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中国法通讯
China Law Newsletter

跨境争议解决
Cross-border Dispute Resolution

第 15 期 • Issue 15
2012 年 9 月 • September 2012

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

- **海事局拟出台《水上交通事故调查处理简易程序规定》（来源：www.msa.gov.cn，2012 年 8 月 24 日）**

  MSA to Issue Fast Track Procedures for Handling Maritime Traffic Accidents (Source: www.msa.gov.cn, August 24, 2012)

  近日，海事局公布《水上交通事故调查处理简易程序规定》，并于 2012 年 9 月 3 日前向各有关单位征求书面意见。根据意见稿，经事故当事方共同书面申请、海事管理机构认定，案情简单、事实清楚、因果关系明确的水上交通小事故，可以适用该规定程序开展调查处理工作，但涉及客（汽）渡船舶、危险品运输船舶、船舶沉没、人员受伤以及外国籍船舶的事故除外。

  The Maritime Safety Administration (MSA) has released the draft Provisions on the Fast Track Procedures for the Investigation and Handling of Maritime Traffic Accidents (the Provisions), inviting relevant entities' opinions in writing by 3 September 2012. Under the draft provisions, fast track procedures are applicable to minor maritime traffic accidents in which the facts of the accidents are simple and clearly identified, and the chain of causation is also easily identified. The parties involved in a minor maritime traffic accident may file a joint application for the said fast track procedures, which may be followed upon approval by the competent maritime authority. However, accidents in relation to passenger (or steam-powered) ships, vessels carrying hazardous goods, ship foundering, personnel injured and foreign ships shall not be subject to the said fast track procedures.

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- **全国人大常委会通过关于修改民事诉讼法的决定（来源：NPC.gov.cn，2012 年 8 月 31 日）**

  NPC Standing Committee adopts decision on revision of Civil Procedure Law (Source: NPC.gov.cn, August 31, 2012)

8 月 31 日全国人大常委会办公厅举行新闻发布会，宣布十一届全国人大常委会第二十八次会议以 140 票赞成、2 票反对、1 票弃权，表决通过了全国人大常委会关于修改民事诉讼法的决定；以 143 票赞成，表决通过了全国人大常委会关于修改农业技术推广法的决定。全国人大常委会法制工作委员会副主任王胜明在发布会上回答了与民事诉讼法有关的问题。

On August 31, the General Office of the Standing Committee of the National People's Congress (NPC) held a press conference to announce the NPC Standing Committee's decision on revision of the Civil Procedure Law adopted by vote (140-2-1) and decision on revision of the Law of the People's Republic of China on the Popularization of Agricultural Technology adopted by vote (143) at the 28th session of the 11th NPC Standing Committee. An official of the NPC Standing Committee answered the questions on Civil Procedure Law at the press conference.

新民诉法增加了关于“公益诉讼”的规定：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。

The new Civil Procedure Law adds provisions on "public interest litigation", stating that for acts of harming the public interest, such as environmental pollution, infringement of numerous consumers' legitimate rights and interests, the authorities and relevant organizations as stipulated in the law may institute legal proceedings in people's courts.

新民诉法建立了小额诉讼制度，诉讼标的额低于上年度城镇单位就业人员年平均工资的 30%的案件，实行一审终审制。

The new Civil Procedure Law establishes a small-sum litigation system, under which if the subject matter amount is lower than 30% of the annual average wage of employees in urban entities in the previous year, the first instance shall be the final instance.

新民诉法规定，当事人之间恶意串通，企图通过诉讼、调解等方式侵害他人合法权益的，人民法院应当驳回其请求，并根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。此外，新民诉法还对逾期举证问题作出了规定。

The new Civil Procedure Law specifies that where the parties concerned in malicious collusion with each other attempt to infringe upon the legitimate rights and interests of others through litigation, mediation and other ways, the people's court shall dismiss their request and impose a fine or detention based on the circumstances; if the act constitutes a crime, the people's court shall impose criminally liability. In addition, the new Civil Procedure Law also provides issues on burden of proof overdue.

修改后的民事诉讼法从 2013 年 1 月 1 日开始实施。

The revised Civil Procedure Law will come into effect on January 1, 2013.

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- **《中华人民共和国民事诉讼法》全文公布（来源：NPC.gov.cn，2012 年 9 月 1 日）**

The Civil Procedure Law of the People's Republic of China released (Source:

NPC.gov.cn, September 1, 2012)

《中华人民共和国民事诉讼法》已于 2012 年 8 月 31 日第二次修正，并在中国人大网公布全文。新民事诉讼法共二十七章、二百八十四条，将于 2013 年 1 月 1 日起施行。

The Civil Procedure Law of the People's Republic of China has been revised for the second time on August 31, 2012, and released in full text at the NPC.gov.cn. The new Civil Procedure Law contains 27 chapters and 284 articles and shall take effect as of January 1, 2013.

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司法动态
JUDICIAL DEVELOPMENTS

- **iPad 商标转让至苹果名下（来源：www.bjnews.com.cn，2012 年 8 月 6 日）**

  iPad Trademark Assigned To Apple (Source: www.bjnews.com.cn, August 6, 2012)

苹果与深圳唯冠之间的 iPad 商标之争于今年 7 月 2 日落下帷幕。根据广东高院公告，苹果支付了 6000 万美元和解费给深圳唯冠，深圳中院也已向商标局送达了将涉案 iPad 商标过户给苹果的裁定书和协助执行通知书。近日，商标局发布公告称，iPad 商标已于 2012 年 7 月 27 日转让给苹果公司。

The dispute over the iPad trademark between Apple Inc. (“Apple”) and Proview Technology Shenzhen (“Proview”) was finally resolved on 2 July this year. According to the announcement of the Higher People’s Court of Guangdong Province, Apple paid USD60 million as settlement fees to Proview, and Shenzhen Intermediate People’s Court also delivered its ruling on assigning the iPad to Apple and the notice on assisting in the enforcement to the Trademark Office. The Trademark Office has recently made a public announcement stating that the iPad trademark was assigned to Apple on 27 July 2012.

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仲裁动态
ARBITRATION DEVELOPMENTS

- **贸仲发布关于约定贸仲上海分会及华南分会案件的管理公告（来源：中国国际经济贸易仲裁委员会，2012 年 8 月 2 日）**

  CIETAC Suspends Its Shanghai & South China Branches from Handling Arbitration

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Cases (Source: China International Economic and Trade Arbitration Commission, August 2, 2012)

中国国际经济贸易仲裁委员会（简称“贸仲”）日前发布公告，自 2012 年 8 月 1 日起，中止对其上海分会、华南分会（原深圳分会）接受仲裁申请并管理仲裁案件的授权。《公告》称，当事人约定将争议提交上海分会或华南分会仲裁的，自 2012 年 8 月 1 日起，当事人应向贸仲申请仲裁，由贸仲秘书局接受仲裁申请并管理案件。未经贸仲授权，其他任何机构无权接受上述仲裁申请并管理相关案件。贸仲秘书局接受仲裁申请并管理上述案件时，除非当事人另有约定，上海分会仲裁的案件，仲裁地和开庭地为上海；约定由华南分会仲裁的案件，仲裁地和开庭地为深圳。

The China International Economic and Trade Arbitration Commission (CIETAC) has issued an announcement to suspend the authorization granted to its Shanghai Branch and South China Branch to accept arbitration applications and administer arbitration cases from 1 August, 2012. The announcement states that, from 1 August 2012, where parties in disputes agree to submit their disputes to the Shanghai Branch or South China Branch of the CIETAC, the parties are required to file their applications of arbitration with the CIETAC, and the Secretariat of the CIETAC shall be in charge of accepting the arbitration applications and administering the arbitration cases. Without the authorization of the CIETAC, no other organization is allowed to accept the said arbitration applications or administer such arbitration cases. For arbitration cases accepted and administered by the Secretariat of the CIETAC, unless otherwise agreed by the parties in disputes, the venue of arbitration and the venue of hearing cases shall be Shanghai for arbitration cases originally agreed to be submitted to the Shanghai Branch of the CIETAC, and, the place of arbitration and the place of hearing shall be Shenzhen for arbitration cases originally agreed to be submitted to the South China Branch of the CIETAC.

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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，在上海、武汉、成都、济南、重庆、天津、哈尔滨、郑州、银川、西宁、厦门、杭州、海口、深圳、南通、广州、长春、西安、沈阳、呼和浩特、南京、常州、无锡、青岛、兰州、福州、南宁、太原、大连、长沙、吉林、舟山、合肥、南昌、苏州、黄石、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 Shanghai Wuhan Chengdu Jinan Chongqing Tianjin Ha'erbin Zhengzhou Yinchuan Xining Xiamen Hangzhou Haikou Shenzhen Nantong Guangzhou Changchun Xi’an Shenyang Hohhot Nanjing Changzhou Wuxi Qingdao Lanzhou Fuzhou Nanning Taiyuan Dalian Changsha Jilin Zhoushan Hefei Nanchang Suzhou Huangshi 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。

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