

# 中国法通讯 China Law Newsletter 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。若您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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- 国家质检总局征求《家用汽车产品修理、更换、退货责任规定（第二次征求意见稿）》修改意见（来源：国家质量监督检验检疫总局，2012 年 1 月 18 日）

The General Administration of Quality Supervision, Inspection and Quarantine solicits revision comments regarding the Regulation on the Liability for Repair, Replacement and Return of Home Auto Products (for second round of comments)

**(source: The General Administration of Quality Supervision, Inspection and Quarantine, 18 January 2012)**

国家质检总局于 1 月 16 日公布《家用汽车产品修理、更换、退货责任规定（第二次征求意见稿）》，于 2012 年 2 月 10 日前征求修改意见。此次的征求意见稿对 2011 年 9 月 20 日第一次公布的意见稿又进行了修改，以促使汽车三包规定更加严谨和完善。根据此次修改，汽车三包规定首次明确，三包责任由销售者依法承担。销售者依照规定承担三包责任后，属于生产者的责任或者属于其他经营者的责任的，销售者有权向生产者、其他经营者追偿。

On January 16, the General Administration of Quality Supervision, Inspection and Quarantine (“AQSIQ”) released the Regulation on the Liability for Repair, Replacement and Return of Home Auto Products (for second round of comments), soliciting comments before the deadline of February 10, 2012. The new release contains revisions to the document (for first round of comments) released in September 20, 2011, as well as improved regulations on “Sanbao” services for autos that are more precise. According to this new release, it specifies for the first time that seller is duly responsible for “Sanbao” services. After discharging the responsibilities for “Sanbao” services, the seller has the right to claim against the manufacturer or other undertakings for problems for which the manufacturer or such other undertakings are liable.

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## **司法动态**

### **JUDICIAL DEVELOPMENTS**

- **安徽 41 家基层法院试点“人身保护令”（来源：最高人民法院网站，2012 年 1 月 5 日）**

**41 grassroots courts in Anhui Province run a pilot on “personal protection order” (source: Supreme People’s Court, 5 January 2012)**

最高人民法院网站转引《法制日报》消息，2011 年，安徽省 10 个市的 41 家基层人民法院试点反家暴人身安全保护裁定（又称“人身保护令”），全年共减免缓诉讼费 858 万元，保障了婚姻中弱势一方通过诉讼途径维护合法权益。

According to a news quoted by the website of the Supreme People’s Court from the Legal Daily, 41 grassroots people’s court in 10 cities in Anhui Province run a pilot on personal protection order against home violence (“Personal Protection Order”) in 2011, under which, a total of RMB 8.58 million in litigation expenses was exempted, reduced or deferred in 2011, and protected the weaker party in matrimony in safeguarding legitimate rights and interests through means of litigation.

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- 云南省高法出台《做好边境地区涉外民商事案件审判工作的实施办法》（来源：中国法院网, 2012 年 1 月 9 日）

**High People's Court of Yunnan Province releases the Implementation Measures for Ensuring the Trial of Foreign-related Civil and Commercial Cases in Border Areas (source: Chinacourt.org, 9 January 2012)**

中国法院网 1 月 9 日消息，为配合国家对云南桥头堡战略建设的实施、做好边疆地区涉外民商事审判工作，云南省高院《做好边境地区涉外民商事案件审判工作的实施办法》于近日开始实施。该办法明确了云南边境地区基层法院受理涉外民商事案件的标的额；同时对在司法程序中涉及的向境外当事人送达司法文书和诉讼材料的方式作出了细化规定，破解了长期困扰和阻碍云南边境地区此类案件审理中程序方面的难题；同时，对法院在此类案件审理中开展诉讼风险提示和诉讼指导工作提出了明确要求。

According to news sourced from [www.Chinacourt.org](http://www.Chinacourt.org) on January 9, in order to support the implementation of Yunnan Qiaotoubao strategic development and ensure the trial of foreign-related civil and commercial cases in border areas, the Implementation Measures for Ensuring the Trial of Foreign-related Civil and Commercial Cases in Border Areas promulgated by the High People's Court of Yunnan Province took effect recently. The Measures clearly specify the amount of subject matter of foreign-related civil and commercial cases heard by grassroots courts in border areas of Yunnan Province; contain detailed provisions on methods for service of judicial documents and litigation materials on parties concerned in foreign countries involved in the judicial process, resolve the procedural difficulties in hearing such kind of cases in border areas of Yunnan Province; at the same time, propose specific requirements on litigation risk indication and litigation guidance carried out in the trial of such kind of cases.

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- 文化部公布 2011 年全国文化市场十大案件八成涉及侵权（来源：新华网, 2012 年 1 月 12 日）

**8 out of 10 big cases in the national cultural market in 2011 involve tort (source: Xinhuanet.com, 12 January 2012)**

2012 年 1 月 11 日，文化部公布了 2011 年全国文化市场十大案件，入选的 2011 年全国文化市场十大案件包括：北京百度网讯科技有限公司侵犯文字作品信息网络传播权案、上海隐志网络科技有限公司（VeryCD 电驴）未经著作权人许可擅自通过信息网络向公众提供他人作品案等。据悉，全国 99% 以上的地市和 92% 以上的区县组建了综合执法机构，统一行使文化（文物）、广播影视、新闻出版（版权）等领域的执法职能，在文化市场领域实行综合执法。据统计，2011 年，全国文化市场共出动文化市场综合执法人员 1224 万余人次，受理举报 4.8 万余件，立案调查 6.3 万余件，移交案件 3504 件，办结案件 5.7 万余件，警告经营单位 10.2 万家次，罚款 19121 万余元。案件办理及移送数量显著提高，行政处罚力度持续加大。

On January 11, 2012, the Ministry of Culture published ten big cases in the national cultural market in 2011, which include the case involving infringement on right to network

dissemination of information by Beijing Baidu Network Technology Co., Ltd., case involving provision of others' works by VeryCD Company for the public through information network without permission of copyright holders. It is reported that over 99% of prefectures and cities and over 92% of districts and counties in the country have established comprehensive law enforcement agencies, exercise law enforcement functions in a unified manner in the sectors of culture (historical relic), radio, film and television, press and publication (copyright), etc., and implement comprehensive law enforcement in the field of cultural market. According to statistics, in the year 2011, over 12,24 mn comprehensive law enforcement officers of cultural market went into action in the national cultural market, accepted 48,000 pieces of reports, investigated 63,000 cases, transferred 3,504 cases to the relevant departments, concluded 57,000 cases, gave a warning to 102,000 business operators, and imposed a fine of RMB 191,21 mn. The number of cases handled and transferred increased significantly and effects of administrative penalties continued to increase.

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## **仲裁动态**

### **ARBITRATION DEVELOPMENTS**

- 广东省发布《转发省人力资源社会保障厅〈关于加强新形势下劳动人事争议调解仲裁工作指导意见〉的通知》（来源：广东省人民政府，2012 年 1 月 1 日）

**Guangdong Province releases a Circular Distributing the Guideline issued by Guangdong Province Human Resources and Social Security Department regarding Strengthening Labor and Personnel Dispute Mediation and Arbitration under the New Situation (source: People's Government of Guangdong Province, 1 January 2012)**

2011 年 12 月 13 日，广东省人民政府发布了《转发省人力资源社会保障厅〈关于加强新形势下劳动人事争议调解仲裁工作指导意见〉的通知》（粤府办[2011]82 号）。《关于加强新形势下劳动人事争议调解仲裁工作指导意见》要求要充分认识新形势下加强劳动人事争议调解仲裁工作的重要性和紧迫性。同时，该指导意见还对劳动人事争议调解仲裁工作的总体要求和工作目标等内容作出了规定。

On December 13, 2011, the People's Government of Guangdong Province released a Circular Distributing the Guideline issued by Guangdong Province Human Resources and Social Security Department regarding Strengthening Labor and Personnel Dispute Mediation and Arbitration under the New Situation (Yue Fu Ban [2011] No. 82). The Guideline stresses the need to fully recognize the urgency and importance of strengthening mediation and arbitration in labor and personnel disputes, and it also sets forth regulations regarding the overall requirements and objectives for mediation and arbitration of labor and personnel disputes.

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- 伦敦海事仲裁员协会 2012 年仲裁规则生效（来源：中国海事仲裁委员会，2012 年 1 月 5 日）

**The Arbitration Rules 2012 of London Maritime Arbitrators Association come into effect (source: China Maritime Arbitration Commission, 5 January 2012)**

2010 年 3 月在伦敦海事仲裁员协会五十周年庆典研讨会上代表们达成共识，认为伦敦要继续保持国际海事仲裁领域的领先地位，必须加强管理，不断完善仲裁规则。伦敦海事仲裁员协会 2012 年的新规则在扩大仲裁庭的管辖权，维护当事人的正当权利方面有了新的探索，适应了当前国际航运市场的需要，增强该协会在海事仲裁领域的竞争力。该规则自 2012 年 1 月 1 日生效。

At the 50th anniversary celebration of London Maritime Arbitrators Association in March 2010, the representatives reached a consensus, believing that for London to maintain its leadership in international maritime arbitration, it must strengthen management, and continually improve its arbitration rules. The new rules of London Maritime Arbitrators Association explores new ideas in expanding jurisdiction of the arbitration tribunal and safeguarding the legitimate rights of the parties, adapting to the need of the current international maritime market and strengthening the Association's competitiveness in maritime arbitration. The new rules took effect on January 1, 2012.

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## **典型案例** **CLASSICAL CASE**

- 2011 年度人民法院十大典型案例（来源：中国法院网，2012 年 1 月 9 日）

2012 年 1 月 6 日，中国法院网转载人民法院报文章，公布了 2011 年度人民法院十大典型案例。这十大案例包括：药家鑫肇事后捅死伤者案、河南“瘦肉精”案、腾讯 QQ 诉 360 不正当竞争案、河南“天价过路费案”重审、许迈永受贿贪污滥用职权案、“股市黑嘴”汪建中获刑七年、浙江“银泰集资诈骗案”、云南环境民事公益诉讼案、仓央嘉措情诗引发知识产权纠纷、金华吴俊东超车致人损害案等。

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- 蓬莱 19—3 油田溢油事故渔业索赔行政调解达成一致（来源：农业部，2012 年 1 月 30 日）

农业部网站 1 月 25 日消息，经过行政调解，农业部、中国海洋石油总公司、康菲石油中国有限公司以及有关省政府就解决蓬莱 19—3 油田溢油事故渔业损失赔偿和补偿问题，达成一致意见。康菲公司出资 10 亿元人民币，用于解决河北、辽宁省部分区县养殖生物和渤海天然渔业资源损害赔偿和补偿问题；康菲公司和中国海油从其



所承诺启动的海洋环境与生态保护基金中，分别列支 1 亿元和 2.5 亿元人民币，用于天然渔业资源修复和养护、渔业资源环境调查监测评估和科研等方面工作。

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## **公报案例**

### **CASE FROM SPC**

- **国际海上货运代理经营权损害赔偿纠纷：马士基（中国）航运有限公司及其厦门分公司与厦门瀛海实业发展有限公司、中国厦门外轮代理有限公司国际海上货运代理经营权损害赔偿纠纷再审案（来源：最高人民法院公报，2011 年第 10 期）**

瀛海公司（再审被申请人、一审原告、二审上诉人）与厦门外代（一审第三人）先后于 2003 年 10 月 31 日、2005 年 3 月 15 日两次签订《集装箱运输合作协议》，其中 2003 年 10 月 31 日签订的协议，因双方无异议而自动延长一年至 2004 年 12 月 31 日终止；双方于 2005 年 3 月 15 日签订的新协议约定厦门外代原则上准许瀛海公司提取集装箱，同时特别约定“在箱主或租箱人明确表示不同意将设备交给瀛海公司使用的情况除外”。

瀛海公司明知厦门外代作为马士基公司（再审申请人、一审被告、二审上诉人）的集装箱代理人与其签订上述两份协议，上述两份协议直接约束瀛海公司和马士基公司。马士基公司于 2005 年 3 月 3 日通知厦门外代停止向瀛海公司提供集装箱及其铅封。

瀛海公司于 2005 年 11 月 10 日以马士基公司、厦门分公司（再审申请人、一审被告、二审上诉人）不接受其代理货主订舱托运造成其损失为由向一审法院起诉，请求：马士基公司、厦门分公司立即停止干涉瀛海公司经营自主权的行为，排除其对瀛海公司与厦门外代之间有关《集装箱运输合作协议》履行的妨碍，责令马士基公司、厦门分公司依其业务惯例向瀛海公司及其委托人提供货运订舱和相关服务，并不得拒绝瀛海公司接受委托办理与马士基公司、厦门分公司有关的集装箱进出口货运和陆路集装箱运输业务。

法院认为，公共运输履行着为社会公众提供运输服务的社会职能，具有公益性、垄断性等特征。为维护社会公众利益，《中华人民共和国合同法》第二百八十九条规定：“从事公共运输的承运人不得拒绝旅客、托运人通常、合理的运输要求。”国际海上集装箱班轮运输是服务于国际贸易的商事经营活动，不属于公用事业，不具有公益性，也不具有垄断性，故不属于公共运输。托运人或者其货运代理人请求从事国际海上集装箱班轮运输的承运人承担强制缔约义务，没有法律依据。

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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、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 Suzhou Hong Kong Taipei Moscow Singapore Paris Seoul London Washington Tokyo New York 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.