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中国法通讯
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跨境争议解决
Cross-border Dispute Resolution

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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。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 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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司法动态
JUDICIAL DEVELOPMENTS

- **最高人民法院发布《关于网络查询、冻结被执行人存款的规定》（来源：人民法院报，2013 年 9 月 2 日）**

  Supreme People's Court Releases Provisions on Online Query or Freezing of Deposits of Persons Subject to Enforcement (Source: rmfyb.chinacourt.org, Sep 2, 2013)

  2013 年 8 月 29 日，最高人民法院发布《关于网络查询、冻结被执行人存款的规定》（《规定》），自 2013 年 9 月 2 日起施行。

  On August 29, 2013, the Supreme People’s Court released the Provisions on Online Query or Freezing of Deposits of Persons Subject to Enforcement (the "Provisions"), effective as of September 2, 2013.

  根据《规定》，人民法院与金融机构已建立网络执行查控机制的，可以通过网络实施查询、冻结被执行人存款等措施。网络执行查控机制的建立和运行应当具备以下条件：（一）已建立网络执行查控系统，具有通过网络执行查控系统发送、传输、反馈查控信息的功能；（二）授权特定的人员办理网络执行查控业务；（三）具有符合安全规范的电子印章系统；（四）已采取足以保障查控系统和信息安全的措施。

  According to the Provisions, where a people’s court establishes an online enforcement examination and control mechanism with a financial institution, the people’s court may, via Internet, implement such measures as query and freezing of the deposits of persons subject to enforcement. Such online enforcement examination and control mechanism shall be established and operated according to the following requirements: (1) an online enforcement examination and control system has been established with the function of sending, transmitting, and feeding back information via the online enforcement examination and control system; (2) designated personnel are authorized to handle the online enforcement examination and control business; (3) it has an electronic seal system that meets the security specifications; and (4) it has taken measures sufficient to safeguard the examination and control system and information security.

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- **最高人民法院发布《最高人民法院关于适用〈中华人民共和国企业破产法〉若干问题的规定（二）》（来源：人民法院报，2013 年 9 月 13 日）**

  The Supreme People's Court Issues the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the

People's Republic of China (II) (Source: rmfyb.chinacourt.org, Sep 13, 2013)

2013 年 9 月 5 日，最高人民法院发布《最高人民法院关于适用〈中华人民共和国企业破产法〉若干问题的规定（二）》（《规定》），自 2013 年 9 月 16 日起施行。

On September 5, 2013, the Supreme People's Court ("SPC") issued the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (II) (the "Provisions"), effective as of September 16, 2013.

《规定》共 48 条，分别从债务人财产的界定、撤销权、取回权、抵销权、债务人财产的保全解除和执行中止，以及有关债务人衍生诉讼的审理等多个角度，对涉及债务人财产的相关问题作出了规定。

The Provisions include 48 articles, specifying the concerns relating to the property of the debtor in such perspectives as the definition for the property of the debtor, the right of rescission, the right of recall, the right of setoff, the release of preservation for the property of the debtor and the termination of implementation, and hearing of the relevant derivative actions of the debtor, etc.

对于破产案件的管辖问题，《规定》明确，对破产申请受理前法院已经受理但在破产申请受理时尚未审结的有关债务人的民事诉讼，仍由原受理法院继续审理；破产申请受理后当事人新提起的有关债务人的民事诉讼，均由受理破产申请的法院管辖。

For the jurisdiction of bankruptcy case, the Provisions define: for the civil action relating with the debtor, if it is accepted and heard prior to the hearing of the bankruptcy petition but not concluded yet when the bankruptcy petition is accepted and heard, it is still heard by the original court; if it is brought by the relevant party after the bankruptcy petition is accepted and heard, it is under the jurisdiction of the court that accepts and hears the bankruptcy petition.

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ARBITRATION DEVELOPMENTS

- **最高人民法院发布《最高人民法院关于人事争议申请仲裁的时效期间如何计算的批复》（来源：人民法院报，2013 年 9 月 22 日）**

  Supreme People's Court Releases the Official Reply of the Supreme People's Court to Methods to Calculate Limitation Period of Application for Arbitration of Personnel Disputes (Source: rmfyb.chinacourt.org, Sep 22, 2013)

2013 年 9 月 12 日，最高人民法院发布《最高人民法院关于人事争议申请仲裁的

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时效期间如何计算的批复》（《批复》），自 2013 年 9 月 22 日起施行。

On September 12, 2013, the Supreme People's Court issued the Official Reply of the Supreme People's Court to Methods to Calculate Limitation Period of Application for Arbitration of Personnel Disputes (the "Official Reply"), which shall take effect as of September 22, 2013.

根据《批复》，四川省高级人民法院《关于事业单位人事争议仲裁时效如何计算的请示》（川高法〔2012〕430 号）应依据《中华人民共和国劳动争议调解仲裁法》第二十七条第一款、第五十二条的规定，当事人自知道或者应当知道其权利被侵害之日起一年内申请仲裁，仲裁机构予以受理的，人民法院应予认可。

According to the Official Reply, Request for Instructions of Sichuan Higher People's Court on Methods to Calculate Limitation Period of Arbitration of Personnel Disputes of Public Institutions (Chuan Gao Fa [2012] No.430) shall be subject to the Item 1, Article 27 and Article 52 of Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes. If the parties concerned apply for arbitration within one year as of the date the parties know or shall have known the infringement of their rights and an arbitration agency accepts and handles the arbitration, the people's court shall recognize the arbitration.

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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:

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(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;

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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

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