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
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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.

目录
CONTENTS

立法新闻 LEGISLATIVE NEWS [1]

[1] 全国人民代表大会常务委员会发布《关于修改〈中华人民共和国国家赔偿法〉的决定》
Standing Committee of the National People's Congress Promulgates the Decision on Revising the Law of the People's Republic of China on State Compensation

司法动态 JUDICIAL DEVELOPMENTS [1]

[2] 最高人民法院公布《关于国有土地开荒后用于农耕的土地使用权转让合同纠纷案件如何适用法律问题的批复》
SPC Promulgates the Official Reply on Issues of Law Application to the Dispute Cases of Use Right Transfer of the Cultivated State-owned Land Used for Farming

仲裁动态 ARBITRATION DEVELOPMENTS [1]

[3] 大成律师参加第六届中国仲裁论坛

Dacheng lawyer attends the Sixth China Arbitration Forum

立法新闻
LEGISLATIVE NEWS

- **全国人民代表大会常务委员会发布《关于修改〈中华人民共和国国家赔偿法〉的决定》（来源：NPC.gov.cn，2012 年 10 月 29 日）**

  Standing Committee of the National People's Congress Promulgates the Decision on Revising the Law of the People's Republic of China on State Compensation (Source: NPC.gov.cn, October 29, 2012)

  10 月 26 日，全国人大常委会发布《全国人民代表大会常务委员会关于修改<中华人民共和国国家赔偿法>的决定》（《决定》），自 2013 年 1 月 1 日起施行。《决定》将《中华人民共和国国家赔偿法》第十九条第三项修改为：依照刑事诉讼法第十五条、第一百七十三条第二款、第二百七十三条第二款、第二百七十九条规定不追究刑事责任的人被羁押的。

  On October 26, the Standing Committee of the National People's Congress promulgated the Decision of the Standing Committee of the National People's Congress on Revising the Law of the People's Republic of China on State Compensation (the "Decision"), effective as of January 1, 2013. According to the Decision, the Item Three of Article 19 of the Law of the People's Republic of China on State Compensation is revised as: where a person, who may not be prosecuted for criminal responsibility in accordance with Article 15, Paragraph Two of Article 173, Paragraph Two of Article 273 and Article 279 of the Criminal Procedure Law, was put into custody.

Top

司法动态
JUDICIAL DEVELOPMENTS

- **最高人民法院公布《关于国有土地开荒后用于农耕的土地使用权转让合同纠纷案件如何适用法律问题的批复》（来源：人民法院报，2012 年 10 月 29 日）**

  SPC Promulgates the Official Reply on Issues of Law Application to the Dispute Cases of Use Right Transfer of the Cultivated State-owned Land Used for Farming (Source:

www.rmfyb.com, October 29, 2012)

2012 年 9 月 4 日，最高人民法院公布《最高人民法院关于国有土地开荒后用于农耕的土地使用权转让合同纠纷案件如何适用法律问题的批复》（法释[2012]14 号），自 2012 年 11 月 1 日起施行。

On September 4, 2012, the Supreme People's Court ("SPC") promulgated the Official Reply on Issues of Law Application to the Dispute Cases of Use Right Transfer of the Cultivated State-owned Land Used for Farming (Fa Shi [2012] No. 14), effective as of November 1, 2012.

《批复》指出，开荒后用于农耕而未交由农民集体使用的国有土地，不属于《农村土地承包法》第二条规定的农村土地。此类土地使用权的转让，应适用《合同法》和《土地管理法》等法律规定。对于国有土地开荒后用于农耕的土地使用权转让合同，不违反法律、行政法规的强制性规定的，当事人仅以转让方未取得土地使用权证书为由请求确认合同无效的，人民法院依法不予支持；当事人根据合同约定主张对方当事人履行办理土地使用权证书义务的，人民法院依法应予支持。

The Official Reply points out that the cultivated state-owned land used for farming not under the collective use by farmers may not be deemed as the rural land mentioned in article 2 of the Law on Land Contract in Rural Areas. The laws such as the Contract Law and the Land Administration Law shall be applied to the land use right transfer of such land. As long as no compulsory provision of laws and administrative regulations is violated in the use right transfer contract of the cultivated state-owned land used for farming, if an involved party claims to determine the invalidity of the use right transfer contract of the cultivated state-owned land used for farming solely for the failure to obtain the corresponding land use right certificate, the people’s court may not grant the claim; and if an involved party claims that the other party shall perform its obligations of going through the formalities for obtaining the land use right certificate as per their contract, the people’s court shall grant the claim.

Top

仲裁动态
ARBITRATION DEVELOPMENTS

- **大成律师参加第六届中国仲裁论坛**

Dacheng lawyer attends the Sixth China Arbitration Forum

2012 年 10 月 31 日，由北京仲裁委员会和清华大学法学院主办，北京市律师协会仲裁法专业委员会协办的“第六届中国仲裁论坛”在北京成功举办。

On October 31, 2012, the Sixth China Arbitration Forum was successfully held in Beijing under the joint sponsorship of the Beijing Arbitration Commission and the School of Law of Tsinghua University, with assistance from the Arbitration Law Section of the Beijing Bar Association.

北京仲裁委员会秘书长林志炜先生致开幕词，副主任王红松女士做了总结发言。论坛邀请了全国人大法工委、最高人民法院、北京市高级人民法院、法学院及律师事务所的专业人士做了主题发言。大成高级合伙人邓永泉律师应邀参加并做了题为“选择国际商事仲裁机构需要考量的因素”的发言。

Mr. Lin Zhiwei, Secretary General of the Beijing Arbitration Commission, delivered an opening speech, and Madam Wang Hongsong, Vice Director of the Beijing Arbitration Commission, made a closing remark. Professionals from the Supreme Court of the Legislative Affairs Commission of the National People Congress, the Supreme People Court, the Superior People Court of Beijing, law schools and law firms were invited to speak on this Forum, among which Dennis Deng, senior partner of Dacheng Law Offices was invited to deliver a speech on *Considerations in the Selection of International Business Arbitration Institutions*.

中国仲裁论坛是由北京仲裁委员会主任梁慧星教授倡议、由关心并致力于我国仲裁事业发展的学者、专家共同发起设立的民间性的学术论坛。设立论坛的目的是搭建一个对话平台，使仲裁界有理论兴趣的仲裁机构人员、仲裁员、律师和学术界的有仲裁兴趣、经验的专家、学者能够定期聚会，共同探讨中国仲裁法制建设与仲裁中的重大理论和实践问题，相互交流仲裁发展的理论知识、实践经验和最新信息，推动仲裁事业发展。论坛坚持“百花齐放，百家争鸣”方针，保障各种不同意见、观点有平等发表的机会，各种理论观点、主张给予同等地尊重，并进行来自不同角度的讨论、评价和争鸣。论坛设立以来，始终关注仲裁领域极具理论研究价值重大现实问题，充分体现开放、务实、平等、包容精神，不仅成为仲裁机构、仲裁员、相关领域学者和其他热爱仲裁人士表达真实意见、坦诚交流观点的重要平台，而且，成为理论与实践，立法、司法、行政机关与仲裁实务界之间良性互动，共同推动中国体制改革深入发展的重要阵地。每次论坛探讨的都是紧扣时代脉搏，事关仲裁发展方向、基本原则的焦点、热点、敏感和难点问题。因而，每次论坛都吸引了大批关心、热爱、关注中国仲裁事业的仲裁机构、仲裁员、高校师生、以及立法、司法机关和政府部门的相关领导、工作人员参加，每次讨论都会产生一批具有影响力和积极推动作用的文章、建议、提案、议案和研究成果，并引起有关部门的重视，得到相应的正向反馈，对我国仲裁体制改革和仲裁机构的发展产生了积极的影响。

Originally proposed by Liang Huixing, Director of the Beijing Arbitration Commission, the China Arbitration Forum is a non-governmental academic forum jointly set up by scholars and experts committed and interested in the development of arbitration in China. The Forum is set up to provide a platform of dialogue for regular engagement and gathering of arbitrators, lawyers and representatives of arbitration institutions who have theoretical inclinations, and of academic scholars and experts who have interest and experience in arbitration, to explore major theoretical and practical issues in arbitration and in the construction of the legal framework for arbitration, to share theoretical knowledge, practical

experience and latest information in the development of the arbitration field, and to promote development of arbitration in China. Guided by the principle of “letting a hundred flowers blossom and a hundred schools of thought contend”, the Forum ensures equal opportunities for the expression of different views and beliefs, and equal respect for different legal theories and ideas, and promotes discussions, debates and commentaries from different perspectives. Since its founding, the Forum has always kept abreast of significant practical issues in the field of arbitration which show great potential for theoretical studies, and has adhered to the principle of openness, practicality, equality and tolerance. It not only serves as a platform for arbitration institutions, arbitrators, scholars in relevant fields and other aficionados of arbitration to air and exchange views in an honest and open manner, it is also an important citadel for positive interaction between theory and practice, and between the legislative, the judiciary, the administrative and the arbitration practitioners for promoting the deepening of structural reforms in China. The agendas of each session of the Forum closely follow the tides of time, with special focus on hotspot and sensitive focal issues that relate to the direction and fundamental tenets of arbitration. Each session has therefore attracted many arbitration institutions, arbitrators, university professors and students as well as the officials from the legislative, the judiciary and the administrative authorities who have interest in and care for arbitration in China, and has consummated in a series of influential papers, articles, proposals and work products, and grabbed the attention of relevant authorities, and received positive feedbacks, imparting a constructive influence on the structural reform in the field of arbitration and on the development of arbitration institutions.

本次为第六届中国仲裁论坛，主要是借民事诉讼法修改的契机对仲裁法的修改做了深入研究和讨论，并就如何进一步发展律师在仲裁中的作用进行了广泛探讨和交流。

This session, being the sixth session of the China Arbitration Forum, conducted in-depth discussion and exploration of possible amendment of the arbitration law in light of the amendment of the PRC Civil Procedural Law, and made extensive exchanges of views on expanding the roles lawyers could play in arbitration.

Top

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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：

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Preservation of evidence;

(5) 财产保全；
Preservation of assets;

(6) 诉讼仲裁代理；

Representation in litigation and arbitration proceedings;

(7) 中国法院生效法律文书的强制执行；

Enforcement of effective legal instruments of the PRC courts;

(8) 中国仲裁机构（如中国国际经济贸易仲裁委员会）生效裁决的强制执行；

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

(9) 香港、澳门及台湾法院生效法律文书在中国的承认与执行；

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

(10) 外国仲裁裁决在中国的承认和执行；及

Recognition and enforcement of foreign arbitral awards in China; and

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