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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

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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.

目录
CONTENTS

立法新闻 LEGISLATIVE NEWS [1]

[1] 中国撤回对《联合国国际货物销售合同公约》所作保留声明

China withdrew reserve statement made for CISG

司法动态 JUDICIAL DEVELOPMENTS [1]

[2] 最高人民法院就融资租赁合同司法解释公开征求社会各界意见

SPC Seeks Public Comments on the Judicial Interpretation on Finance Lease Contracts

判例研究 CASE ANALYSIS [1]

[3] 政府不兑现优惠政策，是否属于法院民事案件受理范围？（作者：邓永泉）

Is the failure by a government to deliver promised preferential policies sued as a civil lawsuit? (By: Dennis Deng)

立法新闻
LEGISLATIVE NEWS

- **中国撤回对《联合国国际货物销售合同公约》所作保留声明（来源：商务部，2013 年 3 月 1 日）**

  China withdrew reserve statement made for CISG (Source: Ministry of Commerce, March 1, 2013)

近日，我国政府正式通知联合国秘书长，撤回对《联合国国际货物销售合同公约》（以下简称“《公约》”）所作“不受公约第十一条及与第十一条内容有关的规定的约束”的保留声明。日前，该撤回已正式生效。至此，我《合同法》与《公约》对于合同形式的规定及适用趋于统一。

Recently, the Chinese government formally notified the Secretary-General of the United Nations that it had withdrawn the reserve statement made for the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as the "CISG") stating not to be bound by Article 11 of the CISG and provisions relating to content of Article 11 of the CISG. The withdrawal has become effective. The provisions on and application of contract form as specified in the Contract Law of the People's Republic of China and the CISG have become consistent by far.

《公约》第十一条规定：销售合同无须以书面订立或书面证明，在形式方面也不受任何其他条件的限制，可以用包括人证在内的任何方法证明。根据该条，国际货物买卖合同可以用书面、口头或其他方式订立、证明，不受形式方面的限制。

Article 11 of the CISG specifies that a contract of sale need not to be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses. According to this article, contracts for the international sale of goods can be concluded and proved in writing, orally or by other means, and are not subject to any formal requirement.

Top

司法动态
JUDICIAL DEVELOPMENTS

- **最高人民法院就融资租赁合同司法解释公开征求社会各界意见（来源：最高人民法院网站，2013 年 3 月 13 日）**

  SPC Seeks Public Comments on the Judicial Interpretation on Finance Lease Contracts (Source: www.court.gov.cn, March 13, 2013)

2013 年 3 月 11 日，最高人民法院发布《最高人民法院关于审理融资租赁合同纠纷案件适用法律问题的解释（征求意见稿）》 ，现公开征求意见。

On March 11, 2013, the Supreme People's Court ("SPC") promulgated the Interpretation of the Supreme People's Court on the Applicable Laws for Trying Cases of Finance Lease Contract Disputes (Draft for Comments). The SPC is seeking public comments.

对于融资租赁合同的认定及效力，意见稿规定，人民法院应当根据合同法第二百三十七条的规定，结合租赁物的性质、租赁物的价值、租金的构成以及当事人的合同权利和义务，对是否构成融资租赁法律关系作出认定。对不构成融资租赁关系的情形，人民法院按其实际构成的法律关系处理。

With regard to the determination and validity of financial lease contracts, the Draft for Comments prescribes that the people’s courts shall, in accordance with Article 237 of the Contract Law and taking into account the nature and value of the leased item(s), composition of the rent and the contractual rights and obligations of the party(ies) involved, determine whether a legal relationship of a finance lease has been established. In circumstances where no finance lease relationship has been established, the people’s courts shall handle such cases based on the actual legal relationship established therein.

Top

判例研究
CASE ANALYSIS

Case Analysis on How Chinese Courts and Arbitration Institutes Decide Cases
判例研究—中国法院和仲裁机构如何判案

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- **政府不兑现优惠政策，是否属于法院民事案件受理范围？**
  Is the failure by a government to deliver promised preferential policies sued as a civil lawsuit?

【原　　告】 某房地产开发公司
【Plaintiff】 A Property Development Company

【被　　告】 某市政府
【Defendant】 A City Government

【背景情况】 原告承建市政基础设施，被告承诺给予原告优惠政策，但没有兑现。
【Background】 The Plaintiff contracted to build an infrastructure project, and the defendant offered preferential policies but failed to deliver them at last.

【一审法院】 黑龙江省高级人民法院：是
【Trial Court】 The Superior People's Court of Heilongjiang Province: Positive

【二审法院】最高人民法院：否。双方当事人在优惠政策制定和履行中地位不平等，不属于民法意义上的平等主体。相关的市政府办公会议关于优惠政策相关内容的纪要及其文件也不构成双方当事人平等协商共同签订的民事合同。
【Appeals Court】 The Supreme People's Court: Negative. The parties to the case do not constitute the parties with equal standing under the civil law due to their unequal footing in the formulation and implementation of the preferential policies. The meeting minutes of the working meetings of the municipal government of the city regarding the preferential policies and other documents do not constitute civil contracts between the parties based on equitable negotiation.

【作者点评】 原告风险控制措施：1. 与政府就优惠政策签订正式的民事合同。2. 通过政府指定的国有企业与政府合作。

【Author Comments】 Risk management for the plaintiff: 1) executing a formal civil contract with the city government regarding the preferential policy; 2) cooperating with the government via a state-owned company as designated by the government.

Top

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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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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；

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