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# 中国法通讯 China Law Newsletter

# 跨境贸易与投资 Cross-border Trade and Investment

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编者按:本刊旨在报道与中国有关的跨境贸易与投资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。您若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 trade and investment 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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# <u>立法新闻</u> LEGISLATIVE NEWS

■ 六部委发布《通知》规定:跨境贸易人民币结算推广至所有进出口企业(来源:厦门市商务局网站,2012年3月5日)

Six Authorities Issued "Circular" to Extend RMB Settlement in Cross-border Trade to All Import and Export Enterprises (Source: www.xmtdc.gov.cn, March 5, 2012)

3月5日,中国人民银行等六部门联合发布了《中国人民银行 财政部 商务部 海 关总署 国家税务总局 中国银行业监督管理委员会关于出口货物贸易人民币结算企 业管理有关问题的通知》(《通知》),具有进出口经营资格的企业均可开展出口货物贸 易人民币结算业务。

On March 5, six authorities, including the People's Bank of China jointly issued the "Circular of the People's Bank of China, the Ministry of Finance, the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation and China Banking Regulatory Commission on Issues Relating to Business Management of RMB Settlement of Outward Cargo Trade" (the "Circular") that stipulates any enterprises with import and export business qualifications may carry out RMB settlement of outward cargo trade.

据了解,以往参与出口货物贸易人民币结算的主体仅局限于试点名单企业。而本次下发的《通知》将结算主体扩大至所有具有进出口经营资格的企业。至此,我国从事进出口货物贸易、服务贸易、其他经常项目的企业均可选择以人民币进行计价、结算和收付。

It is understood that the subjects participating in RMB settlement of outward cargo trade in the past were strictly limited to the enterprises of pilot list. However the "Circular" issued this time will extend the settlement subjects to all enterprises with import and export business qualifications. Thus enterprises engaging in import and export cargo trade, service trade and other current items in China may select pricing, billing and collection and payment in RMB.

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■ 上海市发改委、上海市商委联合印发《上海市吸收外资和境外投资"十二五"规划》 的通知(来源:上海市人民政府,2012年3月15日)

SHDRC, SCOFCOM jointly print and distribute "12th Five-year" Plan of Shanghai



# Municipality for Absorption of Foreign Capital and Overseas Investment (Source: Shanghai Municipal People's Government, March 15, 2012)

2012 年 2 月 27 日,上海市发改委、上海市商委联合发出沪发改外资[2012]010 号通知,印发了《上海市吸收外资和境外投资"十二五"规划》。该通知明确,"十二五"期间,上海将支持符合条件的外商投资企业在境内公开发行股票、债券和中期票据,支持符合条件的外资金融机构通过发行债券等方式筹集人民币资金,支持上海证券市场扩大 QFII 投资规模和投资范围,探索在上海期货市场、黄金市场、金融衍生品市场等其他金融市场引入 QFII 制度。同时,上海还将积极有序推进金融市场和金融服务业对外开放,大力吸引外资金融机构在沪设立区域性总部及业务营运总部,积极吸引国际和区域性多边金融机构入驻。

On February 27, 2012, the Shanghai Municipal Development and Reform Commission (SHDRC) and the Shanghai Municipal Commission of Commerce (SCOFCOM) jointly issued a notice numbered Hu Fa Gai Wai Zi [2012] No. 010, to print and distribute the "12th Five-year" Plan of Shanghai Municipality for Absorption of Foreign Capital and Overseas Investment. The Notice clearly specifies that during the "12th Five-year" plan period, Shanghai will support qualified foreign-invested enterprises in public offering of shares, bonds and mid-term notes in China, and support the qualified foreign-funded financial institutions to raise RMB funds through issuance of bonds, etc., support the Shanghai securities market to expand the QFII investment scale and scope, and explore the introduction of the QFII system in Shanghai futures market, gold market, financial derivatives market and other financial markets. Meanwhile, Shanghai will actively promote the opening up of financial market and financial services in an orderly manner, make efforts to attract foreign-funded financial institutions to set up regional headquarters and business operations headquarters in Shanghai, and actively attract international and regional multilateral financial institutions to enter Shanghai.

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外汇局: 个人资金可参与境外公司股权激励计划(来源: 国家外汇管理局网站,2012 年3月19日)

SAFE: Personal Funds May Participate in Stock Incentive Plan of Overseas Companies (Source: www.safe.gov.cn, March 19, 2012)

3月16日,国家外汇局公布了《国家外汇管理局关于境内个人参与境外上市公司股权激励计划外汇管理有关问题的通知》(《通知》)。《通知》允许个人可以其个人外汇储蓄账户中自有外汇或人民币等境内合法资金参与股权激励计划。以自有外汇资金参与的,银行应凭加盖了境内代理机构公章的股权激励计划外汇登记证明复印件、个人与境内公司雇佣及劳务关系说明等材料办理相应的资金划转手续。而以人民币资金参与的,应由境内代理机构按照规定统一办理有关购付汇手续。

On March 16, the State Administration of Foreign Exchange (the "SAFE") published the "Circular of SAFE Issues Relating to foreign exchange Administration over Domestic Individuals Participating in Stock Incentive Plan of Listed Overseas Companies" (the "Circular"). The Circular allows individuals to participate in stock incentive plan of listed



overseas companies with their own foreign exchange in their savings accounts of foreign exchange or their funds in RMB, etc. For the participation with their own foreign exchange, the bank should handle the relevant fund transfer procedures by the copy of the Foreign Exchange Registration Certificate of stock option incentive plan sealed officially by a domestic agency, the explanation of employment or service relationship between the individual and domestic company, etc. For the participation in RMB, the purchase and payment of foreign exchange should be handled uniformly by domestic agencies according to the provisions.

《通知》的"股权激励计划"是指境外上市公司以本公司股票为标的,对境内公司的董事、监事、高级管理人员、其他员工等与公司具有雇佣或劳务关系的个人进行权益激励的计划,包括员工持股计划、股票期权计划等法律、法规允许的股权激励方式。

The "Stock Incentive Plan" in the Circular means the incentive plan of personal interest with the subject-matter as the shares by an overseas listed company for directors, supervisors, senior officers and other employees of a domestic company in the employment or service relationship, including Employee Stock Ownership Plans, Stock Option Plan and other stock incentive methods that laws and regulations allow.

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国务院国资委将出台意见鼓励民间资本参与国企改制重组(来源:新华网,2012年3 月 23 日)

SASAC to release document to encourage private capital to participate in the restructuring and reorganization of state-owned enterprises (Source: Xinhuanet.com, March 23, 2012)

新华网 3 月 23 日转引中国证券报消息,国务院国资委正在按照《国务院关于鼓励和引导民间投资健康发展的若干意见》(简称"新 36 条")精神,起草完善关于国有企业在改制重组中积极吸收民间投资的指导意见。目前指导意见已基本制定完毕,待进一步完善后有望近期发布。

The State-Owned Assets Supervision and Administration Commission (SASAC) under the State Council is drafting and improving the guiding opinions on actively absorbing the private investment in the restructuring and reorganization of state-owned enterprises according to the spirit of the Certain Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment. The guiding opinions have been basically finalized and are expected to be released soon after further improvement.

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■ 卫生部:港澳医院可进入内地直辖市及省会城市(来源:新华社,2012年3月30日) MOH: Hong Kong and Macao Hospitals May Enter Municipalities and Provincial Capital Cities in Mainland China (Source: Xinhuanet.com, March 30, 2012)

3月21日,商务部、卫生部共同发布《关于扩大香港和澳门服务提供者在内地设立独资医院地域范围的通知》。根据《<内地与香港关于建立更紧密经贸关系的安排>



补充协议八》及《<内地与澳门关于建立更紧密经贸关系的安排>补充协议八》,自 2012 年 4 月 1 日起,香港和澳门服务提供者在内地设立独资医院的地域范围,由上海市、重庆市、广东省、福建省和海南省,扩大到所有直辖市及省会城市。设立独资医院的具体办法按照《香港和澳门服务提供者在内地设立独资医院管理暂行办法》(卫医政发〔2010〕109 号)执行。

On March 21, the Ministry of Commerce and Ministry of Health ("MOH") join issuing the "Circular on Expanding the Geographical Scope of Wholly-owned Hospitals in Mainland China Founded by Hong Kong and Macao Service Providers" According to the "Supplement VIII to the Mainland and Hong Kong Closer Economic Partnership Arrangement" and the "Supplement VIII to the Mainland and Macao Closer Economic Partnership Arrangement", from April 1, 2012 on, the geographical scope of wholly-owned hospitals in the Mainland set up by service suppliers in Hong Kong and Macao will be expanded from Shanghai, Chongqing, Guangdong, Fujian and Hainan to all the municipalities and provincial capital cities. The specific measures to found wholly-owned hospitals in the Mainland shall be subject to the "Tentative Measures for Administration of Foundation of Wholly-Controlled Hospitals in Mainland China by Hong Kong and Macao Service Providers" (Wei Yi Zheng Fa [2010] No. 109).

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■ 国务院拟修法不再批准设立中外合作会计师事务所(来源: 国务院法制办网站,2012 年3月31日)

State Council Intends to Amend Laws for No Longer Approval of the Establishment of Sino-Foreign Cooperative Accounting Firms (Source: www.chinalaw.gov.cn, March 31, 2012)

3月31日,国务院法制办公布了《注册会计师法(修正案)(征求意见稿)》,公 开征求社会各界意见。征求意见稿增加了会计师事务所合伙人和股东条件的规定。现 行注册会计师法规定,经批准,外国会计师事务所可以与中国会计师事务所共同设立 中外合作会计师事务所。这种合作制的组织形式,不符合会计师事务所的组织特征。 为此,征求意见稿删去了现行注册会计师法关于中外合作会计师事务所的规定。本修 正案施行前已设立的中外合作会计师事务所,可以在其合作有效期内继续采用中外合 作组织形式。

On March 31, the Legislative Affairs Office of the State Council issued the "Law on Certified Public Accountants (Amendments) (Draft for Comments)" and sought opinions from various sectors of the society. This Draft for Comments increases the provisions for the conditions of partner and shareholder of accounting firm. The existing Law on Certified Public Accountants stipulates that upon approval the foreign accounting firm may establish Sino-Foreign cooperative accounting firm with Chinese accounting firm. The organizational form of cooperation is not subject to the characteristics of the organization of accounting firms. For that, the Draft for Comments deletes the provisions of Sino-foreign cooperative accounting firm in the existing Law on Certified Public Accountants. For the Sino-Foreign cooperative accounting firms established upon the implementation of the Draft for Comments, they may continue to take the Sino-foreign cooperative form during the

effective period of cooperation.

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# <u>投资动态</u> INVESTMENT DEVELOPMENTS

■ 在华主要外资法人银行拟扩大对华投资(来源:上海证券报,2012年3月1日)
Foreign-funded banks in China propose to expand investment in China (Source: Shanghai Securities News, March 1, 2012)

近日, 汇丰、渣打、恒生、东亚、星展等在华主要外资法人银行陆续发布了 2011 年财务数据, 中国内地盈利贡献大幅提升。与此同时, 上述外资行均在其年报中强调, 2011 年经营支出总额上升, 其中较大部分来自为中国内地未来业务增长而不断做出的投资。 随着中国内地业绩表现强劲, 上述外资行也再度重申将继续加强对华投资及拓展业务的步伐。

Foreign-funded banks in China such as HSBC, Standard Chartered, Hang Seng, Bank of East Asia, DBS Bank successively released their 2011 financial data recently which showed that profit contribution made by the mainland of China increased dramatically. At the same time, all of the said foreign-funded banks stressed in their annual reports that the total operating expenses in 2011 increased mostly due to the investment made unceasingly for the future growth of businesses in the mainland of China. Along with the strong performance of the mainland of China, the said foreign-funded banks reiterated that they would continue to strengthen the investment and business development in China.

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- 放宽居民境外投资限制 维护境外资产安全(来源:中国网,2012年3月5日)
  China to Relax Individual Overseas Investment Restrictions and Strengthen Risk
  Management of Overseas Investment (Source: China.com.cn, March 5, 2012)
  - 3月5日,在十一届全国人大五次会议上,温总理作了政府工作报告,并提出要实施"走出去"战略。我国正处于对外投资加快发展的重要阶段,要加强宏观指导,强化政策支持,简化审批手续,健全服务保障。引导各类所有制企业有序开展境外能源、原材料、农业、制造业、服务业、基础设施等领域投资合作和跨国并购。创新境外经贸合作区发展模式,支持"走出去"的企业相互协同、集群发展。放宽居民境外投资限制。加强对外投资风险管理,维护我境外企业人员和资产安全。

March 5, delivering the government work report at the fifth session of the 11<sup>th</sup> National People's Congress, Premier Wen said China will implement the "go global" strategy this year. With China's outward investment in an important stage of accelerating development, we will enhance macro-guidance, increase policy support, streamline approval procedures, and improve services for Chinese investors. According to Wen, China will guide its



enterprises under various forms of ownership in making overseas investments, mergers and acquisitions in energy, raw materials, agriculture, manufacturing, service industries, and infrastructure in an orderly manner. China will also explore new models for overseas economic and trade cooperation zones, and support companies making overseas investments in coordinating their growth and forming clusters. Wen stressed that restrictions on individual investing overseas will be relaxed. Wen also said China will strengthen risk management of overseas investments and protect the safety of employees and assets of Chinese enterprises operating overseas.

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中部地区实际使用外资上涨快 前 2 月同比增 19. 21%(来源:中国新闻网,2012 年 3 月 15 日)

Central China's Actually Utilized Foreign Investment Jumps, Up 19.21% in First Two Months over Last Year (Source: www.chinanews.com, March 15, 2012)

3月15日,商务部今日召开例行发布会。今年前两月,中部地区实际使用外资上涨较快,实际使用外资 14.28 亿美元,同比增长 19.21%,占全国总额的 8.06%。1-2月,东部地区实际使用外资 151.52 亿美元,同比下降 1.63%,占全国总额的 85.49%。西部地区实际使用外资 11.43 亿美元,同比下降 6.55%,占全国总额的 6.45%。2012年 1-2月,外商投资新设立企业 3005 家,同比下降 11.59%;实际使用外资金额 177.23亿美元,同比下降 0.56%。2月当月,外商投资新设立企业 1603 家,同比增长 38.67%;实际使用外资金额 77.26 亿美元,同比下降 0.90%。

On March 15, the Ministry of Commerce held routine news release. In first two months this year, the actually utilized foreign investment in Central China climbed at a relatively rapid pace, amounting to USD1,428 million, up 19.21% over the last year, and accounting for 8.06% of the national total; the actually utilized foreign investment in East China amounted to USD15,152 million, down 1.63%, accounting for 85.49% of the national total; the actually utilized foreign investment in West China amounted to USD1,143 million, down 6.55% over the last year, accounting for 6.45% of the national total. As for January and February of 2012 in perspective of the whole nation, 3,005 new foreign-funded enterprises established, down 11.59%, with actually utilized foreign investment of USD17, 723 million, down 0.56%. As for February only, 1,603 new foreign-funded enterprises established, up 38.67%, with actually utilized foreign investment of USD7, 726 million, down 0.90%.

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■ 2011 年中国成为在德国投资项目最多的国家(来源:中国政府网, 2012 年 3 月 16 日) China became the country having the most investment projects in Germany in 2011 (Source: Central People's Government, March 16, 2012)

新华社柏林 3 月 15 日电,德国联邦外贸与投资署 15 日公布的数据显示,2011年全年共有来自世界 33 个国家的 827 家企业在德国进行各类投资,比上一年增长13%,其中中国在德国的投资项目总数达 158 个,成为在德国投资项目最多的国家。

The data published by the Germany Trade & Invest on March 15, 2012 show that a



total of 827 enterprises from 33 countries in the world made various types of investments in Germany in 2011, representing an increase of 13% over the previous year. Of the total, the number of China's investment projects is 158, which makes China become the country having the most investment projects in Germany.

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■ 中日韩投资协定谈判顺利结束(来源:商务部,2012年3月22日)

Negotiations on China-Japan-Korea Investment Agreement ended successfully (Source: Ministry of Commerce, March 22, 2012)

2012年3月19—21日,中国、日本、韩国在北京举行投资协定谈判。各方就《中日韩投资协定》文本所有遗留问题达成了实质一致,并草签了协定工作文本。三方均表示,将尽快完成国内程序,以期尽早签署该协定。

From March 19-21, 2012, China, Japan, and South Korea held the negotiations on investment agreement in Beijing. The three parties reached a substantial consensus on all outstanding issues in the text of China-Japan-Korea Investment Agreement and initialed the text of agreement. All the three parties expressed that they would complete the procedures in their own countries as soon as possible, in hope of signing the agreement early.

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# <u>热点追踪</u> HOT TOPICS

■ 财险市场对外开放 外资保险公司全力抢滩(来源:浙江日报,2012年3月14日)
Property Insurance Open to Market, Foreign Insurers Striving for Market Share
(Source: Zhejiang Daily, March 14, 2012)

中国财险业固守的最后一块阵地交强险,已于2月正式向外资保险公司敞开大门。 利宝保险公司率先宣布推出赔付总额 1.5 万元以下单方事故"零单证"赔付,只需客户提供行驶证、驾驶证、身份证、银行卡拍照存档后,即可向客户支付赔款。

The last fortress of China's property insurance, compulsory auto insurance was formally open to foreign insurers in February. Liberty Mutual Insurance first released unilateral accident "zero-document" settlement product with total settlement amount less than CNY15, 000. A client may get paid after providing his driver license, vehicle license, ID card and bank account card, and being shot for photos and filed for record.

对于外资险企来说,涉足交强险并非最终目的,真正令其心动的是借交强险这块 "敲门砖"得以分食国内千亿元规模的车险市场"蛋糕"。而从特色服务入手,提升 对客户的粘性,将成为其作为市场后入者盈利的不二法门。美亚保险华东区营销经理 龚雪表示,美亚不会马上制订市场份额的目标,但希望短时间内把美亚在全球引以为



豪的驾驶员安全教育及道路安全培训等特色服务引入中国市场。

Compulsory auto insurance involvement is not the ultimate goal for foreign insurers. What really drives them is to knock the door with the help of compulsory auto insurance to share the auto insurance market of China evaluated as CNY100 billion. Initiating with specialized services and improving their dependency on clients will become the trump card for profit-making after entering such market. Gong Xue, East China Marketing Manager of Chartis Insurance, said that Chartis wouldn't set the goal of market share right now, but wanted to introduce its proud specialized services into Chinese Market, such as driver safety training and road safety training.

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美国总统签署法案授权美国政府对非市场经济国家征收反补贴税(来源:商务部,2012 年3月15日)

The U.S. President Obama signs bill to authorize the U.S. government to impose countervailing duties on non-market economy countries (Source: Ministry of Commerce, March 15, 2012)

美国白宫网站 2012 年 3 月 13 日发布消息称,奥巴马总统于当日签署 H.R.4105 法案,授权美国政府可对包括中国在内的非市场经济国家征收反补贴税。该法案的生效时间追溯到 2006 年 11 月 20 日,从而使美国商务部已针对中国产品做出的 24 个反补贴裁决合法化。该法案还涵盖了双重计算问题。此前,美国国会参、众两院已分别于 3 月 5 日和 6 日表决通过相关法案。

According to news from the U.S. White House website, the U.S. President Obama signed H.R.4105 bill on March 13, 2012 to authorize the U.S. government to impose countervailing duties on non-market economy countries, including China. The effective date of the bill is tracked back to November 20, 2006, thereby making the 24 anti-subsidy rulings against Chinese products made by the U.S. Department of Commerce legalized. The bill also covers the problem of double counting. Before this, both the U.S. Senate and House of Representatives voted the relevant bill through on March 5 and 6 respectively.

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# <u>项目信息</u> Business Opportunity

■ 美国分销网络项目 寻求战略融资合作伙伴

一家领先的经营产品包括奖杯、牌匾,奖牌、彩带、商业礼品(例如钟表、装饰物)的 B2B 产品经销商,寻求战略融资合作伙伴,共同开拓广告服务/促销产品行业的发展机遇。本公司建立于 1920 年,拥有行业内最全面最广泛的产品线,并且已在美国各地建立了广泛的分销渠道,同时与四千多家零售端分销商有着密切合作。



理想的融资合作伙伴为促销产品行业的供应商,如:服装(T恤、高尔夫球衫、围裙、制服、帽子、头带、夹克、领带、鞋类等)、办公及应用配件、奖品、餐具、日历等产品供应商。

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## ■ 加拿大铁矿石项目 寻找投资者

铁矿石项目基本情况介绍:位于加拿大矿业友好的拉布拉多和魁北克省 20 个不同阶段、分布集中的直运铁矿石的矿区;基础设施齐全:公路、铁路,水电站,机场,港口;预计采矿期 20 多年;其中一期的一个矿区已于 2011 年 6 月正式开始采矿,截止到 2011 年 9 月共开采运输矿石 723,000 吨,其中 212,000 吨为品位 65%的直运矿石;预计到 2015 年,年采矿量将从现在的 150 万吨提高到 500 万吨。

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大成律师事务所建立了覆盖全国、遍布世界重要地区和城市的大成全球法律服务网络。大成的总部设在北京,在中国境内的长春、长沙、常州、成都、重庆、福州、广州、哈尔滨、海口、杭州、呼和浩特、济南、昆明、南京、南宁、南通、青岛、上海、沈阳、深圳、太原、天津、武汉、乌鲁木齐、无锡、厦门、西安、西宁、银川、郑州、吉林、舟山、合肥、南昌、苏州等35个城市设有分所。

Dacheng Law Offices has built a global network of legal service covering China as well as the major regions and cities worldwide. With its head office based in Beijing, Dacheng has established branch offices in 35 Chinese cities, including Changchun, Changsha, Changzhou, Chengdu, Chongqing, Fuzhou, Guangzhou, Harbin, Haikou, Hangzhou, Hohhot, Jinan, Kunming, Nanjing, Nanning, Nantong, Qingdao, Shanghai, Shenyang, Shenzhen, Taiyuan, Tianjin, Wuhan, Urumqi, Wuxi, Xiamen, Xi'an, Xining, Yinchuan, Zhengzhou, Jilin, Zhoushan, Hefei, Nanchang and Suzhou.

大成律师事务所在纽约、洛杉矶、芝加哥、巴黎、新加坡、香港、台湾设立了当地的大成律师事务所,可以为客户提供全面本地业务的法律服务。大成还吸收了 5 家外国律师事务所作为大成网络境外成员单位,并与 9 家外国律师事务所建立了长期稳定的战略合作伙伴关系。

Dacheng Law Offices has incorporated local Dacheng law firms in New York, Los Angeles, Chicago, Paris, Singapore, Hong Kong and Taiwan, which is qualified to render a full range of local legal services. Dacheng has 5 foreign associated firms in its oversea network and maintain long standing steady strategic partnership with another 9 foreign law firms.

2009年,大成作为中国区唯一成员加入了世界最大的、汇集全球顶级律师事务所、会计师事务所、投资公司、金融机构等专业性服务企业和公司的独立专业服务组织 World Service Group(世界服务集团),与100多个国家的律师事务所、8万多名律师建立起了长期稳定的信息交换渠道和业务合作平台,将大成全球化法律服务网络与WSG全球网络实现了链接,使大成客户服务体系更广泛地覆盖全球,更有效地满足法律服务市场多样化、多层次的需求。

In 2009, Dacheng Law Offices joined the World Services Group (WSG) as its only member in China. WSG is the world's largest independent multidisciplinary professional service organization with members including professional service providers such as leading law firms, accounting firms, investment companies and financial institutions in the world, whereby Dacheng has established long term steady channel for exchanges, communications and cooperation with law firms and more than 80000 lawyers from more than 100 countries. Dacheng' global network of legal service is linked with WSG's global network through its membership, which launches Dacheng' client service system to the international arena and puts Dacheng into a better position to serve the diversified and comprehensive demands of the legal service market.