

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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立法新闻 **LEGISLATIVE NEWS**

- 北京出台《北京市人民政府办公厅关于进一步规范房屋租赁市场稳定房屋租金工作的意见》（来源：新京报，2012 年 6 月 1 日）

Beijing Issues Opinions of the General Office of the People's Government of Beijing Municipality on Further Regulating the Housing Rental Market to Stabilize Housing Rent (Source: www.bjnews.com.cn, June 1, 2012)

5 月 31 日，北京下发《北京市人民政府办公厅关于进一步规范房屋租赁市场稳定房屋租金工作的意见》（《意见》）。《意见》规定，将鼓励市有关部门、各区县成立国有房屋租赁经营机构，集中开展房屋租赁经营。这意味着，今后，政府将成立官办“中介”，接受房主委托，收集房源，然后再出租给租房者。《意见》鼓励和盘活闲置房源进入房屋租赁市场。各区县政府应组织乡镇政府、街道办，以及居委会、村委会等基层组织，积极引导辖区各类闲置房屋用于出租。

On May 31, Beijing released the Opinions of the General Office of the People's

Government of Beijing Municipality on Further Regulating House Rental Market to Stabilize House Rent (the "Opinions"). As specified in the "Opinions", the relevant authorities at municipal level and all the districts and counties will be encouraged to establish state-owned house rental agencies to develop house rental operation in a centralized way, which means that government will establish state-owned "intermediaries" to accept the entrustment by house owners, collect house source information and lease houses to tenants. The Opinions encourage and motivate idle houses to enter house rental market. Governments of all the districts and counties shall organize grassroots organizations, such as town and township governments, street offices, neighborhood committees and village committees to actively guide the lease of the idle houses within their own jurisdiction.

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- 最高人民法院发布《关于审理买卖合同纠纷案件适用法律问题的解释》（来源：最高人民法院网站，2012年6月6日）

SPC Promulgates Interpretation on Issues Concerning the Application of Law in Deciding Disputes Arising from Sale & Purchase Agreement (Source: www.court.gov.cn, June 6, 2012)

6月5日，最高人民法院发布了《最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释》。司法解释规定，出卖人就同一普通动产订立多重买卖合同，在买卖合同均有效的情况下，买受人均要求实际履行合同的，应按照以下情形分别处理：先行受领交付的买受人请求确认所有权已经转移的，法院应予支持；均未受领交付，先行支付价款的买受人请求出卖人履行交付标的物等合同义务的，法院应予支持；均未受领交付，也未支付价款，依法成立在先合同的买受人请求出卖人履行交付标的物等合同义务的，法院应予支持。

On June 5, the Supreme People's Court (the "SPC") promulgated the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in Deciding Disputes Arising from Sale & Purchase Agreement. As specified in the Judicial Interpretation, in the event a seller concludes multiple sale contracts on common movable property, all of which are effective and all the buyers intends to perform their own contracts, the court shall deal with it as follows: if the buyer who has accepted the delivery requests for affirmation of the transfer of ownership, the court shall grant the affirmation; if no delivery has been made and the buyer who has already paid the contract price in advance wants the seller to perform its contractual obligations including the delivery of subject matter, the court shall allow the claim; and if the buyer has not paid the contract price and the subject matter has not been delivered, but the buyer whose contract has been concluded according to the law wants the seller to perform the contractual obligations including the delivery of subject matter, the court shall allow the claim.

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- 最高法就劳动争议案件司法解释征求反馈（来源：最高人民法院网站，2012年6月28日）

Supreme Court Seeks Feedback on Judicial Interpretations of Labor Dispute Cases

(Source: www.court.gov.cn, June 28, 2012)

最高人民法院（最高法）于 6 月 27 日发布《关于审理劳动争议案件适用法律若干问题的解释（四）（征求意见稿）》，于 7 月 28 日前公开向社会征求意见建议。征求意见稿规范了竞业限制条款具体内容和经济补偿标准，用人单位以“末位淘汰”等形式单方解除劳动合同应否支付赔偿金，外国人、无国籍人以及台港澳居民在中国大陆境内发生劳动争议后如何解决等问题。

On 27 June the Supreme People's Court (Supreme Court) promulgated the Interpretation of Several Issues Concerning the Application of Law in Labour Dispute Trials (IV) (Draft for Feedback) to seek public feedback till 28 July. The Draft for Feedback regulates issues such as details of non-competition clauses and economic compensation standards, whether employers need to pay compensation for unilaterally terminating labour contracts through "position elimination" and other means, how to solve labour disputes of foreigners, stateless persons and residents from Hong Kong, Macao and Taiwan within mainland China.

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司法动态 JUDICIAL DEVELOPMENTS

- 最高院民二庭负责人就《最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释》接受专访（来源：人民法院报，2012 年 6 月 6 日）

SPC official interviewed on Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in Hearing Cases Involving Disputes over Purchase and Sale Contracts (Source: Supreme People's Court, June 6, 2012)

2012 年 6 月 5 日，最高院召开新闻发布会，向社会公布《关于审理买卖合同纠纷案件适用法律问题的解释》（以下简称《解释》）。发布会后，最高院民二庭负责人就《解释》的出台背景和主要内容，接受专访。针对《解释》关于所有权保留问题所做的规定，该负责人表示，合同法第 134 条虽然对所有权保留制度作出规定，但过于原则和简略。该制度在实务操作中面临着诸如适用范围如何，当事人之间权利义务保护机制等亟待明确的问题。因此，《解释》的一个主要任务和内容就是要细化所有权保留制度，进一步提高该制度的实务操作性。为此，《解释》在第 34 条至第 37 条，通过 4 个条文、8 款规定对该制度作出了颇具操作性的具体解释。该负责人指出，《解释》的相关规定主要考虑了所有权保留制度的适用范围、出卖人权利的保护机制及其限制，以及买受人的回赎权等三方面的问题。

On June 5, 2012, the Supreme People's Court (SPC) held a press conference to release the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in Hearing Cases Involving Disputes over Purchase and Sale Contracts ("Interpretation"). After the conference, the person in charge of the Second Civil Division

of the SPC was interviewed on release background and main content of the Interpretation. In respect of retention of title specified in the Interpretation, the official said though the title retention system is stipulated in Article 134 of the Contract Law, it is too principled and sketchy. The system has problems in practical operation waiting to be clarified such as scope of application, right and obligation protection mechanism between the parties concerned. Therefore, one of the main tasks and contents of the Interpretation is to refine on the title retention system and further improve the practical operability of such system. To this end, the Interpretation makes specific and operable explanations on such system in four articles and eight paragraphs through Article 34 to Article 37. Besides, the official pointed out that the relevant provisions of the Interpretation mainly consider the issues on scope of application of the title retention system, seller right protection mechanism and restrictions, as well as buyer's right of redemption.

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- 中消协六省消协点评苹果维修合同不公平格式条款（来源：法制网，2012 年 6 月 20 日）

Six Provincial CCA Branches Criticize the Unfair Terms and Conditions in Apple Repair Contracts (Source: www.legaldaily.com.cn, June 20, 2012)

近日，有消费者反映《APPLE 维修条款》及《IPHONE 维修报告》中存在不公平合同格式条款。针对这一情况，中国消费者协会联合天津、北京、上海、重庆、江苏、山东等省市消费者协会共同发表点评意见。

Recently, some consumers have complained about the unfair contract clauses in the Apple Repair Terms and Conditions and the iPhone Repair Report. Therefore, China Consumers' Association (the "CCA"), together with its branches in Shanghai, Beijing, Tianjin, Chongqing, Jiangsu and Shandong, expressed their opinions.

意见中指出苹果手机维修有五大“霸王条款”。条款一：维修可用翻新件，旧件归苹果所有。条款二：维修造成产品损坏，仅赔偿维修费。条款三：凡因运输原因，造成的产品损坏不享受免费维修。条款四：修理后逾期未取机，视为放弃所有权，90 天后，苹果公司可公开或私下销售该产品，并无需对客户承担责任。条款五：自行限定责任范围。

The comments point out five major "unfair provisions" in respect of iPhone repair services. First, the refurbished may be used in repair, and the replaced shall be the property of Apple; second, only repair expense will be refunded in the event of repair-caused damage; third, no free repair is available for the product damaged for transport reasons; fourth, failure to collect the device after repair within a certain timeframe will be regarded as a waiver of ownership, and Apple may sell such device in public or private after 90 days without incurring any liability to the repair customers; fifth, Apple sets forth its liability limits on its own.

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仲裁动态

ARBITRATION DEVELOPMENTS

- 深圳国际仲裁院三分之一仲裁员来自境外（来源：中国商事仲裁网，2012 年 6 月 18 日）

One third of arbitrators of Shenzhen Court of International Arbitration come from abroad (Source: CCARB.org, June 18, 2012)

2012 年 6 月 16 日，深圳市政府举行粤港（前海）国际仲裁合作启动仪式暨深圳国际仲裁院揭牌典礼。正式挂牌的深圳国际仲裁院将建立以理事会为核心的法人治理结构。按照章程规定，理事会成员和仲裁员至少三分之一将由境外的知名专家担任，给予境外当事人更多的自主选择仲裁员的机会。同时，仲裁院将与前海管理局共同搭建国际仲裁合作平台，向香港和其他地区的著名国际仲裁机构开放。

On June 16, 2012, Shenzhen People's Government held the Hong Kong-Guangdong (Qianhai) International Arbitration Cooperation Launch Ceremony & Official Launch of Shenzhen Court of International Arbitration. Shenzhen Court of International Arbitration will adopt the corporate governance structure with the council as the core part. In accordance with the articles of association, at least one third of its council members and arbitrators shall be outbound well-known experts, and outbound parties are given more chances to independently choose arbitrators. At the same time, Shenzhen Court of International Arbitration and Qianhai administrative bureau will jointly set up a platform for international arbitration cooperation, which is open to the famous international arbitration courts in Hong Kong and other regions.

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典型案例

TYPICAL CASES

- 苹果以 6000 万美元了结在大陆的商标权官司

Apple reaches a US\$ 60 million settlement in its trademark dispute in Mainland China

7 月 2 日，据广东省高级人民法院官方透露，苹果公司与深圳唯冠就 iPad 商标案达成和解，苹果公司向深圳唯冠公司支付 6000 万美元。据了解，6 月 25 日，广东省高级人民法院向双方送达了民事调解书，该调解书于当日正式生效。6 月 28 日，苹果公司向该案一审法院深圳中院申请强制执行上述民事调解书，并最终于 7 月 2 日将涉案的 IPAD 商标正式过户。这意味着，苹果公司于深圳唯冠公司 iPad 商标权属纠纷案圆满解决。

According to official information from Guangdong Higher People's Court, Apple and

Shenzhen Proveiw reached a settlement over the iPad trademark case on July 2, 2012, under which, Apple will pay Shenzhen Proveiw US\$ 60 million. Guangdong Higher People's Court is said to have served a civil mediation paper on the disputing parties on June 25, 2012 with immediate effect. On June 28, 2012, Apple submitted an application to the first instance court, Shenzhen Intermediate People's Court, to request enforcement of the said civil mediation paper, and title to the disputed IPAD trademark was officially transferred to the name of Apple on July 2, 2012, signifying a successful resolution of the iPad trademark dispute between Apple and Shenzhen Proveiw.

据广东省高级人民法院透露，在 2 月 29 日公开审理此案后，承办案件的合议庭认为，为使纠纷双方利益最大化，调解是最佳选择。目前唯冠公司债权人已达数百人，其最大的财产估值主要集中在 iPad 商标的价值上，诉讼前，涉案商标已被数个银行申请轮候查封，一旦该商标价值发生贬损，将会导致债权人更大损失。广东高院称，高院最大限度的满足了双方当事人的合理诉求。业内人士称，该案成功调解实现了 iPad 商标的价值最大化，极大的保护了债权人的权益，开创了涉外商标权权属纠纷解决的新路径。

Guangdong Higher People's Court indicated that following a public hearing on February 29, 2012, the collegiate panel trying the case believed that mediation is the best way to maximize the interests of the disputing parties. Shenzhen Proveiw currently faces the claims of hundreds of creditors, and the value of its iPad trademark became the largest valuation item. Prior to the case, the disputed trademark has been put under alternate seal-up by numerous banks, and any impairment to the value of the iPad trademark will aggravate the losses of creditors. Guangdong Higher People's Court stated that it had endeavored to satisfy the legitimate claims of the disputing parties to the maximum extent. Industry insiders say the successful mediation maximized the value of the iPad trademark, and afforded greater protection for creditors by pioneering a new approach for resolution of foreign related trademark title disputes.

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- (3) 诉前调查取证；
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Preservation of evidence;
- (5) 财产保全；
Preservation of assets;
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Enforcement of effective legal instruments of the PRC courts;
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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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