www.dachenglaw.com
北京市东直门南大街 3 号国华投资大厦 5 层/12 层/15 层（100007）
5/F, 12/F, 15/F, Guohua Plaza, 3 Dongzhimennan Avenue,
Beijing 100007, China
Tel: +8610-58137799
Fax: +8610-58137788

DACHENG LAW OFFICES
大成律师事务所

中国法通讯
China Law Newsletter

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

第 20 期 • Issue 20
2013 年 4 月 • April 2013

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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Philippe & Partner Law Firm (Belgian, Luxembourg)：Best Energy Law Firm of the Year 2013

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- **中国撤回对《联合国国际货物销售合同公约》所作保留声明（来源：商务部，2013 年 3 月 1 日）**

  China withdrew reserve statement made for CISG (Source: Ministry of Commerce, March 1, 2013)

  近日，我国政府正式通知联合国秘书长，撤回对《联合国国际货物销售合同公约》（以下简称“《公约》”）所作“不受公约第十一条及与第十一条内容有关的规定的约束”的保留声明。日前，该撤回已正式生效。至此，我《合同法》与《公约》对于合同形式的规定及适用趋于统一。

  Recently, the Chinese government formally notified the Secretary-General of the United Nations that it had withdrawn the reserve statement made for the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as the "CISG") stating not to be bound by Article 11 of the CISG and provisions relating to content of Article 11 of the CISG. The withdrawal has become effective. The provisions on and application of contract form as specified in the Contract Law of the People's Republic of China and the CISG have become consistent by far.

  《公约》第十一条规定：销售合同无须以书面订立或书面证明，在形式方面也不受任何其他条件的限制，可以用包括人证在内的任何方法证明。根据该条，国际货物买卖合同可以用书面、口头或其他方式订立、证明，不受形式方面的限制。

  Article 11 of the CISG specifies that a contract of sale need not to be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses. According to this article, contracts for the international sale of goods can be concluded and proved in writing, orally or by other means, and are not subject to any formal requirement.

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- **商务部 民政部发布《关于香港、澳门服务提供者在内地举办营利性养老机构和残疾人服务机构有关事项的通知》（来源：商务部网站，2013 年 3 月 13 日）**

  MOFCOM and MCA Promulgate the Circular on Relevant Matters Concerning the Establishment of For-Profit Elderly Care Institutions and Disability Services Institutions in the Mainland by Service Providers from Hong Kong and Macao (Source: www.mofcom.gov.cn, March 13, 2013)

  2013 年 2 月 17 日，商务部、民政部发布《商务部、民政部关于香港、澳门服务提供者在内地举办营利性养老机构和残疾人服务机构有关事项的通知》（《通知》）。

  On February 17, 2013, the Ministry of Commerce ("MOFCOM") and the Ministry of Civil Affairs ("MCA") promulgated the Circular of the Ministry of Commerce and the Ministry of Civil Affairs on Relevant Matters Concerning the Establishment of For-Profit

Elderly Care Institutions and Disability Services Institutions in the Mainland by Service Providers from Hong Kong and Macao (the "Circular").

《通知》允许香港、澳门服务提供者以中外合资经营企业、中外合作经营企业或外资企业形式，通过新设或并购的方式在内地设立营利性养老机构和残疾人服务机构。

The Circular allows service providers from Hong Kong and Macao to set up for-profit elderly care institutions and disability services institutions in Mainland China through new launches or mergers and acquisitions, either in the form of Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures or wholly foreign-owned enterprises.

《通知》要求，港澳服务提供者申请设立营利性养老机构和残疾人服务机构，应具有良好的信誉及经营实力，至少有一个服务提供者具有在香港、澳门从事 3 年以上养老服务、残疾人服务的经验。

According to the Circular, service providers from Hong Kong and Macao applying for the establishment of for-profit elderly care institutions and disability services institutions must possess goodwill and good operational capabilities with at least one of the service providers possessing more than three years of experience in elderly care services and disability services in Hong Kong or Macao.

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- **商务部发布《商务部关于 2013 年全国吸收外商投资工作的指导意见》（来源：商务部网站，2013 年 3 月 20 日）**

MOFCOM Promulgates the Guiding Opinions on the Attraction of Foreign Investment throughout China in 2013 (Source: www.mofcom.gov.cn, March 20, 2013)

2013 年 3 月 14 日，商务部发布《商务部关于 2013 年全国吸收外商投资工作的指导意见》（《意见》）。

On March 14, 2013, the Ministry of Commerce ("MOFCOM") promulgated the Guiding Opinions of the Ministry of Commerce on the Attraction of Foreign Investment throughout China in 2013 (the "Opinions").

《意见》提出，2013 年的工作目标是：引导外商投资高附加值制造领域，扩大服务业对外开放，强化外商投资作为引进技术和智力的重要载体作用；促进东部地区吸收外资转型升级、中西部地区承接国内外产业转移，优化利用外资区域结构；深化政府职能转变，积极稳妥推进简政放权，着力构建服务型政府；在稳定利用外资规模的基础上提高利用外资质量等。

According to the Opinions, the goals of the work in 2013 are: guiding foreign investment in high value-added manufacturing sector, promoting opening-up in service sector and strengthening the role of foreign investment as an important carrier for the introduction of technologies and talents; promoting transformation and upgrading of the absorption of foreign investment in eastern region as well as the acceptance of domestic and international industrial relocation by western and central regions to optimize the regional

structure of foreign capital utilization; deepening the transformation of government functions and actively and prudently promoting administration streamlining and power delegation to build the service-oriented government; and improving the quality in foreign capital utilization based on its stabilized scale.

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- **商务部发布《规范对外投资合作领域竞争行为的规定》（来源：商务部网站，2013 年 3 月 25 日）**

MOFCOM Promulgates the Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation (Source: www.mofcom.gov.cn, March 25, 2013)

2013 年 3 月 22 日，商务部发布《规范对外投资合作领域竞争行为的规定》，提出将会同有关部门建立对外投资合作不良信用记录制度，因不正当竞争行为被记录在案的企业 3 年内不得享受国家有关支持政策。

On March 22, 2013, the Ministry of Commerce ("MOFCOM") promulgated the Provisions on Regulating Competitive Behavior in Foreign Investment and Cooperation, specifying that it will, in concert with the relevant departments, establish a poor credit record system of foreign investment and cooperation. An enterprise which has been placed on record for unfair competition shall not enjoy the benefits of relevant national supporting policies for three years.

根据《规定》，对外投资合作领域不正当竞争行为包括以商业贿赂争取市场交易机会，以排挤竞争对手为目的的不正当价格竞争行为，串通投标，诋毁竞争对手商誉，虚假宣传业绩以及其他依法被认定为不正当竞争的行为。

According to the Regulations, unfair competition in foreign investment and cooperation includes the acts of seeking market transaction opportunities through commercial bribe, unfair price competition for the purpose of excluding competitors, bid-rigging, degrading competitors' goodwill, publicizing false business performance and other acts regarded as unfair competition by the law.

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- **新闻出版总署发布关于《设立外商投资印刷企业暂行规定》的补充规定（二）（来源：新闻出版总署，2013 年 3 月 28 日）**

GAPP publishes Supplementary Provisions (II) for the "Interim Provisions on Establishment of Foreign-Invested Printing Enterprises" (Source: General Administration of Press and Publication, March 28, 2013)

近日，新闻出版总署网站公布了《关于〈设立外商投资印刷企业暂行规定〉的补充规定（二）》（新闻出版总署、商务部令第 54 号），自 2013 年 1 月 1 日起施行。该补充规定允许香港、澳门服务提供者在前海、横琴试点设立合资企业，从事出版物和其他印刷品的印刷业务。香港或者澳门服务提供者拥有的股权比例不超过 70%。香港、澳门服务提供者在内地投资图书、报纸、期刊印刷领域的其他事项，仍按照《设立外商投资印刷企业暂行规定》执行。

The General Administration of Press and Publication (GAPP) recently published on its website the Supplementary Provisions (II) for the "Interim Provisions on Establishment of Foreign-Invested Printing Enterprises" (Decree No. 54 of the General Administration of Press and Publication and the Ministry of Commerce) which came into force on January 1, 2013. The supplementary provisions allow service providers from Hong Kong and Macau to establish joint venture enterprises in Qianhai and Hengqin on a pilot basis to engage in the printing business of publications and other printed matters. The ratio of equity owned by service providers from Hong Kong or Macau shall not exceed 70%. Other matters on investment by service providers from Hong Kong and Macau in the book, newspaper, periodical printing field in the Mainland shall still be governed by the Interim Provisions on Establishment of Foreign-Invested Printing Enterprises.

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投资动态
INVESTMENT DEVELOPMENTS

- **深圳启动外商投资股权投资企业试点（来源：深圳特区报，2013 年 3 月 6 日）**

  Shenzhen to Launch the Pilot Program of Foreign-invested Equity Investment Enterprises (Source: www.sznews.com, March 6, 2013)

近日从深圳市金融办获悉，外商投资股权投资企业试点工作近日启动，标志着深圳股权投资行业国际化大幕开启。

According to a source from the Financial Industry Development and Service Office of Shenzhen Municipal People's Government, the pilot program of foreign-invested equity investment enterprises will be launched in the near future, marking the beginning of Shenzhen’s globalization in the equity investment industry.

《关于本市开展外商投资股权投资企业试点工作的暂行办法》指出，外商投资股权投资企业认缴出资应不低于 1500 万美元等值货币，与上述文件同时公布的《深圳市外商投资股权投资企业试点工作操作规程》则对申请人提出了更具体的要求。《操作规程》指出，试点工作按照“审慎、择优”原则，申请设立外商投资股权投资企业的境外投资人，应具备以下条件之一：申请前的上一会计年度，具备自有资产规模不低于一亿美元或管理资产不低于二亿美元；持有香港证监会（或境外金融监管部门）颁发的资产管理牌照；权威机构评选发布的资产管理规模世界排名前 100 名。《暂行办法》还指出，试点工作在前海深港现代服务业合作区先行先试。

According to the Interim Measures of Shenzhen on Launching the Pilot Program of Foreign-invested Equity Investment Enterprises (the "Interim Measures"), the paid-in capital of a foreign-invested equity investment enterprise shall not be less than the currency equivalent to USD15 million. More detailed requirements for applicant are specified in the

Operating Rules of Shenzhen for the Pilot Program of Foreign-invested Equity Investment Enterprises (the "Operating Rules"), which were promulgated simultaneously with the above-mentioned document. The Operating Rules state that according to the principles of "prudence and excellence" adopted in the pilot program, a foreign investor who applies for the establishment of a foreign-invested equity investment enterprise shall meet any of the following conditions: its self-owned assets are not less than USD100 million or its managed assets are not less than USD200 million during the previous accounting year before the application; it holds the assets management license issued by the Hong Kong Securities and Futures Commission (or overseas financial regulatory authority); or its managed assets rank among top 100 in the world as rated by an authoritative organization. The Interim Measures also specify that the pilot program shall first be launched in Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone.

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- **山东省发布《外商投资重点产业指导目录(2012 年修订)》（来源：青岛市经济和信息化委员会，2013 年 3 月 22 日）**

Shandong Province Promulgates the Guiding Catalogue on the Key Industries of Foreign Investment (Revised in 2012) (Source: www.qdeic.gov.cn, March 22, 2013)

近日，山东省发改委、省商务厅、省经信委联合发布《山东省外商投资重点产业指导目录(2012 年修订)》(《目录》)，明确了今后几年外商投资的重点和方向。

Recently, the Shandong Provincial Commission of Development and Reform, the Shandong Provincial Department of Commerce and the Shandong Provincial Economic and Trade Committee have jointly promulgated the Guiding Catalogue of Shandong Province on the Key Industries of Foreign Investment (Revised in 2012) (the "Catalogue"), clarifying the key points and directions of foreign investment in the following years.

在制造业方面，《目录》列出了电子信息及家电产业、装备制造业、化工产业、轻工业、纺织服装业、生物技术及制药、新材料、建材工业八大门类的指导内容，增加了新型显示产品开发与生产、新能源汽车关键零部件制造、大型邮轮或游艇设计与制造、海洋工程装备(含模块)设计制造与维修、新能源成套设备及关键零部件制造、生物化工产品的研究和开发、特种天然纤维产品加工、高性能纤维研发与生产等高端制造业和新兴产业发展方向。

For manufacturing industry, the Catalogue lists the guidelines for eight industries, namely, electronic information and household appliances industry, equipment manufacturing industry, chemical engineering industry, light industry, textile and garment industry, biotechnology and pharmaceutical industry, new materials industry and building materials industry, and adds the development directions of high-end manufacturing industry and emerging industries, such as the development and manufacturing of new display products, the manufacturing of key parts and components of new energy automobiles, the design and manufacturing of large passenger liners or yachts, the design, manufacturing and repair of ocean engineering equipment (including modules), the manufacturing of complete sets of new energy equipment and key parts and components, the research and development

("R&D") of biochemical engineering products, the processing of special nature fiber products, and the R&D and production of high-performance fibers.

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- **深圳将出台外资股权政策（来源：商务部网站，2013 年 3 月 25 日）**

Shenzhen to Issue Foreign-invested Equity Policies (Source: www.mofcom.gov.cn, March 25, 2013)

近日，深圳市金融办主任肖亚非表示，深圳正在加紧研究推出外资股权相关政策。

Recently, Xiao Yafei, the Director of the Shenzhen Municipal Government Financial Services Office, said that Shenzhen is stepping up efforts to study and issue relevant policies for foreign-invested equity.

这些政策有几个特点：一是突出先行先试，按照择优的原则，对业界比较优良、管理比较规范的外商股权投资进行多项创新试点；二是突出深港合作，主要想借助于人民币国际化和深港之间便利的资金融资渠道，重点吸引香港的股权机构、资产管理公司、并购基金机构，短期内把前海打造成外资私募股权公司跨境管理的基地；三是推出一站式服务，申请服务的时候可以一次性申请，提高资金的使用效果；四是可以实施有关政策的叠加，落户前海的，既可以享受全市的政策，也可以享受前海现代服务业合作机构有关的金融、财税、人才等各项政策，鼓励市、区联动。

The policies are characterized in the following aspects: firstly - highlighting pilot programs. Innovative pilot programs may be launched for foreign equity investments which are of high quality in the industry and display relatively standardized management; secondly - highlighting Shenzhen-Hong Kong cooperation. The key is to attract Hong Kong-based equity organizations, assets management companies and M&A fund organizations by relying on the globalization of Renminbi and the convenient Shenzhen-Hong Kong financing channel to establish Qianhai as the base for cross-border management of foreign private equity companies within a short period of time; thirdly - providing one-stop services. Services may be applied for together to improve the efficacy of fund use; and fourthly - implementing overlapped policies. The entities located in Qianhai may enjoy the benefits of both the municipal policies of Shenzhen and the policies of the Qianhai Modern Services Industry Cooperation Zone on finance, taxes and talents, which will encourage linkage and interaction between the municipal and Zone levels.

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其他新闻
IN OTHER NEWS

- **Wolf Theiss 律师事务所发布“2013 年中欧、东欧、东南欧可再生能源发电项目操作指引”**

  Wolf Theiss released the "Guide to Generating Electricity from Renewable Sources in Central, Eastern & South-Eastern Europe 2013"

  Wolf Theiss 律师事务所近日发布了“中欧、东欧、东南欧可再生能源发电项目操作指引”最新版本。该 2013 年操作指引旨在探寻中东欧东南欧可再生能源发电项目领域的潜在机会，是一本设立可再生能源发电项目的实务手册，范围涵盖了 Wolf Theiss 业务涉及的 15 个国家，包括：阿尔巴尼亚、奥地利、波斯尼亚和黑塞哥维那、保加利亚、克罗地亚、捷克、匈牙利、科索沃、马其顿、波兰、罗马尼亚、塞尔维亚、斯洛伐克、斯洛文尼亚、乌克兰。如需阅读指引全文，请访问：***http://www.wolftheiss.com/index.php/publications_detail/items/the-wolf-theiss-guide-to-generating-electricity-from-renewable-sources-in-central-eastern-southeastern-europe-2013.html***。

  Wolf Theiss have released the new edition of the "Guide to Generating Electricity from Renewable Sources in Central, Eastern & South-Eastern Europe". The 2013 edition of the Guide assists in exploring untapped opportunities in CEE/SEE, as well as to provide a practical handbook on the principal features of RES-Electricity projects in the 15 jurisdictions covered by Wolf Theiss, namely Albania, Austria, Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kosovo, Macedonia, Poland, Romania, Serbia, Slovak Republic, Slovenia and Ukraine. To read more about this Guide, please visit: ***http://www.wolftheiss.com/index.php/publications_detail/items/the-wolf-theiss-guide-to-generating-electricity-from-renewable-sources-in-central-eastern-southeastern-europe-2013.html***.

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- **Philippe & Partners 律师事务所（比利时、卢森堡）再次荣获“比利时最佳环境、能源和规范律师事务所”称号**

  Philippe & Partner Law Firm (Belgian, Luxembourg)：Best Energy Law Firm of the Year 2013

  继 2012 年获得“比利时最佳环境、能源和规范律师事务所”荣誉后，Philippe & Partners 于 2013 年再次获得该荣誉。

  We are proud to announce that we were awarded for the second time in a row the Belgian Legal Awards in the category “environment, energy and regulatory firm of the year” 2013.

  比利时法律评审会议通过对法律领域 18 个类别的评议，将荣誉颁发给优秀和持

续创新的律师事务所。我们的能源部门秉承创新的精神，坚持追求卓越，在与未来能源市场密切相关的法律领域取得了显著的成绩。能源部门是 Philippe & Partners 非常重视的部门之一，也得到能源领域极高的认可，正处于快速发展阶段。

The Belgian Legal Awards honour “excellence, continuity and innovation in the legal sphere” in eighteen different categories. Our energy department has certainly striven for innovation and excellence by working on topics that will shape the energy markets of tomorrow. The department gained importance within the firm and recognition outside the firm and is on the verge of expanding.

Philippe & Partners 已经连续六年获得比利时法律评审荣誉。2011 年和 2009 年，我们两次获得“比利时最佳律师事务所”的称号，2011 年我们还获得了“比利时最佳诉讼和仲裁律师事务所”的称号。2010 年和 2008 年，我们两次获得“比利时最佳银行和金融律师事务所”的称号。

It is the sixth year in row that our law firm has been awarded. In 2011 we won the awards for “Best Belgian law firm of the year” (as already in 2009) and for “Litigation & Arbitration law firm of the year”. In 2010 and 2008 we received the award for “Banking & Finance law firm of the year”.

我们为比利时法律领域和客户对我们在能源领域的工作的肯定感到自豪和骄傲。能够再次荣获“比利时最佳环境、能源和规范律师事务所”称号，是对我们在能源领域坚持不懈的努力的极高评价和肯定，我们在此与我们的同事、客户和所有支持我们的朋友分享该荣誉。

We are proud and honoured of this new recognition by the legal community in Belgium and by our clients, which illustrates the fact that our efforts in the field of energy are highly appreciated, and would like to share this recognition with all our clients, colleagues, suppliers and friends.

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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、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、珠海等 39 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 39 Chinese cities, including 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.

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.