

中国法通讯 China Law Newsletter

跨境争议解决 Cross-border Dispute Resolution

第 28 期 • Issue 28
2013 年 12 月 • December 2013

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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司法动态

JUDICIAL DEVELOPMENTS

- 最高法院将出台指导性案例适用细则（来源：法制网，2013 年 10 月 22 日）
SPC to Release Detailed Rules on Application of Guiding Cases (Source: www.legaldaily.com.cn, Oct. 22, 2013)

2013 年 10 月 19 日，最高人民法院相关负责人表示，指导性案例的适用细则已经成稿，目前正在征求相关方面意见，预计今年年底或明年年初出台。

On October 19, 2013, the related official of the Supreme People's Court ("SPC") said that the detailed rules on application of guiding cases have been drafted and opinions are being sought from the related parties at present. They are expected to be released at the end of this year or at the beginning of next year.

最高人民法院于 2010 年 11 月 26 日发布了《最高人民法院关于案例指导工作的规

定》(《规定》),又先后于 2011 年 12 月 20 日、2012 年 4 月 14 日、2012 年 9 月 26 日、2013 年 1 月 31 日发布了四批共十六个指导性案例。在指导性案例制度向前推进的过程中,指导性案例的效力问题也日益凸显。根据《规定》第七条,最高人民法院发布的指导性案例,各级人民法院审判类似案件时应当参照。“应当参考”的效力将会在指导性案例使用细则中予以明确。

The SPC released Provisions of the Supreme People's Court on Guiding Cases Works (the "Provisions") on November 26, 2010 and released 16 guiding cases in four batches respectively on December 20, 2011, April 14, 2012, September 26, 2012 and January 31, 2013. In the process of promoting the system of guiding cases, the problem of validity of the guiding cases is also showing. According to Article 7 of the Provisions, people's courts of all levels shall carry out trials of similar cases with reference to the guiding cases issued by the SPC. The validity of the term "reference" will be specified in the detailed rules on application of guiding cases.

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- 最高人民法院发布《关于切实践行司法为民大力加强公正司法不断提高司法公信力的若干意见》(来源:人民法院报,2013 年 10 月 29 日)

The Supreme People's Court Releases Several Opinions on Earnestly Implementing Justice for the People, Greatly Strengthening Judicial Justice and Continuously Enhancing Judicial Credibility (Source: rmfyb.chinacourt.org, Oct. 29, 2013)

近日,最高人民法院发布《最高人民法院关于切实践行司法为民大力加强公正司法不断提高司法公信力的若干意见》(《意见》)。

Recently, the Supreme People's Court released Several Opinions of the Supreme People's Court on Earnestly Implementing Justice for the People, Greatly Strengthening Judicial Justice and Continuously Enhancing Judicial Credibility (the "Opinions").

《意见》全文共计九部分,45 个条文。要求各级人民法院积极回应人民群众对于新时期人民法院工作的新要求和新期待,切实践行司法为民,大力加强公正司法,不断提高司法公信力,充分发挥人民法院的职能作用。

The Opinions, including nine parts with 45 articles, require the people's courts at all levels to actively response the new requirements and new expectations of the people for the work of the people's courts in the new period and to earnestly implement justice for the people, to greatly strengthen judicial justice, to continuously enhance judicial credibility and to give full play to the functions of the people's courts.

《意见》强调,各级人民法院要创新和落实便民利民措施,切实增强司法为民的实际效果。要认真注重司法审判工作与社会生活的融合,切实保障当事人行使诉讼权利,不断加强诉讼服务窗口建设,积极提高便民利民措施实效,有效强化对当事人的诉讼指导与帮助,切实降低当事人的诉讼成本。

The Opinions emphasize that the people's courts at all levels shall innovate and implement the measures for the convenience and benefit of the people and earnestly enhance the practical effect of justice for the people and that they shall carefully lay

emphasis on the combination of judicial adjudication and the social life, earnestly safeguard the parties to exercise the litigation rights and continuously enhance the establishment of service window so as to actively improve the practical effect of measures for the convenience and benefit of the people, to effectively strengthen the guidance on and assistance in the litigation of the parties and earnestly reduce the litigation costs of the parties.

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- 最高人民法院发布《关于新形势下进一步加强人民法院队伍建设的若干意见》（来源：人民法院报，2013 年 11 月 4 日）

SPC Releases Several Opinions on Further Strengthening Construction of the Team of the People's Courts under the New Situation (Source: rmfyb.chinacourt.org, Nov. 4, 2013)

近日，最高人民法院发布《关于新形势下进一步加强人民法院队伍建设的若干意见》（《意见》）。

Recently, the Supreme People's Court ("SPC") released the Several Opinions on Further Strengthening Construction of the Team of the People's Courts under the New Situation (the "Opinions").

《意见》全文共计 11 个方面，涵括新形势下加强人民法院队伍建设的重要性、紧迫性，人民法院队伍建设的指导思想、目标任务和基本要求，加强思想政治建设，加强正规化、专业化、职业化建设，加强领导班子建设，加强干部管理工作，加强法院党建工作，加强法院文化建设，加强基层基础建设，加强作风建设和廉政建设，加强组织领导等内容。

The Opinions contain 11 aspects in full, involving such contents as the importance and urgency of strengthening construction of the team of the people's courts under the new situation, the guiding thoughts, objectives and tasks as well as basic requirements of construction of the team of the people's courts, enhancing the ideological and political construction, reinforcing formalized, specialized and professional construction, intensifying construction of leading group, strengthening the cadre management, strengthening the Party's construction of the people's court, enhancing the cultural construction of the people's courts, strengthening the foundation construction of grassroots, strengthening the construction of work style and an incorruptible government and intensifying the organizational leadership.

《意见》明确强调，要以完善职业保障为重点加强职业化建设。具体措施为：推动完善职业保障政策措施，探索建立法官身份保障制度，加强人身安全保护，推动建立符合法官职业特点的工资福利制度，加强职业风险保障。

The Opinions specifically emphasize on reinforcing the professional construction with the improvement of job security as a key point. The specific measures are: pushing the perfection of the policies and measures for the improvement of job security, exploring the establishment of the judge security system to enhance the protection of personal safety and

promoting the establishment of the salary and welfare system conforming to the professional characteristics of the judge to intensify the guarantee of the professional risk.

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- 高检院发布民事诉讼监督规则（来源：检察日报，2013 年 11 月 20 日）

SPP Issued Rules for Supervision of Civil Procedures (Source: newspaper.jcrb.com, Nov. 20, 2013)

最高人民检察院发布《人民检察院民事诉讼监督规则（试行）》（以下简称《规则》），自 11 月 19 日起施行。

The Supreme People's Procuratorate has issued the Rules for the Supervision of Civil Procedures by People's Procuratorates (for Trial Implementation) (the "Rules") which will come into effect as of 19 November.

《规则》共 11 章 124 条，全面贯彻依法监督原则，对民事诉讼法的新规定进行了细化。在监督范围上，分别设置专章规定对生效判决、裁定、调解书的监督，对审判程序中审判人员违法行为的监督和在执行活动的监督，并细化了监督条件、监督方式和监督程序，确立了对人民法院民事审判活动和民事执行活动进行监督的新格局。在监督方式上，对民事诉讼法新规定的检察建议监督方式进行了分类，明确了不同类型检察建议的提出条件和程序。在监督手段上，对检察机关调查核实等内容进行了规范，明确了适用条件、审批程序和操作流程。

The Rules, consisting of 124 articles in 11 chapters, comprehensively implement the principle of supervision according to law and give more detailed explanations for new provisions in the Civil Procedure Law. As for the supervision scope, the Rules set out special chapters separately for the supervision of effective judgments, ruling and mediation statements, violations committed by judicial officers in trial procedures, and the execution of civil cases, with detailed conditions, methods and procedures for supervision, so as to establish a new structure for the supervision of civil proceedings and execution activities of people's courts. As for supervision methods, the Rules categorize the prosecutorial suggestions, a supervision method stipulated by the new Civil Procedure Law, into different types with different conditions and procedures. As for supervision means, the Rules specify the investigation and verification by people's procuratorates and other relevant contents, with clear application conditions, examination and approval procedures, and operation processes.

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- 最高法发布《意见》全面推进司法公开三大平台建设（来源：中国法院网，2013 年 11 月 28 日）

Supreme Court Issues Opinions to Promote Construction of Three Major Platforms for Judicial Publicity (Source: www.chinacourt.org, Nov. 28, 2013)

最高法日前发布《关于推进司法公开三大平台建设的若干意见》（以下简称《意见》），于发布之日起施行。

The Supreme People's Court has released the Tentative Provisions of Beijing Municipality on the Management of the Sale of Home-based Commercial Residential Buildings (Draft for Comments) (the "Opinions") with effect from the date of issuance.

《意见》包括五个部分 23 条，其主要内容如下：（一）推进审判流程信息全面公开。审判流程信息是人民法院在立案、庭审、听证、合议、宣判等诉讼过程中产生的各类静态和动态信息。（二）推进裁判文书信息全面公开。（三）推进执行信息全面公开。执行信息是人民法院在执行过程中产生的各类信息。

The Opinions consist of 23 articles in five parts, including the following content: (1) promoting to information about the trial process to be made fully public. Such information refers to various static and dynamic information produced during the legal proceedings including case filing, court hearing, hearing of witnesses, panel discussion, sentencing, etc. (2) promoting case judgments to be made fully public; (3) promoting law enforcement information to be made fully public. Such information refers to various types of information produced by the people's courts during the law enforcement process.

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- 最高法发布人民法院在互联网公布裁判文书的规定（来源：中国法院网，2013 年 11 月 28 日）

Supreme Court Issues Provisions on Online Issuance of Judgment Documents by People's Courts (Source: www.chinacourt.org, Nov. 28, 2013)

最高人民法院日前发布《关于人民法院在互联网公布裁判文书的规定》（以下简称《规定》）。《规定》将自 2014 年 1 月 1 日起施行。

The Supreme People's Court has released the Provisions on the Online Issuance of Judgment Documents by People's Courts (the "Provisions"), which shall take effect as of 1 January 2014.

《规定》确保人民法院在互联网公布裁判文书的全面性。《规定》第四条明确要求，除 4 种情形外，人民法院的生效裁判文书均应当在互联网公布。人民法院生效裁判文书不在互联网公布的 4 种情形是：1、涉及国家秘密、个人隐私的；2、涉及未成年人违法犯罪的；3、以调解方式结案的；4、其他不宜在互联网公布的。

The Provisions ensure the comprehensiveness of judgment documents released online by people's courts. Under Article 4 of the Provisions, the people's courts shall release online their effective judgment documents except in four circumstances, including: (1) those involving the State's secrets and personal privacy; (2) those involving the illegal conduct and crimes of minors; (3) those being settled by way of mediation; (4) others that are unsuitable to be released online.

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热点追踪 HOT TOPICS

- 最高法就光大证券内幕交易引发民事赔偿案指定管辖（来源：www.court.gov.cn，2013 年 11 月 20 日）

The Supreme Court Designates Jurisdiction for Civil Compensation Cases Caused by Everbright Securities' Insider Trading (Source: www.court.gov.cn, Nov. 20, 2013)

最高人民法院于 2013 年 11 月 15 日发布《关于光大证券股份有限公司“8?16”内幕交易引发的民事赔偿案件指定管辖的通知》（以下简称《通知》），就光大证券“8?16”内幕交易引发的民事赔偿案件，人民法院是否受理和如何管辖等问题作出明确规定。

On 15 November 2013 the Supreme Peoples' Court released the Circular on Designating Jurisdiction for Civil Compensation Cases Caused by Insider Trading in Everbright Securities on 16 August (hereinafter referred to as the Circular), which gives clear regulations on how the people's court should accept and handle civil compensation cases triggered by insider trading in Everbright Securities on 16 August.

《通知》明确指出，起诉人以中国证券监督管理委员会对光大证券公司作出的行政处罚决定为依据，以行政处罚决定确认的违法行为侵害其合法权益、导致其损失为由，采取单独诉讼或者共同诉讼方式向人民法院提起民事诉讼的，人民法院应当受理。

The Circular clearly points out that the people's court should accept civil lawsuits lodged by plaintiffs undertaking independent or joint action according to the administrative penalty decision made by CSRC against Everbright Securities, and on the grounds of losses of lawful interests caused by illegal activities confirmed by the administrative penalty decision.

《通知》特别强调，根据《中华人民共和国民事诉讼法》第三十七条的规定，指定省、自治区、直辖市人民政府所在的市、计划单列市和经济特区中级人民法院作为一审法院管辖。

Moreover, the Circular specially emphasises that, according to Article 37 of the Civil Procedure Law of the People's Republic of China, the intermediary people's courts in the municipalities, municipalities with independent planning and special economic zones where the governments of provinces, autonomous regions and centrally administered municipalities are located, have been designated as the courts of first instance.

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仲裁动态

ARBITRATION DEVELOPMENTS

- 中证协建立仲裁与调解对接机制（来源：上海证券报，2013 年 11 月 6 日）
SAC established the linkage mechanism of arbitration and mediation (Source: Shanghai Securities News, Nov. 6, 2013)

中国证券业协会 5 日与北京仲裁委员会签署战略合作框架协议。开展仲裁与调解对接合作后，经中证协调解中心调解成功的案件，当事人如有增强调解协议法律效力的要求，可以向北京仲裁委申请将调解协议制作成仲裁裁决书，赋予调解结果强制执行效力。

The Securities Association of China (SAC) on November 5 signed a strategic cooperation framework agreement with Beijing Arbitration Commission. After establishing the cooperation, for the cases successfully mediated by the mediation center of SAC, the parties intended to strengthen the legal validity of the mediation agreement may apply to Beijing Arbitration Commission for making such mediation agreement into an arbitration award, granting the compulsory enforcement power to the mediation results.

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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:

- (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.