

中国法通讯 China Law Newsletter

跨境争议解决 Cross-border Dispute Resolution

第22期 • Issue 22
2013年5月 • May 2013

编者按：本刊旨在报道与中国有关的跨境争议解决的最新动态与我们的实务经验，但本刊不可替代个案的正式法律意见。若您重复收到本刊或者要订阅、退订或进一步了解本刊的内容，请与大成的有关律师联系。

Editor's note: the purpose of this publication is to report the most recent developments in the field of cross-border dispute resolution in connection with China, as well as our practical experience therein. However, this publication should not be treated as a substitute for a formal legal opinion in individual cases. If you have received this publication more than once, or would like to subscribe or unsubscribe to this publication, or follow up on any issues raised in this publication, please be in contact with the lawyer you usually deal with at Dacheng Law Offices.

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立法新闻 LEGISLATIVE NEWS

- 消费者权益保护法草案：经营者免责条款无效（来源：法制日报，2013 年 4 月 25 日）
Draft Consumer Protection Law: Exemption Clause of Business Operators Invalid
(Source: www.legaldaily.com.cn, April 25, 2013)

4 月 23 日被提请审议的消费者权益保护法修正案草案规定，经营者不得以格式条款限制消费者权利或者免除责任。

The draft amendment to the Consumer Protection Law submitted for discussion on April 23, 2013 provides that no business operator may use standard terms to restrict consumers' rights or exempt themselves from liability.

草案根据合同法等法律的有关规定，对消费领域的格式条款作了进一步规范，规定：“经营者使用格式条款，应当以明显方式提请消费者注意商品或者服务的数量和质量、价款或者费用、履行期限和方式、风险警示、售后服务、民事责任等与消费者有重大利害关系的内容，并按照消费者的要求予以说明。”“经营者不得以格式条款、通知、声明、店堂告示等方式作出排除或者限制消费者权利、减轻或者免除经营者责任、加重消费者责任等对消费者不公平、不合理的规定。”格式条款、通知、声明、店堂告示等含有上述内容的，其内容无效。

According to relevant legal provisions such as those of the Contract Law, the draft further regulates the standard terms in the consumers' sector, providing that "when using standard terms, a business operator shall expressly direct the consumer's attention to matters of significant interest to consumers such as the quantity and quality, price or cost, deadline and methods for performance of certain obligations, risk warnings, after-sales service and civil liability of or relating to products or services, and explain the same as required by the consumer " and "no business operator may specify provisions that are unfair or unreasonable to consumers such as those that exclude or restrict the consumers' rights, reduce or exempt the business operators' liability, and increase the consumers' liability through the use of standard terms, notices, statements, shop bulletins or other means". Standard terms, notices, statements, shop bulletins, etc., containing the above contents shall be invalid.

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司法动态

JUDICIAL DEVELOPMENTS

- 最高人民法院发布《关于违法的建筑物、构筑物、设施等强制拆除问题的批复》（来源：中国人民法院网，2013 年 4 月 3 日）

Supreme People's Court Promulgates the Official Reply to the Issues Concerning Compulsory Dismantlement of Unlawful Buildings, Structures, and Facilities (Source: www.chinacourt.org, April 3, 2013)

《最高人民法院关于违法的建筑物、构筑物、设施等强制拆除问题的批复》已于 2013 年 3 月 25 日由最高人民法院审判委员会第 1572 次会议通过，自 2013 年 4 月 3 日起施行。

The Official Reply of the Supreme People's Court to the Issues Concerning Compulsory Dismantlement of Unlawful Buildings, Structures and Facilities (the "Official Reply"), adopted at the 1572nd meeting of the Judicial Committee of the Supreme People's Court on March 25, 2013 comes into force on April 3, 2013.

这件针对北京市高级人民法院的专项请示作出的批复指出，根据行政强制法和城乡规划法有关规定精神，对涉及违反城乡规划法的违法建筑物、构筑物、设施等的强制拆除，法律已经授予行政机关强制执行权，人民法院不受理行政机关提出的非诉行政执行申请。

The Official Reply to the special request of the Beijing Higher People's Court provides that, in accordance with the guiding principles of relevant provisions of the Administrative Enforcement Law and the Urban and Rural Planning Law, the law confers to the administrative organs the right of compulsory enforcement to compulsorily dismantle the unlawful buildings, structures and facilities in violation of the Urban and Rural Planning Law, and the people's court shall not accept the application for non-litigation administrative enforcement filed by administrative organs.

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- 最高人民法院修改《最高人民法院关于审理专利纠纷案件适用法律问题的若干规定》（来源：人民法院报，2013 年 4 月 15 日）

SPC Revises the Certain Provisions on Issues Concerning the Application of Law in the Hearing of Patent Dispute Cases (Source: www.court.gov.cn, April 15, 2013)

4 月 14 日，最高人民法院公布《最高人民法院关于修改〈最高人民法院关于审理专利纠纷案件适用法律问题的若干规定〉的决定》（《决定》），自 2013 年 4 月 15 日起施行。

On April 14, the Supreme People's Court (SPC) promulgated the Decision of the Supreme People's Court on Revising the Certain Provisions on Issues Concerning the Application of Law in the Hearing of Patent Dispute Cases (the "Decision"), effective as of April 15, 2013.

《决定》明确，“最高人民法院根据实际情况，可以指定基层人民法院管辖第一审专利纠纷案件。”对于专利民事纠纷案件数量较多同时具备专利民事纠纷案件审理能力的基层法院而言，该司法解释为其管辖此类案件提供了明确的法律依据。

The Decision provides "the Supreme People's Court may, depending on actual circumstances, designate a basic people's court to have jurisdiction over first instance patent dispute cases". For basic people's courts that have larger amounts of civil patent dispute cases and have the capability to hear civil patent dispute cases, the judicial interpretation provides a clear legal basis for their jurisdictions over such cases.

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- **最高法司法解释规范国际司法协助（来源：news.xinhuanet.com，2013 年 4 月 28 日）**
Supreme Court Promulgates Judicial Interpretation on International Judicial Assistance (Source: news.xinhuanet.com, April 28, 2013)

4 月 28 日，最高人民法院发布了《关于依据国际公约和双边司法协助条约办理民商事案件司法文书送达和调查取证司法协助请求的规定》，于 5 月 2 日起施行。该司法解释适用于中国法院与外国法院依据海牙送达公约、海牙取证公约和双边民事司法协助条约，相互委托办理民商事案件司法文书送达和民商事案件调查取证请求。

On 28 April, the Supreme Court promulgated the Provisions on Service of Judicial Document and Requests for Investigation and Evidence Collection in Civil and Commercial Cases in Accordance with International Conventions and Bilateral Agreements on Judicial Assistance, which will come into effect on 2 May 2013. The judicial interpretation applies to domestic and foreign courts commissioning each other for the service of documents and requests for investigation and evidence collection in civil and commercial cases.

司法解释第一条改变了《最高人民法院关于涉外民事或商事案件司法文书送达问题若干规定》第六条第二款的规定，对于国际公约和双边协定均适用的情况，取消了双边条约优先适用的规定。

Article 1 of the Judicial Interpretation adjusts regulations in Article 6 (2) of Provisions of the Supreme People's Court on Service of Judicial Documents in Foreign-Related Civil or Commercial Cases, and cancels the priority of bilateral agreements on the condition that both international conventions and bilateral agreements are applicable.

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大成律师事务所成立于 1992 年，是亚洲最大的综合性律师事务所之一。大成总部设在北京，拥有中国最大的全球化法律服务网络，在长春、长沙、常州、重庆、福州、广州、哈尔滨、海口、杭州、合肥、黄石、吉林、济南、昆明、南昌、南京、南宁、南通、内蒙古、宁波、青岛、上海、沈阳、深圳、四川、苏州、太原、天津、温州、武汉、乌鲁木齐、无锡、厦门、西安、西宁、银川、郑州、舟山、珠海、香港、台北、莫斯科、新加坡、巴黎、首尔、华盛顿、东京、纽约、芝加哥、旧金山、多伦多、墨西哥、圣保罗、利马、伦敦、布鲁塞尔、柏林、阿姆斯特丹、马德里、斯德哥尔摩、迪拜、开罗、开普敦、阿布贾、特拉维夫、悉尼等城市设有分支机构或联盟机构。

Founded in 1992, Dacheng Law Offices is one of the largest law firms of full services in Asia. Headquartered in Beijing, Dacheng has the largest global legal services network of any law firm in China, with branch offices or alliance partners in Changchun, Changsha, Changzhou, Chongqing, Fuzhou, Guangzhou, Harbin, Haikou, Hangzhou, Hefei, Huangshi, Jilin, Jinan, Kunming, Nanchang, Nanjing, Nanning, Nantong, Inner Mongolia, Ningbo, Qingdao, Shanghai, Shenyang, Shenzhen, Sichuan, Suzhou, Taiyuan, Tianjin, Wenzhou, Wuhan, Urumqi, Wuxi, Xiamen, Xi'an, Xining, Yinchuan, Zhengzhou, Zhoushan, Zhuhai, Hong Kong, Taipei, Moscow, Singapore, Paris, Seoul, Washington, Tokyo, New York, Chicago, San Francisco, Toronto, Mexico, St. Paul, Lima, London, Brussels, Berlin, Amsterdam, Madrid, Stockholm, Dubai, Cairo, Cape Town, Abuja, Tel Aviv, Sydney.

争议解决与强制执行是大成的传统优势业务，大成曾获得《亚洲法律事务》(ALB) 2009 年度“纠纷解决律师事务所大奖”。大成可以通过其全球化法律服务网络，帮助客户高效、经济地处理发生在中国各地及其法律服务网络内其他国家和地区的争议。大成在争议解决领域与强制执行可以提供如下法律服务：

Dacheng traditional strength is in the field of dispute resolution and enforcement, and was awarded the Dispute Resolution Law Firm of Year 2009 by Asian Legal Business (ALB). Drawing upon its global legal services network, Dacheng is able to assist clients in resolving, in a highly efficient and economical manner, disputes arising in any location throughout China, as well as all other countries and regions forming part of its global legal services network. Dacheng offers the following legal services in the field of dispute resolution and enforcement:

- (1) 争议解决谈判与争议和解；
Negotiations in the course of dispute resolution and settlement of disputes;
- (2) 诉前法律咨询；
Pre-action legal consultancy;
- (3) 诉前调查取证；
Pre-action investigation and evidence-gathering;
- (4) 证据保全；
Preservation of evidence;
- (5) 财产保全；
Preservation of assets;
- (6) 诉讼仲裁代理；

Representation in litigation and arbitration proceedings;

- (7) 中国法院生效法律文书的强制执行；

Enforcement of effective legal instruments of the PRC courts;

- (8) 中国仲裁机构（如中国国际经济贸易仲裁委员会）生效裁决的强制执行；

Enforcement of the effective awards of Chinese arbitration institutions (such as the China International Economic and Trade Arbitration Commission);

- (9) 香港、澳门及台湾法院生效法律文书在中国的承认与执行；

Recognition and enforcement of the effective legal instruments of the courts of Hong Kong, Macau and Taiwan in mainland China;

- (10) 外国仲裁裁决在中国的承认和执行；及

Recognition and enforcement of foreign arbitral awards in China; and

- (11) 基于争议解决实务经验的法律风险管理。

Legal risks management based on our practical experience in dispute resolution.