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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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立法新闻
LEGISLATIVE NEWS

- **7 月 1 日起我国《有机产品认证实施规则》全面实施（来源：新华社，2012 年 7 月 1 日）**

  The PRC Implementation Rules for Certification of Organic Products come into full force on July 1, 2012 (Source: Xinhua News Agency, July 1, 2012)

经过 4 个月的过渡期，从今年 7 月 1 日起，我国《有机产品认证实施规则》将全面实施，消费者购买有机产品时应认准认证标志、编号等，还可凭编号在“国家有机产品认证标志备案管理系统”网上查询产品的真伪。根据相关管理规定，7 月 1 日之后出厂销售的有机产品将统一加施国家有机产品认证标志（含有机转换产品认证标

志)、唯一编号（有机码）和认证机构名称（标识）。截止到６月２７日，各有机产品认证机构累计上传有机产品标志数约１．４亿枚。

The PRC Implementation Rules for Certification of Organic Products came into full force on July 1, 2012 after the completion of a four-month transition period. Consumers should pay attention to the certification symbols and numbers when buying organic products, and consumers can verify authenticity of the products on-line by logging the certification number into the Organic Product Certification Signage Filing and Administration System. According to relevant administrative regulations, all organic products shipped from factories for sale after July 1, 2012 will be uniformly stamped with the national organic product certification symbols (including certification symbols for products under conversion to organics), and the unique identifying numbers (organic code) as well as the name of the certification agency (logo). By June 27, 2012, the organic product certification agencies have uploaded an aggregate of 140 million pieces of organic product certification symbols.

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- **北京市发布《关于进一步加强房屋买卖合同管理的通知》（来源：新京报，2012 年 7 月 23 日）**

Beijing Issues New Circular to Prevent Tax Evasion Through Second Online Contract Signing for House Purchase (Source: www.bjnews.com.cn, July 23, 2012)

7 月 21 日，北京市住建委会同市地税局、市银监局联合发布《关于进一步加强房屋买卖合同管理的通知》，将于 8 月 1 日起施行，出台新规防止在银行贷款和交税这两个环节用两次网签的手法来避税。

On July 21, the Beijing Municipal Commission of Housing and Urban-Rural Development, the Beijing Local Taxation Bureau and the Beijing Banking Regulatory Bureau jointly released the Circular on Further Strengthening the Management of Housing Sale & Purchase Contracts. It will take effect as of August 1. The new Circular is issued to prevent tax evasion through the second online contract signing during bank loan application and tax payment.

《通知》规定，买卖双方注销二手房网签合同信息后，同一购房人再次购买同一套房屋签约的，住建部门将在《存量房买卖合同信息表（纳税）》上记载价格变化情况。纳税申报人要持该信息表及相关材料到地税部门办理纳税手续。地税部门将综合运用房地产估价等技术加强房屋交易税收征管。这意味着如果采用“二次网签”来避税，税务部门将能核查到上一次网签的成交价格，不一定按照第二次网签申报的较低价格来征税。

As set forth in the Circular, after a buyer and a seller revoke the online contract signing information of second hand house, if the same buyer signs the sale & purchase contract of the same house for the second time, the housing and urban-rural development authorities will record the change in price on the Information Form of Stock Housing Trade Contracts (Tax Payment).The tax payer shall go through the tax payment procedure with local tax authorities with the said information form and the relevant documents. The local tax

authorities will conduct real estate assessment or employ other methods to strengthen the administration and collection of tax payment for housing trades. That is to say, if someone evades tax through "second online contract signing", tax authorities may check the trading price of the first online signing, and may not collect tax according to the lower price as declared through the second online signing.

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- **《深圳经济特区合同格式条款条例》8 月 1 日起实施（来源：南方日报，2012 年 7 月 31 日）**

Regulations of Shenzhen Special Economic Zone on Standard Contract Clauses to Take Effect on August 1 (Source: www.nfdaily.cn, July 31, 2012)

《深圳经济特区合同格式条款条例》（《条例》）8 月 1 日起实施。根据《条例》规定，生活中与消费者利益密切相关、使用格式条款较多且问题也较多的“供用水、电、气；电信；邮政；有线电视使用；物业服务；旅游”等合同，其经营者应当在使用之日起 5 个工作日内报主管部门备案，并在其部门网站上公示该合同文本，听取社会意见，公示期不少于 15 个工作日，否则将被责令限期改正，仍不改者处 5 万元罚款。

The Regulations of Shenzhen Special Economic Zone on Standard Contract Clauses ("Regulations") will take effect as of August 1. According to the provisions of the Regulations, contracts to supply water, electricity, gas, telecommunication service, postal service, cable TV service, property management service and travel service, which are closely connected to the interests of consumers in daily life and are available in different formats and have many problems shall be filed by the suppliers with the competent authorities within 5 working days beginning from the date of using the contract format, and publicize the contract context on their official websites to seek public comments. The publicizing period shall not be less than 15 working days, or otherwise they may be ordered to rectify within a time frame. Those failing to rectify are subject to CNY50, 000 fines.

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- **最高人民法院发布《关于铁路运输法院案件管辖范围的若干规定》（来源：最高人民法院网站，2012 年 7 月 31 日）**

SPC Promulgates the Several Provisions on the Jurisdiction of Railway Transport Courts (Source: www.court.gov.cn, July 31, 2012)

7 月 17 日，最高人民法院公布了《最高人民法院关于铁路运输法院案件管辖范围的若干规定》(《规定》)，自 2012 年 8 月 1 日起施行。根据《规定》，改制后的铁路运输法院刑事案件的管辖范围，除涉及铁路运输犯罪的各类公诉案件外，还包括有关刑事自诉案件；民事案件的管辖范围除涉及铁路运输、铁路安全、铁路财产等各类民事案件外，经驻在地高级人民法院指定管辖，铁路运输法院还可受理其他民事案件和执行案件。

On July 17, the Supreme People's Court ("SPC") promulgated the Provisions of the Supreme People's Court on the Jurisdiction of the Railway Transport Courts (the "Provisions"), effective as of August 1, 2012. According to the Provisions, after the system reform, railway transport courts have their jurisdiction extended to cover the relevant

privately prosecuted criminal cases in addition to different kinds of publicly prosecuted criminal cases. Other than various civil cases involving railway transport, safety and property, it may also accept other civil cases and execution of civil cases directed by the higher people's court at the locality of the railway transport courts.

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司法动态
JUDICIAL DEVELOPMENTS

- **最高院公布《最高人民法院关于税务机关就破产企业欠缴税款产生的滞纳金提起的债权确认之诉应否受理问题的批复》（来源：人民法院报，2012 年 7 月 12 日）**

  SPC Promulgates the Official Reply of Supreme People's Court on Whether to Accept the Lawsuits Lodged by Tax Authorities to Determine Their Creditor's Rights to the Late Fees of Tax Arrears Incurred by Bankrupt (Source: Supreme People's Court, July 12, 2012)

最高人民法院发布公告，公布了《最高人民法院关于税务机关就破产企业欠缴税款产生的滞纳金提起的债权确认之诉应否受理问题的批复》（《批复》），自 2012 年 7 月 12 日起施行。

The Supreme People's Court (the "SPC") has promulgated the Official Reply of Supreme People's Court on Whether to Accept the Lawsuits Lodged by the Tax Authorities to Determine Their Creditor's Rights to the Late Fees of Tax Arrears Incurred by Bankrupt Enterprises (the "Reply"), which took effect on July 12, 2012.

根据《批复》，税务机关就破产企业欠缴税款产生的滞纳金提起的债权确认之诉，人民法院应依法受理。依照企业破产法、税收征收管理法的有关规定，破产企业在破产案件受理前因欠缴税款产生的滞纳金属于普通破产债权。对于破产案件受理后因欠缴税款产生的滞纳金，人民法院应当依照《最高人民法院关于审理企业破产案件若干问题的规定》第六十一条规定处理。

According to the Reply, the people's courts shall accept the lawsuits lodged by tax authorities to determine their creditor's rights to the late fees of tax arrears incurred to bankrupt enterprises. According to the relevant provisions of the Enterprise Bankruptcy Law and the Law on the Administration of Tax Collection, the late fees incurred by the tax arrears prior to the acceptance of bankruptcy application shall be regarded as general creditor's rights in bankruptcy. The people's courts should apply Article 61 of the Provisions of the Supreme People's Court on Issues Concerning the Hearing of Enterprise Bankruptcy Cases when they are determining the issue of the late fees incurred by the tax arrears after the acceptance of bankruptcy application.

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- **最高人民法院将制定民间借贷司法解释（来源：中国法院网，2012 年 7 月 25 日）**

  The Supreme People's Court will prepare a judicial interpretation regarding private lending (Source: China Court Net, June 20, 2012)

最高人民法院近日在山东省威海市召开了全国部分法院民间借贷司法解释研讨会，专题研究最高人民法院民间借贷司法解释起草小组起草的征求意见稿。据统计，2011 年全国法院受理民间借贷案件已突破 60 万件，涉案标的额超过 1100 亿余元，同比增长 38.27%；今年上半年，全国法院受理的民间借贷案件数量达 37.6 万件，同比上升 24.78%。

The Supreme People's Court recently held a workshop in Weihai City, Shandong Province regarding a judicial interpretation for private lending, which was attended by some of the courts in the nation. The workshop focused on a study of the draft judicial interpretation for public comments prepared by the Drafting Group under the Supreme People's Court which is tasked to draft the judicial interpretation regarding private lending. According to statistics, the number of private lending cases accepted by the court system in the nation has topped 600,000 cases in 2011, involving claims of more than RMB 110 billion. It represents a year-on-year increase of 38.27%. In the first half of 2012, the number of private lending cases accepted by the court system in the nation reached 376,000 cases, a year-on-year increase of 24.78%.

最高人民法院民一庭庭长杜万华在会议上指出，当前审理民间借贷纠纷案件，必须要坚持几个原则：全力维护国家金融在宏观调控中的重要地位；全力支持国家投资、融资制度的改革，支持中小微企业的发展；严格依法审理好民间借贷纠纷案件；维护好社会主义道德，促进社会主义经济的健康发展。

Du Wanhua, the court president of the First Court of the Civil Bench under the Supreme People's Court, stated at the meeting that in adjudicating private lending disputes, the courts must abide by several principles at the present: making every endeavors to maintain the prominent role of national finance in macro-control; making every endeavors to support national reforms in investment and financing systems, support the development of mini-enterprise and SMEs; adjudicating private lending dispute cases strictly in accordance with laws; and safeguarding socialist morality and promoting sound development of socialist economy.

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仲裁动态
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- **域名争议解决程序调整（来源：中国国际经济贸易仲裁委员会，2012 年 7 月 17 日）**

  Domain name dispute resolution procedures adjusted (Source: China International

Economic and Trade Arbitration Commission, July 17, 2012)

中国国际经济贸易仲裁委员会网站 7 月 9 日消息，近日，亚洲域名争议解决中心和中国国际经济贸易仲裁委员会网上争议解决中心分别对其域名争议解决办法补充规则进行了修改，对相关域名争议解决程序进行了调整。就.com、.org、.net 等通用顶级域名争议解决程序而言，主要对成立专家组的有关规定进行了调整，并采用了新的案件费用表，修改后的补充规则将于 2012 年 7 月 26 日生效实施。就.cn、.中国、.公司、.网络等国家顶级域名争议解决程序而言，主要是取消了以有形书面形式提交投诉书或答辩书的规定，基本上采用了以电子形式进行域名争议解决程序，修改后的补充规则已于 2012 年 6 月 28 日生效实施。

Recently, the Asian Domain Name Dispute Resolution Centre and the Online Dispute Resolution Center of China International Economic and Trade Arbitration Commission amended their respective supplementary rules to domain name dispute resolution methods and adjusted the relevant domain name dispute resolution procedures. With respect to the top level domain name dispute resolution of .com, .org, and .net, the relevant rules of setting up expert panel were adjusted, and new case charge rate was adopted. The amended supplementary rules will take effective from July 26, 2012. With respect to national top level domain name dispute resolution procedures of .cn, .中国, .公司, .网络, the submission of complaint or defense in written form was cancelled and the domain name dispute resolution procedure were conducted mainly in electrical form. The amended supplementary rules have taken effect on June 28, 2012.

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典型案例
TYPICAL CASES

- **广药、加多宝争夺红罐装潢权（来源：中国证券报，2012 年 7 月 10 日）**

  Guangzhou Pharmaceutical Group and JDB Fight for the Packing Right of Red Cans (Source: www.cs.com.cn, July 10, 2012)

在加多宝提出撤销仲裁之后，“王老吉”商标归属之争尚无定论，红罐装潢权又成为广药集团和加多宝争夺的一个焦点。广药集团近日公开表示，红罐王老吉的红罐装潢是“王老吉”特有的包装装潢，加多宝凉茶侵犯了王老吉知名商品装潢权，广药集团已经向法院起诉并获立案。加多宝则称其享有红罐凉茶外包装的装潢权，广药如今声称外包装装潢权属于广药，并以装潢权为由继续市场宣传，颠倒黑白，误导消费者。

After JDB applied to revoke the arbitration award, the dispute of the "Wong Lo Kat" trademark is still undecided. The packing right of red cans becomes another hot dispute between Guangzhou Pharmaceutical Group and JDB. Recently, Guangzhou Pharmaceutical

Group announced that the red-canned Wong Lo Kat is the distinguished packing of Wong Lo Kat, and the JDB herbal tea had infringed the packing right of Wong Lo Kat, the famous brand. Guangzhou Pharmaceutical Group has lodged a lawsuit at the court. JDB claimed that it has the external packing right of red-canned herbal tea, and Guangzhou Pharmaceutical Group's claim of the external packing right and its continuous marketing based on the alleged packing right is distorting the truth and misleading consumers.

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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:

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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.