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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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The Beijing Arbitration Commission issued the Annual Review on Commercial Dispute Resolution in China (2013) (Chinese version) in Beijing

司法动态
JUDICIAL DEVELOPMENTS

- **最高人民法院出台《关于人民法院办理自赔案件程序的规定》(来源：法制日报，2013 年 8 月 12 日)**

  Supreme People's Court Promulgates the Provisions on the Procedures of People's Court on Dealing with Self-Compensation Cases (Source: www.legaldaily.com.cn, Aug 12, 2013)

2013 年 7 月 26 日，最高人民法院出台《最高人民法院关于人民法院办理自赔案件程序的规定》(《规定》)，自 2013 年 9 月 1 日起施行。

On July 26, 2013, the Supreme People's Court promulgated the Provisions of the Supreme People's Court on the Procedures of Dealing with Self-Compensation Cases (the "Provisions"), effective as of September 1, 2013.

根据《国家赔偿法》，该《规定》结合人民法院国家赔偿工作实际，针对人民法院办理本院作为赔偿义务机关的国家赔偿案件程序作出统一规范。

According to the State Compensation Law, the "Provisions" have standardized the procedures for the people's court as compensatory obligatory agency to deal with the case of state compensation by combining with the actual work of the people's court for state compensation.

《规定》明确，自赔案件是指人民法院办理的本院作为赔偿义务机关的国家赔偿案件。基层人民法院国家赔偿小组、中级以上人民法院赔偿委员会负责办理本院的自赔案件。

The "Provisions" define the self-compensation case as the case of state compensation dealt with by the people's court as compensatory obligatory agency. The state compensation group of the basic-level people's court, the compensation committee of the intermediate people's court and above shall be responsible for dealing with the court's self- compensation

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- **中央政法委出台首个防冤假错案指导意见（来源：xinhuanet.com，2013 年 8 月 14 日）**

  China Issues First Guiding Opinions to Prevent Unjust Cases (Source: xinhuanet.com, Aug 14, 2013)

中央政法委近日出台首个关于切实防止冤假错案的指导意见，要求法官、检察官、人民警察在职责范围内对办案质量要终身负责，并建立健全冤假错案的责任追究机制。

Recently, the Political and Judiciary Commission of the CPC Central Committee released first guiding opinions on the prevention of unjust cases, which requires judges, prosecutors, and police to take lifetime responsibility for cases within their scope of duties, and set up accountability mechanisms for unjust cases.

指导意见重申审判环节疑罪从无原则、证据裁判原则等，提出坚持证据裁判原则，证据未经法庭调查程序查证属实的，不得作为定案根据。指导意见强调，不能因舆论等压力，作出违反法律规定的裁判和决定。

The guiding opinions reiterates the importance of in dubio pro reo and evidence-based adjudication, and insists on the principle of evidence-based adjudication, which means that evidence that has not been verified by court investigation procedures cannot be used to support the final decision. The guiding opinions emphasises that the court cannot violate the law and make unjust judgments or decisions because of mass media, public opinion and other pressures.

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- **最高人民法院发布公告，对被执行人进行风险提示（来源：人民法院报，2013 年 8 月 21 日）**

  Supreme People's Court Releases Announcement on Risk Prompt to Persons Subject to Enforcement (Source: www.court.gov.cn, Aug 21, 2013)

2013 年 8 月 21 日，最高人民法院发布公告，对 2013 年 10 月 1 日前已经进入执行程序尚未执行完毕的案件被执行人，统一作出风险提示。逾期仍未履行生效法律文书确定义务的被执行人将被人民法院依法纳入失信被执行人名单并予以信用惩戒。

On August 21, 2013, the Supreme People’s Court (SPC) released an announcement to make risk prompt in a unified manner for persons subject to enforcement under the cases where, before October 1, 2013, the enforcement procedure has been initiated but has not been completed. The people’s courts will legally include the persons subject to enforcement who have not fulfilled the obligations as determined in effective legal documents within a specified time limit in a list of dishonest persons subject to enforcement and legally impose a credit punishment thereon.

根据今年 10 月 1 日将施行的最高人民法院《关于公布失信被执行人名单信息的若干规定》（法释[2013]17 号）有关规定： 被执行人具有履行能力而不履行生效法律文书确定的义务，并具有司法解释规定的六种情形之一的，人民法院应当将其纳入失信被执行人名单，依法对其进行信用惩戒。

The Several Provisions of the Supreme People's Court on Issuance of List of Dishonest Persons Subject to Enforcement (Fa Shi [2013] No. 17), effective as of October 1, 2013, provide: if the person subject to enforcement fails to perform the obligations established by effective legal documents while being equipped with the ability to perform, and one of the six circumstances applies, the people's court shall include him/her in the list of dishonest persons subject to enforcement, and enforce the penalty mechanism for dishonesty.

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仲裁动态
ARBITRATION DEVELOPMENTS

- **北京：劳动人事争议调解协议经仲裁审查确认后具法律效力（来源：www.bjld.gov.cn，2013 年 8 月 2 日）**

  Beijing: Labour Dispute Mediation Agreements to Become Legally Effective After Arbitration Approval (Source: www.bjld.gov.cn, Aug 2, 2013)

2013 年 7 月 31 日，北京市人力资源和社会保障局发布了《关于加强和规范劳动人事争议调解协议仲裁审查确认工作的通知》（《通知》），自 8 月 1 日起施行。《通知》明确北京市劳动人事争议调解协议经仲裁审查确认后将具法律效力。

On 31 July 2013, the Beijing Human Resources and Social Security Bureau released the Circular on Reinforcing and Standardising the Review and Confirmation of Labour Dispute Mediation Agreements (Circular), which became effective on 1 August 2013. The Circular clarifies that labour dispute mediation agreements shall become legally effective after being reviewed and confirmed by arbitration.

此外，《通知》规范了北京市调解协议的仲裁审查确认工作，方便当事人将调解协议转换为具有法律效力的仲裁调解书，以促进劳动纠纷彻底化解在基层。

Moreover, the Circular regulates arbitration examination and verification of mediation agreements to enable parties to convert mediation agreements into legally effective arbitration agreements, to promote the complete resolution of labour disputes at the grassroots level.

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- **北京仲裁委员会在京发布《中国商事争议解决年度观察(2013)》（中文版）（来源：**

www.bjac.org.cn，2013 年 8 月 27 日）

The Beijing Arbitration Commission issued the Annual Review on Commercial Dispute Resolution in China (2013) (Chinese version) in Beijing (Source: www.bjac.org.cn, Aug 27, 2013)

继今年 6 月在英国伦敦发布《中国商事争议解决年度观察(2013)》（以下简称“《观察》”）英文版，引发国际社会广泛关注后，8 月 23 日北京仲裁委员会又在京正式发布了《观察》的中文版。大成律师事务所邓永泉律师受邀参加了此次发布活动。

The internationally recognized Commercial Dispute Resolution in China: An Annual Review (2013) (hereinafter referred to as the “Annual Review”) English version, was issued in London England during the month of June 2013. Due to its recognition, the Annual Review Chinese version subsequently was issued once again in Beijing by the Beijing Arbitration Commission on August 23rd, 2013. Mr. Deng Yongquan of Dacheng Law Offices was invited to participate in the conference.

据北京仲裁委秘书长林志炜介绍，《中国商事争议解决年度观察(2013)》以大量翔实的最新资料对中国商事争议解决在 2012 年的发展情况进行了全景式回顾，同时放眼未来中国商事争议解决的发展趋势。

Lin Zhiwei, secretary general of the Beijing Arbitration Commission, has asserted that the Commercial Dispute Resolution in China: An Annual Review（2013） contains the most extensive and up-to-date legal materials regarding Commercial Dispute Resolution in China for the year 2012, including a critical analysis of the progresses made, while concurrently discussing the outlook on Chinese Commercial Dispute Resolution for the future.

在当日召开的研讨会上，《观察》获得多位专家的认同，被认为“是一份不可多得的研究中国商事争议解决发展进程的理论和实务资料”。

At the conference, the Annual Review received wide legal expert and practitioner acknowledgement, and was recognized as a “valuable research tool in investigating commercial dispute resolution in China both in its theoretical and practical aspects.”

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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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(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。

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