution”. On March 30, 2021, the Provincial Higher Court issued the *Implementation Plan of Hainan High People’s Court on Carrying out Special Rectification Activities for “Difficulty in Execution” and “Disorder in Execution” within the Scope of Hainan Court*, and decided to organize such special rectification activities within the scope of Hainan Court. After the special rectification lasted a period of three months and four stages, a total of ten outstanding problems of “difficulty in execution” and “disorder in execution” in the province were investigated and summarized, which have been rectified in a timely manner. The special rectification activities have achieved the expected results, and effectively cooperated with the in-depth development of three special activities, including special conquest to promote the rate of execution in place, property execution conquest in

criminal cases involving underworld crimes and special execution of cases involving the Party and government agencies for the person to be executed, laying a solid foundation for Hainan Court to further standardize execution behavior and comprehensively improve the quality and efficiency of execution.

4. Carry out a special action for concentrated rectification of outstanding issues in the field of execution

From March to the end of October 2021, Hainan Court carried out a special action to increase the execution rate, so as to guarantee that the successful parties could realize their rights and interests in a timely manner according to the law, further promote a fair and civilized execution with goodwill, strive to significantly increase the execution closing rate and actual execution rate of Hainan Court, and further improve the quality and efficiency of execution. Under the effective supervision of the Provincial High Court, the index of execution rate in the whole province has been greatly improved in 2021.

According to the requirements of the *Notice of the Leading Group on Education and Rectification of the Supreme People's Court Team on Carrying out a Special Action for Concentrated Rectification of Outstanding Issues in the Field of Execution*, Hainan Court has carried out a special action for centralized rectification of outstanding problems in the field of execution from mid-September to mid-November 2021. Hainan Court promoted the high-quality

development of the execution of people's courts in the new era through the "Five in Place", namely organizational leadership in place, ideological mobilization in place, plan interpretation in place, coordination in place, and supervision and inspection in place. On November 18, 2021, Hainan Court carried out the centralized distribution of case funds with a total amount of RMB 541.53 million yuan distributed and 151 cases involved, and a total of 158 parties went to the scene to receive the case funds.

#### 5. Strengthen the concept of civilized execution with goodwill

In the process of execution, Hainan Court strictly implemented the concept of civilized execution with goodwill, strengthened the protection of property rights, and intensified the innovation of execution. The execution can be neither soft nor mechanical, accordingly, we should dispose of the property in as many ways as possible, such as execution and mediation, and appropriately choose self sale, financing and other flexible disposal methods based on actual situation of the property, so as to help the executed enterprises get out of the predicament, resolve the debt crisis and restore production capacity. Hainan Court has explored many execution measures, including establishment of online auctions, direct delivery, asset reorganization and entrusted operation to speed up the efficiency of property disposal and reduce the cost burden of enterprises.

#### 6. Focus on the reduction of execution cost



Hainan Court strictly implemented the Supreme People's Court's *Provisions on Several Issues Concerning Online Judicial Auction by the People's Courts*, gave full play to the characteristics of online auction that are "wide spread, openness and transparency, wide participation, convenience and efficiency, high premium rate, low cost and zero commission", and reduced the cost for resolution of commercial disputes mainly from the perspective of reducing evaluation fees and auction fees. At present, Hainan Court has achieved a 100% online auction rate to dispose the property for the person to be executed, realizing "zero" auction fees. Hainan Court strictly implemented the *Provisions of the Supreme People's Court on Several Issues Concerning the Determination of Reference Price for Property Disposal by the People's Courts*, comprehensively adopted the methods of party negotiation, directional inquiry, online inquiry and entrusted evaluation to determine the reference price of property disposal, and gave priority to the party negotiation, directional inquiry and online inquiry, which have changed the previous practice the the reference price of property disposal shall be determined only by entrusted evaluation and saved execution costs of the party involved.

**( V )Reduce the litigation fees, and improve the refund process**

**1. Reduce the charging standard for litigation fees**

In order to reduce the charging standards for litigation fees of Hainan Court, the Provincial Higher People's Court took the initiative

to coordinate with the Department of Finance and other departments to issue relevant regulations to unify standards, reduce litigation fees, reduce the cost in safeguarding the masses' rights and interests, improve index of execution contract, and optimize the business environment of the free trade port. In order to reduce litigation fees related to the court, the Provincial High Court, within the framework authorized by the *Measures for the Payment of Litigation Fees* of the State Council, suggested to the financial department to reduce litigation fees after investigation. The provincial development and reform department organized the price verification to reduce the standard and submitted it to the provincial government for approval. The Provincial Department of Finance and the National Development and Reform Commission jointly issued the *Notice on Clarifying the Specific Payment Standards for Litigation Fees in Some Cases* in “Q.F.G.S.F. [2022] No. 242”. The *Notice* was officially implemented on March 25, 2022, which was immediately issued by the Provincial High Court to the provincial courts for implementation.

## 2. Improve refund efficiency

The Provincial High Court took active measures to advance the reform of refund system, and issued the *Refund Procedures for Litigation Fees of Hainan High People's Court* to standardize the refund standard process of the three-level unified linkage of Hainan Court, changing “application for refund” by the party to “voluntary

refund” by the court. The Provincial High Court took the “institutionalized, standardized and programmed” construction as an effective means to improve the quality and efficiency of refund, and opened a window for collection and refund of litigation fees in the Provincial Litigation Service Center. Hainan Court made a joint and simultaneous implementation to change the previous way that the parties need to provide refund application, judgment, document validity certificate, pre-paid litigation bills and other materials to the court to apply for refund after being approved within the court at all levels, and required that the people’s court should take the initiative to handle the refund procedures for the parties in a timely manner within 15 days from the date when the judgment takes effect, and the refund must be paid in full and at one time within 15 days to the maximum extent. At the same time, Hainan Court issued the *Announcement of Hainan High People’s Court on Matters Concerning the Refund of Litigation Fees*, and publicly promised to the public that for civil and administrative cases that have taken effect after November 1, 2021, if it is required the parties to refund the litigation fees, the court will voluntarily return them to relevant party to the maximum extent within 15 days from the date when the judgment takes effect without application from the party, which accepted the supervision of the masses. The introduction of refund procedures of litigation fees has effectively solved the difficulty in refunding the litigation fees, and truly realized the fact that “data

runs more, while the masses run less”. From November 1st to December 31st, 2021, Hainan Court has initiated 2,366 refunds, with a total amount of more than RMB 32.66 million yuan in litigation fees. The shortest refund time was 24 hours, and the average refund time was 6 days in the province. The refund efficiency of litigation fees has been greatly improved to provide a judicial guarantee for improving the efficiency of litigation services, and widely praised by the parties and lawyers.

#### **(VI) Carry the open justice forward, and promote the judicial transparency**

##### **1. Promote the construction of open justice platform**

Hainan Court has significantly improved its standardized, institutional and informationalized level for open justice. The four disclosure platforms for trial procedures, hearing activities, judgment documents and execution information have been fully completed and put into operation, and an open, dynamic, transparent and convenient judicial mechanism has been basically formed, which has played an important role in safeguarding the people’s rights to know, participate, express and supervise, promoting the impartial justice ability to serve people, carrying forward the spirit of the rule of law, and telling the story of the rule of law in Hainan.

##### **2. Improve the mechanism of open justice**

The system on convenient and efficient judicial service

mechanism was innovated to improve the judicial level of serving people. The indicators related to business environment were benchmarked, and a normalized judicial data disclosure platform was gradually established on the portal websites of Internet at all levels to realize the disclosure of various judicial data closely related to business environment.

### 3. Promote the disclosure of judgments

In 2021, Hainan Court disclosed a total of 35,464 judgments. For online judgment, it standardized its disclosure, refined the regulations on its management, established a normalized review mechanism, improved the long-term mechanism for its quality control, and comprehensively strengthened the supervision and management of people's courts by taking the opportunity of the second-phase transformation of China Judgments Online; benchmarked the public data of commutation and parole system and execution system, and finally made the judgments in different systems sent to the Internet normally. The overall quality of judgments has been significantly improved with the help of judicial supervision, self-examination and self-correction.

### 4. Promote the disclosure of court trial

In 2021, Hainan Court live broadcast 37,797 court trials, an increase of 17.9% compared with 32,055 in 2020, with a cumulative number of 117 million people-times to watch, and the number of live

court trials has increased steadily year by year; the newly established Hainan Free Trade Port Intellectual Property Court has been connected to China Court Trial Online, and completed the live broadcasts of civil, administrative and criminal cases during the year; judges at all levels of court have actively conducted live court trials, and a total of six judges have been rated as excellent live broadcast judges by China Court Network in 2021.

#### 5. Rank top for the index of judicial transparency

The Provincial High Court and Haikou Intermediate Court continued to rank high in the national court system for judicial transparency (which is now integrated in law propaganda). According to the data collected by the public service platform relying on the evaluation object, the Institute of Law of the Chinese Academy of Social Sciences and the Social Science Academic Press (China) jointly released the *Blue Book of the Rule of Law·Development Report on Local Rule of Law in China (2021)* in Beijing (excluding Hong Kong, Macao and Taiwan regions) on March 16, 2022, which issued the first *Third Party Evaluation Report of People's Court on Law Propaganda (2021)*. This report released the index ranking of courts in various regions, among which: the Provincial High Court ranked fifth among the 32 high courts in the country, and Haikou Intermediate Court ranked eighth among 49 intermediate courts. The evaluation index of law propaganda of the people's courts include five first-level index,

that is, normative documents of laws and regulations (accounting for 20%), litigation guideline (accounting for 20%), cases disclosure (accounting for 30%), law propaganda form and platform (accounting for 15%) and judicial data (accounting for 15%).

## **II . We gave play to the function of commercial trial to promote investment, protect investment, promote innovation and guarantee development**

### **( I ) Impartial justice to protect the legitimate rights and interests of medium and small investors**

1. Adjust the policies of justice, improve the rules of adjudication, and promote the development of private economy

The Provincial High Court formulated institutional documents, such as the *Opinions of Hainan Court on Providing Judicial Services and Guarantee for the High-quality Development of the Private Economy*, the *Opinions on Providing Judicial Services and Guarantee for “Promoting Investment and Protecting Investment”*, and the *Opinions on Strengthening Judicial Protection of Property Rights to Serve the Construction of Hainan Free Trade Port*, and used judicial functions to precisely safeguard the legitimate rights and interests of small and medium investors. The first was to maintain the personal and property safety of private entrepreneurs and create a high-quality environment for private enterprises and private entrepreneurs to start

businesses in Hainan, so as to promote the healthy development of private economy, and serve the overall economic and social development of Hainan and the construction of a free trade port. The second was to actively implement judicial policies and measures to overcome difficulties and benefit enterprises. For the issues in the development of private enterprises, judicial safeguard measures were put forward to the point. In response to the phenomenon that private enterprises have “difficulties in financing”, the Provincial High Court clearly proposed to properly hear the cases of financial loans, financial leasing and private loans involving private enterprises to support private enterprises in multi-channel financing. The third was to give priority to handling cases related to shareholders suing management, so as to balance the conflict of interests between shareholders and management, protect the rights and interests of all parties equally, and guide the courts at all levels to properly hear the disputes over validity of company resolutions, shareholders’ right to know, profit distribution right, pre-emptive right, shareholder representative litigation, and equally protect the legitimate rights and interests of medium and small shareholders according to law.

Courts at all levels have formulated detailed rules for the implementation of the above-mentioned regulations. For example, Haikou Intermediate Court issued the *Working Guidance of Haikou Intermediate People’s Court on the System for Documentary Evidence*



*Submission Order (Trial)*, which fully protected the litigants' rights and interests in evidence collection, enhanced their ability to put to the evidence, and unified the legal application and operating procedures of the system for documentary evidence submission order; formulated the *Working Guidelines of the Haikou Intermediate People's Court on the Model Judgment Mechanism for Securities Disputes (Trial)*, which was conducive to properly handling group securities disputes and realizing the unification of laws applicable to the group securities disputes, so as to improve the quality and efficiency of trials, safeguard the legitimate rights and interests of the litigants, and promote the timely and effective resolution of disputes; formulated and implemented the *Opinions of the Supreme People's Court <on Provisions on Several Issues Concerning Representative Litigation in Securities Disputes>* to ensure that securities class action system has been put into practice and effectively resolved the contradiction and disputes of securities.

Guided by the above-mentioned normative documents, Hainan Court properly heard the cases of financial loans, financial leasing, securities and futures, private lending, real estate, companies, shareholders and investment, and strengthened the mediation, so that the quality and efficiency of cases have been effectively improved, and the judicial function of serving and guaranteeing the construction of Hainan Free Trade Port and the overall situation of economic and social development of Hainan has been further played. Among them, a

total of 38 cases that small and medium investors sued Sundiro Company in a series of securities misrepresentation disputes were concluded. On January 12, 2019, Sundiro Company issued the *Risk Reminder Announcement of Sundiro Holdings Co., Ltd. on the Company's Registration and Investigation by China Securities Regulatory Commission*, which was the first time to announce to the investors that it was registered and investigated by China Securities Regulatory Commission for its suspected information disclosure violating laws and rules. Because Sundiro Company failed to disclose its guarantee information in accordance with regulations, it was punished by Hainan Supervision Bureau of China Securities Regulatory Commission, and many shareholders demanded it to bear the compensation liability on the ground that Sundiro Company's misrepresentation caused its economic losses. Hainan Court supported the reasonable demands of shareholders in accordance with the law, and effectively safeguarded the legitimate rights and interests of small and medium investors. The determination and handling results of this case established the rules that the information disclosed by listed companies according to law must be true, accurate and complete and shall not contain false records, misleading statements or major omissions, which is conducive to further optimizing the investment environment of securities market, protecting the legitimate rights and interests of small and medium-sized investors, and promoting a

business environment with the rule of law.

2. Improve a diversified resolution mechanism for various commercial disputes

A working mechanism for litigation and mediation of financial and securities disputes was built to further improve the diversified resolution system for commercial disputes in our province. In December 2019, the Chief Justice Zhou Qiang fully affirmed the one-stop diversified dispute resolution and litigation services when he investigated in Hainan, and made important instructions to require Hainan Court to “deeply promote the ‘one-stop’ construction and provide the masses with menu-style services to resolve the disputes. This mechanism was selected as Mechanism Innovation Cases by Hainan Provincial Party Committee for Continuing the Reform Comprehensively together with the mechanism introduced by the Department of Justice.

The Supreme People’s Court and the China Securities Regulatory Commission have jointly promoted the “People’s Court Mediation Platform” and the “China Investor.com Securities and Futures Dispute Online Resolution Platform” to realize data exchange and interconnection, and establish a coordinated, connected, efficient and convenient online litigation and mediation mechanism for securities and futures disputes, which has been implemented by Hainan Court. In handling the series of disputes over securities misrepresentation

liability of Sundiro Holding Co., Ltd., Haikou Intermediate Court, on the basis of entrusting China Securities Legal Service Center to conduct mediation and loss verification, legally supported some demands of small and medium investors and protected legitimate rights and interests of the shareholders.

The Provincial High Court issued the *Memorandum of Understanding on Establishing a Litigation and Mediation Docking Mechanism for Securities and Futures Disputes* jointly with Hainan Securities Regulatory Bureau, and issued the *Opinions on Establishing a Diversified Resolution Mechanism for Financial Consumer Disputes* jointly with Haikou Central Sub-branch of the People's Bank of China and Hainan Banking and Insurance Regulatory Bureau, establishing a diversified resolution mechanism for financial consumption disputes and further enriching the diversified resolution ways of financial securities disputes, which is a powerful measure to effectively resolve financial and securities disputes. Haikou Intermediate Court signed a cooperation agreement on the docking of securities and futures dispute litigation and mediation with Hainan Securities Regulatory Bureau and China Securities Capital Market Legal Service Center Co., Ltd. The China Securities Legal Service Center was appointed and entrusted by the courts at the levels of city and district in Haikou, and was responsible for mediating the securities and futures disputes in Haikou and earnestly safeguarding the legitimate rights and interests of

investors. On this basis, Haikou Intermediate Court signed a cooperation agreement on the docking of securities and futures disputes with Hainan Securities Regulatory Bureau, Securities Association of China and Hainan Securities and Futures Association in September 2021, to expand the width and depth of the docking of securities and futures disputes.

### 3. Strengthen the law propaganda of medium and small investors

Hainan Court actively carried out the activity of “Seven Accesses of Law”, adhered to the normalized online live broadcast of court trials, earnestly implemented the online system of judgment documents, and promoted normalized activity of “Open Court Day” to improve justice through openness. It also innovated the way of law propaganda for small and medium investors, built a new media information release pattern of “three-in-one” including website, Microblog and WeChat, and realized the benign interaction between the portal website and “Microblog, WeChat and News Client”. At the same time, the trial white paper and typical cases to protect the investors of small and medium enterprises were released to the public in a timely manner, so as to report and interpret laws by the cases, and in-depth law propaganda was carried out to help better resolve disputes and promote the substantive resolution of conflicts. In June 2021, Haikou Intermediate Court and Hainan Provincial Securities Regulatory Bureau jointly held “Shareholders Are Coming”, an activity to walk

into Haikou Intermediate Court in Hainan area in 2021, which exchanged and discussed the issues such as professional trial of securities and futures disputes, dispute resolution, and application of law, and effectively improved the right-protection awareness of small and medium investors. Hainan Court have stepped up propaganda efforts to guide market players to resolve disputes before litigation through China Securities Capital Market Legal Service Center or Haikou International Commercial Mediation Center in the event of fund, securities disputes and other commercial disputes.

## **( II ) Efficient justice to improve the convenience of handling the bankrupt**

The convenience of handling the bankruptcy is one of the main indicators to evaluate business environment. Hainan Court actively benchmarked the evaluation indicators, adopted targeted measures to position precisely, and strived to improve the index.

1. Reduce the time and cost required to recover the creditor's rights, and improve the recovery rate

First, a system for fast trial of brief cases was established. The Provincial High Court formulated and issued the *Several Opinions on Transferring the Execution Cases to Bankruptcy Review (Trial)*, the *Several Opinions on Fast Trial of the Cases "Transferred from Execution to Bankruptcy"* (Trial), the *Procedural Guidelines for Enterprise Bankruptcy Cases*, and the *Several Opinions on Fast Trial*

*of Enterprise Bankruptcy Liquidation Cases (Trial)* and other documents, so as to deepen the reform of system on transferring execution to bankruptcy, further improve the bankruptcy trial mechanism of Hainan Court, and improve the quality and efficiency of bankruptcy trials. Haikou Intermediate Court formulated the *Provisions Applicable to Simple Procedures for the Fast Trial of Enterprise Bankruptcy and Liquidation Cases*, optimized the procedural processes such as case acceptance and service, fully implemented the scope applicable to the simply procedures, compressed procedural nodes and time, and realized quick clearing of the “zombie enterprises” that have no property for bankruptcy.

For example, “Mingguang International Mansion” is a project developed and constructed by the debtor in a bankruptcy liquidation case (the case of “transferring execution to bankruptcy”), namely Haikou Mingguang Hotel Co., Ltd., and there were 258 owners who had not yet obtained the real estate ownership certificate before the company entered bankruptcy proceedings, so they strongly demanded to resolve this issue for many times after entering bankruptcy proceedings. Haikou Intermediate Court actively fulfilled the concept of “Justice for People”, repeatedly organized administrator to communicate with the Municipal Taxation Bureau and other government functional departments, and found a way to solve the difficulty in handling the certificates for the owners. As of December

31, 2021, the administrator has handled the real estate ownership certificates for 60 owners, and the certificate application procedures for the remaining 198 owners are being actively advanced.

Second, informatization was used to speed up and increase efficiency. The first was to rely on the bankruptcy reorganization platform of the people's court, the smart court system and the execution case information system to improve the debtor's property investigation method, provide convenience for the administrator to exercise the investigation right in terms of investigating and monitoring the enterprise property network of the debtor and verifying the execution related to litigation of the enterprise, effectively solve the difficult problem of property inspection and control of bankrupt enterprises, and greatly improve the efficiency of the administrator to take over the property of bankrupt enterprises. The second was that Haikou Intermediate Court and Haikou Municipal Bureau of Natural Resources and Planning signed the *Haikou "Internet + Real Estate Registration" Data Sharing Cooperation Agreement*, establishing an information sharing and integration mechanism between departments, strengthening information interconnection and improving the efficiency to handle the bankruptcy. The third was to improve the efficiency of convening and voting of creditors' meetings. The first meeting of creditors is generally held on site or online, and after the resolution of the first meeting of creditors is passed, subsequent meetings can be held by other off-site



methods, such as offline video communication group. In addition to on-site voting, the creditors' meeting may vote by use of the off-site ways such as written, fax, text message, email, instant messaging, and communication groups. The administrator shall be instructed to release work reports, online Q&A and solicit objections in a timely manner through WeChat groups and Dingding work groups, etc., to protect the creditors' right to know and increase the voting rate of creditors' meetings. The fourth was to formulate the *Guideline on Property Online Auction in Bankruptcy Proceedings (Trial)*, which required administrators to first select the online auctions when disposing of property, and use the advantages of online auction platforms such as Taobao.com and JD.com to expand the audience of auction information, improve the debtor's property realization rate, reduce the property disposal cost, and achieve efficiency increasing and speeding up.

Third, the bankruptcy cost was controlled. The cost of bankruptcy was controlled to the maximum extent by adopting low-cost valuation methods and approving the appraisal and auction prices in the execution procedure. The first was to guide the administrator in specific cases to determine the property appraisal price and reduce bankruptcy cost by use of the low-cost methods such as price inquiry, price negotiation and determination at the creditors' meeting. The second was to make full use of the property investigation and monitoring results, appraisal conclusions and disposal results that have

been completed by the execution agency in the cases of transferring execution to bankruptcy, to avoid unnecessary duplication. The third was to make full use of the National Enterprise Bankruptcy Information Disclosure Platform to publish case process nodes, announcements and legal documents to reduce bankruptcy expenses.

Fourth, the advantages of bankruptcy, reconciliation and reorganization were fully played. On December 9, 2019, Haikou Intermediate Court ruled to accept the bankruptcy liquidation case of Xufenghui Company. After mediation, the creditor and the debtor voluntarily reached and signed the *Reconciliation Agreement*. This case is the first bankruptcy reconciliation case in Haikou Intermediate Court, bringing a slim chance of survival to the enterprise that was on the verge of bankruptcy. Bankruptcy proceedings are not the only endpoint of liquidation, which play a good role in protecting the enterprises that have development potential but temporarily encounter difficulties. Bankruptcy reconciliation has effectively helped the endangered enterprises to regenerate in a hopeless situation, given full play to the functional advantages of bankruptcy reconciliation procedures, and is conducive to continuing to optimize the business environment, providing strong judicial services and guarantee for promoting the economic development in Hainan. Hainan Airlines Group (HNA Group) used to be a large international conglomerate with air transport, airport operation, hotel management and financial services as its main business,

and was once listed in TOP 500 throughout the world with more than 2,000 domestic and foreign enterprises. Due to improper operation, mismanagement, investment disorder and market downturn, HNA Group experienced a liquidity crisis at the end of 2017. On February 10, 2021, Hainan High Court ruled to accept the reorganization case of HNA Group and its affiliates. After a lot of meticulous review and coordination, the two parties reached a reorganization intention. On September 29, 2021, Hainan High Court presided over the second creditors' meeting of the reorganization case of 321 companies including HNA Group. The meeting voted and approved the *Reorganization Plan of the Substantive Merger and Reorganization Case of 321 Companies including HNA Group Co., Ltd. (Draft)* and the *Plan to Adjust the Investors' Rights and Interests of 321 Companies including HNA Group Co., Ltd.* Hainan High Court ruled to approve the *Reorganization Plan* and terminate the reorganization process of HNA Group. Through the reorganization, HNA Group not only resolved the debt, but also solved the compliance of the listed company, implemented the all-round reorganization of business, management, assets, liabilities and equity, and realized the unification of legal effect, social effect and economic effect, which provided fresh and rich samples and materials for risk resolution of large conglomerates, overseas recognition and execution of domestic reorganization procedures, substantive merger and reorganization of affiliated

companies, resolution of compliance issues of listed companies, and bankruptcy legislation and justice of Hainan Free Trade Port. This case was selected as one of the top ten commercial cases in the national courts in 2021.

## 2. Improve the quality of bankruptcy legal framework

First, bankruptcy regulations were issued, and the mechanism that enterprises shall be assisted by bankruptcy fiscal taxation policy was established. The first was that the Provincial High Court actively participated in the bankruptcy legislation of the Standing Committee of Provincial People's Congress. On December 1, 2021, the Thirty-first Meeting of the Standing Committee of the Sixth National People's Congress of Hainan Province passed and promulgated the Regulations on the Bankruptcy Proceedings of Enterprises in Hainan Free Trade Port, which innovatively stipulates a specialized agency for the administration of bankruptcy affairs and its specific scope of responsibilities, and separates the bankruptcy judicial power from the bankruptcy affairs administration power; at the same time, it gives creditors the right to recommend administrators under certain conditions. The second was that the guarantee fund for bankruptcy fees has been established with the reply from the Department of Finance after the Provincial High Court conducted relevant research and report it to the Provincial Department of Finance and the General Office of Provincial Government. Haikou Intermediate Court implemented the

administrator assistant fund system, expanded the using conditions and scope of bankruptcy funds from cases that can be bankrupted without property to those that can be bankrupted with property, and made it clear that there was no cash property and physical property with big disposal difficulty, long disposal period and difficulty in the payment of bankruptcy fees, and necessary fees can be applied from the assistant fund in advance which will be deducted from the bankruptcy property first to fill the funds after the property is realized, so that the bankruptcy fund has both functions of “helping difficulties” and “helping the emergency”, which effectively solved the fees difficulty in handling bankruptcy. In 2021, Haikou Intermediate Court allocated a total of RMB 90,265 yuan to the administrators of four bankruptcy cases as assistance funds.

Second, Haikou Bankruptcy Court was promoted to establish, and the professional level of bankruptcy handling was promoted. The first was that the Provincial High Court applied for the establishment of Haikou Bankruptcy Court on the basis of effective operation of the collegial panel for bankruptcy trials. With the reply of Supreme People’s Court and the approval of the Office of the Institutional Establishment Committee of CPC Hainan Provincial Committee, Haikou Bankruptcy Court was established in Haikou Intermediate Court to centrally handle the compulsory liquidation and bankruptcy cases, derivative litigation cases and cross-border bankruptcy cases of

the companies (enterprises) approved and registered by the market supervision and administration authorities at or above the district level in Haikou (including the same level). On December 27, 2021, Haikou Bankruptcy Court was listed to establish, which is equipped with professional and young judges according to high standards, aiming to create a high-quality bankruptcy trial team that adapts to the needs of constructing the “legal, international and convenient” business environment in Hainan Free Trade Port, and further enhance the professional level of judges in handling bankruptcy. Haikou Bankruptcy Court is the first specialized judicial institution for bankruptcy in Hainan Province, which is another major achievement of Hainan Court in deepening system integration innovation and promoting trial specialization after the establishment of Foreign-related Civil and Commercial Court, Intellectual Property Court and Hainan Free Trade Port Intellectual Property Court, and also a practical exploration to promote the modernization of judicial system and judicial capacity of Hainan Court. The second was that Haikou Intermediate Court, according to the trial characteristics of compulsory liquidation and bankruptcy cases and in combination with actual trial of bankruptcy cases, formulated the Measures for Independent Performance Evaluation for Compulsory Liquidation and Bankruptcy Cases (Trial) to improve the specialized and professional level of bankruptcy trials, clarifying specific evaluation methods of compulsory

liquidation and bankruptcy cases.

Third, the system for bankruptcy trial was improved to provide a solid institutional foundation for the professional construction of bankruptcy trials. The first was to revise the original system. In combination with the actual bankruptcy trial, Haikou Intermediate Court improved the Measures for Management and Use of Administrator's Assistance Funds for Bankruptcy Cases, the Opinions on the Implementation of Payment of Administrators' Remuneration and other systems. The second was to innovate the way of trial, establish and explore the implementation of the pre-reorganization system. While actively studying and promoting the practice of enterprise bankruptcy and reorganization, in order to accurately identify the value and possibility of reorganization, reduce its cost and improve its success rate, the Provincial High Court instructed Haikou Intermediate Court to explore the reorganization combination in and out of the court, tried to establish a pre-reorganization system, and formulated the Guidance for Pre-reorganization Operation of Bankruptcy Cases (Trial), which clarified the scope of debtors who can enter the pre-reorganization and the procedures for pre-reorganization. On the basis of establishing the system, the judge handling the case has visited a private enterprise that was in operational difficulties many times to investigate and discuss the feasibility and path of the enterprise entering the pre-restructuring, so as to help the enterprise get

out of the predicament and realize its rebirth.

Fourth, the selection and supervision mechanism of administrators was improved, and their ability and enthusiasm to perform duties were promoted. The first was to re-compile the name list of bankruptcy administrators in Hainan Court. In order to make the administrators team of bankruptcy cases more standard and professional, the Provincial High Court carried out the re-compilation of the name list of administrators of bankruptcy cases in Hainan Court in the event that the original name list couldn't meet the actual needs of the bankruptcy trial because the original administrator list in Hainan Court had few institutions and was not managed according to classification, and some institutions didn't participate in the bankruptcy work actually. After the publicity stage of the registered institutions, the new list has been announced. The second was to improve the supervision and management system of administrators, and strengthen the assessment to administrator's performance. For example, Haikou Intermediate Court issued the Administrative Regulations for Bankruptcy Case Administrators of Haikou Intermediate People's Court (Trial) and Assessment Measures for Bankruptcy Case Administrators of Haikou Intermediate People's Court (Trial) to comprehensively assess the administrators' professional integrity, practice ability, work attitude and work performance taking the trial procedures of bankruptcy cases as clues and combining individual case assessment with annual



assessment, used the assessment results as a dynamic adjustment basis for recommending the promotion, demotion and elimination of administrators to the Provincial High Court, and established the dynamic management mechanism that “the competent can work both at the top and at the grass roots”. In 2021, Haikou Intermediate Court conducted an annual assessment to the original 12 registered administrators, and rated four institutions including Hainan Tianhao Law Firm as excellent, which effectively stimulated the enthusiasm of the administrators.

Fifth, the linkage mechanism between government and court was further improved to promote the convenience of bankruptcy. First, based on the established joint meeting system for bankruptcy disposal of enterprises in Haikou, in order to build a point-to-point linkage mechanism between government and court, Haikou Intermediate Court convened the Municipal Natural Resources and Planning Bureau, Municipal Taxation Bureau, Municipal Human Resources and Social Security Bureau, Market Supervision Administration and the bankruptcy administrators in September 2021 to hold a joint meeting for the linkage between government and court on bankruptcy disposal, soliciting opinions and suggestions from various administrators, identifying the problems and crux of the bankruptcy trial and discussing the contents of handling bankruptcy registration related to tax, real estate and enterprise, as well as the linkage between

government and court on protection of workers' arrears. The second was that in order to implement the *Opinions on Promoting and Guaranteeing Administrator to Perform his Duties according to Law and Further Optimize the Business Environment in Bankruptcy Proceedings* jointly issued by thirteen units including the National Development and Reform Commission, the Supreme People's Court and the Ministry of Finance, Haikou Intermediate Court, together with the Municipal Taxation Bureau and Municipal Natural Resources and Planning Bureau, countersigned *Several Opinions on Further Solving Tax-related Issues in Bankruptcy Proceedings (Trial)* and the *Opinions on Handling Real Estate Registration Matters in Bankruptcy Proceedings*, which further improved the convenience of bankruptcy and strengthened the guarantee of administrator's performance of duties.

### 3. Focus on preventing and resolving major risks

Organizational leadership was strengthened by establishing the leading groups of risk prevention and control in the three-level courts across the province, of which was mainly in charge by the chief justice personally. The risk prevention and disposal mechanism for "unified linkage of three-level courts, and integration of registration, trial and execution" was improved, risk cases were regularly checked, and 7,418 risk cases were effectively managed and controlled throughout the year in a "Three Synchronized" manner. Under the strong leadership of

Provincial Party Committee, with the full support of the Supreme People's Court and the active promotion of the Provincial Government, Provincial High Court through hard work has successfully handled the bankruptcy and reorganization of HNA Group, which involved an amount of trillions and more than 100,000 creditors, judicially helped HNA Group rebirth and obtain new development opportunity, and effectively maintained the economic security and social stability of the free trade port. The bankruptcy and reorganization case of HNA Group has an important impact at home and abroad. Belgian Court and Hong Kong High Court of China recognized and executed the ruling of Hainan court, which is the first time that the EU and Hong Kong jurisdictions have recognized and executed the judgment of the bankruptcy and reorganization case in the mainland of China. Zhou Qiang, Chief Justice of the Supreme People's Court, called it a landmark case with international standards, which was also fully affirmed by the main leaders of the Provincial Party Committee and Provincial Government.

### **(III) Promote innovative development, and strengthen judicial protection of intellectual property**

Hainan Court actively benchmarked the evaluation index of business environment, strengthened the judicial protection of intellectual property, and guaranteed the innovative development of free trade port.

## 1. High-quality operation of the Intellectual Property Court of Hainan Free Trade Port

In order to promote the construction of Hainan Free Trade Port, the Standing Committee of the National People's Congress reviewed and approved the establishment of the Intellectual Property Court of Hainan Free Trade Port at the end of 2020 with the strong support of the Supreme Court and the Provincial Party Committee. After its establishment, this court took 11 key parks in the province as the starting point, and initiated the judicial service guarantee mechanism of "1 intellectual property court +5 circuit points for handling cases +11 judicial protection contact points for key parks" in the country. Through the functional positioning of "nearby service, regular consultation, special training, litigation and mediation docking, and strengthening protection", it has actively provided judicial services and guarantees for promotion and construction of key enterprises such as seed breeding in Hainan, new medical technology and digital creativity, as well as major functional platforms such as the introduction base of global animal and plant germplasm resources, deep-sea aerospace and intellectual property trading center, and extended the intellectual property protection to key parks. Judicial protection contact points were set up in key parks to listen to the needs and suggestions of relevant enterprises to intellectual property protection, and closely provide judicial protection of intellectual property. The liaison

personnel of Intellectual Property Court of Hainan Free Trade Port at the judicial protection contact points of key parks and the city-county points for “fights against two crimes” was determined to establish a working system on liaison and park and take charge of the specific work of circuit legal service points, and a special column was started to publicize the basic information of the liaison. A liaison mechanism was established and implemented, which relied mainly on the online consultation, and the court working platform was used for online video consultation in real time, to achieve uninterrupted services and help enterprises prevent business risks. Meetings were held regularly to exchange views. Circuit trials were conducted to facilitate enterprise litigation. A communication and docking mechanism between enterprises and courts was built to make the communication and issue consultation mechanism between enterprises and courts unobstructed. A two-way communication mechanism was built to regularly cooperate to carry out seminars on intellectual property protection, hold special lectures on the rule of law and other publicity activities, actively offer advice and suggestions on common intellectual property legal issues of enterprises in the park, and provide assistance for their innovative development.

At present, the court has been listed at the judicial protection contact points of Sanya Yazhou Bay Science and Technology City, Hainan Resort Software Community and Wenchang International

Aerospace City. The trial division of special intellectual property zone in Sanya Yazhou Bay Science and Technology City has been founded. The First Civil Trial Court of the Supreme People's court and this court jointly established the "Research (Hainan) Base of Germplasm Resources under Judicial Protection by Intellectual Property Rights of the People's Court", which was approved by the Supreme People's Court to support the construction of the national seed industry base of "Breeding Silicon Valley in Hainan".

## 2. Actively explore punitive compensation mechanism

A mechanism for infringement damages with punitive damages was established, which was orientated by respecting intellectual property and encouraging innovative use and guided by realizing the market value of intellectual property. The spirit of General Secretary Xi Jinping's important speech on the effective implementation of the Civil Code was conscientiously studied and implemented, and the study and training of the Civil Code and related judicial interpretations was emphasized on a regular basis to combine with the legislative spirit and provisions of the Civil Code to accurately apply the Civil Code's protection of intellectual property and data rights, so as to protect all kinds of property rights fully and equally in accordance with the law, serve the technological innovation and digital economy development through judicial trails, and promote and guarantee the healthy development of socialist market economy.

In May 2020, Yahua Research Institute found in Yazhou District, Sanya City, Hainan Province that a person with the surname of Zhang used the female parent of “Longke 638S” to breed the rice variety of Longliangyou, so it made a complaint. After investigation by the administrative organ, the infringing seed samples involved in the case are extremely approximate or identical to “Longliangyou 1377”; and there is a genetic relationship with “Longke 638S”.Yahua Research Institute filed a lawsuit to the court, asking Zhang to stop the infringement and compensate for the economic losses. After hearing, the people’s court supported the petition of Yahua Research Institute. The judicial protection of the seed industry is related to the construction of Hainan Free Trade Port, and the construction of the national “Breeding Silicon Valley in Hainan” concerns more about the construction of the rule of law in China. The Intellectual Property Court of Hainan Free Trade Port has always taken strengthening the judicial protection of intellectual property as an important starting point to serve the construction of free trade port and create a first-class business environment. It has innovated the judicial protection mode of “trial + guidance + publicity + research”. The case has given full play to the judicial function of the special intellectual property court by means of publicly holding a court on April 26, the World Intellectual Property Day and publicly adjudicating on the trial division of special intellectual property zone in Sanya Yazhou Bay Science and

Technology City, popularized laws with cases, and showed the judicial protection of the free trade port to the rights of new variety plant. This case was included in *Typical Cases of People's Court Promoting Judicial Protection of Intellectual Property (Second Batch)* issued by the Supreme Court.

### 3. Construct an integrated intellectual property protection mechanism

The communication and cooperation between relevant units of intellectual property protection was strengthened to actively promote the implementation of tasks such as innovating and establishing an integrated intellectual property protection mechanism in system integration and innovation, and creating a comprehensive intellectual property protection center. Relying on the construction of the great protection pattern of intellectual property, the Intellectual Property Court of Hainan Free Trade Port has paid attention to strengthening the communication and coordination with public security, procuratorial organs and competent departments of intellectual property, market supervision and copyright, etc., promoted the improvement of working mechanism of intellectual property litigation, arbitration, mediation and notarization, strengthened coordination, optimized resource allocation, unblocked dispute resolution channels, intensified the whole chain protection of intellectual property, and promoted the construction of an integrated intellectual property protection mechanism under the guide of promoting the construction of public legal service platform. The



Provincial High Court and the Intellectual Property Court of Hainan Free Trade Port have jointly signed a framework agreement on the collaborative protection of intellectual property rights in Haikou and Sanya with the Hainan administration for market regulatory, public security, procuratorate, judicial administration, commercial mediation center and other units to strive to build a great protection pattern of “five-in-one” intellectual property, including judicial adjudication, commercial arbitration, diversified mediation, legal services and industry self-discipline, create the system integration and innovation of a comprehensive intellectual property protection center, and focus on Haikou National High-tech Zone and Sanya Yazhou Bay Science and Technology City to form a layout of “One South and One North” and “Two Wings Flying Together”.

#### 4. Establish a fast-trial mechanism for intellectual property cases

*The Notice on Completing the Replication and Promotion of the First Batch of Institutional Innovation Experiences* put forward by the Provincial Party Committee’s Office for Deepening Reform was implemented to establish a fast-trial mechanism for intellectual property cases. The system for sorting intellectual property cases was established and improved to promote the mechanism reform for sorting complicated and simple cases. The cross-regional trial mechanism of intellectual property cases within provincial-level administrative regions continued to be promoted. *The Provisions on the Public*

*Hearing of Major Cases (Trial)* have been formulated to regulate the public hearing of major cases involving emerging industries, key areas, key core technologies, and new plant varieties in Hainan during the construction of the free trade port, ensuring the unity of legal effect and social effect of major cases. The trial of typical civil, administrative and criminal cases has attracted widespread public attention. The *Provisions on the Operation of the Fast-Trial Mechanism for Intellectual Property Cases* and the *Provisions on Simplifying the Style of Judgment Documents for Intellectual Property Cases (Trial)* were formulated to promote the reform of the fast-trial mechanism and document style for intellectual property civil cases, and strive to improve the quality and efficiency of intellectual property cases. Guided by the “List of Litigation Elements” and “Interpretation of Response to Litigation”, the trial procedures were optimized, the trial efficiency was improved, and the judgment documents were simplified.

#### 5. Actively promote the “three-in-one” trial of the Intellectual Property Court

Approved by the Standing Committee of the National People’s Congress, the Intellectual Property Court of Hainan Free Trade Port is the only specialized court in the country that has the “three-in-one” functions of civil, administrative and criminal trial, integrating case registration, trial and execution. The court has carefully studied and implemented the *Hainan Free Trade Port Law of the People’s Republic*

*of China, the Opinions of the General Office of the CPC Central Committee and the General Office of the State Council on Several Issues Concerning Strengthening Reform and Innovation in the Field of Intellectual Property Trial, and the Opinions of the Supreme People's Court on Comprehensively Strengthening the Judicial Protection of Intellectual Property*, to further promote the innovation of systems and mechanisms. The court also took the lead in promoting the jurisdiction of intellectual property criminal cases, and cooperated with the Provincial High Court to issue the *Opinions on Several Issues Concerning the Connection of Case Jurisdiction in the Intellectual Property Court of Hainan Free Trade Port* and the *Opinions on Establishing a Working Mechanism for Designating Jurisdiction in Intellectual Property Criminal Cases (Trial)*, clarifying the scope of intellectual property criminal cases and establishing a communication and coordination mechanism for public security, procuratorial organs and people's courts. In 2021, the court accepted 5 intellectual property criminal cases, among which 180,000 netizens sat on the criminal case involving the sale of counterfeit Maotai trademark products online that was heard in public.

#### **(IV) Strengthen maritime trial, and help build a marine power**

1. Actively serve to guarantee the development of cruise and yacht industry

The first was to promulgate the *Opinions of Haikou Maritime*

*Court on the Maritime Judicial Guarantee to Promote the Development of Cruise and Yacht Industry in Hainan*, establish judicial rules for the disputes involving cruise and yacht, and improve the pertinence and effectiveness of maritime judicial guarantee. The second was to set up circuit trial points for cruise and yacht disputes in Sanya Phoenix Island Cruise Home Port and other places, design and produce the templates of form-filling judgment documents, provide menu-based judicial services, and innovate the case handling mode of on-site “registration, trial, and quick judgment”. *Legal Daily* made a special report on this. The third was to launch the maritime judicial service mechanism of cruise tourism in all time and space, set up a circuit trial court and legal service points on the “Dream of the South China Sea” cruise, and open 24-hour all-time maritime judicial services such as conflict resolution, legal consultation and publicity of rule of law by means of on-board circuit trial + online remote dispute resolution. The fourth was to properly hear the cruise and yacht cases, and fairly and efficiently hear 111 cases involving the entire industrial chain of cruise and yacht, including ship construction, management, leasing, berthing and insurance according to law.

2. Facilitate to develop new land and sea route in the western region as an international shipping hub

The first was to give full play to the regional advantages of Yangpu Court of Haikou Maritime Court. Since June 1, 2020, Yangpu

Court has accepted 583 cases, an increase of 420.54% year-on-year, and properly heard maritime cases involving port construction, ship financing, protection of seafarers' rights and interests, port warehousing and logistics, and facilitated Yangpu to build a demonstration area for the pilot area of Hainan Free Trade Port. The second was to establish a smooth communication and consultation mechanism with the relevant departments of the port and shipping of the Management Committee of Yangpu Economic Development Zone, thoroughly study and judge the possible legal issues such as international ship management, international ship registration, shipping finance, bonded oil supply, port warehousing and logistics during the construction of the port of registry, "Yangpu Port of China", and properly hear disputes related to bonded fuel oil transportation. The third was to hear the marine development and utilization disputes related to the construction of large-scale infrastructure according to law, and impose an "Integrity Fine" on the two parties who falsified evidence to impede justice in relevant cases, highlighting the "predictability" of the business environment in the free trade port. The fourth was to write the *Adjudication Guidelines on Hearing the Disputes over Real Rights of Ships*, unify the handling and adjudication standards of civil and commercial disputes related to real rights of ships, serve to guarantee the international ship registration of "Yangpu Port of China", and promote the development of ship construction,

registration and financing markets in Hainan Free Trade Port.

### 3. Strengthen the marine ecological environment protection

The first was to build a “community” for judicial protection of marine environmental resources. Focusing on the linkage between the free trade port and Guangdong-Hong Kong-Macao Great Bay area, the Maritime Court took the lead in signing Judicial Cooperation Agreement on Marine Environmental Protection with maritime courts in Guangzhou and Beihai, and published typical cases. Three mechanisms, namely, “cross-regional judicial cooperation”, “joint prevention and control of environment protection” and “public interest litigation support”, have been established. The second was to release the 2018-2020 white paper on the trial of marine environmental resources and the *Adjudication Guidelines on Hearing the Disputes over Natural Resources of Marine Ecological Environment (Trial)*, sort out the main practices and trial experience of the judicial protection of marine environmental resources, and expand the social awareness of the trial of marine environmental resources. The third was to create typical cases of marine environmental resources. One case from the first instance of the Maritime Court and the second instance of the Provincial High Court was selected into the 31st batch of guiding cases of the Supreme Court, and also published on the judicial portal of the United Nations Environment Programme as a judicial case of China’s environmental resources. Three cases were selected as typical cases of

environmental resources in national courts.

#### 4. Improve and consolidate the execution effect of marine cases

The first was to make every effort to “basically solve difficulties in execution”, take the “One-Five-Three” emphasis in work as the starting point, strengthen the concept of civilized execution, and constantly standardize the execution behavior. Over the past five years, the average annual closing rate of execution cases has exceeded 95%, and the cases involving people’s livelihood and involving Party and government agencies for the person to be enforced are properly handled with the annual closing rate of 100%.The second was to strengthen the concept of civilized execution with good will, properly handle the cases involving Party and government agencies for the person to be enforced, and promptly recover RMB 2,869,200 yuan of fishing boat compensation for 14 fishermen; use the weekend to recover more than RMB 1,000,000 yuan of salary for 20 crew members from Zhoushan, Zhejiang, after a round-trip of 4,010 kilometers in 2 days, which has strongly safeguarded the legitimate rights and interests of 14 fishermen (execution applicants), and also effectively guaranteed the closing work of the Nangang Wharf of the Guangdong-Hainan Railway. The third was to play the executive function, complete the “Six Stability” and implement the “Six Guarantees”. In accordance with the law, the dispute case of financial loan contract involving Boao Lecheng Pilot Zone of International Medical Tourism with the target

value of more than RMB 1.1 billion yuan was concluded, which provided legal guarantee for the smooth construction of the key zone of the free trade port. The fourth was to innovate working methods, establish a joint case handling mechanism with Maritime Safety Administration and other departments, check and control ships with information technology, and realize seamless connection between 24-hour ship detention and custody.

#### 5. Strengthen the effectiveness of pre-litigation preservation and marine injunction

The first was to continue to promote the “all-time” preservation rapid response mechanism to ensure that the party’s preservation application can also be accepted outside the 8-hour working hours, and the preservation measures can be taken in a timely manner. In case of emergency, ship detention procedures can be handled within 24 hours. If the guarantee provided by the party to apply for the release of detained ship meets the conditions, the ship will be released within 24 hours, and the interests of the ship, the cargo and the terminal will be taken into account with a higher standard and efficiency than the international practice. The second was to take initiative to guide relevant personnel to apply for pre-litigation preservation and maritime injunction, and timely handle conflicts and disputes through the application of relevant procedures, and ensure the smooth development of production and life of the parties. In 2021, Haikou Maritime Court



efficiently handled 18 maritime injunction cases. In a batch of injunction cases, the detained agricultural materials and products were smoothly circulated, which seized time for farmers to work and solved the urgent needs of the masses.

### **Ⅲ. We accurately grasped the criminal justice policies and measures, optimized the business environment, and protected the legitimate rights and interests of various subjects**

Adhering to the judicial concept of combining justice with mercy, Hainan Court has intensified the efforts to crack down on crimes that seriously affect social order and business environment; adopted a tolerant policy on reforms and innovations in business operations, promoted the construction of Safe Hainan, optimized the business environment, and promoted economic development.

#### **( I ) Punish criminal offenses according to law, and maintain a safe and stable business environment**

Hainan Court earnestly implemented criminal policies and judicial principles such as “statutory punishment for a specified crime”, “no punishment in doubtful cases”, “combine justice with mercy” and “illegal evidence exclusion”. In 2021, 10,586 criminal cases of various types were heard, and 11,903 people were imposed of penalty according to law. A special campaign of crackdown on gang crimes continued to be carried out. 172 underworld and vicious power cases

involving 1,301 people, such as Wu Zonglong and Xing Kongquan 12, and 51 cases related to “protective umbrella” involving 53 people were concluded according to law, with RMB 2.037 billion yuan of illegal assets disposing in accordance with the law. A new round of the three-year anti-drug campaign was carried out in depth, and by combination punishment with prevention, 532 drug-related cases involving 1,017 people were concluded. The new needs of free trade port construction were emphasized to crack down on the new cross-border crimes such as smuggling and money laundering in accordance with law, and 833 cases of new types were heard in accordance with law, which effectively safeguarded the investment and trade security of the free trade port. The judicial needs of the people’s livelihood were closely followed to crack down on the illegal acts such as “robbery, plunder and theft”, telecommunication fraud, fund-raising fraud, production and sale of inferior food and drugs and trick loans, and 2,163 related cases were concluded.

**( II ) Adhere to the tolerance rule of criminal law, and encourage the reform and innovation of production and management**

In the criminal trial, the trial concept upheld by Hainan Court is to: adhere to the equality of all market entities, and treat state-owned enterprises, private enterprises, domestic and foreign-funded enterprises, and large, medium, small and micro enterprises equally.

The court adhered to treat and deal with the irregular behaviors of private enterprises and entrepreneurs in the past operations from the perspective of development, rectified unjust and erroneous cases related to property rights in accordance with the law, insisted on the practice that all erroneous cases shall be corrected entirely, partial ones be corrected partially and what is erroneous shall be corrected, strictly distinguished economic disputes and economic crimes, civil liability and criminal liability, legal property and illegal income, company property and personal property, legitimate financing and illegal fund-raising, resolutely acquit those with unclear facts and insufficient evidence, and protected the personal and property security of entrepreneurs. The personal and property safety of entrepreneurs was focused on to change the concept of judicial law enforcement and create the most secure development environment. Hainan Court adhered to the judicial law enforcement concept of “tolerance, prudence, goodwill, civility and standardization”, protected the personal and property safety of various enterprises and entrepreneurs, applied compulsory measures prudently in accordance with the law, and improved the effective prevention and normalized correction mechanism for unjust and erroneous cases related to property rights, so that entrepreneurs can concentrate on starting businesses, investing with confidence, and operating with confidence. In handling all kinds of cases, courts at all levels have objectively viewed the issue of

non-standard business operations, accurately grasped the principle of interests balance, and ensured the healthy development of enterprises; limited the criminal judicial power's intervention in civil disputes, unified the adjudication standards for economic crime cases, and clarified the incriminating standards for crimes such as contract fraud. For example, in the trial of three cases including Yang and Zeng, it was determined that the defendant did not constitute the crime of contract fraud and achieved good legal and social effects. The boundaries between criminal offenses and illegal operations were strictly distinguished, releasing a positive signal to protect those with investment experience.

#### **IV. We substantially resolved administrative disputes to ensure the healthy development of business entities**

Hainan Court firmly established the concept of justice for the people, earnestly safeguarded the legitimate rights and interests of enterprises, substantially resolved administrative disputes, conscientiously implemented the work arrangements of the Provincial Party Committee and the Leading Party Group of High Court, focused on the main business of trial, and practiced “quality is the foundation, and efficiency is the guarantee”, necessarily adhered to the judicial concept of purpose, compliance and rationality, and steadily improved the quality and efficiency of case handling.

**( I ) Comprehensively promote the reform of cross-regional jurisdiction over administrative cases**

Hainan Court has carried out the reform of cross-regional jurisdiction over administrative cases since May 1, 2020. This is an important measure taken by Hainan Court to serve the overall situation of Hainan's economic and social development, which is of great significance to supervise the administration of administrative organs in accordance with the law, protect the legitimate rights and interests of administrative counterparts, maintain judicial justice, improve judicial credibility and serve the construction of Hainan Free Trade Port. Since 2021, in order to fully grasp the implementation of the reform of cross-regional jurisdiction over administrative cases, strengthen the government-court linkage, the court-court linkage and the up-down communication, timely solve the new situation and new problems in the implementation of the reform, properly handle the major relations involved in the reform, actively seek the support of the Party committee and government, allow the masses to truly feel the bonus from the reform, and ensure the implementation of various measures, the Provincial High Court has carried out field survey in various cities and counties in the province for many times to deeply understand the preparation and implementation of the reform, and conducted on-site instructions and question answering, and at the same time, it also discussed with local governments and departments related to land,

planning, legal system and law enforcement as well as all intermediate and primary courts to fully listen to the opinions and suggestions of all parties, investigated and understood the implementation of reform and the problems encountered, and practically reached the grassroots level to understand the problems existing in the reform of remote jurisdiction, so as to promote successful experience, improve quality and efficiency of reform and provide a solid guarantee for further scientifically evaluating the quality and efficiency of remote jurisdiction reform.

**( II ) Vigorously strengthen the substantive resolution of cases**

1. Pay close attention to complicated and sensitive cases such as series case and similar case, and strive to resolve conflicts and disputes on the spot. The first was to communicate and coordinate key cases by the leaders of the court who visited the masses. The second was to actively communicate and coordinate with deputies to the National People's Congresses and members of the Chinese People's Political Consultative Conference (CPPCC) who expressed their concerns, and the effect was remarkable.

2. Innovate coordination methods. The major administrative cases were handled by closely relying on the support of the Party committee and the government to coordinate the active cooperation of relevant departments and protect the rights and interests of all parties equally.

**( III ) Promote the appearance of the person in charge of the administrative organ to respond to the lawsuit in court**

The leaders attached great importance to it, and the government and the court made joint efforts to promote the person in charge of the administrative organs to appear in court to respond to the lawsuit. In 2020, the Provincial High Court, together with the Provincial Department of Justice and the Department of Natural Resources and Planning, conducted an investigation on the appearance of the person in charge of the administrative organ to respond the lawsuit in court and made a special report to the Provincial Party Committee. In response to the fact that the rate of court appearances of the administrative organs was generally lower than the national average, Secretary Shen Xiaoming, Governor Feng Fei and Chief Justice Chen Fengchao (then) attached great importance to it and repeatedly issued instructions. On September 30, 2021, the Provincial Party Committee and the Provincial Government issued the *Implementation Plan for the Construction of the Legal Government of Hainan Province (2021-2025)* (Q.F. [2021] No. 22), which clearly stated that it is necessary to implement the job requirement that “it is the principle to appear in court to respond to the lawsuit, while an exception is not appear”, and establish a system for the approval and management of the person in charge of the administrative organ not appearing in court to respond to a lawsuit. With the strong support of the Provincial Party Committee, the Provincial Government and the Provincial High Court jointly issued the *Measures for the Person in Charge of Administrative Organs*

*to Appear in Court to Respond to a Lawsuit* to encourage the person in charge of the government to appear in court to respond to the lawsuit. A total of 1,681 persons in charge of administrative organs of governments at all levels across the province appeared in court to respond to lawsuits. In 2021, the appearance rate of the person in charge of administrative organs to respond to the lawsuit in court has reached more than 50%. The administrative organs have appeared in court to respond to 1,095 cases from the introduction of *Measures* to December 31, with an appearance response rate of 85.15%. The response rate of the person in charge of administrative organs has changed dramatically. Zhou Qiang, Chief Justice of the Supreme Court, instructed to summarize and promote our experience.

## **V. Next work plan**

### **( I ) Benchmark against the advanced regions, and further improve mechanism**

Benchmark relevant mechanisms for business environment optimization in Shanghai, Guangdong and other advanced regions, further improve the working mechanism for business environment optimization of Hainan Court, strengthen mutual cooperation and cooperation, further smooth the working mechanism, and work together to enhance the people's sense of contentment from business environment.



**( II ) Benchmark against the bankruptcy indicators, and promote the quality and efficiency of bankruptcy trials**

The first is to further develop a bankruptcy trial system applicable to the whole province, and improve the informationalized level in handling bankruptcy.

The second is to further strengthen the professional construction of bankruptcy trials, promote the normalized and substantive operation of the bankruptcy government-court linkage mechanism, and provide external guarantees for the smooth operation of bankruptcy proceedings.

The third is to further promote the separation of complicated and simple bankruptcy cases, and implement fast trial of simple cases and simplified handling of complicated cases.

The fourth is to further promote the effective connection between bankruptcy proceedings and execution investigation and control systems, implement online property search and auction, and reduce the cost of property investigation and disposal.

The fifth is to formulate a system for substantive merger and bankruptcy of affiliated enterprises.

The sixth is to further exert the security function and promoting role of bankruptcy security funds.

The seventh is to strengthen the business study, research and exchange of bankruptcy trials, and improve the level of bankruptcy

specialization.

**(III) Benchmark against the indicators of medium and small investors, and strengthen the protection on them**

The first is to establish and improve the model judgment mechanism for corporate disputes and futures disputes, and continue to implement the representative litigation system and the documentary evidence-based order system.

The second is to improve the diversified resolution mechanism for securities and futures disputes, promote the establishment of a mediation or entrusted mediation mechanism for corporate disputes and securities and futures disputes, and promote the participation of the China Securities Legal Service Center in the assessment of losses in the trial of securities misrepresentation cases by the courts.

The third is to strengthen the equal protection of various property rights in accordance with the law. Properly handle economic disputes involving property rights in accordance with the law, fairly hear cases involving property rights, and prudently take compulsory measures such as sealing up, seizing, freezing and disposing of property. Correctly distinguish the boundaries between economic disputes and criminal crimes, prudently handle the determination of crimes and non-crimes involving private entrepreneurs in contract disputes, and strengthen the protection of the legitimate rights and interests of entrepreneurs' personal property.

The fourth is to further strengthen the publicity of the rule of law

among small and medium investors.

**(IV) Benchmark against the indicators of execution contract, and promote the quality and efficiency of trial execution**

The first is to thoroughly implement the *Regulations of Hainan Province on Diversified Dispute Resolution* to comprehensively improve the quality and efficiency of diversified resolution of conflicts and disputes. Continue to promote the inclusion of the diversified resolution of conflicts and disputes, the rate of successful civil (administrative) cases per 10,000 people and the rate of pre-litigation mediation into the assessment scope of comprehensive governance objectives, continue to integrate the diversified resolution of conflicts and disputes with comprehensive governance and safety construction, continue to promote institutional guarantees for the active participation and initiative of member units to ensure that a large number of conflicts and disputes can be effectively diverted and properly resolved.

The second was to comprehensively implement the working mode of “diversified mediation + quick adjudication”. For simple cases with clear basic facts, definite rights and obligations, single legal relationship and little dispute, on the premise of following legal procedures, protecting litigation rights of the parties and ensuring quality of case handling, a multi-level dispute resolution system will be constructed to scientifically allocate trial resources, reasonably divert cases, simplify workflow, optimize trial methods, promote element-based judgment documents in tabular format, vigorously

reduce the average number of trial days for front-end quick-adjudicated cases, standardize the withdrawal mechanism of quick-adjudicated cases, and make the management and approval procedures of program conversion strict.

The third is to improve the commercial mediation and litigation docking mechanism. Continue to reduce the time and cost of resolving commercial disputes; strengthen the publicity of commercial dispute mediation, increase the awareness rate of market entities on commercial mediation, and guide them to resolve commercial disputes through the Commercial Mediation Center; for those who reach a mediation agreement and apply for confirmation, provide a timely judicial confirmation.

The fourth is to further shorten the cycle of registration, trial and execution. Actively guide and expand the scope of online registration, cross-regional registration and online payment cases, standardize registration standards, simplify registration procedures, and reduce the time consumption in the process of registration. Strictly manage the trial limit, strengthen the supervision of the chief justice and presiding judge, standardize the postponement of court sessions, standardize the entrusted appraisal, and improve the efficiency of the trial. Standardize the transfer of cases and shorten the transfer period for appeals against jurisdiction and appeals against first-instance judgments. Complete the service of legal documents, promote the use of delivery methods such as SMS service, WeChat service and electronic service, continue to

guide the parties to fill in the service address confirmation, improve the efficiency and accuracy of service, and reduce the entire time-consuming process of registration, trial and execution.

The fifth is to improve the efficiency of refunds. Implement the requirements of the *Notice on Issuing the <Procedures for Refund of Litigation Fees>* issued by the Provincial High Court, and provide more efficient and convenient refund services for the parties. In the meantime, comprehensively promote handle the case by electronization, and achieve “full coverage of cases and full coverage of processes”.

The sixth is to effectively promote the establishment and improvement of a long-term mechanism for solving difficulties in execution. Improve the networked degree of property search, encourage parties to determine the price of property disposal by means of price negotiation and online inquiry, promote the use of online auctions, and strive to reduce the cost of rights protection. Strengthen the information connection with government functional departments, promote the construction and improvement of the information sharing mechanism, and accelerate the informatization development of court execution across the province. Strictly standardize the property appraisal and auction process, further reduce the cost of execution time, and improve the efficiency of enterprises in recovering claims. Innovate the way of execution and explore the execution methods of new types of property objects.

# 海南法院优化营商环境典型案例

## 【民事典型案例】

案例1:

### 沃尔沃汽车金融（中国）有限公司与羊某 融资租赁合同纠纷案

#### 【关键词】

融资租赁 取回权 格式条款 约定解除权的限制 公平原则

#### 【案情概要】

2018年5月4日，沃尔沃汽车金融（中国）有限公司（以下简称沃尔沃公司）作为出租人、羊某作为承租人签订一份《融资租赁协议》，约定：沃尔沃公司将向羊某指定的出卖人购买沃尔沃挖掘机出租给羊某，羊某提前应支付首期款 672908 元，剩余货款 537092 元，由羊某分 36 期还款，第一期首期支

付 18119.78 元，剩余 35 期每期支付 17252.38 元，每月 10 日为付款日，付款方式为委托扣款，租期为 2018 年 6 月 10 日至 2021 年 5 月 10 日。因羊某逾期支付租金，沃尔沃公司向法院起诉，请求判令解除《融资租赁协议》、收回挖掘机，判令羊某向沃尔沃公司支付到期租金 69489.27 元（含罚息，60.11 元/天）及自 2020 年 10 月 6 日起至实际返还租赁物之日止的租金和利息，支付聘请律师服务费支出 12000 元。

### **【裁判结果】**

羊某向原告沃尔沃公司支付租金 45965.19 元及逾期利息。判决作出后，双方当事人均未上诉，该判决已发生法律效力。

### **【典型意义】**

积极发挥审判职能，依法平等保护中外投资群体；严格秉持公正公平，合力打造法治营商环境。“每个案件就是一个营商环境”，平等保护各类市场主体合法权益，努力让人民群众在每一件司法案件中都感受到公平正义，是人民法院审判工作的宗旨和目标。本案中，原告沃尔沃公司系在北京市注册登记的外商投资公司，法院在案件审理中，严格依法裁判，既依法维护原告作为外商投资公司的合法权益，判令被告承担相应的违约责任，亦依法对原告主张的融资租赁物的取回权主张不予支持。法院既保护市场平等主体的合法利益，又对外商投资企

业的平等参与市场竞争具有警示教育 and 价值引导作用，引导各类市场主体依法经营，尊重市场规则和契约行为。本案彰显了海南法院在民商事案件审理中，坚持依法平等保护、全面保护、依法保护各类市场主体的合法权益，对待中外投资主体权利平等、机会平等、规则平等，营造稳定、公平、透明、可预期的法治化营商环境。



案例 2:

## 管某、钱某等 34 名投资者与新大洲控股股份有限公司 证券虚假陈述责任纠纷系列案

### 【关键词】

上市公司 信息披露 因果关系 赔偿数额

### 【案情概要】

新大洲控股股份有限公司(以下简称新大洲公司)系一家在海南省海口市注册成立的股份有限公司,于 1994 年 5 月 25 日在深圳证券交易所上市,证券名称“\*ST 大洲”(原名:新大洲 A),证券代码“000571”。因新大洲公司在 2017 年底至 2018 年期间三次未按《中国证券监督管理委员会上市公司信息披露管理办法》等有关规定披露其为关联公司债务提供担保的事项,中国证券监督管理委员会海南监管局以新大洲公司信息披露违法违规为由对新大洲公司及其相关责任人员给予警告、罚款等行政处罚。新大洲公司将其被行政处罚的有关信息披露后,管某、钱某等合计 34 名股民分别分批以新大洲公司的虚假陈述行为给其造成投资损失为由向海口市中级人民法院起诉要求赔偿其投资损失、佣金、印花税损失及相应利息损失。

## 【裁判结果】

人民法院在审理该系列案过程中，依法审查了新大洲公司关于其虚假陈述行为与投资者的损失之间不具有因果关系的抗辩理由，认定新大洲公司没有完成举证证明责任，投资者的投资损失与上市公司的虚假陈述行为之间存在因果关系。同时，考虑到新大洲公司实施证券虚假陈述行为的期间，公司股票亦受到证券市场本身的系统风险的影响，故在扣除证券系统风险因素后，仅支持了投资者的部分诉讼请求。新大洲公司不服一审判决，提起上诉。海南省高级人民法院经审理，认为一审判决认定事实清楚，适用法律正确，驳回新大洲公司的上诉。

## 【典型意义】

上市公司依法披露的信息，必须真实、准确、完整，不得有虚假记载、误导性陈述或者重大遗漏。上市公司未按规定公开披露重大信息资料，或有虚假记载、误导性陈述、重大遗漏等情形，致使投资者在证券交易中遭受损失的，应当承担赔偿责任。本案的处理结果，既依法保护了中小投资者合法权益，督促上市公司依法及时全面完整地进行信息披露，确保公司经营管理透明，保障中小投资者的知情权，在保护中小投资者合法权益方面具有典型的正面意义；同时，也依法维护了上市公司的权益，进一步优化证券市场的投资环境，为海南资本市场健康、稳定发展提供有力的司法保障。

案例 3:

## 宁某与吴某合同纠纷案

### 【关键词】

损害股东权益 合同 保底条款

### 【案情概要】

2015 年 1 月 2 日，吴某与宁某签订《合作养鱼及投资渔场合作协议书》，约定：双方共同成立公司，宁某占公司股份 60%，吴某占 40%。宁某渔场及其租赁土地合计估值为 350 万元，吴某购买该渔场及其租赁土地 40% 产权的入股资金为 140 万元。宁某承诺到 2017 年 2 月前，吴某除拥有宁某所租赁土地及地上渔场厂房设施 40% 的产权外，同时还应享有不低于 42 万元-现金的投资分红。如截止到 2017 年 2 月时，渔场运营所产生的总盈利高于 100 万元，则吴某应按实际总盈利的 50% 分享投资分红。2017 年 2 月前，如宁某不能实现年 30% 的保底盈利目标，吴某可退股。宁某应按 140 万元赎回吴某 40% 的股份。股份回购期限由双方协商并应在吴某提出的半年内实现。吴某分别于 2013 年、2014 年、2015 年向宁某转账共 140 万元投资款。因宁某未按照约定向吴某支付 140 万元投资款及 42 万元利息，合计 182 万元，吴某催要未果，遂诉至法院。请求宁某返还吴

某 140 万元及利息；宁某向吴某支付吴某投资现金分红人民币 42 万元。

### **【裁判结果】**

二审判决宁某向吴某支付140万元及利息，驳回吴某的其他诉讼请求。

### **【典型意义】**

合伙是一项重要的民事法律制度，因具有募集资金迅速、设立方便、经营灵活等特点，成为自然人、法人等民事主体参与投资的重要方式。中小投资者在合伙共事过程中，除了共享利益还需共担风险，因此，在合伙投资办企业亦或成立公司共同经营前，需就合伙或合作事宜签署明确的合伙协议或合作协议，以防范法律风险，避免产生不必要的纠纷。本案判决旨在提醒中小企业投资者在合伙投资办企业亦或成立公司经营的时候，必须遵守相应的法律法规，不得违反法律、行政法规的强制性规定，当事人在平等自愿的基础上签订，个别条款违反了法律、行政法规强制性规定无效，而其他条款并不违反法律法规的强制性规定的，应认定合法有效，双方应当严格履行。司法审查中，依法确立合同的效力，鼓励合法、正当、自主自愿的交易，能够确保公司法定资本的维系和股东固有权利的保护，充分发挥审判职能，持续加大优化营商环境力度，为企业合法经营提供优质高效的司法服务。

案例 4:

## 海口旭丰汇投资咨询有限公司破产清算案

### 【关键词】

破产清算 破产和解 “执转破”

### 【案情概要】

海口旭丰汇投资咨询有限公司（以下简称旭丰汇公司）于 2010 年 10 月 29 日成立，注册资本 2550 万元。2015 年 11 月 24 日，因民间借贷纠纷一案，旭丰汇公司需按判决偿还 750 万元及利息 43750 元给北京海御南北投资管理有限公司（以下简称海御南北公司）。判决生效后，该公司认未按判决履行义务，债权人海御南北公司向海口市龙华区人民法院申请强制执行。执行过程中，债权人申请执行法院轮候冻结了旭丰汇公司名下的股权，但无法评估执行，且该公司无可供执行的财产，龙华区人民法院将该执行案移送至海口市中级人民法院进行“执转破”审查。2019 年 12 月 9 日，海口市中级人民法院根据海御南北公司的申请，裁定受理旭丰汇公司破产清算一案，并依法指定破产管理人，组织召开债权人会议。在债权申报期内，债权人翁月晴申报两笔债权，经审核，提交债权人会议，确定翁月晴经分别从海御南北公司、董津处受让债权，继而成为本案

唯一债权人，翁月晴的两笔债权数额分别为 7543750 元和 5427806 元。2021 年 1 月 14 日，债权人与债务人自愿达成并签署《和解协议书》，对债权数额、债务履行方式、管理人报酬及相关破产费用的承担等事项进行了明确约定，债务人通过与债权人翁月晴自行协商的方式，就本案涉及的债权债务达成明确具体的清偿方式安排，且就管理人报酬及相关破产费用的承担等事项作出详细约定，并向法院申请破产和解。

### **【裁判结果】**

裁定认可旭丰汇公司破产和解协议，并终止破产程序。

### **【典型意义】**

本案是海口市中级人民法院的首个破产和解案件，裁定认可旭丰汇公司破产和解协议，并终止破产程序，为原本濒临破产的公司带来了一线生机。“执转破”是一个双赢的法律机制，是濒临破产企业的另一条出路，破产并非只有清算一个终点，对有发展潜力但暂时遇到困难的企业，破产程序起到了良好的保护作用。破产和解避免了因债务人破产而发生的连锁反应，高效推进案件程序，极大缩短破产案件审理周期，有效助力了濒危企业绝地重生，充分发挥了破产和解程序功能优势，有利于整个社会经济秩序的稳定，避免了破产宣告给社会带来的消极影响，有利于持续优化营商环境，为推动海南经济发展提供强有力的司法服务和保障。

案例5:

## 嘉兴某公司（外资独资）诉三亚某公司 买卖合同纠纷案

### 【关键词】

ODR 平台 新冠疫情 经营困难

### 【案情概要】

嘉兴某公司（外资独资）从2014年开始向三亚某公司供应酒店油烟净化设备，三亚某公司于2019年6月开始停止向嘉兴某公司付款，嘉兴某公司遂起诉至法院。三亚某公司抗辩由于新冠疫情爆发的原因，导致企业经营困难，并非有意拖欠货款。基于双方有长期合作的基础，且该案为一起涉外商事案件，法院引导双方当事人通过ODR在线解纷平台，选任特邀调解员进行调解。同时，法官也在线释明疫情爆发后新的司法政策，通过多方努力，三亚某公司积极制定了分期支付的还款方案，得到了嘉兴某公司的认可。后嘉兴某公司撤诉。

### 【调解结果】

调解撤诉。

### 【典型意义】

良好的营商环境离不开公平、公正、便民利企的司法服务。在疫情防控常态化的背景下，部分企业面临严峻的考验，涉诉案件明显增多。法院在司法工作中努力营造稳定、公平、可预期的法治化营商环境，在依法平等保护中外市场主体的合法权益上发挥着关键的作用。本案充分发挥了涉外多元解纷 ODR 调解平台优势，通过选任特邀调解员，在线向双方当事人释明新冠疫情对经济生活和司法实践的影响、改变，再辅之以法官专业化的引导，使这起涉外商事案件得以高效、圆满化解，保障了受疫情影响企业的正常经营、维护了外资企业的合法权益，赢得了中外企业对海南法院的信任与赞赏。



案例 6:

## 海航集团有限公司等三百二十一家公司 实质合并破产重整案

### 【关键词】

民事 破产重整 实质合并破产 关联企业

### 【案情概要】

海航曾是以航空运输、机场运营、酒店管理、金融服务为主要业务的大型跨国企业集团，曾入选世界五百强，拥有境内外企业超2000余家。因经营失当、管理失范、投资失序，加之市场下行，海航集团于2017年底爆发流动性危机。2021年2月10日，海南高院分别裁定受理海航集团有限公司（以下简称海航集团）、大新华航空有限公司、海航航空集团有限公司、海航资本集团有限公司、海航基础控股集团有限公司、海航商业控股有限公司、海航实业集团有限公司（以下简称海航集团等7家公司）重整案，并于同日分别指定海航集团清算组担任海航集团等7家公司管理人。后海航集团等7家公司管理人申请，2021年3月13日，海南高院裁定对海航集团有限公司等三百二十一家公司（原申请325家后撤回4家）（以下简称海航

集团等321家公司)进行实质合并重整,并于同日指定海航集团清算组分别担任海航集团等321家公司管理人(以下简称管理人)。且于2021年6月4日召开海航集团等321家公司重整案第一次债权人会议。2021年9月29日,海南高院主持召开海航集团等321家公司重整案第二次债权人会议,并以书面表决方式召开出资人组会议,由债权人会议各表决组及出资人组会议分别对《海航集团有限公司等三百二十一家公司实质合并重整案重整计划(草案)》及《海航集团有限公司等三百二十一家公司出资人权益调整方案》进行表决。

### **【裁判结果】**

2021年3月13日,海南高院于作出(2021)琼破1号之一民事裁定:对海航集团有限公司等三百二十一家公司进行实质合并重整。2021年10月31日,海南高院作出(2021)琼破1号之六民事裁定:一、批准《海航集团有限公司等三百二十一家公司实质合并重整案重整计划》;二、终止海航集团有限公司等三百二十一家公司实质合并重整程序。

### **【典型意义】**

海航集团破产案件是目前亚洲地区债务规模最大、债权人数量最多、债权人类型最多元、重整企业数量最多、法律关系最复杂、程序联动最复杂的破产重整案件,也是少有的由高级

法院直接审理的重整案件。超大型企业破产重整的最大困难在于如何妥善关联、维护、运营或处置复杂财产，尽可能保护债权人的整体清偿利益。在海航系的四个重整案中，海航集团有限公司等 321 家企业合并重整案涉及的企业主体最多、涉及的债权最多、重整计划安排也是最复杂的，主要通过信托计划实现资产管理与债务安排。《重整计划》提出设立信托计划的方案，充分利用信托计划的财产管理、运营功能，确保企业持续经营及分期偿还债务，该计划得到了法院的批准，该做法对后续企业集团的破产重整具有一定的指引意义。通过重整，海航集团既化解了债务问题，又解决了上市公司合规问题，实现对业务、管理、资产、负债、股权的全方位重组，实现了法律效果、社会效果、经济效果的统一，为大型集团企业风险化解、境内重整程序的境外承认与执行、关联企业实质合并重整、上市公司合规问题解决以及海南自贸港破产立法及司法提供了鲜活丰富的样本与素材。对于海南自贸港建设中，尤其是在“办理破产”这一重要营商环境专项指标上，起到了重要的示范作用，为营造公平透明、可预期的营商环境提供有力司法服务和保障。该案例入选 2021 年全国法院十大商事案件。

## 【 知识产权典型案例 】

案例 7:

### 湖南亚华种业科学研究院与张某 侵害植物新品种权纠纷案

#### 【 关 键 词 】

植物新品种权 侵权 赔偿

#### 【 案情概要 】

湖南亚华种业科学研究院（以下简称亚华研究院）系“隆科 638S”的品种权人，涉案杂交水稻品种“隆两优 1377”由母本“隆科 638S”与父本“R1377”组配繁育。2020 年 5 月，亚华研究院在海南省三亚市崖州区发现张某利用“隆科 638S”母本繁育隆两优水稻品种，遂委托袁隆平农业高科技股份有限公司就此向三亚市有关行政执法部门进行投诉。经行政机关查处，发现张某生产涉案侵权种子 439 包，合计约 35120 斤。经鉴定，涉案侵权种子样品系与“隆两优 1377”极近似品种或相同品种；与“隆科 638S”存在亲缘关系。亚华研究院向法院起诉，主张张某侵犯其植物新品种权，应立即停止侵权行为，销

毁繁育的全部侵权种子产品及其全部母本“隆科 638S”种子；并参考“隆两优 1377”的销售价格，主张判令张某赔偿经济损失，含维权合理支出 3.5 万元，共计 50 万元。

### **【裁判结果】**

判决张某立即停止对原告亚华研究院“隆科 638S”植物新品种权的侵害；并向亚华研究院赔偿经济损失包括合理开支共计 10 万元。双方当事人未上诉。

### **【典型意义】**

对种业的司法保护关系海南自贸港建设、国家“南繁硅谷”建设，更关系法治中国的建设。海南自由贸易港知识产权法院始终把加强知识产权司法保护作为服务保障自贸港建设，营造一流营商环境的重要抓手，创新“审判+引导+宣传+研究”的司法保护模式，该案通过在“4·26”世界知识产权日公开开庭和在三亚崖州湾知识产权特区审判庭公开宣判的方式，充分发挥知识产权专门法院的审判职能作用，以案普法，展现了自贸港对植物新品种权的司法保护力度。全面加强南繁种业和深海科技等领域知识产权保护，有效保护我国自主研发的关键核心技术。

案例 8:

## **九牧厨卫股份有限公司与海南潮君实业有限公司、 海口闽业兴建材有限公司、儋州那大名家卫浴商行 8 宗 侵害专利权纠纷系列案**

### **【关 键 词】**

侵害外观设计专利权 侵害实用新型专利权 赔偿

### **【案情概要】**

福建西河卫浴科技有限公司,于 2015 年 1 月 14 日申请“花洒(66)”外观设计专利,2015 年 6 月 10 日获得授权,专利号为 ZL201530010727.3。2014 年 10 月 23 日申请“一种按压式除垢花洒”实用新型专利,2015 年 2 月 18 日获得授权,专利号为 ZL201420621626.X。2015 年 11 月 10 日,九牧厨卫股份有限公司(以下简称九牧公司)依法取得福建西河卫浴科技有限公司授权,以自己名义打击侵害涉案外观设计、实用新型专利权的行为。经调查,九牧公司在海口、儋州等地发现三被告销售、许诺销售的花洒产品与涉案外观设计、实用新型专利设计特征一致,遂在海南潮君实业有限公司、海口闽业兴建材有限公司、儋州那大名家卫浴商行经营的店铺公证购买了该涉案

产品。经具体比对发现，公证产品使用的技术与福建西河卫浴科技有限公司外观设计、实用新型专利技术特征一致，属于涉案专利的保护范围。遂起诉，请求判令三被告分别立即停止销售、许诺销售侵害原告外观设计、实用新型专利权产品的侵权行为；赔偿经济损失及为制止被告侵权行为所支出的合理费用（包含调查取证差旅费、公证费、律师代理费等合理费用）3万元；并承担案件的诉讼费用。

### **【裁判结果】**

海南自由贸易港知识产权法院通过网络开庭，促使三被告与九牧公司在庭前达成调解协议，共向九牧公司赔偿6万元，现已全部履行完毕。

### **【典型意义】**

海南自由贸易港知识产权法院自成立以来，全力为营造法治化、国际化、便利化的营商环境提供司法保护，落实“简案快审，繁案精审”机制，充分利用“互联网+审判”及智慧法院在线诉讼机制的建设成果，依托信息化手段办案，不断完善知识产权纠纷多元化解决机制，善于总结知识产权案件的调解经验，找准切入点，灵活运用调解技巧，通过多元化解、案例指引、释法说理等方式，促进当事人换位思考，积极协商沟通，缩短诉求差距，及时化解。该八宗案件的处理，最大程度地维

护了双方当事人的利益。对优化营商环境，促进公平竞争，保障和建设中国特色自由贸易港高水平开放型经济新体制有着十分重要的意义。



## 【刑事典型案例】

案例 9:

### 黄鸿发等 196 人组织领导参加黑社会性质组织

#### 【关键词】

涉黑 扫黑除恶

#### 【案情概要】

20 世纪 80 年代末，黄鸿发与其兄黄鸿金、黄鸿明、黄鸿波（已死亡）在其父黄应祥（时任海南省昌江县建委建安组组长）带领下，在昌江县逞强争霸、打架斗殴。90 年代起，通过开设赌场、盗采铁矿，并拉拢恶势力、招揽社会闲散人员、组建打手队伍，增强经济实力和非法影响，逐步形成以黄鸿发、黄鸿明、黄应祥、黄鸿金为组织者、领导者的黑社会性质组织。该组织通过实施故意伤害、聚众斗殴、寻衅滋事、敲诈勒索、强迫交易等犯罪及违法活动，并控制当地赌场、混凝土、砂场、废品回收、啤酒销售、烟花爆竹、农贸市场、娱乐场所、土建工程、摩托车销售、典当行、驾校等行业，摄取巨额非法经济利益，用于支持组织运行发展，并收买原昌江县公安局局长麦

宏章等 7 人充当保护伞，在昌江县为非作恶，欺压、残害群众，称霸一方，实施违法犯罪活动 90 余起，导致 2 人死亡、3 人重伤、13 人轻伤、5 人轻微伤，严重破坏了当地的经济、社会生活等秩序。

### **【裁判结果】**

黄鸿发数罪并罚，被判处死刑，剥夺政治权利终身，并处没收个人全部财产；黄鸿明被判处死缓，剥夺政治权利终身，并处没收个人全部财产，同时限制减刑；其他成员也分别被判刑。

### **【典型意义】**

黄鸿发涉黑组织盘踞昌江县近 30 年，通过暴力及软暴力等多种犯罪手段，垄断了昌江县多种行业经营，严重破坏了当地的经济秩序和社会生活秩序，在当地形成重大影响，当地群众“闻黄色变”，黄鸿发个人一度成为当地社会青年膜拜的“偶像”，在青少年中形成“黑色”文化，严重败坏了当地社会风气。该案系中共中央、国务院决定在全国开展扫黑除恶专项斗争以来，海南省侦破的涉黑案件中人数最多，犯罪事实最多，涉及罪名最多，社会影响力最大的涉黑案件。海南法院在全国扫黑办、省委政法委的坚强领导下，在最高人民法院的正确领导下，严格按照中央对扫黑除恶专项斗争的要求，坚持依法办

案，从快从重处理，严格贯彻宽严相济的刑事政策，严厉惩治该犯罪组织的组织者、领导者、骨干成员及其“保护伞”，并运用追缴、没收、判处财产刑等多种手段，铲除了黑恶势力经济基础，特别是采用定罪量刑和涉案财产分别判决，法院和公安联合执行的方式，高效的处置了 20 多亿的涉案财产，得到全国扫黑办的充分肯定，取得了政治效果、法律效果和社会效果的高度统一，成为我省处置“黑财”的一个示范标杆。该案的圆满审结及众多“保护伞”的彻底铲除，充分彰显了海南省委、省政府彻底铲除黑恶势力的坚强决心，展现了海南法院在扫黑除恶专项斗争中“小省办大案”的审判智慧和斗争精神，进一步营造了公平正义的法治环境、风清气正的社会环境、安全有序的营商环境、安定和谐的生活环境，让海南人民获得了更多的安全感和幸福感，确保海南自贸港建设更加蹄疾步稳。该案被评为 2020 年度全国法院十大案例，对全国办理涉黑案件有非常重要的借鉴和指导意义。

案例 10:

**邱明才、王尊富滥伐林木罪，李谋道、王康飞  
非法运输滥伐的林木罪，海南远宏木业有限公司、  
张玉国非法收购滥伐的林木罪案**

**【关键词】**

环境资源 滥伐林木

**【案情概要】**

2019 年 10 月下旬，邱育香（已判决）与李道清、何瑞胜达成买树协议，邱育香以人民币 2000 元购买李道清和何瑞胜种植在澄迈县文儒镇罗莲岭（萝犇岭）的马占相思树，并砍伐林木后清理林地表面。2019 年 11 月 4 日，邱育香在没有办理林木采伐许可证的情况下，擅自雇佣王尊富、邱明才将其购买的马占相思树进行砍伐，雇佣李谋道、王康飞运输马占相思树，其 5 人被护林员冯乃安和蔡文明巡逻发现后逃离现场。大约 5 天后，在邱育香仍未出示林木采伐许可证的情况下，王尊富、邱明才继续砍伐完剩余的马占相思树，李谋道、王康飞将砍伐的林木运送到海南远宏木业有限公司。海南远宏木业有限公司明知收购木材时应要求出售人出示木材运输证或林木采伐许

可证，但在李谋道、王康飞未能提供木材运输证或林木采伐许可证的情况下，仍以人民币 21170 元的价款予以收购。经鉴定，被采伐林木立木蓄积量为 76.7878 立方米。

### **【裁判结果】**

海南远宏木业有限公司犯非法收购滥伐的林木罪，并处罚金人民币6000元；邱明才犯滥伐林木罪，判处有期徒刑一年六个月，缓刑二年，并处罚金人民币2500元；王尊富犯滥伐林木罪，判处有期徒刑一年六个月，缓刑二年，并处罚金人民币2500元；王康飞犯非法运输滥伐的林木罪，判处有期徒刑一年月，缓刑一年六个月，并处罚金人民币2000元；李谋道犯非法运输滥伐的林木罪，判处有期徒刑一年月，缓刑一年六个月，并处罚金人民币2000元；张玉国、犯非法收购滥伐的林木罪，有期徒刑一年，缓刑一年六个月，并处罚金人民币2000元；邱明才违法所得人民币6500元（已缴纳）、被告人王尊富违法所得人民币2500元（已缴纳）、被告人王康飞违法所得人民币800元（已缴纳），被告人李谋道违法所得1050元（已缴纳），海南远宏木业有限公司违法所得人民币21170元（已缴纳）。

### **【典型意义】**

无论是滥伐林木，还是运输明知是滥伐的林木，亦或是收购明知是滥伐的林木，都构成犯罪。本案在海口市琼山区甲子

镇大同村委会会议室公开开庭审理，甲子镇 50 余名干部群众参加旁听，直观了解法院庭审活动，接受法治教育，丰富了村民们的环境保护法律意识，有效引导了广大群众更加自觉地保护好身边的绿水青山，依法保护生态环境，有利于促进经济高质量发展，更好的促进了营商环境的提升。海南法院一以贯之践行“绿水青山就是金山银山”的理念，扛起生态文明建设海南担当的政治自觉和生态自觉，为加快推进国家生态文明试验区建设提供有力的司法保障。

案例 11:

## 陈伟冲、林超、吴其番走私普通货物、物品案

### 【关键词】

走私 免税 “套代购”

### 【案情概要】

2019 年 10 月，陈伟冲了解到在海南免税店利用他人免税额度（案发时免税额度为 3 万元）购买免税化妆品，集中发往深圳销售，可以赚取差价。2019 年 10 月 31 日、11 月 6 日，陈伟冲先后 2 次找了朋友为其代购免税品。11 月 6 日，陈伟冲通过微信联系被告人吴其番，双方约定由吴其番负责组织代购人员（俗称“人头”）到海口市日月广场免税店按照陈伟冲的要求购买指定的免税商品，然后提货坐船过海到海安，将货交给陈伟冲，陈伟冲负责支付购买免税品的货款以及代购人员的交通费，另外按照人头给予吴其番 250-400 不等的报酬。从 2019 年 11 月 7 日开始，吴其番先后 7 次找人帮助陈冲伟到日月广场进行代购。经海口海关核定，陈伟冲采取上述方式倒卖免税商品涉嫌偷逃税款 215007.13 元，其中吴其番参与倒卖免税品部分涉嫌偷逃税款 197082.96 元。从 2019 年 10 月 28 日至同

年 11 月 15 日，林超、吴其番先后 12 次倒卖免税商品，经海口海关核定，涉嫌偷逃税款 175515.01 元。

### **【裁判结果】**

陈伟冲犯走私普通货物罪，判处有期徒刑一年，缓刑二年，并处罚金人民币 22 万元。林超犯走私普通货物罪，免于刑事处罚。吴其番犯走私普通货物罪，判处有期徒刑一年，缓刑二年，并处罚金人民币五万元。

### **【典型意义】**

离岛免税购物是海南的“金字招牌”，近年来，不法分子利用海南离岛购物免税的优惠政策，组织、利用他人购买离岛免税品的资格和额度购买免税品进行倒卖牟利，对此类行为依法认定为走私行为，从严惩处，通过强化源头管理，加强宣传教育，健全打击“套代购”走私长效机制。本案的依法判决彰显了打击走私犯罪的决心，为海南自贸港法治营商环境建设和经济社会高质量发展提供了有力司法保障。



## 【行政典型案例】

案例 12:

### 海南世外桃源休闲农业有限公司诉 海口市琼山区人民政府土地行政处罚案

#### 【关键词】

关联事实考量 政府信赖利益保护 违法过错责任 处罚合理性

#### 【案情概要】

2009 年，海口市琼山区人民政府招商建设堆插村休闲农业项目，要求建设周期为 2 年，公开承诺在规划审批、土地供应等方面实行绿色通道，桃源公司通过琼山区政府的引荐与堆插村签订合作建设协议。项目备案批准配套建设接待中心、驿站、景观点等服务设施；土地利用总体规划为风景名胜设施用地、农村居民点用地。2012 年 3 月，海南省农业厅、琼山区政府将该项目确定为省休闲旅游重点项目、区政府重点旅游项目。琼山区召开专题会议，要求项目加快建设进度。桃源公司利用水

塘岸边的荒坡废地、边角地、灌木丛坡地及村中空闲宅基地进行建设，并投入巨资为村民建设生产生活设施。2012年6月，海口市国土资源局认定涉案项目建设占用农用地。琼山区政府向市国土资源局发函申请调转12亩预留宅基地用地指标，并给予办理农转用手续；琼山区旅游局向海口市法制局作出说明，介绍项目是政府主导的重点旅游项目，不存在非法占地的故意，建议免除行政处罚。2012年12月，市国土局向桃源公司、堆插村作出处罚决定，责令退还非法占用的土地，没收新建建筑物和其他设施，并处以罚款。2013年5月，海口市琼山区人民法院判决撤销该处罚决定，海口市中级人民法院二审予以维持。此后，企业没有进行加建、扩建。项目先后获评省五椰级乡村旅游点、2016年中国最美休闲农庄、2017年首批共享农庄示范点、中国乡村旅游金牌农家乐、省休闲农业示范点、省乡村旅游示范点、海口旅游名村、省休闲观光果园等荣誉称号，2014年获省旅游产业发展专项补助资金，2017年纳入海口市重点投资项目，2018年获共享农庄创建试点专项奖励资金。“多规合一”之后，项目用地调整为乡村建设用地。2019年2月，国家自然资源督察广州局致函海南省政府，指出涉案项目存在违法用地问题；2019年3月，海南省自然资源规划厅向海口市政府发函要求严肃查处，海口市国土局向琼山区政府发函要求整改到位。2019年4月，琼山区政府向桃源公司作出

处罚决定，责令退还非法占用的土地，没收在非法占用的土地上新建的建筑物和其他设施，按照实际非法占用土地面积处以罚款。桃源公司不服，提起本案行政诉讼，请求撤销处罚决定。

### **【裁判结果】**

海南高院二审判决认为，被诉处罚决定遗漏共同违法行为人，琼山区政府对涉案项目用地 2017 年土地利用现状地类调整、海口市“多规合一”规划调整的情况没有调查清楚并相应地确定行政处罚的内容；琼山区政府要求涉案项目建设必须申请使用国有建设用地，适用法律错误，对涉案项目用地是否属于 2004 年修订的《土地管理法》第四十三条的“但书”情形，也没有作出分析认定；处罚程序违法。依照《中华人民共和国行政诉讼法》第八十九条第一款第（二）项、第三款，第七十条第（一）项、第（二）项、第（三）项之规定，判决：一、撤销海口市中级人民法院（2019）琼 01 行初 694 号行政判决；二、撤销海口市琼山区人民政府于 2019 年 4 月 4 日向海南世外桃源休闲农业有限公司作出的琼山土资执字（2019）152 号《行政处罚决定书》。一、二审案件受理费各 50 元共 100 元，由被上诉人海口市琼山区人民政府负担。

### **【典型意义】**

政府招商引资发展乡村经济，就土地供应、规划许可等事

项作出承诺，在完成多项行政审批之后，要求企业加快建设进度，配合大项目先行启动建设，企业按政府要求完成项目施工，政府相关部门迟延办理用地手续，造成非法占地，过错责任不在企业。在项目已经建成并积极办理各项手续的情况下，政府作出没收、罚款的处罚决定，不仅损害政府信赖利益，而且损害政府部门的公信力，与国家实施行政管理以保障民众生活和社会秩序的最终目的背道而驰。查处相关案件，应当查清关联事实，兼顾行政处罚的合法性与合理性，充分考虑政府信赖利益保护，简单罚款没收不仅不符合立法目的，严重侵害企业合法权益，悖离诚信政府建设要求，而且严重损害营商环境，挫伤企业的投资信心。为此，司法机关需要依法监督行政机关依法行政，保护行政相对人合法权益，深入推进法治海南建设，营造海南自贸港法治化营商环境。

案例 13:

## 何某某等 2 人诉琼海市人民政府、 琼海市中原镇人民政府土地行政强制案

### 【关键词】

行政强制 征收土地 强制执行

### 【案情概要】

1992 年，何某某等 2 人（夫妻关系）依法向其所属锦武上村承包土地种植槟榔等经济作物，并在承包地上陆续修建了一些附属设施。为建设博鳌乐城国际医疗旅游先行区项目，在经海南省人民政府批准农用地转用方案后，琼海市人民政府（以下简称琼海市政府）于 2019 年 5 月 22 日在各被征地农村集体经济组织处发布《征收土地公告》，对包括锦武上村在内的农村集体经济组织的部分集体土地实施征收。2019 年 7 月 29 日，琼海市自然资源和规划局与锦武上村签订《征（收）土地协议书》，就征收包括何某某等 2 人承包地在内的 182.5 亩各地类土地，约定土地补偿费、安置补助费总计 2076.808944 万元，青苗补偿委托中原镇人民政府（以下简称中原镇政府）实施。同年 8 月 28 日，中原镇政府向何某某等 2 人送达《关于要求

配合对地上青苗及附着物证据保全和房屋评估公证的告知书》，要求其配合对地上的农作物及附着物进行清点登记。同年9月12日，因何某某等2人拒绝参加清点登记工作，在公证机构全程监督下，中原镇政府对农作物及附着物进行清点登记保全，制作了《青苗调查表》《附属物调查表》。市政府在未与何某某等2人就补偿问题达成协议的情况下，决定按照《海南省征地青苗及地上附着物补偿标准》给予其青苗补偿96.5062万元、按照《2018年琼海市房屋参考基价》给予地上附着物补偿2.571万元，并在何某某等2人拒绝领取的情况下予以公证提存。同年10月10日，中原镇政府将《土地清表公告》送达给何某某等2人，要求其在10日内自行移除地上的农作物并拆除地上附着物，逾期则视为放弃处理权，由镇政府进行清理。2019年12月4日，中原镇政府经请示琼海市政府后，组织人员对地上的农作物和附着物进行了强制清表。何某某等2人不服，诉请确认强制清表行政行为违法。

### **【裁判结果】**

海南高院二审判决认为，《中华人民共和国土地管理法实施条例》第四十五条规定，违反土地管理法律、法规规定，阻挠国家建设征收土地的，由县级以上人民政府土地行政主管部门责令交出土地；拒不交出土地的，申请人民法院强制执行。涉案集体土地已经完成征收、补偿程序，即使何某某等2人对

土地征收补偿有异议,亦不应影响土地征收工作实施,在何某某等2人未按通知自行清表情形下,土地行政主管部门应申请人民法院强制执行。中原镇政府迳行组织人员对涉案土地实施强制清表,明显超越职权,因该行为已实施完毕而不具有可撤销内容,依法应确认其违法。遂判决确认强制清表行政行为违法。

### **【典型意义】**

在集体土地征收过程中,个别集体经济组织成员因对补偿标准或补偿项目有异议而拒绝领取补偿款,导致土地无法及时收储并供地,影响重大项目的实施。在此情形下,对阻挠国家建设征收土地的被征收人,依法应经县级以上人民政府土地行政主管部门责令交地程序后,再对拒不交出土地的被征收人申请人民法院强制执行,而不能通过行政机关进行强制清表方式收储土地。随着海南经济社会的发展,特别是海南自贸港发展战略的实施,土地供需矛盾突出,集体土地征收成为解决国有建设用地不足的重要措施,类似本案的问题各市县时有发生,本案为行政机关在集体土地征收过程中依法行政有较好的警示意义和指引作用,进一步监督行政机关依法行政,纠正其违法行为,实质性化解行政争议,促进行政权力规范透明运行。

## 【执行典型案例】

案例 14:

### 文昌、琼海、陵水等三家农信社与文昌某投资公司 借款合同纠纷执行案

#### 【关键词】

府院联动 引入资方 执行和解

#### 【案情概要】

2015 年，文昌某投资公司向文昌、琼海、陵水三家农信社贷款用于房地产开发建设。项目开发建设过程中，因受房地产限购政策和疫情等因素影响，项目资金链断裂，文昌某投资公司未能按合同约定偿还借款，引发诉讼。经法院审理，判决文昌某投资公司向三家农信社偿还借款本金及利息。文昌某投资公司未依照生效判决偿还借款，三家农信社遂向海南一中院申请强制执行。

#### 【执行结果】

考虑到项目资产处置难度大、资金回笼周期长和政府稳控风险高等因素，海南一中院借助府院联动平台，会同文昌市政府多次召集各方当事人会商。经了解，发现该房地产项目未能



办证的主要原因在于消防验收，执行法官遂指导文昌某投资公司尽快筹钱优先支付消防工程费用，政府为消防验收工作开通“绿色通道”，指定住建部门专人负责对接，组织专家评审团快速验收，完善竣工手续。执行法官既执行又普法，引导各方当事人找准利益交汇点，缩短和解金额差距，推进和解进程。同时文昌市政府面向全国招商引资，引入资本方出资收购涉案房地产项目。最终，在海南一中院的主持调解下，债权方、债务方和资本方三方协商一致达成和解方案，签订注资收购盘活项目协议。至此，涉金融债权房地产风险项目得到妥善化解，案结事了。目前，第一笔和解款项已经到账。

### 【典型意义】

本案执行中秉承善意文明执行理念，从大局着手，府院联动打出“组合拳”。法院帮助企业查找堵点和难点，从法律层面提出合法合情且极具执行力的解决方案；政府为企业提供全方位项目建设保障，当好企业的“保姆”和“红娘”；债权人响应号召，对企业债务作出了一定程度的减免，助力企业复工复产，帮助企业缓解资金压力。在各方联合发力助推下，帮助企业恢复“造血功能”，盘活了一家即将陷入死局、濒临破产的房地产项目，化解了重大房地产风险稳控困境，既推进了执行案件，又从源头上化解购房人持续信访问题，取得了政治效果、社会效果、法律效果有机统一，助力服务保障海南自由贸易港建设！

# **Typical Cases of Hainan Court On Optimizing Business Environment**

## **【 Civil Cases 】**

Case 1:

### **Volvo Auto Finance (China) Co., Ltd. suing Yang over financial leasing contract dispute**

#### **【Keywords】**

financial leasing, right of recall, standard terms, restrictions on  
agreement dissolution, principle of equity

#### **【Summation】**

On May 4, 2018, Volvo Auto Finance (China) Co., Ltd. (hereinafter referred to as Volvo Company), the lessor, signed with Yang, the lessee, a *Financial Leasing Agreement*, where Volvo Company shall purchase from the seller designated by Yang a Volvo excavator and lease the same to Yang, Yang shall pay via entrusted

debit the down payment of CNY672,908 in advance and the balance of CNY537,092 in 36 installments (first installment: CNY18,119.78, the remaining 35 installments: CNY17,252.38 each) on the 10<sup>th</sup> day each month, and the lease period shall be June 10, 2018, to May 10, 2021. Volvo Company then filed a lawsuit with the court suing Yang for overdue payment of rents and requesting the dissolution of the *Financial Leasing Agreement*, the recovery of the excavator and the payment by Yang of the overdue rents of CNY69,489.27 (including a penalty interest of CNY60.11 per day), the rents and interests from October 6, 2020, to the actual return of the leased property, and the attorney service fees of CNY12,000.

### **【Verdict】**

Yang shall pay to Volvo Company the rents of CNY45,965.19 and the overdue interests. Neither party appealed against the verdict, which has duly come into effect.

### **【Signification】**

The people's court performs its adjudicative duties to equally protect both Chinese and foreign investors and justly and fairly creates a business environment by the rule of law. "Each case is a business environment", and it's the purpose and goal of the people's court in adjudication to equally protect the legitimate rights and interests of the market entities and let the public feel fair and just in every judicial case.

In this specific case, Volvo Company, the plaintiff, is a foreign-invested company registered in Beijing. During the trial, the court meted out the judgment strictly according to the law, safeguarding the legitimate rights and interests of the plaintiff as a foreign-invested business by ordering the defendant to bear the corresponding liabilities for the breach of contract while rejecting the plaintiff's claim for the right of recall over the target property under financial leasing. The court verdict protects the legitimate rights and interests of market entities, passes a warning message to foreign-invested enterprises for equal participation in market competition, and guides market entities of various types to operate by the law and respect the market rules and contractual behaviors. This case shows that Hainan courts are firm in the trial of civil and commercial lawsuits to protect the legitimate rights and interests of all market entities in a lawful, equal and comprehensive way, treat both Chinese and foreign investors equally in rights, opportunities and rules, and create by the rule of law a stable, fair, transparent and predictable business environment.

Case 2:

**34 investors including Guan and Qian suing  
Sundiro Holding Co., Ltd. over misrepresentation  
liabilities concerning their securities**

**【Keywords】**

listed company, information disclosure, causal relationship,  
amount of compensation

**【Summation】**

Sundiro Holding Co., Ltd. (hereinafter referred to as Sundiro Company) is a limited liability company registered in Haikou City, Hainan Province, which was listed on Shenzhen Stock Exchange on May 25, 1994 (\*ST大洲/\*ST Dazhou, formerly 新大洲A/Xindazhou A, stock code: 000571). For three times from the end of 2017 to 2018, Sundiro Company failed to disclose in accordance with the *Administrative Measures for the Information Disclosure of Listed Companies of China Securities Regulatory Commission* and related regulations its guarantees for the debts of affiliated companies, and China Securities Regulatory Commission Hainan Supervision Bureau meted out such administrative penalties as reprimand and fines on Sundiro Company and the responsible personnel for their violation of

laws and regulations in information disclosure. When the administrative penalties were disclosed by Sundiro Company, a total of 34 shareholders including Guan and Qian filed lawsuits in batches with Haikou Intermediate People's Court (hereinafter referred to as Haikou Intermediate Court) alleging that the misrepresentation of Sundiro Company had caused them investment losses and claiming for compensations for their losses in investments, commissions, stamp duties and the related interests.

### **【Verdict】**

The people's court during the trial of this series of cases examined the defense of Sundiro Company that there is no causal relationship between its misrepresentation and the investors' losses, and found that Sundiro Company had failed to discharge its burden of proof and that there was a causal relationship between the investors' losses and the misrepresentation of the listed company. Considering the company stocks were also subject to systematic risks intrinsic to securities markets during the misrepresentation of Sundiro Company on securities, the court, after eliminating the factor of systematic risks, supported part of the investors' claims. Sundiro Company refused the verdict of the first instance and appealed to a higher people's court. Hainan High People's Court (hereinafter referred to as Hainan High Court) found in hearing that the verdict of the first instance was clear in

fact judgement and appropriate in law application, and rejected the appeal of Sundiro Company.

### **【Signification】**

Listed companies when disclosing information according to the law must be true, accurate and complete and without any false records, misleading statements or material omissions. Listed companies failing to disclose critical information according to the law or disclosing critical information with false records, misleading statements or material omissions, should losses result therefrom to investors in the transaction of securities, shall be liable for compensations. The court verdict safeguards the legitimate rights and interests of small and medium-sized investors and urges listed companies to disclose information in a lawful, timely and comprehensive fashion to ensure transparency in company operation and management and to protect the right to know of small and medium-sized investors, while upholding the rights and interests of listed companies according to the law, further optimizing the investment environment in the securities market and providing judicial assurance for the healthy, stable development of Hainan's capital market.

Case 3:

## **Wu suing Ning over contract dispute**

### **【Keywords】**

damage to shareholders' equity, contract, minimum guarantee clause

### **【Summation】**

On January 2, 2015, Wu signed with Ning a *Cooperation Agreement on Fish Farming and Investment in Fishing Grounds*, where the two parties agree to set up a company with Ning and Wu taking 60% and 40% of the company's shares, respectively; the estimated value of Ning's fishing grounds and the leased land is CNY3,500,000, and Wu contributes CNY1,400,000 to purchase 40% of the property rights of the fishing grounds and the leased land; Ning promises Wu an investment dividend of no less than CNY420,000 by February, 2017, apart from the 40% of property rights of the leased land, the fishing grounds and facilities thereupon; should the total profit generated from the operation of the fishing grounds exceeds CNY1,000,000 by February, 2017, Wu shall be entitled to 50% of the actual total profit as investment dividend; in the event Ning fails to hit the minimum yearly target of 30% profit by February 2017, Wu may choose to withdraw



from the company, in which case, Ning shall redeem Wu's 40% of shares at the price of CNY1,400,000; and the redemption period shall be negotiated between the two parties and the redemption effected within six months of Wu's request. Wu transferred CNY1,400,000 in total as investment to Ning in 2013, 2014 and 2015, respectively. As Ning failed to pay to Wu a total of CNY1,820,000 in investment (CNY1,400,000) and interests (CNY420,000), Wu brought a lawsuit to the court after unsuccessful requests of payment, claiming for the payment by Ning of CNY1,400,000 and interests as well as a cash dividend of CNY420,000.

### **【Verdict】**

The people's court decided in the second instance that Ning shall pay CNY1,400,000 and interests to Wu, and rejected any other requests of the plaintiff.

### **【Signification】**

Partnership is an important arrangement in civil law as well as an essential way for natural persons, legal persons and other civil entities to participate in investment by virtue of its quick funding, convenient incorporation and flexible operation; small and medium-sized investors in a partnership share profits and bear risks together and need, prior to joint investment in an enterprise or the establishment of a company for joint operation, to sign a partnership agreement or cooperation

agreement to define matters concerning the partnership or cooperation to ward off legal risks and any other unnecessary disputes. The court verdict reminds small and medium-sized investors that the relevant laws and regulations shall be followed in joint investment in enterprises or the establishment and operation of companies, and no mandatory provisions of the law and administrative regulations shall be violated; and the relevant parties shall sign agreements on an equal and voluntary basis, and in case any clause violates the mandatory provisions of the law or administrative regulation and is ruled invalid, the other clauses that are not against the mandatory provisions of the laws and regulations shall be lawful and effective, and both parties shall perform their duties as agreed therein. In judicial examinations, the court can, by establishing the validity of the contract according to the law and encouraging lawful, justifiable, autonomous and voluntary transactions, ensure the maintenance of a company's legal capital and the protection of the shareholders' inherent rights, perform its adjudicative duties, reinforce the optimization of the business environment and provide quality and effective judicial services for the lawful operation of enterprises.

Case 4:

## **Bankruptcy liquidation of Haikou Xufenghui Investment Consulting Co., Ltd.**

### **【Keywords】**

bankruptcy liquidation, bankruptcy reconciliation, “enforcement-to-bankruptcy”

### **【Summation】**

Haikou Xufenghui Investment Consulting Co., Ltd. (hereinafter referred to as Xufenghui Company) was established on October 29, 2010, registered capital: CNY25,500,000. On November 24, 2015, Xufenghui Company formerly involved in a litigation of private lending disputes was ordered to repay CNY7,500,000 and interests of CNY43,750 to Beijing Haiyu Nanbei Investment Management Co., Ltd. (hereinafter referred to as Haiyu Nanbei Company). As the company failed to perform its obligations according to the judgement in effect, Haiyu Nanbei Company, the creditor, applied to Longhua Primary People’s Court, Haikou (hereinafter referred to as Longhua Primary Court), for enforcement. During the enforcement, the court at the request of the creditor lined up and had the equity of Xufenghui Company frozen. However, as no evaluation could be conducted on the equity for

enforcement, and neither did the company have any property for enforcement, Longhua Primary Court had to transfer this case of enforcement to Haikou Intermediate Court for enforcement-to-bankruptcy examination. On December 9, 2019, Haikou Intermediate Court decided upon the application of Yuhai Nanbei Company to accept the bankruptcy and liquidation case of Xufenghui Company, and appointed according to the law a bankruptcy administrator to convene creditors meetings. During the declaration of creditor's rights, Weng Yueqing, a creditor, declared two claims, which were reviewed and submitted to the creditors meeting, which verified that Weng Yueqing had received the creditor's rights from Haiyu Nanbei Company and Dong Jin, respectively, and was thus the only creditor in this case; and the amounts of the two claims were CNY7,543,750 and CNY5,427,806, respectively. On January 14, 2021, the creditor and the debtor voluntarily reached and signed a *Reconciliation Agreement*, which defines the amounts of the creditor's rights, the performance method of the debts, the remuneration of the administrator and the commitment of the related bankruptcy expenses; the debtor, after negotiations with creditor Weng Yueqing, made clear and specific arrangement for the repayment of the creditor's rights and debts involved in this case, worked out detailed agreements on the remuneration of the administrator and the commitment of the relevant bankruptcy expenses, and applied to the court for bankruptcy reconciliation.

## **【Verdict】**

The court approved the bankruptcy reconciliation agreement of Xufenghui Company and terminated the bankruptcy proceedings.

## **【Signification】**

This is the first bankruptcy reconciliation case that Haikou Intermediate Court has ever handled, in which it approved the bankruptcy reconciliation agreement of Xufenghui Company and terminated the bankruptcy proceedings, bringing a slim chance of life to a company struggling on the verge of bankruptcy. “Enforcement-to-bankruptcy” is a win-win legal mechanism and another way out for companies on the verge of bankruptcy. Bankruptcy may not necessarily end in liquidation. For enterprises with development potentials but in temporary difficulties, bankruptcy proceedings can be a protection. Bankruptcy reconciliation prevents the chain effect arising from the bankruptcy of the debtor, expedites the handling of lawsuits, greatly shortens the process of bankruptcy cases, helps endangered enterprises to survive hopeless situations, gives full play to the advantages of bankruptcy reconciliation procedures, benefits the overall stability of the social and economic order, avoids the negative impact of bankruptcy notice to the public, is conducive to the continuous optimization of the business environment and provides strenuous judicial services and assurance for Hainan’s economic development.

Case 5:

**A wholly foreign-owned company in Jiaxing  
suing a company in Sanya over sales contract dispute**

**【Keywords】**

ODR platform, Covid-19 epidemic, operation difficulties

**【Summation】**

A wholly foreign-owned company in Jiaxing (hereinafter referred to as Jiaxing Company) began in 2014 to supply hotel fume purification equipment to a company in Sanya (hereinafter referred to as Sanya Company), Sanya Company stopped payment to Jiaxing Company since June, 2019, and Jiaxing Company brought a lawsuit to the court. Sanya Company argued that the company had had difficulties in operation due to the outbreak of Covid-19 epidemic and did not intentionally default on payment. Considering the two parties had been in long-term cooperation and the lawsuit was a foreign-related commercial case, the court guided the two parties onto the Online Dispute Resolution (ODR) platform to select a special mediator to preside over the mediation. Meanwhile, the judge expounded online new judicial policies since the Covid-19 epidemic. Through the joint efforts of all parties, Sanya Company formulated an installment

repayment plan, which was then approved by Jiaxing Company, and the latter withdrew the lawsuit.

### **【Verdict】**

The lawsuit was withdrawn after mediation.

### **【Signification】**

A sound business environment needs fair, just, convenient and helpful judicial services. In the context of normalized epidemic prevention and control, some enterprises may face serious challenges and litigations have increased significantly. The court in judicial works strives to create a stable, fair and predictable business environment under the rule of law and plays a critical role in the equal protection by law of the legitimate rights and interests of Chinese and foreign market entities. In this case, the court made use of the ODR platform for diverse resolution of foreign-related lawsuits, selected special mediators to explain online to both parties the impact of Covid-19 epidemic upon the economic life and judicial practice and the subsequent changes, and threw in expert guidance by judges to promote the efficient, successful resolution of this foreign-related commercial case, safeguarding the normal operation of the Covid-19 affected enterprise, upholding the legitimate rights and interests of the foreign enterprise and reaping the trust and approval of both Chinese and foreign enterprises for Hainan courts.

Case 6:

**Substantive merger, bankruptcy and reorganization  
of 321 companies including Hainan Airlines Group  
Co., Ltd. (HNA Group)**

**【Keywords】**

civil, bankruptcy reorganization, substantive merger and  
bankruptcy, affiliated enterprise

**【Summation】**

HNA Group, once a world Top500 company, used to be a large international conglomerate running mainly businesses in air transport, airport operation, hotel management and financial services, and owned more than 2000 enterprises at home and abroad. Due to improper operation, irregular management, uncontrolled investment and market downturn, HNA Group suffered a liquidity crisis towards the end of 2017. On February 10, 2021, Hainan High Court decided to accept the reorganization case of HNA Group Co., Ltd., Grand China Air Co., Ltd., HNA Air Group Co., Ltd., HNA Capital Group Co., Ltd., HNA Basic Holding Group Co., Ltd., HNA Commercial Holdings Co., Ltd. and HNA Industrial Group Co., Ltd. (hereinafter referred to as the 7 companies including HNA Group), and appointed the liquidation group



of HNA Group as the administrator of the seven companies including HNA Group the same day. On March 13, 2021, at the request of the administrator of the 7 companies including HNA Group, Hainan High Court ruled the substantive merger and reorganization of 321 companies including HNA Group Co., Ltd. (4 withdrawn from the original 325 applicants) (hereinafter referred to as the 321 companies including HNA Group), and appointed the liquidation group of HNA Group as the administrator of the 321 companies including HNA Group (hereinafter referred to as the Administrator) the same day. On June 4, 2021, the first creditors' meeting for the reorganization of the 321 companies including HNA Group took place. On September 29, 2021, Hainan High Court presided over the second creditors' meeting for the reorganization of the 321 companies including HNA Group, and convened the investors group meeting by written voting, and the voting groups of the creditors' meeting and the investors' group meeting voted on the *Reorganization Plan for the Substantive Merger and Reorganization of 321 Companies including HNA Group Co., Ltd. (draft)* and the *Plan for the Adjustment of Investors Equity in the 321 Companies including HNA Group Co., Ltd.*

### **【Verdict】**

On March 13, 2021, Hainan High Court made out a civil ruling ((2021) Qiong Po No. 1-1) on the substantive merger and reorganization of 321 companies including HNA Group Co., Ltd. On

October 31, 2021, Hainan High Court made out a civil ruling ((2021) Q.P. No. 1-6) which: 1. approves the *Reorganization Plan for the Substantive Merger and Reorganization of 321 Companies including HNA Group Co., Ltd.*; 2. terminates the substantive merger and reorganization procedures of 321 companies including HNA Group Co., Ltd.

### **【Signification】**

The case of HNA Group bankruptcy and reorganization boasts of so far the largest size of debts, the most numerous creditors, the most diversified types of creditors, the most enterprises for reorganization, the most complicated legal relations and the most complex linkage of procedures in Asia, as well as a rare reorganization case heard directly by a high court. The toughest part in handling the bankruptcy and reorganization of ultra-large enterprises lies in how to properly associate, maintain, operate or dispose of complex assets and to protect as much as possible the general repayment interests of the creditors. Among the four reorganization cases of the HNA family, the merger and reorganization of the 321 companies including HNA Group involved the most enterprise entities and creditor's rights and was the most complicated in reorganization plans and arrangements, where the assets management and liability arrangement were basically realized via trust plans. In the *Reorganization Plan*, a trust plan with assets management and operation functions was proposed, which was then

approved by the court to ensure continuous operation of the enterprises and the repayment of debts in installments. This practice may serve as a guide to the bankruptcy and reorganization of other enterprise groups. After reorganization, HNA Group solved the issue of debts as well as compliance of a public company, reshuffled its business, management, assets, debts and equity, consolidated the legal, social and economic effects, and provided a fresh and vivid sample and material for the corporate risk resolution of large conglomerates, the overseas recognition and enforcement of Chinese reorganization procedures, the substantive merger and reorganization of affiliated enterprises, the solution of compliance issues of listed companies, and the legislation and judicature concerning bankruptcy in Hainan Free Trade Port. This case has played a critical role of demonstration in the construction of Hainan Free Trade Port, in particular, in the achievement of the major business environment index of “handling bankruptcy”, provided strenuous judicial services and assurance for the creation of a fair, transparent and predictable business environment, and was elected a China Courts Top10 Commercial Case 2021.

## **【 IP Cases 】**

Case 7:

### **Hunan Yahua Seed Industry Research Institute suing Zhang over infringing on the right of new variety plant**

#### **【Keywords】**

right of new variety plant, infringement, compensation

#### **【Summation】**

Hunan Yahua Seed Industry Research Institute (hereinafter referred to as Yahua Research Institute) is the right holder of the variety of “Longke 638S”, and the hybrid rice variety of “Longliangyou 1377” involved in this case is propagated through tissue culture between “Longke 638S”, the female parent, and “R1377”, the male. In May 2020, Yahua Research Institute found in Yazhou District, Sanya City, Hainan Province, that Zhang made use of “Longke 638S” to breed the rice variety of Longliangyou, and authorized Yuan Longping Agricultural High-Tech Co., Ltd. to file a case of complaint to the effect to the relevant administrative enforcement department of

Sanya City. During the investigation, the administrative organ found that Zhang had produced 439 packets, approximately 17,560 kg, of seeds as involved in the infringement case, the samples of which were verified as extremely close or identical to the variety of “Longliangyou 1377”, and a kinship exists with “Longke 638S”. Yahua Research Institute sued to the court, claiming that Zhang who infringed on its right of new plant variety shall immediately stop the infringement, destroy all of the infringement seed products he had bred and “Longke 638S” seeds, the female parent, and, based on the sales price of “Longliangyou 1377”, compensate CNY500,000 for economic losses, including a reasonable expense of CNY35,000 for upholding its rights.

### **【Verdict】**

The court decided that Zhang shall immediately stop the infringement on the right of new variety plant of “Longke 638S” of Yahua Research Institute, the plaintiff, and compensate Yahua Research Institute CNY100,000 for economic losses and reasonable expenses. Neither party appealed to a higher court.

### **【Signification】**

The judicial protection of the seed industry bears on the construction of Hainan Free Trade Port, the national “Nanfan Silicon Valley” and the rule of law in China. Hainan Free Trade Port Intellectual Property Court has always made the judicial protection of

intellectual property the key to the construction of free trade port and the creation of a first-class business environment, and innovated the “trial + guidance + publicity + research” judicial protection mode. The court, by hearing the case in public on April 26, the World Intellectual Property Day, and announcing the verdict at Sanya Yazhou Bay Special Intellectual Property Zone tribunal, gives full play to the functional role of adjudication of intellectual property courts, makes use of the case to popularize law, and demonstrates the strenuous judicial protection of the rights of new variety plants in Hainan Free Trade Port. Through the intellectual property protection in such fields as Nanfan seeds industry and deep-sea technologies, Hainan courts have effectively safeguarded China’s self-developed critical core technologies.

Case 8:

**JOMOO Kitchen and Bathroom Co., Ltd. suing  
Hainan Chaojun Industrial Co., Ltd., Haikou  
Minyexing Building Materials Co., Ltd. and Danzhou  
Nada Mingjia Sanitary Ware Firm over 8 patent  
infringement disputes**

**【Keywords】**

infringement on appearance design patent rights, infringement on utility model patent rights, compensation

**【Summation】**

Fujian Xihe Sanitary Ware Technology Co., Ltd. applied on January 14, 2015, for “Shower (66)” appearance design patent, which was granted on June 10, 2015, patent No. ZL201530010727.3. On October 23, 2014, the company applied for “a kind of press-type descaling shower” utility model patent, which was granted on February 18, 2015, patent No. ZL201420621626.X. On November 10, 2015, JOMOO Kitchen and Bathroom Co., Ltd. (hereinafter referred to as JOMOO Company) obtained lawfully the authorization of Fujian Xihe Sanitary Ware Technology Co., Ltd., to crack down in its own name on the infringement of the appearance design and utility model patent

rights involved in the case. During the investigation, JOMOO Company found in Haikou, Danzhou, etc. that the three defendants sold or offered shower products that were consistent in design features with the appearance design and utility model patents in question, and purchased under notarization such products in the stores run by Hainan Chaojun Industrial Co., Ltd., Haikou Minyexing Building Materials Co., Ltd. and Danzhou Nada Mingjia Sanitary Ware Firm. Comparisons showed that the technology used in the notarized products are consistent in features with that of the appearance design and utility model patents of Fujian Xihe Sanitary Ware Technology Co., Ltd., and fall within the protection scope of the patent involved. And JOMOO Company brought the case to the court and requested that the three defendants shall immediately stop the infringement action of selling or offering products infringing on the plaintiff's appearance design and utility model patents, compensate its economic losses and reasonable expenses to stop the defendant's infringement (including travel expenses for investigation and evidence collection, notary fees, attorney's fees and other reasonable expenses), CNY30,000 in total, and bear the litigation costs.

### **【Verdict】**

Hainan Free Trade Port Intellectual Property Court, in internet court hearing, urged the three defendants to reach with JOMOO Company a mediation agreement before trial and paid to the latter a



total of CNY60,000 in compensation. The verdict is fully fulfilled.

### **【Signification】**

Since its establishment, Hainan Free Trade Port Intellectual Property Court has vigorously provided judicial protection for creating a rule-of-law, international and convenient business environment. It implements a mechanism of “quick trial of simple cases and intensive trial of complex cases”, makes use of the achievements of “internet + trial” construction and smart court online litigation mechanism as well as informatized handling methods to improve the diversified resolution mechanism of intellectual property disputes, sums up experiences in the mediation of intellectual property lawsuits, finds the right starting point, flexibly utilizes mediation skills, and employs diversified resolution, case guidance and didactic exposition to urge the litigants to think in their counterpart’s shoes, seek communication and negotiation, narrow gaps between appeals and reach reconciliation the soonest possible. The settlement of the eight cases has safeguarded the interests of both parties to the greatest extent, and is of great importance to the optimization of business environment, the promotion of fair competition and the assurance and construction of a high-level open economy new mechanism for a free trade port with Chinese characteristics.

## **【 Criminal Cases 】**

Case 9:

**196 people including Huang Hongfa organizing, leading and participating underworld-like organizations**

### **【Keywords】**

underworld-like, crackdown on underworld crimes

### **【Summation】**

Towards the end of the 1980s, Huang Hongfa and his brothers Huang Hongjin, Huang Hongming and Huang Hongbo (deceased), under the leadership of Huang Yingxiang, their father, (then head of the construction and installation team under the Construction Committee of Changjiang County, Hainan Province), flaunted their muscles and provoked fights in Changjiang County. Since the 1990s, they began to open casinos and illegally mine iron ores, solicit and recruit evil forces and unemployed social personnel to set up bully teams, and develop their economic power and illegal influence to form, step by step, an underworld-like organization organized and headed by Huang Hongfa, Huang Hongming, Huang Yingxiang and Huang Hongjin. The organization, by implementing criminal and illegal activities such as

intentional injury, affray, provocation, extortion, forced transaction and the control of local casinos, concrete, sand fields, waste recycling, beer sales, fireworks and firecrackers, farmers' markets, entertainment venues, civil engineering, motorcycle sales, pawnshops, driving schools, etc., grabbed illegal economic benefits in enormous quantities to support its operation and development, and bribed seven functionaries, including Mai Hongzhang, then director of Changjiang County Public Security Bureau, to act as its protective umbrellas. In Changjiang County, they did evil works, oppressed and persecuted local people and played kings in their locality. Over 90 illegal and criminal actions were committed, resulting in 2 deaths, 3 major injuries, 13 minor injuries and 5 slight injuries, and seriously jeopardizing the local economic and social orders.

### **【Verdict】**

Huang Hongfa, with combined punishment for several crimes, was sentenced to death, deprived of political rights for life, and confiscated all of his personal assets; Huang Hongming was sentenced to death with a reprieve, deprived of political rights for life, confiscated all of his personal assets, and restricted of any commutation of his sentence; and the other members were also sentenced accordingly.

### **【Signification】**

The underworld-like organization headed by Huang Hongfa made Changjiang Country its homebase for almost 30 years, wielded

violence, soft violence and other criminal means to monopolize the operation of various businesses in Changjiang County, seriously damaged the local economic and social orders, and became something that the local people “turned jittery at the mention of Huang”. Huang Hongfa was once himself an “idol” worshipped by local youths, creating among youngsters an “underworld” culture and undermining seriously the social atmosphere in that region. Since the CPC Central Committee and the State Council decided to crack down on underworld crimes in the country, this case has been the underworld-related lawsuit that Hainan Province has ever cracked and features the most criminals, the most criminal facts, the most accusations and the most social influence. Hainan courts, under the firm leadership of the national office for the eradication of underworld and evil forces and the correct leadership of the Supreme People’s Court, strictly followed the Central requirements on the eradication of underworld and evil forces, handled the lawsuit according to the law for quick and severe crackdown, implemented strictly the leniency-severity balanced criminal policy, punished vigorously the organizers, leaders, cadres and “protective umbrellas” of criminal organizations, and employed various means including recovery of spoils, confiscation and asset punishment to demolish the economic basis of the underworld and evil forces. In particular, the court processed the crimes and assets separately, enforced the verdicts in collaboration with the police, and disposed

with high efficiency of more than CNY2,000,000,000 assets involved in the case. The treatment of the case has won the unreserved approval of the national office for the eradication of underworld and evil forces, achieved highly consolidated political, legal and social effects, and become a benchmark in Hainan Province for the disposal of underworld assets. The successful conclusion of the case and the thorough eradication of numerous “protective umbrellas” has fully demonstrated the determination of the CPC Hainan Provincial Committee and the Provincial Government to thoroughly eradicate the underworld and evil forces, showed the adjudicative wisdom and fighting spirit of Hainan courts to “handle big cases in small province” in the special crackdown on underworld and evil forces, and further created a fair, just rule-of-law environment, a clean and upright social environment, a safe and orderly business environment, and a stable and harmonious living environment to give Hainan people more security and happiness and ensure more rapid and stable construction of Hainan Free Trade Port. The case was rated a China Courts Top10 Case 2020, and will serve as an importance reference and guidance to the handling of underworld-related lawsuits in China.

Case 10:

**Qiu Mingcai and Wang Zunfu prosecuted for illegal logging, Li Moudao and Wang Kangfei for illegal transportation of illegally logged trees, and Hainan Yuanhong Wood Industry Co., Ltd. and Zhang Yuguo of illegal purchase of illegally logged trees**

**【Keywords】**

environmental resources, illegal logging

**【Summation】**

Late October, 2019, Qiu Yuxiang (sentenced) reached a tree purchase agreement with Li Daoqing and He Ruisheng that Qiu Yuxiang purchases the Acacia mangium trees planted by Li Daoqing and He Ruisheng in Luolianling (Luobenling), Wenru Town, Chengmai County at CNY2,000, and has the woodland cleared after logging. On November 4, 2019, Qiu Yuxiang, without handling the logging permit, had the purchased Acacia mangium trees felled by Wang Zunfu and Qiu Mingcai, and hired Li Moudao and Wang Kangfei to transport the timber. Being spotted by forest rangers Feng Nai'an and Cai Wenming during their patrol, the 5 people fled the scene. About 5 days later, Wang Zunfu and Qiu Mingcai returned to the site without logging

permit and cut down the *Acacia mangium* trees that were left over last time, and Li Moudao and Wang Kangfei transported the timber to Hainan Yuanhong Wood Industry Co., Ltd., which, knowing perfectly well that the sellers shall produce their timber transport permit or logging permit for transaction, purchased the trees at a price of CNY21,170 without any of the permits from Li Moudao and Wang Kangfei. After measurement, the growing stock volume of the felled trees is 76.7878 cubic meters.

### **【Verdict】**

Hainan Yuanhong Wood Industry Co., Ltd. committed the crime of illegally purchasing illegally harvested timber and was fined CNY6,000; Qiu Mingcai committed the crime of illegal logging and was sentenced to one year and six months in prison with a two-year reprieve and a fine of CNY2,500; Wang Zunfu committed the crime of illegal logging and was sentenced to one year and six months in prison with a two-year reprieve and a fine of CNY2,500; Wang Kangfei committed the crime of illegal transportation of illegally harvested timber and was sentenced to one year in prison with a one-year-and-six-month reprieve and a fine CNY2,000; Li Moudao committed the crime of illegal transportation of illegally harvested timber and was sentenced to one year in prison with a one-year-and-six-month reprieve and a fine of CNY2,000; Zhang Yuguo committed the crime of illegal purchase of illegally harvested

timber and was sentenced to one year in prison with a one-year-and-six-month reprieve and a fine of CNY2,000; the illegal gains of the defendants: Qiu Mingcai, CNY6,500 (surrendered), Wang Zunfu, CNY2,500 (surrendered), Wang Kangfei, CNY800 (surrendered), Li Moudao, CNY1,050 (surrendered), Hainan Yuanhong Wood Industry Co., Ltd., CNY21,170 (surrendered).

### **【Signification】**

Illegal logging, transportation of illegally logged trees and purchase of illegally logged trees are all crimes. The case was heard in public in the meeting room of Datong Village Committee, Jiazi Town, Qionghua District, Haikou City, and more than 50 cadres and residents in Jiazi town were present to witness the court trial and to receive legal education. The arrangement heightened the villagers' legal awareness of environmental protection, effectively guided them to protect their green hills and clear waters. To protect the ecological environment by law will benefit the high-quality economic development, and better facilitate the improvement of the business environment. Hainan courts are committed to the concept of "clear waters and green mountains are invaluable assets", are aware of their political and ecological undertakings in building an ecological Hainan and provide powerful judicial assurance for the construction of a national ecological civilization pilot zone.



Case 11:

**Chen Weichong, Lin Chao and Wu Qifan prosecuted  
for smuggling ordinary goods and articles**

**【Keywords】**

smuggling, duty-free, “arbitrage purchasing”

**【Summation】**

In October 2019, Chen Weichong learned that one might use other people’s duty-free quota (duty-free quota at the time of the crime: CNY30,000) to purchase in Hainan’s duty-free shops duty-free cosmetics and sell the same in Shenzhen for a price difference. On October 31 and November 6, 2019, Chen Weichong twice asked his friends to buy duty-free articles for him. On November 6, Chen Weichong contacted defendant Wu Qifan on WeChat, and the two agreed that Wu Qifan organizes purchasing agents (commonly known as “headcount”) to buy duty-free commodities as specified by Chen Weichong at the duty-free store in Riyue Plaza, Haikou City, picks up the goods and takes a ship to Hai’an to deliver them to Chen Weichong, who then pays to Wu Qifan the purchase price of duty-free goods, the transportation of the purchasing agents, and a remuneration of CNY250-400 per headcount. Since November 7, 2019, Wu Qifan had

for seven times organized purchasing agents to shop for Chen Weichong at Riyue Plaza. As verified by Haikou Customs, Chen Weichong was suspected of duty evasion amounting to CNY215,007.13 by reselling duty-free goods in a manner as mentioned above, and Wu Qifan was suspected partly involved in the reselling of duty-free goods amounting to a duty evasion of CNY197,082.96. From October 28 to November 15, 2019, Lin Chao and Wu Qifan resold duty-free goods 12 times, and were suspected of duty evasion amounting to CNY175,515.01 as verified by Haikou Customs.

### **【Verdict】**

Chen Weichong committed the crime of smuggling ordinary goods and was sentenced to one year in prison with a two-year reprieve and a fine of CNY220,000; Lin Chao committed the crime of smuggling ordinary goods and was exempted from criminal punishment; and Wu Qifan committed the crime of smuggling ordinary goods and was sentenced to one year in prison with a two-year reprieve and a fine of CNY50,000.

### **【Signification】**

Offshore duty-free shopping is Hainan's "Gold-lettered Signboard". In recent years, however, criminals take advantage of Hainan's offshore duty-free shopping policies, organize and make use of the eligibility and quotas of other people to purchase offshore

duty-free goods and resell the same for profits. Such behaviors are already identified by the law as smuggling, and will be severely punished. Hainan courts have strengthened management at the source, reinforced publicity and education and completed a long-term mechanism to crack down on “arbitrage purchasing” activities. The adjudication of this case shows Hainan courts’ determination to fight smugglings and to provide strenuous judicial assurance for the construction of a rule-of-law business environment and the high-quality economic and social development in Hainan Free Trade Port.

## 【 Administrative Cases 】

Case 12:

### **Hainan Shiwai Taoyuan Leisure Agriculture Co., Ltd. suing Haikou Qiongsan District People's Government over land administrative penalties**

#### **【Keywords】**

consideration of related facts, protection of government reliance interests, liability for violation of law, rationality of punishment

#### **【Summation】**

In 2009, Qiongsan District People's Government, Haikou (hereinafter referred to as Qiongsan District Government), solicited investment for the construction of a leisure agriculture project in Duicha Village, the construction of which should be completed within 2 years, and publicly promised to open a green channel for planning approval and land supply. Taoyuan Company then signed a joint construction agreement with Duicha Village through the referral of the government of Qiongsan District. The project, according to the approved planning, shall have such service facilities as tourist center,

post station and scenic spots, and the general land use plan shall be for landscape facilities and rural residences. In March 2012, the project was identified by the Provincial Department of Agriculture and Qiongsan District Government a provincial and district key leisure tourism project. A special meeting was held in Qiongsan District to step up the construction of the project. Taoyuan Company made use of wasteland by the pond, irregular plots, shrub-covered slopes and forlorn homesteads in the village for the construction, and invested huge sums of money on production and living facilities for the villagers. In June 2012, Haikou Municipal Bureau of Land and Resources decided that the construction of the project in question occupied agricultural land. Qiongsan District Government then sent an application letter to the Municipal Bureau of Land and Resources for the adjustment and conversion of 0.8 ha reserved homestead land to construction land and the handling of the relevant formalities; and Qiongsan District Tourism Bureau explained to Haikou Municipal Bureau of Legislative Affairs that the project was a government-led key tourism project, and there was no intention to illegally occupy agricultural land, so it was recommended to exempt from administrative punishment. In December 2012, the Municipal Bureau of Land and Resources issued a penalty decision to Taoyuan Company and Duicha Village, ordering the return of illegally occupied land, confiscating newly built buildings and other facilities, and imposing a

fine. In May 2013, Qiongsan Primary People's Court, Haikou (hereinafter referred to as Qiongsan Primary Court), decided to revoke the penalty decision, and Haikou Intermediate Court upheld the decision to the effect in the second instance. Since then, the company did not add or expand any construction. The project has been awarded many honorary titles such as provincial five-coconut rural tourism spot, the most beautiful leisure farm in China (2016), the first batch of farm-share demonstration site (2017), China gold-medal agritainment for rural tourism, provincial leisure agriculture demonstration site, provincial rural tourism demonstration site, famous tourism village in Haikou and provincial leisure and sightseeing orchard. The project received provincial subsidies for tourism industry development in 2014, was selected a Haikou key investment project in 2017, and won the incentive fund for farm-share pilot projects in 2018. After the "integration of multiple plannings", the project land was converted to rural construction land. In February 2019, the National Natural Resources Supervision Guangzhou Bureau sent a letter to Hainan provincial government, pointing out that the project in question is illegal in land use; in March 2019, Hainan Provincial Department of Natural Resources and Planning sent a letter to Haikou Municipal Government, ordering serious investigation and punishment, and Haikou Municipal Bureau of Land and Resources sent a letter to Qiongsan District Government, requesting a thorough rectification. In

April 2019, Qiongsan District Government issued a punishment decision to Taoyuan Company, ordering the return of the illegally occupied land, confiscating the newly built buildings and other facilities thereon, and imposing a fine according to the actual area of the land. Taoyuan Company refused the decision and filed an administrative lawsuit, requesting the revocation of the penalty decision.

### **【Verdict】**

Hainan High Court held in the second instance that in the penalty decision which was sued is omitted the common offender, and Qiongsan District Government failed to clarify in its investigation the adjustment of the current land use type of the project involved in 2017 and the planning adjustment in Haikou City's "integration of multiple plannings", and to determine the administrative penalties accordingly; that that Qiongsan District Government required that the construction of the project involved must apply for the use of state-owned construction land is wrong in law application, and it has not analyzed and decided whether the land used for the project involved belongs in the "proviso" circumstances in the *Land Administration Law*, Article 43, as revised in 2004; that the punishment procedure violates the law. In accordance with the provisions of the *Administrative Litigation Law of the People's Republic of China*, Article 89, Paragraphs 1 (2) and 3, and Article 70 (1), (2) and (3), it decided that: 1. the administrative

judgment ((2019) Qiong 01 Xing Chu No. 694) of Haikou Intermediate Court is revoked; 2. the *Written Decision of Administrative Penalty* (Qing Shan Tu Zi Zhi Zi (2019) No. 152) made out on April 4, 2019 by Haikou Qiongsan District Government to Hainan Shiwai Taoyuan Leisure Agriculture Co., Ltd. is revoked. The acceptance fees of the first and second instances of CNY50 each, totaling CNY100, shall be borne by appellee Haikou Qiongsan District Government.

### **【Signification】**

That the government solicited investments to develop rural economy, made commitments on land supply, planning permission, etc., and required, upon completion of a number of administrative approvals, the enterprise to kick off and speed up project construction to pave the way for large projects; the enterprise completed the project construction according to the requirements of the government; and the relevant government departments delayed in handling the land use formalities, resulting in illegal land occupation, the fault is not with the enterprise. That the government decided to impose confiscation and fines while the enterprise had completed the project construction and had been earnestly handling the various formalities damaged not only the government's reliance interests, but also the credibility of government departments, which goes contrary to the ultimate goal of the State to implement administrative management to ensure the people's living and social order. To investigate and deal with lawsuits,



it is necessary to find out the relevant facts, take into account the legality and rationality of administrative penalties, and fully consider the protection of government reliance interests. Indiscreet fines and confiscation will never serve the purpose of legislation. Instead, they will seriously infringe upon the legitimate rights and interests of enterprises, deviate from the requirements of honest government construction, seriously damage the business environment and deflate the enterprises of their investment confidence. Therefore, the judiciary has to supervise the lawful administration of administrative organs, protect the legitimate rights and interests of the administrative counterparts, deepen the construction of the rule of law in Hainan and create a rule-of-law business environment in Hainan Free Trade Port.

Case 13:

**2 people including He suing Qionghai Municipal  
People's Government and Qionghai Zhongyuan  
Township People's Government over administrative  
enforcement in land acquisition**

**【Keywords】**

administrative enforcement, land expropriation, enforcement

**【Summation】**

In 1992, two people including He (man and wife) legally contracted fields to plant betel nut and other economic crops in their village of Jinwushang, and built thereon some ancillary facilities. For the purpose of building Bo'ao Lecheng International Medical Tourism Pilot Zone project, Qionghai Municipal People's Government (hereinafter referred to as Qionghai Municipal Government), after Hainan Provincial People's Government (hereinafter referred to as Hainan Provincial Government) approved the agricultural land conversion plan, published on May 22, 2019, the *Land Expropriation Announcement* at the rural collective economic organizations, of which, part of the collective land of such rural collective economic organizations including Jinwushang Village will be requisitioned. On

July 29, 2019, Qionghai Municipal Bureau of Natural Resources and Planning signed with Jinwushang Village the *Land Acquisition (Collection) Agreement*, and agreed on land compensations and resettlement subsidies for the acquisition of 182.5 mu (approx. 12.17 ha) of land of various types, including the fields contracted by the 2 people including He, totaling CNY20,768,089.44, and the compensations for young crops were entrusted to Zhongyuan Township People's Government (hereinafter referred to as Zhongyuan Township Government) to take care of. On August 28, Zhongyuan Township Government sent a *Notification on Requesting Collaboration for Evidence Preservation Concerning Young Crops and Attachments on the Ground and Notarization of House Evaluation* to the 2 people including He, requesting their collaboration in the inventory and registration of crops and attachments on the ground. On September 12, as the 2 people including He refused to participate in the inventory and registration work, Zhongyuan Township Government, under the supervision of the notary agency, counted, registered and preserved the crops and attachments and produced a *Young Crop Questionnaire and Attachment Questionnaire*. Without reaching any agreement with the 2 people including He on compensations, Qionghai Municipal Government decided to compensate CNY965,062 for young crops in accordance with the *Compensation Standards of Hainan Province for Young Crops and Attachments on the Ground* and CNY25,710 for

attachments on the ground in accordance with the *Reference Base Price for Houses of Qionghai City (2018)*, and, as the 2 people including He refused to accept the compensations, set aside the sums under notarization. On October 10, Zhongyuan Township Government sent a *Land Clearance Announcement* to the 2 people including He, requiring them to remove the crops and tear down the attachments on the ground within 10 days, and failing to meet the deadline will be deemed a waiver of their right of disposal and the land will be cleared by Zhongyuan Township Government. On December 4, 2019, Zhongyuan Township Government, after seeking instructions from Qionghai Municipal Government, organized personnel to have the crops and attachments on the ground cleared. The 2 people including He refused to accept the result and appealed for a decision that the administrative act of forced land clearing is illegal.

### **【Verdict】**

Hainan High Court held in the second instance that according to the *Regulations on the Implementation of the Land Administration Law of the People's Republic of China*, Article 45, anyone who violates land administration laws and regulations and obstructs State requisition of land for construction purpose shall be ordered by the competent land administration department of the people's government at or above the county level to surrender the land; in case of refusal to surrender the land, enforcement can be applied for from the people's court. The

collective land involved in the case had been requisitioned and compensated, and even if the 2 people including He disagreed to the compensation for land acquisition, there should not be any disruption to the implementation of the land acquisition. As the 2 people including He failed to clear the land on their own according to the requirement of the notification, the land administration department should apply to the people's court for enforcement. That Zhongyuan Township Government arbitrarily organized personnel to force the clearing of the land involved obviously exceeds their powers. The act though accomplished and irrevocable should be ruled illegal according to law. Therefore, it was decided that the administrative act of forced clearing is illegal.

### **【Signification】**

During the requisition of collective lands, some members of collective economic organizations may refuse compensations due to disagreement to the compensation standards or compensation items, and the delay in land collection, storage and supply will hinder the progress of major projects. Should such a circumstance arise, the land administration department of the people's government at or above the county level should order the party who obstructs the State requisition of land for construction purpose to surrender the land, and, if the party refuses to do so, instead of forcing the clearing for land collection by administrative organs, apply to the people's court for enforcement. The

economic and social development in Hainan, in particular, the implementation of Hainan Free Trade Port strategy, has brought about serious conflicts between land demand and supply, the requisition of collective lands has become an important measure to complement the shortage of State-owned construction land, and problems similar to this case have occurred from time to time in cities and counties. This case is a good example of warning and guidance to administrative organs in exercising their administrative role in the requisition of collective lands, and the court will further supervise the law-based administration of administrative organs, rectify their illegal acts, substantively resolve administrative disputes, and promote standard, transparent operation of administrative powers.

## 【 Execution Case 】

Case 14:

### **Execution Case Concerning Loan Contract Disputes between Three Rural Credit Cooperatives in Wenchang, Qionghai and Lingshui and an Investment Company in Wenchang.**

#### **【Key Words】**

government-court linkage; introduction of investors;  
reconciliation execution

#### **【Case Outline】**

In, 2015, an investment company in Wenchang got loans from three rural credit cooperatives in Wenchang, Qionghai and Lingshui for real estate development. During the project development, affected by factors such as house purchase quota policy and COVID-19 pandemic, the project's capital chain ruptured, the investment company in Wenchang failed to repay the loans as agreed and caused a litigation. Through a trial, the court judged that the investment company in Wenchang should repay the capital and interest to the three rural credit

cooperatives. The investment company in Wenchang failed to repay the loans according to the effective judgment, so the three rural credit cooperatives applied to Hainan First Intermediate People's Court for compulsory execution.

### **【Execution Result】**

Considering factors such as difficulty in project asset handling, long cycle of fund withdrawal and high risks in government's stability control, Hainan First Intermediate People's Court and Wenchang Municipal Government called different parties several times to a conference by relying on the government-court linkage platform. Through investigation, it was made clear that the main reason for the real estate project being unable to obtain a licence was fire control acceptance. Therefore, the executive judge guided the investment company in Wenchang to raise a fund as soon as possible for priority payment of the fire engineering expense, and the government opened a "green channel" for fire control acceptance, appointed commissioners from the housing department to contact with them, and organized an expert jury to make rapid acceptance and improve the completion procedures. The executive judge enforced and popularized laws simultaneously. He guided different parties to find interest intersections and shorten the gap in settlement amount, and pushed forward the reconciliation process. At the same time, Wenchang Municipal Government attracted investment nationwide, and introduced investors to purchase the real estate project involved in the case. Eventually,



intervened by Hainan First Intermediate People's Court, the creditor, debtor and investor reached a reconciliation program through consensus, and signed an agreement on capital injection for purchase and activation of the project. So far, the real estate risk project concerning financial claim has been properly settled, and the case concluded. Now, the first reconciliation fund has been paid into the account.

Typical Significance: Adhering to the goodwill and civilization execution principle, the case execution focused on a general situation and implemented government-court linkage. The court helped the enterprise to find blocking points and difficulties, and raised a legal, reasonable and extremely executable solution from the perspective of law. The government provided the enterprise with comprehensive project construction guarantee, and served as a good “babysitter” and “matchmaker” for the enterprise. Responding to the call, the creditor reduced and canceled the enterprise’s debt to some extent, helped the enterprise to resume work and production, and helped the enterprise to relieve the capital pressure. Through joint efforts of different parties, the enterprise resumed “hematopoietic function”, a real estate project on the verge of bankruptcy was revitalized, and the dilemma of major risks in real estate stability control was overcome. It not only advanced the execution case, but also solved the problem of continuous petitioning of house purchasers from the root, achieved organic unification of political, social and legal effects, and guaranteed the construction of Hainan Free Trade Port!



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