

## 2013年中国十大法律事件 Countdown of China's Top Legal Developments of 2013

### 导言

2013年对于中国法律界是非常重要的一年。这一年里，一些与经济和生活息息相关的法律得以修改；这一年里，一些屡受争议的政策制度发生变化；这一年里，司法改革进一步推进；这一年，对于中国的仲裁机构和律师事务所是多事之秋……以下，我们为您呈现2013年中国十大法律事件。我们相信，这些事件对于推动中国法治进程具有深远的意义，某些事件或许会成为中国法治历程上的里程碑。

### Introduction

The year 2013 was a very significant year for legal developments in China. It has seen several judicial milestones, as well as many important changes to laws and regulations that may have profound impact on the Chinese economy and society. As we begin the new year, it is worthwhile to step back and take a look at changes that occurred over the last 12 months that will affect China's legal regime in 2014 and beyond. Without further ado, please find below our informal "countdown" of China's top 10 most significant legal developments of 2013.

### 10. 中国国际经济贸易仲裁委员会分家

位于北京的中国国际经济贸易仲裁委员会与上海分会、华南分会的纠纷，经过数月的纷争，以分家而告终。上海分会和华南分会分别更名为上海国际经济贸易仲裁委员会（上海国际仲裁中心）和华南国际经济贸易仲裁委员会（深圳国际仲裁院）。此后，最高法发布通知，要求各级法院将因为三家仲裁机构管辖权之争而引发的司法审查案件逐级上报至最高法，待由最高法答复后方可作出裁定。

### 10. CIETAC Shanghai and Shenzhen Split From CIETAC Beijing

Due to disputes between the China International Economic and Trade Arbitration Commission in Beijing (CIETAC) and its Shanghai and Shenzhen Sub-Commissions, both the Sub-Commissions have ended their affiliation with CIETAC and rebranded themselves. The former Shanghai Sub-Commission is now the Shanghai International Economic and Trade Arbitration Commission<sup>1</sup> and the former Shenzhen Sub-Commission is now the South China International Economic and Trade Arbitration Commission.<sup>2</sup> The disputes, which were ongoing for more than a year, created some uncertainty regarding enforcement of contracts specifying CIETAC Shanghai or CIETAC Shenzhen as the agreed venue for dispute resolution.

<sup>1</sup> Also referred to as the Shanghai International Arbitration Center

<sup>2</sup> Also referred to as the Shenzhen Court of International Arbitration

The Supreme People's Court issued a notice in September of 2013<sup>3</sup> in an effort to settle these disputes and has asked lower courts hearing any case involving claims relating to the CIETAC split to report to the Supreme People's Court before rendering a decision. Going forward, however, contracting parties may elect for arbitration of disputes to be handled through the rebranded Shanghai or Shenzhen tribunal if so desired.

## 9. 律师事务所面临海外诉讼和证监会审查

2013年5月，包括知名的瑞士信贷证券（Credit Suisse）和美银美林（Bank of America Merrill Lynch）在内的11家证券公司和金融机构向加拿大安大略省高等法院提起诉讼，指控两家中国律师事务所——通商律师事务所和竞天公诚律师事务所疏忽和失职。中国律师事务所被国际投行起诉在历史上尚属首次。此外，数家律师事务所因在为企业IPO提供法律服务时未能勤勉尽责遭到证监会的调查或处罚，反映出强化律师事务所等中介机构的责任将成为新一轮证券监管的重点。

## 9. Chinese Law Firms Under Siege

In May of 2013, 11 securities firms and financial institutions, including Credit Suisse Securities and Merrill Lynch, filed claims against two elite Chinese firms, Jingtian & Gongcheng Attorneys at Law and Commerce & Finance Law Offices, at the Ontario Superior Court of Justice in Ontario, Canada, alleging negligence and breach of duty in connection with their handling of certain public offerings for Chinese companies. The plaintiffs are seeking hundreds of millions of dollars in damages. This ongoing case is one of the first instances in which well-established Chinese law firms have been subject to a significant lawsuit initiated by international clients. Separately, last year, several Chinese law firms were also subject to investigation and/or penalty by the China Securities Regulatory Commission for failing to perform sufficient due diligence in connection with IPOs they were handling.

## 8. 中国开放“单独二胎”政策

中共十八届三中全会决定启动实施一方是独生子女的夫妇可生育两个孩子的政策，逐步调整完善生育政策，促进人口长期均衡发展。“单独二胎”正式开放后，各个省市将相应地修改地方性法规。如进展顺利，将于2014年全面实施“单独二胎”政策。“单独二胎”政策的实施使得我国生育政策再次发生改变，由70年代初的“只生一胎”，到本世纪初调整到“双独二胎”，再演变成现在“单独二胎”。生育政策的变化会对我国人口结构、经济和社会生活带来深远影响。

## 8. China Relaxes One-Child Policy

In November of 2013, China announced that it would ease its family planning regulations, known in the West as the “one-child policy.” The new rules stipulate that couples will be allowed to have two children if either one of the parents was an only child themselves. Previously, most couples residing in cities were allowed to have a second child only if both parents were only children. It is believed that the new policy will help address demographic problems caused by China's declining birth rate and may ultimately pave the way for further phasing out of China's controversial family planning controls.

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<sup>3</sup> Notice of the Supreme People's Court on Certain Issues Relating to Correct Handling of Judicial Review of Arbitration Matters, issued on September 4, 2013

## 7. 新《消费者权益保护法》出台

新《消费者权益保护法》于2013年10月通过讨论，并将于2014年3月生效。新法首次明确规定经营者采用网络、电视、电话、邮购等方式销售商品，消费者有权自收到商品之日起七日内退货，且无需说明理由，并且商家需全额退款。此外，新《消费者权益保护法》将关于经营者涉嫌消费欺诈的赔偿额度大幅提高，新法中还有维权纠纷举证责任倒置、网络交易平台承担先行赔付责任等特点，意图提升对消费者的保护力度。

## 7. Enhanced Protections for Chinese Consumers

The amended Consumer Protection Law enacted last December<sup>4</sup> focuses on protecting consumer rights and interests, with added regulations crafted in response to the recent boom in online shopping. For example, the new law allows e-shoppers to return purchased goods for a refund for any reason within seven days of an online transaction, though the customer must pay the return costs for the goods. Other changes include raising the standard compensation for fraudulent sales and imposing penalties for misuse of consumers' personal information. These changes come as China's government tries to steer the country towards increasing domestic consumption, as a means of fueling sustainable economic growth.

## 6. 《公司法》修正案于年底出炉

《公司法》修正案于2013年底经讨论通过。此次修改主要涉及三个方面：公司的设立制度、注册资本登记条件和登记事项的简化。根据该修正案，有限责任公司、一人有限责任公司、股份有限公司最低注册资本的限制将被取消；公司登记时无需出具验资报告。此外，注册资本的登记制度由实缴改为认缴，股东认缴出资额与公司实收资本都不再是有限责任公司的登记事项。此次《公司法》修正案是政府深化经济改革的重要举措之一，意在通过放宽、降低准入门槛，激励与吸引更多的创业。

## 6. New Amendments to China's Company Law

The most recent amendments to China's Company Law were approved last December and will take effect in March 2014.<sup>5</sup> The changes to the Company Law effected through these amendments include lowering registered capital requirements, shifting from a "paid-in" capital contribution regime to a "subscription" based regime, and simplification of various registration procedures. These amendments are a key part of the central government's economic reform plan, which aims to lower thresholds for market access and to encourage individual entrepreneurship.

## 5. 网络谣言转发500次可构成诽谤罪

根据最高法、最高检于2013年9月公布的最新解释，利用信息网络诽谤他人，同一诽谤信息实际被点击、浏览次数达到5000次以上，或者被转发次数达到500次以上的，应当认定为《刑法》第246条第1款规定的“情节严重”，可构成诽谤罪。此外，在信息网络上散布编造的虚假信息，并造成公共秩序严重混乱的，可以寻

<sup>4</sup> Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, issued on December 28, 2013

<sup>5</sup> Decision of the Standing Committee of the National People's Congress on Amending the Company Law of the People's Republic of China, issued on December 28, 2013

衅滋事罪定罪处罚。最高法解释说，此项规定意图厘清通过信息网络发表言论的法律边界，为惩治利用网络实施诽谤等犯罪提供法律标尺。该规定引起民众对言论自由、网络监督、微博反腐等话题的广泛讨论。

### 5. Crackdown on Chinese Bloggers

In China, people who post comments online that are deemed to be defamatory may now receive up to three years in prison if their statements are widely reposted. Bloggers may face criminal charges for defamation if the offending posts are either viewed by more than 5,000 internet users or “retweeted” more than 500 times, according to the latest judicial interpretation issued by the Supreme People’s Court and the Supreme People’s Procuratorate in September of 2013.<sup>6</sup> In addition, according to the same judicial interpretation, anyone who causes serious public disruption by knowingly disseminating false information online may also face criminal charge. The new interpretation has been criticized as having a chilling effect on China’s online communities, which have been used with increasing frequency as a platform for reporting suspected official malfeasance.

### 4. 劳动教养制度得以废除

2013年12月，随着十二届全国人大常委会第六次会议的召开，劳动教养制度被正式废除。劳动教养最为人诟病之处在于，公安机关无须经过法定程序，即可将尚不构成犯罪的违法之人投入劳教场所，剥夺其人身自由，最长可达四年。该制度的废除标志着我国又搬走一块巨大的人治自留地。

### 4. Labor Camps Abolished

China’s “re-education through labor” program was finally terminated according to a resolution adopted by the Standing Committee of the People’s Congress in December of 2013.<sup>7</sup> The controversial regime had enabled the police to send people into labor camps for up to four years without any due process. The abolition of these camps is an important advance for the rule of law and human rights protection in China, though some critics charge that the new resolution does not go far enough in dismantling the tools used by the authorities to silence political dissent.

### 3. 各级法院裁判文书网上公开

根据最高法于2013年11月的规定，全国各级法院从新的一年起，应当将所有的裁判文书公布于网上，以供公众查询。除涉及国家安全、个人隐私、未成年人违法犯罪等情形，所有的生效裁判文书都应当在中国裁判文书网进行公布。最高法的该举措有利于提高司法的透明度，对法院独立行使审判权亦有推动作用。

### 3. Chinese Courts to Publish Rulings Online

The public will have access to official rulings from courts at all levels beginning in 2014, according to an order issued by the Supreme People’s Court last November.<sup>8</sup> However, the spectrum of cases subject to

<sup>6</sup> Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Certain Issues Concerning the Application of Law in Handling Criminal Cases involving Defamation and Other Acts Committed through Information Networks, issued on September 9, 2013

<sup>7</sup> Resolution of the Standing Committee of the National People’s Congress on Approving the Decision of the State Council on Abolishing the Legislation Governing Re-Education through Labor, issued on December 28, 2013

<sup>8</sup> Provisions on the Online Issuance of Judgment Documents by People’s Courts, issued on November 21, 2013

online publication requirements does not include cases involving national security issues, sensitive personal matters or juvenile delinquency. The new protocol is intended to improve the transparency and impartiality of the Chinese judicial system. Previously, rulings of the PRC courts were generally not available to the public.

## 2. 中国（上海）自由贸易试验区成立

中国（上海）自由贸易试验区于2013年8月经国务院正式批准设立。试验区总面积为28.78平方公里，涵盖上海市外高桥保税区、外高桥保税物流园区、洋山保税港区和上海浦东机场综合保税区等4个海关特殊监管区域。上海自贸区探索建立以准入后监督为主，准入前负面清单管理为辅的体制改革。上海自贸区的成立预示着中国将进一步顺应全球经贸发展趋势，中国的经济体制改革将面临深水区。

## 2. China Launches Pilot-Free Trade Zone in Shanghai

The China (Shanghai) Pilot Free Trade Zone was launched in August of 2013, marking the beginning of a trial run for groundbreaking changes intended to free up cross-border commodity and capital flows in the world's second largest economy. The new free-trade zone covers an area of 28.78 square kilometers, integrating four existing bonded zones — Shanghai Waigaoqiao Free Trade Zone, Waigaoqiao Free Trade Logistics Park, Yangshan Free Trade Port Area and Pudong Airport Comprehensive Free Trade Zone. The establishment of the Shanghai free-trade zone has been widely hailed as a major step in the loosening of controls on China's markets and currency.

## 1. 薄熙来案公开审理

2013年8月，举世瞩目的薄熙来案在济南市中级人民法院一审公开开庭审理。9月22日，法庭对被告人薄熙来以受贿罪、贪污罪、滥用职权罪依法判处刑罚，数罪并罚，决定执行无期徒刑，剥夺政治权利终身。9月25日，山东省高级人民法院裁定驳回薄熙来上诉，维持一审原判。薄熙来案在政治上表明了不走老路的原则。在法律上，济南中院开创司法公开先例，通过官方微博及时全面地对庭审信息进行披露，受到国内外舆论的关注。

## 1. Trial of Bo Xilai Takes Center Stage

In August of 2013, the Jinan Intermediate People's Court handled the trial of Bo Xilai, formerly one of the most powerful men in China and a member of the Central Politburo. The trial attracted worldwide attention and widespread media coverage as Bo mounted an impassioned defense. In an unprecedented display of transparency, the trial court issued almost real-time posts on Sina Weibo (China's equivalent to Twitter) during the trial, so that the public could follow developments. On September 22, 2013, the court found Bo guilty of corruption and abuse of power, stripped him of all his assets, and sentenced him to life imprisonment. Given Bo's reactionary leanings and strong populist appeal, his trial and conviction marked an important victory for progressives within the Chinese Communist Party seeking to keep the country on its current track and avoid the possibility of another Cultural Revolution.

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