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DACHENG LAW OFFICES
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# 中国法通讯
# China Law Newsletter

# 跨境争议解决
# Cross-border Dispute Resolution

**第 16 期 • Issue 16**
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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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# 立法新闻
# LEGISLATIVE NEWS

- **全国人大常委会发布修改《中华人民共和国民事诉讼法》的决定（来源：NPC.gov.cn，2012 年 9 月 3 日）**

  **The Standing Committee of the National People's Congress Promulgates the Decision on the Amendment of Civil Procedural Law of the People's Republic of China (Source: NPC.gov.cn, September 3, 2012)**

8 月 31 日，第十一届全国人民代表大会常务委员会第二十八次会议通过《全国人民代表大会常务委员会关于修改<中华人民共和国民事诉讼法>的决定》，自 2013 年 1 月 1 日起施行。

On August 31, the Standing Committee of National People's Congress has adopted the decision on the amendment of the Civil Procedural Law of the People's Republic of China at the 28th session of the 11th National People's Congress, which will come into force as of January 1, 2013.

公益诉讼制度首次写入修改后的民事诉讼法，对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，法律规定的机关和有关组织可以向人民法院提起诉讼。修改后的民事诉讼法规定了小额诉讼制度，并将小额诉讼的标的额确定为相对数



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——标的额为各省、自治区、直辖市上年度就业人员年平均工资百分之三十以下。

Public interest litigation system has been incorporated into the amended Civil Procedural Law for the first time. The relevant agencies and organizations authorized by the law may take legal action at the people's court against the acts that harm the social or public interest such as environmental pollution, or infringement upon the lawful rights and interests of the masses of consumers. The amended Civil Procedural Law provides for a small claims litigation system, and sets up a relative amount in terms of the subject amount of small-claims litigation - the amount claimed shall be less than 30% of the employee's average wage for the previous year in the provinces, autonomous regions and municipalities directly under the Central Government.

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- **最高人民法院发布《关于军事法院管辖民事案件若干问题的规定》（来源：www.mod.gov.cn，2012 年 9 月 17 日）**

**SPC Promulgates the Provisions on Several Issues Concerning the Jurisdiction of Military Courts over Civil Cases (Source: www.mod.gov.cn, September 17, 2012)**

最高人民法院 8 月 28 日发布了《关于军事法院管辖民事案件若干问题的规定》（《规定》），规定自 9 月 17 日起施行。《规定》明确军事法院民事案件管辖范围：一是军事法院对于双方当事人均为军人或者军队单位的案件，涉及重要军事秘密的案件，以及适用特别程序的涉军案件实行专门管辖；二是对于军人或者军队单位执行职务过程中造成他人损害的侵权责任纠纷案件，当事人一方为军人或者军队单位、侵权行为发生在营区内的侵权责任纠纷等案件，赋予地方当事人管辖法院选择权；三是对于当事人一方是军人或者军队单位，且合同履行地或者标的物所在地在营区内的合同纠纷案件，准许当事人书面约定由军事法院管辖。

On August 28, the Supreme People's Court ("SPC") promulgated the Provisions on Several Issues Concerning the Jurisdiction of Military Courts over Civil Cases (the "Provisions"), effective as of September 17. The provisions clarify the jurisdiction scope of military courts over civil cases: (1) Military courts have the sole jurisdiction over the cases in which all the parties involved are military soldiers or organizations, or those involving important military secrets, or the military-involved cases applicable to special procedures; (2) For an infringement liability dispute case resulting in personal injury to others during the performance of duties by a soldier or military organization, and the infringement liability dispute case which occurs at military camp area with any soldier or military organization as a party, the non-military party has the right to choose the jurisdiction court; (3) For a contract dispute case in which a party is a soldier or military organization and the military camp area covers the place of performing the contract or the place where the subject matter locates, the parties may agree in writing to be bound by the judgment of military courts.

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# 司法动态
# JUDICIAL DEVELOPMENTS

- **最高人民法院发布第三批指导性案例（来源：人民法院报，2012 年 9 月 27 日）**

  **SPC Releases the Third Batch of Guiding Cases (Source: www.rmfyb.com, September 27, 2012)**

近日，最高人民法院发布第三批指导性案例。这次共发布 4 个指导性案例，民事和刑事案例各 2 个，2 个民事案例均涉及公司法具体适用问题，进一步明确了公司决议撤销之诉的司法审查范围和股东清算责任问题，2 个刑事案例分别涉及新形式、新手段贪污和死缓限制减刑问题。

Recently, the Supreme People's Court ("SPC") has released the third batch of guiding cases. There are four guiding cases in total, including two civil cases and two criminal cases. The two civil cases involve the specific application of Company Law, further clarifying the judicial examination scope of the lawsuits for canceling any corporate resolution, and the shareholder liability of liquidation. The two criminal cases involve the new forms and methods of corruption, as well as the punishment commutation limits for a suspended death sentence.

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# 仲裁动态
# ARBITRATION DEVELOPMENTS

- **浙江温州仲裁委员会出台《关于为温州市金融综合改革提供仲裁法律服务的实施意见》（来源：www.chinalaw.gov.cn，2012 年 9 月 19 日）**

  **Wenzhou Arbitration Commission of Zhejiang Province Promulgates the Implementing Opinions on Providing Arbitration Services for the Comprehensive Financial Reform of Wenzhou (Source: www.chinalaw.gov.cn, September 19, 2012)**

近日，温州仲裁委制定出台了《关于为温州市金融综合改革提供仲裁法律服务的实施意见》(《意见》)。 《意见》提出，成立温州金融仲裁院，打造仲裁服务金融综合改革专业平台。出台《温州仲裁委员会金融仲裁规则》，建立仲裁服务金融综合改革快捷绿色通道。金融仲裁案件在受理、送达、组庭、举证、审理等方面的期限，要分别比普通仲裁案件缩短 3 天、5 天、10 天、20 天、60 天，提速幅度至少在 50%以上，并使案件的受理、送达、审理、裁决各个环节的程序设置能够最大限度地适应温州金融综合改革的需求。

Recently, the Wenzhou Arbitration Commission has promulgated the Implementing

Opinions on Providing Arbitration Services for the Comprehensive Financial Reform Wenzhou (the "Opinions"). The Opinions point out that effort should be made to establish the Wenzhou Arbitration Commission, to build a professional arbitration services platform for comprehensive financial reform, to issue the Financial Arbitration Rule for the Wenzhou Arbitration Commission and to set up a green channel of arbitration services for the comprehensive financial reform. The time limit for case acceptance, service of notice, tribunal formation, evidence presentation and trial for a financial arbitration case shall be respectively 3 days, 5 days, 10 days, 20 days and 60 days shorter than a general arbitration case, speeding up at least 50 percent. Furthermore, the procedures of case acceptance, service of notice, trial and arbitration shall be formulated to meet the needs of the comprehensive financial reform of Wenzhou to the fullest possible extent.

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- **中国贸仲委首个境外分支机构在港正式成立（来源：路透香港，2012 年 9 月 25 日）**

  **First CIETAC Overseas Branch Officially Established In Hong Kong (Source: cn.reuters.com, September 25, 2012)**

月 24 日，中国国际经济贸易仲裁委员会(贸仲委)首个境外分支机构在香港正式成立。截至 8 月底,贸仲委北京总会、天津中心和西南分会共受理案件 656 件，其中涉外件 217 件，国内案件 439 件。新受理案件争议金额总计 79.4343 亿元人民币。新争议类型，如资产并购、著作权转让合同、物流合同、特许经营合同、行纪合同、融资租赁合同、造船合同等争议均有相应增长。

On September 24, the China International Economic and Trade Arbitration Commission ("CIETAC") officially established its first overseas branch in Hong Kong. Up to the end of August, the Beijing headquarters, Tianjin Center and South China Sub-Commission of CIETAC had accepted a total of 656 cases, including 217 foreign-related cases and 439 domestic cases. The disputed amount of all the newly accepted cases amounts to CNY7, 943.43 million. The new categories of dispute, such as merger and acquisition, copyright transfer contract, logistics contract, franchised operation contract, contract for brokerage, finance lease contract and shipbuilding contract has increased to some extent.

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# 典型案例
# TYPICAL CASES

- **美修订关税法修订法案有违规则 商务部向 WTO 起诉（来源：news.xinhuanet.com，2012 年 9 月 18 日）**

  **MOFCOM Files WTO Challenge against U.S. Tariff Law(Source: news.xinhuanet.com,**

**September 18, 2012)**

北京时间 9 月 17 日下午 4 点，针对美国在《关税法修订法案》中违反世贸规则的错误做法，中国商务部向世贸组织提出，与美国在“世贸组织争端解决机制”下进行磋商，正式启动世贸争端解决程序。这次中美之间的贸易争端，共涉及 24 类产品，累计涉案金额 72.27 亿美元，合 450 多亿人民币。外界认为，美国的钢铁、纸张、化工产品、制造业是其中的受益者。 商务部相关人士昨天表示，如果磋商不顺利，未来有可能会从磋商晋级到法律程序。

China’s Ministry of Commerce (MOFCOM) filed a complaint with the World Trade Organization (WTO) on 17 September at 4:00PM Beijing time to challenge the U.S. newly amended Tariff Act, in an attempt to conduct consultations with the U.S. under the WTO Dispute Settlement Mechanism, and has formally initiated WTO dispute settlement proceedings. The trade dispute involves 24 types of products, worth US$7.227 billion (RMB45 billion). The steel, paper, chemical product and manufacturing industries are considered to be the principal beneficiaries. If the consultation fails, China will possibly resort to legal proceedings for settlement, a MOFCOM official said yesterday.

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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:

(1) 争议解决谈判与争议和解；
Negotiations in the course of dispute resolution and settlement of disputes;

(2) 诉前法律咨询；
Pre-action legal consultancy;

(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;

(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

(11) 基于争议解决实务经验的法律风险管理。

Legal risks management based on our practical experience in dispute resolution.