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跨境争议解决
Cross-border Dispute Resolution

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编者按：本刊旨在报道中国法下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 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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LEGISLATIVE NEWS

- **江苏省试点海上“不动产”物权登记（来源：江苏省人民政府，2011 年 8 月 4 日）**

  Jiangsu launches pilot program for property registration of maritime 'real property' (source: People's Government of Jiangsu Province, 4 August 2011)

  从 2011 年 8 月起至年底，江苏省将在赣榆、海安、海门、如东等县（市）启动海上构筑物所有权登记试点，在此基础上研究和完善相关机制后推广至全省沿海。

  From August to the end of 2011, Jiangsu Province will implement a pilot program for property registration of structures built over the sea in some of its counties and cities, namely Ganyu, Hai'an, Haimen, and Rudong. Jiangsu aims to establish and improve registration mechanisms that may be applied in all coastal areas of the Province.

  海上构筑物所有权登记是保护其所有者合法权益的根本措施。

  The registration of ownership of structures built over the sea is a primary measure for protecting the legitimate rights and interests of the owners of such structures. Top

- **环保部印发《环境行政处罚证据指南》（来源：环境保护部，2011 年 8 月 8 日）**

MEP prints and distributes Guidelines for Evidence Related Matters in the Imposition of Environmental Administrative Penalties (source: Ministry of Environmental Protection, 8 August 2011)

2011 年 5 月 30 日，环境保护部发布环办[2011]66 号通知，印发《环境行政处罚证据指南》，以规范环境行政处罚证据的收集、审查和认定，保证事实认定的准确性和环境行政处罚案件的办理质量，提高行政执法效能。

The Ministry of Environmental Protection (MEP) issued a notice numbered Huan Ban [2011] No. 66 on May 30, 2011, under which the Guidelines for Evidence Related Matters in the Imposition of Environmental Administrative Penalties are printed and distributed. The Guidelines aim to standardize the collection, review and identification evidence used in imposing environmental administrative penalties, to ensure the accuracy of factual findings, and to improve the effectiveness of administrative law enforcement.

该指南附则部分以示例形式告诉执法人员哪种违法行为该取什么证据，如何制作笔录，调查询问笔录需要问哪些问题等。同时，对调查取证中的薄弱环节、执法容易出现偏差的地方，也进行了详细规定。

The Supplementary Provisions section of the Guidelines includes a few examples to instruct law enforcement personnel on evidence collection, on-site note-taking, interview records, etc. This section also points out vulnerabilities in the evidence collection process, and cases that are difficult to handle.

该指南还针对《环境行政处罚办法》规定的新证据形式—自动监控数据的审查进行详细指导。

The Guidelines also provide detailed instructions on the review of the new types of evidence, such as automatic monitoring data, as stipulated in the Measures for Administrative Punishments on Environmental Offences. Top

- **最高法规范审理政府信息公开行政案件有关问题（来源：最高人民法院，2011 年 8 月 15 日）**

SPC Regulates Issues concerning the Trial of Administrative Cases on Government Information Disclosure (source: the Supreme People's Court, 15 August 2011)

8 月 15 日，最高人民法院颁布《最高人民法院关于审理政府信息公开行政案件若干问题的规定》（《规定》），全面规范人民法院审理政府信息公开行政案件中遇到的有关问题。

The Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases on Government Information Disclosure (Provisions) were promulgated by the Supreme People's Court (SPC) on August 15, 2011, which comprehensively regulate the issues encountered in the trial of administrative cases on government information disclosure.

《规定》共有 13 个条文，就人民法院应当受理的政府信息公开行政案件的受案范围，该解释第一条明确规定，在公民、法人或者其他组织向行政机关申请获取政府信息，行政机关拒绝提供或者逾期不予答复；认为行政机关提供的政府信息不符合其在申请中要求的内容或者法律、法规规定的适当形式；认为行政机关主动公开或者依他人申请公开政府信息侵犯其商业秘密、个人隐私；认为行政机关在政府信息公开工作中的其他具体行政行为侵犯其合法权益等 5 种情形下，依法提起行政诉讼的，人民法院应当受理。

The Provisions consist of 13 articles. With respect to the accepted scope of administrative cases on government information disclosure, article 1 of this interpretations specifies that at following circumstances, actions shall be accepted by the people's court: 1. Where any citizen, legal person, or other organizations apply to administrative authority for obtaining government information, while administrative authority decline to provide such information or give no reply after specified time limits; 2. Where it is believed that government information provided by the administrative authority does not contain the content requested in the application or not in the proper form prescribed in the laws and regulations; 3. Where it is believed that the government information provided initiatively by administrative authority or upon the request of others violates commercial secrets or personal privacy; 4. Where it is believed that other specific administrative acts of the administrative authority during the course of government information disclosure violates his/her legitimate rights and interest. Top

- **婚姻法最新解释发布（来源：最高人民法院，2011 年 8 月 15 日）**

New Interpretations on Marriage Law Released (source: the Supreme People's Court, 5 August 2011)

8 月 14 日，最高人民法院发布了《关于适用〈中华人民共和国婚姻法〉若干问题的解释（三）》，解释共有 19 条，将于 2011 年 8 月 13 日起施行。

The Interpretations of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China (III) (Interpretations) were promulgated by the Supreme people's Court on August 14, 2011 which consist of 19 articles and shall come into effect as of August 13, 2011.

《婚姻法解释（三）》明确，离婚案件中，一方婚前贷款购买的不动产应归产权登记方所有。如果夫妻一方未经另一方同意而出售夫妻共同共有的房屋，第三人善意购买、支付合理对价并办理产权登记手续，另一方主张追回该房屋的，人民法院不予支持。同时，夫妻一方擅自处分共同共有的房屋造成另一方损失，离婚时另一方请求赔偿损失的，人民法院应予支持。《婚姻法解释（三）》还对亲子关系诉讼、婚姻关系中的财产问题作了明确规定。

As specified in the Interpretations, in the divorce cases, the ownership of the real estate purchased by one party by loan before marriage shall belong to the registration party. If one party of the couple sells house(s) owned by the couple in unity of ownership without agreement from the other party, while the third party buys in good will, pays reasonable

consideration and goes through ownership registration formalities, but the other party claims to take back the house(s), the people's court shall not support such claim. Meanwhile, where any party of the couple disposes the houses owned by the couple in unity of ownership without agreement from the other party, and incurs the loss to the other party, if the other party claims the loss to be paid during divorce cases, the people's court shall support such claim. Additionally, the interpretations also specify the issues relevant to parentage action and property issues in marriage. Top

- **国税总局发出《关于纳税人转让土地使用权或者销售不动产同时一并销售附着于土地或者不动产上的固定资产有关税收问题的公告》（来源：江苏省国家税务局，2011 年 8 月 25 日）**

SAT releases announcement on taxation issues concerning transfer of land use rights or simultaneous sale of real property and fixed assets attached (source: Jiangsu Provincial Office of the State Administration of Taxation, 25 August 2011)

2011 年 8 月 17 日，国家税务总局发出《关于纳税人转让土地使用权或者销售不动产同时一并销售附着于土地或者不动产上的固定资产有关税收问题的公告》（国家税务总局公告[2011]第 47 号）。

On August 17, 2011, the State Administration of Taxation (SAT) released the Announcement on Taxation Issues in Circumstances Where Taxpayers Transfer Land Use Rights or Simultaneously Sell Real Property and Fixed Assets Attached to the Property or Land (Document No.: Announcement [2011] No. 47 of the State Administration of Taxation).

该公告明确，自 2011 年 9 月 1 日起，纳税人转让土地使用权或者销售不动产的同时一并销售的附着于土地或者不动产上的固定资产中，凡属于增值税应税货物的，应按照《财政部国家税务总局关于部分货物适用增值税低税率和简易办法征收增值税政策的通知》（财税[2009]9 号）第二条有关规定，计算缴纳增值税；凡属于不动产的，应按照《中华人民共和国营业税暂行条例》“销售不动产”税目计算缴纳营业税。

The Announcement clearly stipulates that effective September 1, 2011, where a taxpayer transfers land use rights or simultaneously sells real property and fixed assets attached to such property or land, if the fixed assets are subject to value-added tax (VAT), the VAT payable should be calculated according to provisions of Article 2 of the Notice of the Ministry of Finance and the State Taxation Administration on the Application of Low Value-added Tax Rate and Simplified Method to Certain Goods (Document No.: Cai Shui [2009] No. 9); if the fixed assets are real property, the business tax payable should be calculated according to the tax rate for the taxable item of "sale of real property" as stipulated in the Interim Regulations of the People's Republic of China on Business Tax.

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- **最高院确定 2011 年国家赔偿侵犯公民人身自由权计算标准（来源：最高人民法院，2011 年 8 月 26 日）**

SPC Clarifies State Compensation Calculation Standards for the Infringement of Citizen's Right to Personal Freedom of Citizens 2011 (source: the Supreme People's Court, 26 August 2011)

2011 年 5 月 4 日，最高人民法院发布《最高人民法院关于 2011 年做出的国家赔偿决定涉及侵犯公民人身自由权计算标准的通知》（《通知》）。

The Circular on State Compensation Calculation Standards for the Infringement of Citizen's Right to Personal Freedom 2011 (the Circular) were promulgated by the Supreme People's Court (SPC) on May 4, 2011.

《通知》指出，《中华人民共和国国家赔偿法》规定："侵犯公民人身自由的，每日的赔偿金按照国家上年度职工日平均工资计算。"根据国家统计局 2011 年 5 月 3 日发布的 2010 年城镇非私营单位在岗职工年平均工资（即原"全国在岗职工平均工资"）数额，2010 年城镇非私营单位在岗职工年平均工资为 37147 元。按照人力资源和社会保障部提供的日平均工资的计算公式，日平均工资标准为 37147（元）÷12（月）÷21.75（月计薪天数）=142.33 元。据此，各级人民法院在 2011 年做出国家赔偿决定时，对侵犯公民人身自由权每日的赔偿金应为 142.33 元。

As provided by this Circular, in accordance with the State Compensation Law of the People's Republic of China, "with respect to the infringement to citizen's rights to personal freedom, the daily compensation standard shall be calculated in line with the State average daily wages of workers of the previous year." and also with the annual average wages of on-job employees of non-private units (i.e. previously National Average Wage of On-Job Workers) released by the State Statistics Bureau on May 3, 2010, which provide the annual average wages of on-job employees of non-private units in 2010 as RMB 37147. According to the calculation formula of daily average wages provided by the Ministry of Human Resources and Social Security, the average daily wage standard is RMB 37147 (Yuan)/12 (Month)/21.75 (Day)=142.33 Yuan. Thus, where any people's court at various levels makes decisions for state compensation 2011, it shall verify the daily compensation standard for the infringement of the citizen's rights to freedom as RMB 142.33 Yuan. Top

- **"两高"出台司法解释阻击"黑客"（来源：最高人民法院，2011 年 8 月 31 日）**

"Supreme People's Court and Supreme People's Procuratorate Promulgating Judicial Interpretations to Block "Hacker" (source: Supreme People's Court, 31 August 2011)

8 月 29 日，最高人民法院、最高人民检察院联合发布了《最高人民法院、最高人民检察院关于办理危害计算机信息系统安全刑事案件应用法律若干问题的解释》，自 2011 年 9 月 1 日起施行。

On August 29, the Supreme People's Court and the Supreme People's Procuratorate jointly promulgated the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate of Several Issues concerning the Application of Law in Handling Criminal Cases of Endangering the Security of Computer Information System, which shall come into effect as of September 1, 2011.

《解释》共有 11 条，针对危害计算机信息系统安全犯罪，如非法获取计算机信息系统数据、非法控制计算机信息系统罪，提供侵入、非法控制计算机信息系统程序、工具罪，破坏计算机信息系统罪等犯罪的定罪量刑标准、单位犯罪、共同犯罪、术语界定等问题，进一步明确了相关刑事案件的法律适用标准。

The Interpretations have 11 articles in all, which further clarify the standards for application of law in relevant criminal cases regarding such issues as standards for conviction and sentencing, unit crime, joint crime, definitions of terms of crimes of endangering the security of computer information system, such as crimes of illegally obtaining the date of computer information system and illegally controlling computer information system, crimes of providing programs and tools for hacking into and illegally controlling computer information system, and crimes of destroying computer information system. Top

司法动态
JUDICIAL DEVELOPMENTS

- **海淀法院成为北京首个审理专利纠纷的基层法院（来源：国家知识产权局，2011 年 8 月 1 日）**

  Haidian Court becomes the first grass-roots court in Beijing to try patent related cases (source: State Intellectual Property Office, 1 August 2011)

据国家知识产权局 2011 年 7 月 28 日消息，海淀法院成为北京市第一个最高法院授权审理专利纠纷案件的试点基层法院。经批复，海淀法院可以审理管辖辖区内诉讼标的额在 500 万元以下，以及诉讼标的额在 500 万元以上 1000 万元以下且当事人住所地均在北京的一审实用新型专利和外观设计专利纠纷案件。在此之前，专利纠纷案件的一审只能由中级人民法院进行审理，基层人民法院没有审理权利。海淀法院所审理的知识产权案件包括著作权、商标权、商业秘密、技术合同、特许经营合同、企业名称（商号）、特殊标志、计算机网络域名等，没有包括专利纠纷案件。

According to news from the State Intellectual Property Office on July 28, 2011, Haidian Court became the first pilot grass-roots court in Beijing authorized by the Supreme People’s Court to try patent related cases. According to the approval, Haidian Court may try first instance utility model and design patent cases within its jurisdiction if the amount at issue is below RMB 5 million, or cases with a disputed amount between RMB 5 million and RMB 10 million if the parties are both domiciled in Beijing. Prior to this authorization, the first instance trial of patent related cases could only be conducted by an intermediate people’s court, and the grass-roots courts are not empowered to try such cases. Intellectual property cases within the jurisdiction of Haidian Court covered copyright, trademark, trade secret, technology contract, franchise contract, corporate name (trade name), special marks, and computer domain names, but did not include patent related cases. Top

- **北京东城法院对民事诉讼伪证方罚款两万元（来源：法制网，2011 年 8 月 1 日）**

  Beijing Dongcheng Court imposed a fine of RMB 20,000 on the party who committed a perjury in a civil action (source: Legal Net, 1 August 2011)

2011 年 2 月，某中介公司将被告王某和第三人许某告上法院，讨要居间服务费 7 万元。中介公司提出，王某、许某二人均在《房屋买卖居间服务合同》上签了字，并向法庭提交了该合同的原件作为证据。但是在审理过程中，许某反驳称该合同上自己的签名是伪造的，而中介公司坚称合同上的签名确实为许某本人所签。鉴定结论显示，涉案的《房屋买卖居间服务合同》上许某的签名系伪造。

In February 2011, an intermediary company initiated a lawsuit against Mr. Wang and Mr. Xu, who is a third party to the action, claiming the payment of intermediary fee in the account of RMB 70,000. The intermediary company argued that Mr. Wang and Mr. Xu both signed the House Sale and Purchase Intermediary Service Contract, and submitted to the court the original contract as evidence. However, during the trial, Mr. Xu rebutted that his signature in the said contract was forged, while the intermediary company insisted that the signature in the said contract was indeed that of Mr. Xu himself. Verification thereof showed that the signature of Mr. Xu in the disputed House Sale and Purchase Intermediary Service Contract was forged.

北京市东城区法院认定，中介公司提交的《房屋买卖居间服务合同》上第三人许某的签字为虚假签字，且许某拒绝追认，因此该居间合同并未成立，对三方当事人不产生约束力，中介公司不能依据该合同请求支付居间服务报酬及违约金。但鉴于王某与许某签订的房屋买卖合同确实是由原告中介公司介绍成交，基于公平原则，法院酌情判令被告王某向中介公司支付报酬 5000 元。法院在宣判的同时，依法对在案件审理过程中提交伪证的中介公司做出处罚决定，责令其限期交纳罚款 2 万元。

Beijing Dongcheng District Court holds that the signature of Mr. Xu in the House Sale and Purchase Intermediary Service Contract submitted by the intermediary company was fraudulent, and as Mr. Xu refuses to ratify the signature, the said intermediary court was not formed, and it has no binding effect on the three parties, and the intermediary company cannot claim the payment of intermediary service fee and liquidated damages on the basis of the said contract. However, in view that the house sale and purchase contract between Mr. Wang and Mr. Xu was indeed concluded via introductions of the intermediary company, the court in its discretion ordered Defendant Mr. Wang to pay compensation of RMB 5000 to the intermediary company on the basis of fairness. While pronouncing the judgment, the court also duly imposed a penalty against the intermediary company who committed perjury during the trial process, and ordered it to pay a fine of RMB 20,000 within a specified period of time. Top

- **海南高院出台《关于开展环境资源民事公益诉讼试点的实施意见》（来源：最高人民法院，2011 年 8 月 2 日）**

  Hainan High Court releases the Opinions on the Implementation of the Pilot Program for Civil Public Interest Litigations Related to Environment and Natural Resources

(Source: Supreme People's Court, 2 August 2011)

据最高人民法院 2011 年 8 月 1 日消息，7 月 29 日，海南省高级人民法院召开新闻发布会，介绍海南法院开展环境资源民事公益诉讼（以下简称环境公益诉讼）试点工作的相关情况，并发布了《关于开展环境资源民事公益诉讼试点的实施意见》。

The Hainan High People's Court held a press conference on July 29 to brief the pilot program launched by Hainan courts for civil public interest litigations related to environment and natural resources ("environment PILs"), and promulgated the Opinions on the Implementation of the Pilot Program for Civil Public Interest Litigations Related to Environment and Natural Resources, according to news sourced from the Supreme People's Court on August 1, 2011.

该意见规定，环境公益诉讼的一审案件一般由中级法院管辖，涉海洋环境公益诉讼案件由海口海事法院管辖，有重大影响的或者跨省陆源、海域污染的案件由省高院管辖。

According to the Opinions, the first instance environment PIL cases are usually under the jurisdictions of intermediate people's courts, and environment PIL cases involving maritime issues are under the jurisdiction of the Haikou Maritime Court, while major cases or cases involving other provinces are under the jurisdiction of the Hainan High People's Court.

同时，该意见还明确了检察院、相关行政主管部门、依法成立的自然保护区管理机构、从事环境保护和社会公益事业法人组织、基层群众性自治组织、公民等六大主体均可作为原告提起诉讼。检察院、相关行政机关在合理期限内不起诉的，公民可以自行提起环境公益诉讼。

The Opinions also clearly stipulate that six groups of subjects, namely, procuratorates, relevant competent administrative departments, management institutions of legally established nature reserves, legal person organizations engaging in environmental protection and public interest undertakings, grass root self-disciplinary organizations, and citizens, may act as plaintiffs and file civil actions. Where procuratorates and relevant competent administrative departments fail to file litigations within a reasonable time period, citizens may file environment PILs at their own discretion. Top

- 2011 年上半年一审审结知识产权案标的近 13 亿元（来源：国家知识产权局，2011 年 8 月 5 日）

Subject matters of IPR cases closed in 1st half of 2011 reach nearly RMB 1.3 bn (source: State Intellectual Property Office, 5 August 2011)

2011 年 8 月 3 日，据最高人民法院消息，2011 年上半年，全国地方法院共新收和审结知识产权民事一审案件 27649 件和 18704 件，分别比上年增长 35.72%和 45.72%，审结一审案件诉讼标的总金额达到 129193.96 万元。

During the first half of 2011, the numbers of first-instance intellectual property right

(IPR) civil cases newly accepted and closed by all local courts were 27,649 and 18,704, up 35.72% and 45.72% respectively compared to last year. The subject matters of closed first-instance cases reached about RMB 1.292 bn, according to data released by the Supreme People's Court on August 3, 2011.

其中，新收专利案件 3712 件，比上年增长 43.76%；商标案件 5850 件，增长 48.29%；著作权案件 16160 件，增长 36.64%；技术合同案件 306 件，增长 18.40%；不正当竞争案件 540 件，下降 4.09%。

Of all said cases, 3,712 of them were newly accepted patent cases, 43.76% more than the last year; 5,850 were trademark cases, up 48.29%; the number of copyright cases was 16,160, up 36.64%; the number of cases involving technical contract was 306, up 18.40%; and there were 540 cases involving unfair competition, down 4.09%.

全国地方法院共受理和审结垄断民事一审案件 7 件和 8 件。

The numbers of civil cases involving monopoly accepted and closed by all courts were 7 and 8 respectively. Top

- **中国近十年向世贸组织主动起诉 8 起、被诉 13 起案件（来源：中国政府网，2011 年 8 月 5 日）**

China involved in 21 WTO cases after joining WTO (Source: Central People's Government, 5 August 2011)

据新华社上海消息，2011 年 8 月 4 日，在此间举行的纪念中国加入世界贸易组织十周年研讨会上，商务部条约法律司司长李成钢在回顾商务法律近十年发展进程时介绍了中国经世贸组织开展的 8 起主动起诉案件和 13 起被诉案件。

A meeting was held on August 4, 2011, to commemorate the 10th anniversary of China's entry into WTO. At the meeting, Li Chenggang, director of the Department of Treaty and Law under the Ministry of Commerce, reviewed the development of business laws during the last decade, and gave a brief review of 21 WTO cases in which China has been involved, including 8 cases initiated by China, and 13 cases against China.

在 8 起主动起诉案件中，3 起已结案，包括诉美钢铁保障措施案、诉美铜版纸双反案、诉美 727 条款案；5 起仍在法律程序中的案件分别是：诉美双反措施案、诉美轮胎特保案、诉欧紧固件反倾销案、诉欧皮鞋反倾销案、诉美反倾销归零案。

With regard to 8 cases filed by China, 3 of them have been closed, including a case against U.S. steel protective measures, cases against U.S. imposition of anti-dumping and countervailing duties on Chinese coated paper, and a case against a U.S. ban on the import of Chinese poultry, while the other 5 are still in legal proceedings: a case against U.S. imposition of anti-dumping and countervailing duties on Chinese standard steel pipe, rectangular steel pipe, etc., a case against the U.S. imposition of special tariffs on tire imports from China, a case involving EU imposition of anti-dumping duty on Chinese fasteners, a case against the EU imposition of anti-dumping duty on China-made shoes, and

consultations with the U.S. concerning its continued application of the "zeroing" methodology in anti-dumping cases.

在中国 13 起被诉案件中，7 起已结案，包括美诉集成电路增值税案、美欧加诉汽车零部件案、美墨诉税收补贴案、美诉知识产权案、美欧加诉金融信息案、美墨危诉出口补贴案、美诉风能设备进口替代补贴案。目前，中国有 6 起被诉案件尚在法律程序中，包括美诉出版物案、美欧墨诉出口限制案、欧诉紧固件案、美诉电子支付案、美诉取向电工钢双反案、欧诉 X 射线安检设备反倾销案。

With regard to 13 cases against China, 7 of them have been closed, including a case filed by the U.S. against China's preferential value-added tax ("VAT") for domestically-produced or designed integrated circuits ("IC"), a case against China's imposition of measures adversely affecting exports of automobile parts from the European Communities, the United States and Canada to China, a case in which the U.S. and Mexico challenged China's tax subsidies measures, a case filed by the U.S. over intellectual property rights, a case filed by the U.S. against China concerning certain measures providing grants, funds, or awards to enterprises manufacturing wind power equipment, a case filed by the U.S., the EU and Canada against China with respect to measures affecting financial information services and foreign financial information service suppliers in China, and a case filed by the U.S. and Mexico against China concerning its export related subsidies. Until now, 6 cases against China are still in legal proceedings: the case filed by the EU against China concerning the imposition of definitive anti-dumping duties on x-ray security inspection equipment from the EU, a case filed by the U.S. against China with respect to countervailing and anti-dumping duties on grain oriented flat-rolled electrical steel ("GOES") from the United States, a case filed by the U.S. against China concerning its measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products, a case filed by the U.S., the EU, and Mexico against China concerning its export restrictions on certain raw materials, a case filed by the EU against China's imposition of anti-dumping measures on fasteners, and a case filed by the U.S. against China concerning certain restrictions and requirements maintained by China pertaining to electronic payment services for payment card transactions and the suppliers of those services. Top

- **最高法探索大规模侵权案件赔偿体系（来源：法制日报，2011 年 8 月 9 日）**

SPC endeavors to establish compensation system for cases involving mass torts (Source: Legal Daily, 9 August 2011)

2011 年 8 月 8 日，最高法民事审判第一庭庭长杜万华透露，针对我国目前食品安全、矿业灾难等事故高发、频发的特点，最高法目前正在深入探索大规模侵权案件赔偿体系，逐步确立与经济社会发展水平相适应的大规模侵权案件的裁判标准。 杜万华表示，最高法强调法院要充分发挥侵权诉讼一次性解决纠纷的功能，合理处理侵权诉讼程序法与实体法的关系。在程序上，要逐步完善将交通事故损害赔偿等侵权案件与相应的保险合同案件合并审理、在一次诉讼中一并解决的机制和方法，从而提高

权利实现的便捷性，减少当事人的讼累。在实体上，要注意侵权责任的认定、赔偿项目和赔偿数额的确定，既要给予受害人以充分、及时的补偿，也要依法保护保险公司的权利。

Du Wanhua, president of the First Civil Division of the Supreme People's Court (SPC), said on August 8, 2011, that in light of the current circumstances of frequent occurrence of food safety incidents and mining accidents and disasters, SPC is exploring to set up a compensation system for cases involving mass torts, so as to gradually establish mass tort ruling standards conforming to the economic and social development requirements. Du Wanhua also said that SPC should make full utilization of the tort litigation function of giving one-off resolution to disputes, and appropriately handle the relationship between procedural law and substantive law. In terms of procedural law, SPC aims to gradually combine the trial of tort litigations such as cases involving traffic accidents with the trial of relevant insurance contract cases, so as to simplify the procedures and improve the case closure efficiency. In terms of substantive law, SPC urges all courts to emphasize on the identification of tort liability, and determination of compensation items and related damages, so as to ensure that victims get compensation in full while the rights of insurance companies are legally protected. Top

- **北京调整民商等案件级别管辖标准（来源：人民法院报，2011 年 8 月 17 日）**

Beijing adjusted the threshold for hierarchical jurisdiction of civil and business cases (Source: People's Court Daily, 17 August 2011)

从 8 月 16 日起，北京市高级人民法院根据相关规定，结合审判工作实际，对全市三级法院一审民商事案件级别管辖标准和高院执行案件进行的调整。

As of August 16, 2011, Beijing Higher People's Court adjusted the threshold for hierarchical jurisdiction of first instance civil and business cases across the three-level court system in Beijing as well as enforcement cases originally under the jurisdiction of the Beijing Higher People's Court, which adjustment was made according to relevant stipulations and by taking into account the trial practices of the court.

该调整方案规定：北京市区县人民法院、铁路运输法院管辖诉讼标的额在 1 亿元以下的第一审民商事案件，管辖婚姻、继承、家庭、物业服务、人身损害赔偿、交通事故、劳动争议案件以及群体性纠纷案件。北京市各中级法院管辖诉讼标的额在 1 亿元以上的第一审民商事案件，管辖诉讼标的额在 5000 万元以上且当事人一方住所地不在本市辖区的第一审民商事案件。高级法院管辖本辖区有重大影响的第一审民商事案件，不再受理执行实施案件。

According to the adjustment, the people's court in each district and county in Beijing as well as the railway courts have jurisdiction over first instance civil and business cases with disputed amounts below RMB 100 million, including actions related to marriage, inheritance, family, property management service, bodily damages, traffic accidents, labor disputes and group related disputes. The intermediate people's courts in Beijing have jurisdiction over first instance civil and business cases with disputed amounts of over RMB

100 million, as well as first instance civil and business cases with disputed amounts of over RMB 50 million where one of the parties is not domiciled in Beijing. Beijing Higher People's Court has jurisdiction over first instance civil and business dispute cases which have significant impacts in the jurisdiction, and will no longer accept enforcement cases.

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- **发展中国家涉华贸易救济案激增（来源：中国网，2011 年 8 月 26 日）**

Number of trade remedy cases involving China surged (source: China.com.cn, 26 August 2011)

据中国网 2011 年 8 月 26 日消息，《经济参考报》记者根据商务部公开信息初步统计，今年年初至今，来自阿根廷、墨西哥、巴西、土耳其、印度等发展中国家涉华贸易救济案件已经多达约 40 起，其中新发起的案件 14 起，反倾销 12 起，反补贴 1 起，保障措施 1 起。产品涉及电扇、电加热器、不锈钢餐具、无缝钢管、钢钉、草甘膦等。

According to information disclosed by the Ministry of Commerce (MOFCOM), developing countries, including Argentina, Mexico, Brazil, Turkey and India, have filed about 40 trade remedy cases involving China. Of the 14 newly launched cases, 12 are anti-dumping cases, 1 involves countervailing duties, and 1, safeguard measures. Products involved in those cases include electric fans, electric heaters, stainless steel dinnerware, seamless steel pipes, steel nails, glyphosate, and others, according to news published on China.com.cn on August 26, 2011.

据悉，2011 年以来，中国进出口创新高主要来自新兴市场国家。海关总署数据显示，2011 年 1 至 7 月我国与南非进出口总额同比增长 86.6%，其中出口增长 21.5%，进口增长 138%；与巴西进出口总额 增 长 38.6%，其中出口增长 37.8%，进口增长 39.1%；与东盟国家进出口总额增长 25.5%，其中出口增长 24%，进口增长 27%。

It was reported that starting in 2011, China achieved its major import and export records mainly in emerging market countries. Statistical data released by the General Administration of Customs showed that from January to July 2011, China's total imports and exports with South Africa increased by 86.6% year on year - exports saw a growth of 21.5%, while imports increased by 138%; China's total imports and exports with Brazil increased by 38.6% - exports grew by 37.8%, while imports were up by 39.1%; and China's total imports and exports with ASEAN countries were up by 25.5% - exports increased by 24%, while imports were up by 27%.

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仲裁动态
ARBITRATION DEVELOPMENTS

- 广州知识产权仲裁院成立（来源：中国商事仲裁网，2011 年 8 月 1 日）

Guangzhou Intellectual Property Arbitration Tribunal was formed (source: China Commercial Arbitration Net, 1 August 2011)

2011 年 7 月 11 日，广州知识产权仲裁院正式成立。据悉，广州知识产权仲裁院成立后，将建立专门的知识产权仲裁员名册，制定专门的知识产权仲裁规则。

On July 11, 2011, Guangzhou Intellectual Property Arbitration Tribunal was officially formed. According to sources, after its formation, Guangzhou Intellectual Property Arbitration Tribunal will set up an arbitrator roster tailored to intellectual property related arbitration cases, and will prepare special intellectual property arbitration rules. Top

- 中国企业海外仲裁十案九败（来源：法制网, 2011 年 8 月 8 日）

Nine out of ten overseas arbitration cases involving Chinese enterprises were awarded against Chinese enterprises (source: Legal Net, 8 August 2011)

据法制网 2011 年 8 月 8 日消息，中国仲裁法学研究会副会长、对外经贸大学博士生导师沈四宝教授指出，海外仲裁中 90%以上案子的被告是中方，结果往往是外方胜诉。国内企业原则上都是败诉，而且惩罚性的赔偿数量大，没有达到减损的目标。个别胜诉的也“虽胜犹败”，仲裁费用与大量时间精力的消耗使得胜诉企业同样不堪重负。中国仲裁法学研究会秘书长高菲还指出，中国企业在海外仲裁中存在语言的不熟悉；外籍仲裁员歧视中方当事人，偏袒西方人偏袒外方；国外仲裁缺乏程序管理监督，一旦发生错误裁决也无补救方法；中外法律理念、法律规定、文化传统、思维方式本身的不同等多方面的问题，故中方当事人很难在国际仲裁中取得预期效果。

According to news of the Legal Net on August 8, 2011, Shen Sibao, who is vice chairman of China Arbitration Research Institute, and instructor for doctoral candidates at University of International Business and Economics, stated that Chinese enterprises are respondents in more than 90% of overseas arbitration cases, and the results of the arbitration are generally in favor of the foreign parties. Chinese enterprises are generally the losing parties, and often penalized with enormous punitive damages, and their original objective of loss mitigation was defeated. The rare instances of winners were “like losers despite winning the case” because those winners were overwhelmed by the arbitration fees and the large amounts of time and efforts spent on the arbitration. Top

法规全文精选
FULL VERSION OF SELECTED LEGISLATION

最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释（三）
Interpretation of the Supreme People's Court on Certain Issues

Concerning the Application of the "Marriage Law of the People's Republic of China" (III)

生效日期：2011 年 08 月 13 日

Effective Date: 13-08-2011

为正确审理婚姻家庭纠纷案件，根据《中华人民共和国婚姻法》、《中华人民共和国民事诉讼法》等相关法律规定，对人民法院适用婚姻法的有关问题做出如下解释：

For the purpose of proper hearing of cases involving matrimonial and family disputes, the issues concerning the application of the Marriage Law of the People's Republic of China (hereinafter referred to as the "Marriage Law") by the people's courts are hereby interpreted as follows in accordance with the provisions of the Marriage Law, the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Contract Law"), and other relevant law and regulations:

第一条　当事人以婚姻法第十条规定以外的情形申请宣告婚姻无效的，人民法院应当判决驳回当事人的申请。

Article 1　Where the parties apply for annulment of marriage under the circumstance other than those as provided for in Article 10 of the Marriage Law, the people's court shall rule to reject the application filed by the parties.

当事人以结婚登记程序存在瑕疵为由提起民事诉讼，主张撤销结婚登记的，告知其可以依法申请行政复议或者提起行政诉讼。

Where the parties institute a civil lawsuit, claiming cancelation of marriage registration, on the ground that there are defects in the marriage registration procedure, the people's court shall inform that they may apply for administrative review or institute an administrative proceeding.

第二条　夫妻一方向人民法院起诉请求确认亲子关系不存在，并已提供必要证据予以证明，另一方没有相反证据又拒绝做亲子鉴定的，人民法院可以推定请求确认亲子关系不存在一方的主张成立。

Article 2　Where a spouse files an action, claiming confirmation of non-existence of paternity, with the people's court and has already provided the necessary evidence, and the other spouse does not have any evidence to the contrary and refuses to take a paternity test, the people's court may presume that such claim is justified.

当事人一方起诉请求确认亲子关系，并提供必要证据予以证明，另一方没有相反证据又拒绝做亲子鉴定的，人民法院可以推定请求确认亲子关系一方的主张成立。

Where either party files an action claiming confirmation of paternity and has already provided the necessary evidence for proof, and the other party does not have any evidence to the contrary and refuses to take a paternity test, the people's court may presume that such claim is justified.

第三条　婚姻关系存续期间，父母双方或者一方拒不履行抚养子女义务，未成年或

者不能独立生活的子女请求支付抚养费的，人民法院应予支持。

Article 3 During marriage, where one or both of the parents refuse to fulfill the obligation to provide for their child and the child who is a minor or unable to live independently requests his/her parent(s) to pay child maintenance, the people's court shall uphold such request.

第四条 婚姻关系存续期间，夫妻一方请求分割共同财产的，人民法院不予支持，但有下列重大理由且不损害债权人利益的除外：

Article 4 During marriage, where a spouse requests division of community property, the people's court shall not uphold such request, except for the circumstance where there are the following major reasons without prejudice to the interest of the creditor:

（一）一方有隐藏、转移、变卖、毁损、挥霍夫妻共同财产或者伪造夫妻共同债务等严重损害夫妻共同财产利益行为的；

(1) One party is found to have behavior that severely impairs the interests of their community property such as concealing, transferring, selling off, destroying, or squandering their community property or forging their community debt; or

（二）一方负有法定扶养义务的人患重大疾病需要医治，另一方不同意支付相关医疗费用的。

(2) One party who has statutory duty of maintenance suffers from a critical illness and needs medical treatment, and the other party refuses to pay the relevant medical expenses.

第五条 夫妻一方个人财产在婚后产生的收益，除孳息和自然增值外，应认定为夫妻共同财产。

Article 5 Any proceeds that are generated, after marriage, from the personal property of a spouse, other than fruits and unearned increment, shall be determined as community property.

第六条 婚前或者婚姻关系存续期间，当事人约定将一方所有的房产赠与另一方，赠与方在赠与房产变更登记之前撤销赠与，另一方请求判令继续履行的，人民法院可以按照合同法第一百八十六条的规定处理。

Article 6 Where, before or during marriage, both parties agree that the house property owned by one party is bestowed on the other party, but the donor revokes the gift prior to the registration of change of the house property and the other party requests a court decision on continuing the performance of the gift, the people's court may handle the case according to the provisions of Article 186 of the Contract Law.

第七条 婚后由一方父母出资为子女购买的不动产，产权登记在出资人子女名下的，可按照婚姻法第十八条第（三）项的规定，视为只对自己子女一方的赠与，该不动产应认定为夫妻一方的个人财产。

Article 7 With regard to immovable property purchased, after marriage, using funds from the parents of one party, if the property ownership thereof registers under the name of the child of the investors, such immovable property may be deemed as a gift only to the investors' child

according to the provisions of Item (3) of Article 18 of the Marriage Law, and shall be determined as the personal property of a spouse.

由双方父母出资购买的不动产，产权登记在一方子女名下的，该不动产可认定为双方按照各自父母的出资份额按份共有，但当事人另有约定的除外。

With regard to immovable property purchased using funds from the parents of both parties, where the property ownership thereof registers under the name of one party, such immovable property may be determined to be owned by the parties in proportion to their respective parents' share in capital contribution, unless otherwise agreed upon by the parties.

第八条　无民事行为能力人的配偶有虐待、遗弃等严重损害无民事行为能力一方的人身权利或者财产权益行为，其他有监护资格的人可以依照特别程序要求变更监护关系；变更后的监护人代理无民事行为能力一方提起离婚诉讼的，人民法院应予受理。

Article 8　Where the spouse of a person having no capacity for civil conduct has the act that severely impairs the personal right or property rights and interests of the party having no capacity for civil conduct such as abuse or abandonment, any other person with guardianship eligibility may require changing the guardianship relationship according to special procedure. Where the changed guardian represents the party having no capacity for civil conduct to institute a divorce proceeding, the people's court shall accept it.

第九条　夫以妻擅自中止妊娠侵犯其生育权为由请求损害赔偿的，人民法院不予支持；夫妻双方因是否生育发生纠纷，致使感情确已破裂，一方请求离婚的，人民法院经调解无效，应依照婚姻法第三十二条第三款第（五）项的规定处理。

Article 9　Where a husband makes a claim for damages on the ground of infringement of his reproductive right due to termination of pregnancy by his wife without his consent, the people's court shall not uphold it. Where both spouses have a dispute over whether or not to bear a child, resulting in alienation of mutual affection, and one party requests divorce, the people's court shall, after mediation fails, deal with the case according to the provisions of Item (5) of Paragraph 3 of Article 32 of the Marriage Law.

第十条　夫妻一方婚前签订不动产买卖合同，以个人财产支付首付款并在银行贷款，婚后用夫妻共同财产还贷，不动产登记于首付款支付方名下的，离婚时该不动产由双方协议处理。

Article 10　Where a spouse executes a contract for the sale and purchase of immovable property before marriage, pays down payment with his/her personal property, takes a loan from a bank, repays the loan with the community property of both spouses after marriage, and registers the immovable property under the name of the payer of down payment, both parties shall dispose of the immovable property by agreement upon divorce.

依前款规定不能达成协议的，人民法院可以判决该不动产归产权登记一方，尚未归还的贷款为产权登记一方的个人债务。双方婚后共同还贷支付的款项及其相对应财产增值部分，离婚时应根据婚姻法第三十九条第一款规定的原则，由产权登记一方对另一方进行补偿。

Where both parties fail to reach an agreement according to the preceding paragraph, the people's court may rule that such immovable property vests in the party whose name is stated in the property ownership registration certificate, and the loan outstanding thereof shall be the personal debt of such party. In respect of loan repayment jointly paid by both parties after marriage and the corresponding property increment thereof, the party whose name is stated in the property ownership registration certificate shall pay compensation to the other party upon divorce according to the principle specified in Paragraph 1 of Article 39 of the Marriage Law.

第十一条　一方未经另一方同意出售夫妻共同共有的房屋，第三人善意购买、支付合理对价并办理产权登记手续，另一方主张追回该房屋的，人民法院不予支持。

Article 11　Where a spouse sells a house under co-ownership without the consent of the other spouse, the third party makes the purchase and payment in good faith at reasonable consideration and completes the property ownership registration formality, and the other spouse makes a claim for recovering the house, the people's court shall not uphold such claim.

夫妻一方擅自处分共同共有的房屋造成另一方损失，离婚时另一方请求赔偿损失的，人民法院应予支持。

Where a spouse disposes of the house under co-ownership arbitrarily, causing loss to the other spouse, and the other spouse claims against the compensation for the loss at the time of divorce, the people's court shall uphold such claim.

第十二条　婚姻关系存续期间，双方用夫妻共同财产出资购买以一方父母名义参加房改的房屋，产权登记在一方父母名下，离婚时另一方主张按照夫妻共同财产对该房屋进行分割的，人民法院不予支持。购买该房屋时的出资，可以作为债权处理。

Article 12　Where both spouses make capital contribution to purchase a house under the housing reform scheme in the name of the parent of one spouse with their community property during marriage, the property ownership is registered under the name of such spouse's parent, and the other spouse makes a claim for division of the house as their community property upon divorce, the people's court shall not uphold such claim. Such contribution for the purchase of the house may be treated as creditor's rights.

第十三条　离婚时夫妻一方尚未退休、不符合领取养老保险金条件，另一方请求按照夫妻共同财产分割养老保险金的，人民法院不予支持；婚后以夫妻共同财产缴付养老保险费，离婚时一方主张将养老金账户中婚姻关系存续期间个人实际缴付部分作为夫妻共同财产分割的，人民法院应予支持。

Article 13　Where a spouse, upon divorce, has not retired and fails to meet the requirements for receiving endowment insurance benefits, and the other spouse requests division of the endowment insurance benefits as their community property, the people's court shall not uphold it; where the endowment insurance premium is paid with the community property of both spouses after marriage, and one party makes a claim, upon divorce, for dividing the portion in the pension account actually paid by him/her during marriage as the community property of both spouses, the people's court shall uphold it.

第十四条　当事人达成的以登记离婚或者到人民法院协议离婚为条件的财产分割协议，如果双方协议离婚未成，一方在离婚诉讼中反悔的，人民法院应当认定该财产分割协议没有生效，并根据实际情况依法对夫妻共同财产进行分割。

Article 14　With regard to a property division agreement reached by both parties based on divorce registration or filing for divorce by agreement with a people's court, if both parties fail to get a divorce by agreement, and one party repudiates the property division agreement in the divorce proceeding, the people's court shall hold that the property division agreement has not become effective and the community property shall, according to the actual situation, be divided according to the law.

第十五条　婚姻关系存续期间，夫妻一方作为继承人依法可以继承的遗产，在继承人之间尚未实际分割，起诉离婚时另一方请求分割的，人民法院应当告知当事人在继承人之间实际分割遗产后另行起诉。

Article 15　Where the estate that may be inherited legally by a spouse as an inheritor during marriage has not actually been divided among the inheritors, and the other spouse requests the division thereof when an action is filed for divorce, the people's court shall inform the parties to file an action separately after actual division of the estate among the inheritors.

第十六条　夫妻之间订立借款协议，以夫妻共同财产出借给一方从事个人经营活动或用于其他个人事务的，应视为双方约定处分夫妻共同财产的行为，离婚时可按照借款协议的约定处理。

Article 16　Where both spouses conclude a loan agreement lending their community property to one spouse for engaging in personal business operations or using in other personal affairs, such act shall be regarded as disposal of the community property as agreed by both spouses. Upon divorce, the estate shall be dealt with according to the loan agreement.

第十七条　夫妻双方均有婚姻法第四十六条规定的过错情形，一方或者双方向对方提出离婚损害赔偿请求的，人民法院不予支持。

Article 17　Where both spouses are under the circumstances of faults as provided for in Article 46 of the Marriage Law and one or both of them makes a claim for divorce damages against the other party or each other, the people's court shall not uphold it.

第十八条　离婚后，一方以尚有夫妻共同财产未处理为由向人民法院起诉请求分割的，经审查该财产确属离婚时未涉及的夫妻共同财产，人民法院应当依法予以分割。

Article 18　Where, after divorce, one party files an action claiming division of property with the people's court on the ground that there is community property to be dealt with, and the community property, after examination, is indeed found to have not been dealt with during divorce, the people's court shall divide the community property according to the law.

第十九条　本解释施行后，最高人民法院此前做出的相关司法解释与本解释相抵触的，以本解释为准。

Article 19　After this Interpretation becomes effective, where relevant judicial interpretations previously made by the Supreme People's Court contradict with this

Interpretation, this Interpretation shall prevail.

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