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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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- **最高人民法院公布《关于个人独资企业清算是否可以参照适用企业破产法规定的破产清算程序的批复》（来源：人民法院报，2012 年 12 月 18 日）**

  SPC Announces the Reply on Whether the Sole Proprietorship May Be Liquidated by Referring to the Bankruptcy Liquidation Procedures under the Enterprise Bankruptcy Law (Source: rmfyb.chinacourt.org, December 18, 2012)

2012 年 12 月 11 日，最高人民法院公布《最高人民法院关于个人独资企业清算是否可以参照适用企业破产法规定的破产清算程序的批复》，自 2012 年 12 月 18 日起施行。

On December 11, 2012, the Supreme People’s Court ("SPC") announced the Reply on Whether the Sole Proprietorship May Be Liquidated by Referring to the Bankruptcy Liquidation Procedures under the Enterprise Bankruptcy Law which shall come into force as of December 18, 2012.

根据《中华人民共和国企业破产法》第一百三十五条的规定，在个人独资企业不能清偿到期债务，并且资产不足以清偿全部债务或者明显缺乏清偿能力的情况下，可以参照适用企业破产法规定的破产清算程序进行清算。

According to Article 135 of the Enterprise Bankruptcy Law of the People's Republic of China, where any sole proprietorship cannot repay the debts due and its assets are not enough to liquidate all the debts or are obviously insolvent, it may be liquidated by referring to the bankruptcy liquidation procedures under the Enterprise Bankruptcy Law.

根据《中华人民共和国个人独资企业法》第三十一条的规定，人民法院参照适用破产清算程序裁定终结个人独资企业的清算程序后，个人独资企业的债权人仍然可以就其未获清偿的部分向投资人主张权利。

According to Article 31 of the Law of the People's Republic of China on Sole Proprietorship Enterprises, after the people's court rules, by referring to the bankruptcy liquidation procedures, to close the liquidation procedures for the sole proprietorship, the creditors of the sole proprietorship may still make a claim for the unpaid against the investors.

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- **最高人民法院公布《关于审理道路交通事故损害赔偿案件适用法律若干问题的解释》（来源：最高人民法院网站，2012 年 12 月 21 日）**

SPC Promulgates the Interpretations on Several Issues on the Application of Law in Hearing the Cases of Compensation for Road Traffic Accident Damages (Source: www.spc.gov.cn, December 21, 2012)

2012 年 11 月 27 日，最高人民法院公布《最高人民法院关于审理道路交通事故损害赔偿案件适用法律若干问题的解释》（《解释》），自 2012 年 12 月 21 日起施行。

On November 27, 2012, the Supreme People's Court ("SPC") promulgated the Interpretations of the Supreme People's Court on Several Issues on the Application of Law in Hearing the Cases of Compensation for Road Traffic Accident Damages (the "Interpretations") which will take effect as of December 21, 2012.

《解释》规定醉酒驾驶、无证驾驶、吸毒后驾驶以及驾驶人故意制造交通事故，造成他人人身损害的，保险公司在机动车第三者责任强制保险（即交强险）责任限额范围内予以赔偿。"人身伤亡"是指机动车发生交通事故侵害被侵权人的生命权、健康权等人身权益所造成的损害，包括医疗费用与精神损害赔偿。

The Interpretations stipulate where any traffic accident results from drunken driving, unlicensed driving, or driving while intoxicated or is caused by the driver with intentional purpose, causing personal injury to other persons, the insurance companies shall compensate the damages within the scope of liability as set forth in the compulsory motor vehicle third party liability insurance (that is, the compulsory traffic insurance). The "personal injury" means the harm caused by the infringement upon the right to life, the right to health and other personal rights and interests caused by motor vehicle traffic accident, including medical expenses and mental damages.

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- **最高人民法院公布《关于审理侵害信息网络传播权民事纠纷案件适用法律若干问题的规定》（来源：人民法院报，2012 年 12 月 27 日）**

SPC Promulgates the Provisions on Several Issues Concerning the Application of Law for Trial of Civil Dispute Cases of Infringement of Information Networking Transmission Right (Source: rmfyb.chinacourt.org, December 27, 2012)

2012 年 12 月 17 日，最高人民法院公布《最高人民法院关于审理侵害信息网络传

播权民事纠纷案件适用法律若干问题的规定》，自 2013 年 1 月 1 日起施行。

On December 17, 2012, the Supreme People's Court ("SPC") promulgated the Provisions on Several Issues Concerning the Application of Law for Trial of Civil Dispute Cases of Infringement of Information Networking Transmission Right which will take effect as of January 1, 2013.

根据该司法解释，网络用户、网络服务提供者未经权利人许可，通过信息网络提供权利人享有信息网络传播权的作品、表演、录音录像制品，除法律、行政法规另有规定外，将构成侵害信息网络传播权行为。网络服务提供者在提供网络服务时，如果教唆或者帮助网络用户实施侵害信息网络传播权行为的，网络服务提供者需对网络用户侵犯权利人信息网络传播权的行为承担连带责任。

Pursuant to these Provisions, the provision by the network users or the network service providers of the works, performance, audio and video products with their information network transmission right enjoyed by the other right holders through the information network without the permit of the right holders will constitute infringement upon the information network transmission right, unless otherwise provided by the laws or administrative regulations. If the network service providers instigate network users to, or help them, infringe the information network transmission right when providing the network services, such network service providers shall bear joint and several liabilities for the network users' infringement of the information network transmission right.

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- **最高人民法院发布《关于修改后的民事诉讼法施行时未结案件适用法律若干问题的规定》（来源：最高人民法院网站，2012 年 12 月 31 日）**

SPC Promulgated the Provisions on Several Issues Concerning the Application of Law for Cases Pending upon Implementation of the Revises Civil Procedure Law (Source: www.spc.gov.cn, December 31, 2012)

2012 年 12 月 28 日，最高人民法院公布《最高人民法院关于修改后的民事诉讼法施行时未结案件适用法律若干问题的规定》（《规定》），自 2013 年 1 月 1 日起施行。

On December 28, 2012, the Supreme People's Court ("SPC") promulgated the Provisions on Several Issues Concerning the Application of Law for Cases Pending upon Implementation of the Revised Civil Procedure Law (the "Provisions") which will take effect as of January 1, 2013.

《规定》立足于指导各级人民法院依法妥善处理 2013 年 1 月 1 日未结案件，按照"实体从旧、程序从新"这一大陆法系和普通法系公认的法则，确立了 2013 年 1 月 1 日未结案件适用修改后的民事诉讼法的一般规则。

The Provisions establish the general rules on the application of the revised civil procedure law for cases pending on January 1, 2013 pursuant to the principle of the "old substantive law prevails over the new one and the new civil law prevails over the old one" that is generally accepted in the continental law system and common law system with the purpose to provide guidance on handling the cases pending on January 1, 2013 in a proper

manner.

《规定》共八条，主要内容为：首先，对民事诉讼法新旧衔接适用的一般规则和 2013 年 1 月 1 日前已完成的程序事项的效力问题作出规定；然后，明确规定了 2013 年 1 月 1 日前人民法院对案件已经完成的管辖和送达的效力、妨害民事诉讼行为处理规则的新旧衔接适用、诉前保全措施的新旧衔接适用、申请再审期间规定的新旧衔接适用、申请不予执行仲裁裁决案件的新旧衔接适用的具体规则。

The Provisions cover eight clauses. The main contents of the Provisions are: firstly, set out provisions on the general rules for the engagement and application of the new and old civil procedure law and the effectiveness of the procedural issues that are completed before January 1, 2013; secondly, specify the detailed rules on the jurisdiction and the effectiveness of the service for the cases closed by the people's courts before January 1, 2013, the engagement and application of new and old handling rules that impair the civil actions, the engagement and application of new and old preservation measures applied before the acceptance of the cases, the engagement and application of the new and old provisions on the time limits for application for re-trial, and the engagement and application of new and old rules for the cases of application for not enforcement of the arbitrational awards.

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- **商务部拟简化反垄断审查程序 审理期或低于 30 天（来源：人民网，2012 年 12 月 28 日）**

MOFCOM to Simplify Antimonopoly Examination Procedures to Complete Examination within 30 Days (Source: www.people.com.cn, December 28, 2012)

商务部反垄断局 27 日通报了今年反垄断工作情况。据商务部反垄断局局长尚明在会上介绍，今年截至目前，商务部附条件批准经营者集中案件 6 起，为 2008 年以来最多。为提高办案效率，经营者集中简易审查程序预计将于明年出台，届时相关案件审理期将有望低于 30 天。

On December 27, the Ministry of Commerce ("MOFCOM") had a briefing on their antimonopoly work in 2012. According to Shang Ming, the Director General of the MOFCOM Anti-Monopoly Bureau, the MOFCOM has conditionally approved six applications for concentration of undertakings so far, the most since 2008. To improve efficiency, the summary examination procedures for concentration of undertakings are expected to be issued next year, and the relevant case examination is expected to be complete within 30 days by then.

据介绍，自反垄断法实施以来，我国经营者集中反垄断审查案件数量从 2008 年的 17 件上升至目前每年 200 余件。截至目前，2012 年商务部共收到经营者集中申报 201 件，立案 186 件，审结 154 件，基本与去年持平。在今年已审结的案件中，无条件批准 142 件，占总量的 92%，立案后撤回 6 件，包括谷歌收购摩托罗拉案、沃尔玛收购纽海控股案在内的 6 起经营者集中被附加限制性条件批准。

It is introduced that after the antimonopoly law took effect, the number of annually

examined cases of concentration of undertakings has climbed from 17 in 2008 to current more than 200 every year. The MOFCOM has received 201 applications in 2012 for concentration of undertakings, and 186 cases were filed, among which 154 were closed, almost the same number of last year. Among these cases closed in this year, 142 cases were approved unconditionally, accounting for 92 percent; six cases were withdrawn after being filed; and six cases of concentration of undertakings, including Google's acquisition of Motorola and Wal-Mart's acquisition of Yihaodian equity, were approved conditionally.

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- **广东省深圳市公布《深圳国际仲裁院管理规定（试行）》（来源：法制网，2012 年 12 月 13 日）**

  Guangdong's Shenzhen Announces the Administrative Provisions of Shenzhen Court of International Arbitration (for Trial Implementation) (Source: www.legaldaily.com.cn, December 13, 2012)

12 月 12 日，广东省深圳市政府常务会议审议通过的《深圳国际仲裁院管理规定（试行）》正式公布，标志着中国第一个对仲裁机构的专门立法在深圳经济特区诞生。

On December 12, the Administrative Provisions of Shenzhen Court of International Arbitration (for Trial Implementation) (the "Provisions") adopted at the executive meeting of the Shenzhen government of Guangdong province was officially announced, marking the release of the first Chinese specific legislation related to arbitration institutions in Shenzhen.

《规定》规定，深圳国际仲裁院应当根据有关法律法规和本规定,结合深圳经济特区和前海合作区的实际，借鉴国际商事仲裁的先进制度,创新争议解决机制,制定仲裁规则、调解规则、谈判促进规则、专家评审规则和其他形式的争议解决规则,为境内外当事人提供选择。应当建立与境外仲裁机构的合作机制，可以为境外仲裁机构在境内开展仲裁活动提供仲裁庭审设施,并可以提供一定的程序协助。

According to the Provisions, the Shenzhen Court of International Arbitration ("SCIA") shall, in accordance with the relevant laws and regulations and the Provisions in light of the actual situation of Shenzhen Special Economic Zone and Qianhai Cooperation Area, innovate dispute resolution mechanism, and formulate arbitration rules, meditation rules, negotiation promotion rules, expert review rules and other dispute resolution rules with reference to the advanced system of international commercial arbitration to provide alternatives to domestic and foreign involved parties. It shall also establish the mechanism for cooperating with overseas arbitration institutions to provide certain procedure assistance and arbitration hearing facilities during the arbitration conducted by overseas arbitration

institutions in China.

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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：

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(2) 诉前法律咨询；
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(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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