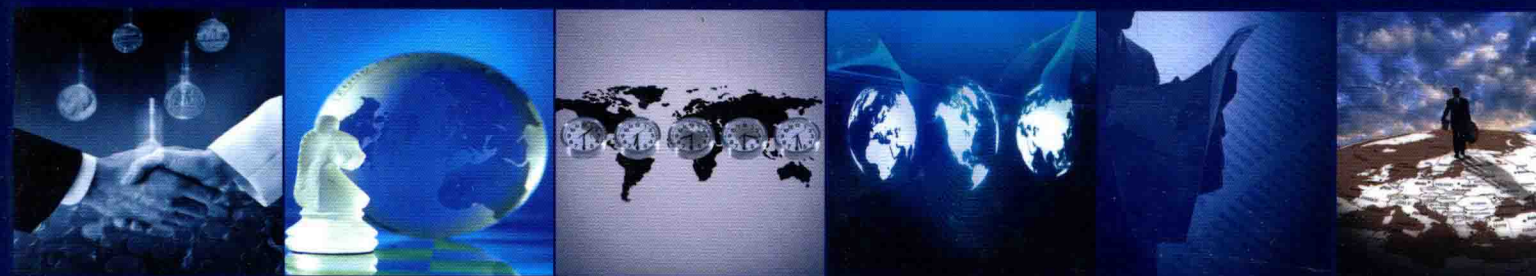


中国当代律师系列丛书

# 中国当代涉外律师

CONTEMPORARY CHINESE LAWYERS FOR FOREIGN-RELATED MATTERS



记录中国律师发展历史；

记录中国当代律师的心路历程与智慧的结晶！

当代法学泰斗江平教授

耄耋之年，赤子之心，题写总序言！



法律出版社  
LAW PRESS CHINA

# 中国当代涉外律师

CONTEMPORARY CHINESE LAWYERS FOR FOREIGN-RELATED MATTERS

赵伟 主编



法律出版社  
LAW PRESS CHINA

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# 中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION



World-Wide Commercial Arbitration Service

## 简介

中国国际经济贸易仲裁委员会（英文简称 CIETAC，中文简称“贸仲委”）是世界上主要的常设商事仲裁机构之一。贸仲委以仲裁的方式，独立、公正地解决经济贸易争议。

贸仲委设在北京，并在深圳、上海、天津和重庆分别设有分会，在香港特别行政区设有贸仲委香港仲裁中心。

五十多年来，贸仲委以其仲裁实践和理论活动为中国《仲裁法》的制定和中国仲裁事业的发展做出了突出贡献。贸仲委还与世界上主要仲裁机构保持着友好合作关系，以其独立、公正和高效在国内外享有盛誉。

## CIETAC 仲裁的特点

### ● 受案范围宽 程序国际化

自 1956 年成立以来，贸仲委共受理了万余件国内外仲裁案件。贸仲委既可受理涉外案件，也可受理国内案件；同时，其受理案件的范围也不受当事人行业和国籍的限制。近些年来，贸仲委平均每年的受案数量近千件，始终位居世界知名仲裁机构前列。

从《仲裁规则》和仲裁员的角度而言，贸仲委也实现了国际化。贸仲委第一套《仲裁规则》制定于 1956 年，之后七次进行了修改，其现行有效的《仲裁规则》自 2012 年 5 月 1 日起施行。贸仲委现行的《仲裁规则》与国际上主要仲裁机构的仲裁规则基本相同，在现行《仲裁法》允许的范围最大限度地尊重了当事人意思自治。此外，贸仲委的《仲裁员名册》中有近千名仲裁员，均为国内外仲裁或其他行业的知名专家。其中，外籍仲裁员近 300 名，分别来自 30 多个国家或地区。

### ● 独立公正

作为国际上主要的仲裁机构，贸仲委独立于行政机关，其办案不受任何行政机关的干涉。贸仲委的仲裁员，包括当事人选定的仲裁员，均不代表任何当事人，必须保持独立和公正。在仲裁程序中，各方当事人均有平等的机会陈述自己的意见。在过去几十年中，贸仲委的独立、公正、廉洁以及裁决的质量得到了国内外当事人的广泛赞誉。

### ● 仲裁程序快捷高效

在贸仲委的仲裁中，当事人可以约定仲裁程序如何进行。对于当事人提交的证据和陈述，贸仲委将以书面形式在当事人之间进行充分的交换，贸仲委的开庭审理一般只需 1 至 3 天。因此，贸仲委的仲裁程序具有快捷高效的特点，其受理的仲裁案件绝大多数均在仲裁庭组成之后 6 个月内结案。

### ● 仲裁费用相对较低

作为国际仲裁机构，贸仲委的仲裁收费标准在世界主要仲裁机构中相对较为低廉。与国内其他仲裁机构相比，同等条件下收费基本相同。与诉讼相比，由于仲裁一裁终局、程序快捷等特点，使得采用仲裁对当事人而言更为经济。

### ● 仲裁与调解相结合

仲裁与调解相结合是贸仲委仲裁的显著特点。该做法将仲裁和调解各自的优点紧密结合起来，不仅有助于解决当事人之间的争议，而且有助于保持当事人的友好合作关系。

仲裁和调解相结合可以在仲裁程序中进行。即经当事人请求或在征得当事人同意后，仲裁庭在仲裁程序进行过程中担任调解员的角色，对其审理的案件进行调解，以解决当事人之间的争议。如果任何一方当事人认为调解没有必要或者不会成功，可以随时要求终止调解，恢复仲裁程序。

此外，当事人在贸仲委之外通过调解达成和解协议的，可以凭当事人达成的由贸仲委仲裁的仲裁协议和他们的和解协议，请求贸仲委主任指定一名独任仲裁员，按照和解协议的内容作出仲裁裁决。此时，贸仲委可以视工作量的大小和实际开支的多少，减少仲裁收费。

### ● 专业的仲裁管理服务

贸仲委秘书局和分会秘书处现有 90 多名高素质的专业人员，对贸仲委受理的案件进行管理。在每个仲裁案件中，贸仲委秘书局或分会秘书处向当事人发出仲裁通知后，即会指定一名工作人员负责该案件的程序管理工作。贸仲委的工作人员大多具有法学硕士、博士学位，精通英语、法语或俄语等语言，并以积极向上的态度和勤勉尽责的工作作风为仲裁员和当事人提供优质的服务。

### ● 示范条款

#### 示范仲裁条款（一）

凡因本合同引起的或与本合同有关的任何争议，均提交中国国际经济贸易仲裁委员会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。

#### 示范仲裁条款（二）

凡因本合同引起的或与本合同有关的任何争议，均提交中国国际经济贸易仲裁委员会 \_\_\_\_\_ 分会（仲裁中心），按照仲裁申请时中国国际经济贸易仲裁委员会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。

# CIETAC

## WHY CIETAC ARBITRATION

The China International Economic and Trade Arbitration Commission (CIETAC) is one of the major permanent arbitration institutions in the world. CIETAC independently and impartially resolves economic and trade disputes by means of arbitration.

With its headquarters in Beijing, CIETAC also has sub-commissions in Shenzhen, Shanghai, Tianjin, Chongqing, and CIETAC arbitration center in Hongkong.

Throughout the past 50 years, CIETAC has made prominent contributions to the legislation of the Chinese Arbitration Law and the development of the arbitration practice in China, has maintained positive relations and cooperation with all the major arbitration institutions across the world and gained the reputation at home and abroad as an independent, impartial and efficient arbitration institution. In accordance with the New York Convention, CIETAC awards are recognized and enforced in more than 140 countries. CIETAC's nearly 20,000 concluded arbitration cases have involved parties from more than 70 countries and regions outside the Chinese mainland, and its awards have been recognized and enforced in more than 60 countries and regions. Since 1990, CIETAC's caseload has been one of the heaviest among the world's major arbitration institutions. In recent years, on average, CIETAC handled as many as 1,300 cases annually, involving parties from more than 50 countries and regions outside the Chinese mainland.

## Highlights of CIETAC's arbitration services.

### ● Broad jurisdiction and internationalized procedures

CIETAC accepts foreign-related and international cases, as well as domestic ones. Its scope of accepting cases is not limited by the nature of the parties' business or their nationalities. The domestic cases filed with CIETAC are typically multi-industry, trans-regional and interdisciplinary, with a trend towards an increase in those related to the new economy. CIETAC is gradually developing into one of the major arbitration institutions in the world dealing with complicated, large-claim, or foreign-related disputes.

CIETAC is independent of the administrative organs, and free from any administrative interference in handling cases. All parties have equal opportunities to present their cases during the arbitral proceedings.

### ● Efficiency

It generally takes between one and three days to conduct an oral hearing and most CIETAC arbitrations can be concluded within six months after the formation of the arbitral tribunal. The time typically taken by CIETAC to render an award in international and foreign-related cases is significantly shorter than that of other international arbitration institutions.

### ● Cost-effectiveness

As an international arbitration institution, CIETAC's arbitration fees for international and foreign-related cases are relatively low. Its arbitration fees for domestic

cases are at the same level as those of other arbitration institutions in China. Because of its finality and efficiency, arbitration is also more economical than litigation. Over 90% of CIETAC's arbitral awards are promptly honored by the parties. Fewer than one in a thousand of CIETAC's awards have been annulled or their enforcement rejected. Thus the parties save both time and money.

### ● Combination of arbitration with conciliation

A salient feature of CIETAC arbitration is the combination of arbitration with conciliation, a practice which is internationally known as the "Oriental Model". It not only encourages dispute resolution but also helps to maintain friendship and cooperation between the parties. It's an example that more and more foreign arbitration institutions are following.

### ● Sector-specific dispute resolution services

Expert adjudication is a major advantage of arbitration. To best use this advantage, CIETAC was the first institution in China to provide tailor-made dispute resolution services for parties in different trades. CIETAC has set up special committees on construction, finance, grain, leather, and commerce, and it offers tailor-made services for dispute resolution in specific trades to satisfy the particular needs. At the same time, CIETAC also engages in actively in developing alternative dispute resolution mechanisms in addition to arbitration.

## 中国国际经济贸易仲裁委员会

地址：北京市西城区桦皮厂胡同2号国际商会大厦6层

邮编：100035

电话：010-82217788

传真：010-82217766, 64643500

电子信箱：info@cietac.org

网址：http://www.cietac.org

## China International Economic and Trade Arbitration Commission

Address: 6/F, CCOIC Building, No.2 Huapichang Hutong, Xicheng District, Beijing, 100035, P.R. China

Tel: 86 10 64646688 86 10 82217788

Fax: 86 10 82217766/ 64643500

E-mail: info@cietac.org

Website: http://www.cietac.org



# 序

在有关律师的问题上，我发表过的文章不少，尤其是中国律师制度初创时期，在涉及律师制度的几乎方方面面，我都作过专题报告。

西方国家对律师是非常重视的，他们对人权的重视、对法治的重视，在很大程度上都表现在对律师作用的重视上。当个人被捕的时候，警察马上要说，你有请律师为自己辩护的权利。辩护的权利可以自己行使，也可以请别人行使。律师的权限也很大，无论是审判还是侦察期间，律师都可以参与其中。而且，律师在社会上，也得到了很高的尊重。

西方国家法律制度中，律师的地位和作用在审判中表现得尤为明显。律师和检察方是平等的，控辩双方是站在同样的位置上，而法官则代表法院，高高在上并且绝对中立。在审理过程中，控方从法律的角度提出了控诉被告人的理由，然后律师则要通过自己的工作，向法官和陪审团证明，控方的控诉是站不住脚的，使法官相信被告人的无辜或者轻罪。从法律地位上来说，控辩双方的地位是完全一样的。相较而言就这个司法状况来说，中国还远没有达到这么文明的高度。

律师制度的建立是为了维护国家法治，不仅是实质，而且也是形象。如果一个国家的律师都是在政府的管理下，没有任何自己的独立思考，那就说明国家法治有缺陷了，不能够限制政府的权力。一个国家的法治健全不健全，首先在于公权力是不是得到限制。而公权力对于律师的限制，影响律师对公权力的监督能不能自由进行。“律师兴则国家兴”，只有律师制度发达了，国家的民主、法制才能够更加完善。中国的律师制度恢复已经有三十多年了，三十多年来律师经历的甜酸苦辣，大家心里都有一本账。中国的司法改革有前进，也有倒退，在司法改革进程中，律师的作用是不能埋没的，他们为中国法治进程、人权保护的艰苦奋斗应该留在史册中！

尤为欣喜地看到法律出版社《中国当代律师》系列丛书收录了各领域的优秀律师、专业律师的事迹和经典的案件，透过一个个标志性的案件让我也看到了中国律师的希望！

耄耋之年，赤子之心，欣然提笔，是为序！



2015年3月10日



# Preface

I do have published a lot of articles related to the issues of lawyer. Especially in the start-up period of Chinese lawyer's system, I did many special reports involved in all aspects of the lawyer system.

In western countries, the emphasis on human rights and laws, to a large extent, can be concluded in the emphasis on attaching great importance to the role of lawyers. When people were arrested, the police would immediately say that you have the right to invite a lawyer for defending yourself. The right to defend oneself can be exercised both by others or himself/herself. Lawyers have great permissions to get involved no matter during the trial period or reconnaissance. Moreover, lawyers, in the society, have also been highly respected.

In the legal system of western countries, the status and role of the lawyer is particularly evidenced in the trial. Lawyers have equal position with the prosecution party. Prosecution and the defense stand in the same position while the judge is on behalf of the Court who is superior with absolute neutrality. In the course of a hearing, the prosecution party raises the reason of accusing defendant from the legal point of view, and then the lawyers will have to prove, through their work, to show the judge and jury that prosecution's indictment is untenable so as to make the judge believe the defendant is innocent or just has misdemeanor. From the legal status, the prosecution and the defense's position is exactly the same.

The lawyers system aims to safeguard the rule by law of the state. This is not only the substance but also the image. If a country's lawyers are all under the management of the government without any itself independent thinking, there must be defects in China's law government which cannot limit the power of government. A country's rule of law is perfect or not, the first important factor is whether the public authority is limited or not. The restrictions on lawyers affect lawyers' freely oversight of public authority. "Lawyers being respected, country can be prosperous". Only the lawyer system is developed, the country's democratic and legal system can be more perfect. It has been more than 30 years since the Chinese lawyer system recovery, during which the lawyers of China encountered too much life tastes. There is both advancement and retrogression in China's judicial reform. However, the role of lawyers should not be ignored. They have been struggling and making great efforts for the protection of human rights and the judicial reform process of the rule of law in China. They should be remembered in the annals!

I feel very glad to see that the Chinese Contemporary Excellent Lawyers by Law Press China has collected a lot of deeds and classic cases of many great and professional lawyers in several of fields to bring us the hope of Chinese layers through each of significant case.

To write this preface from the bottom of my heart at the venerable age with all best wishes!

Jiang Ping

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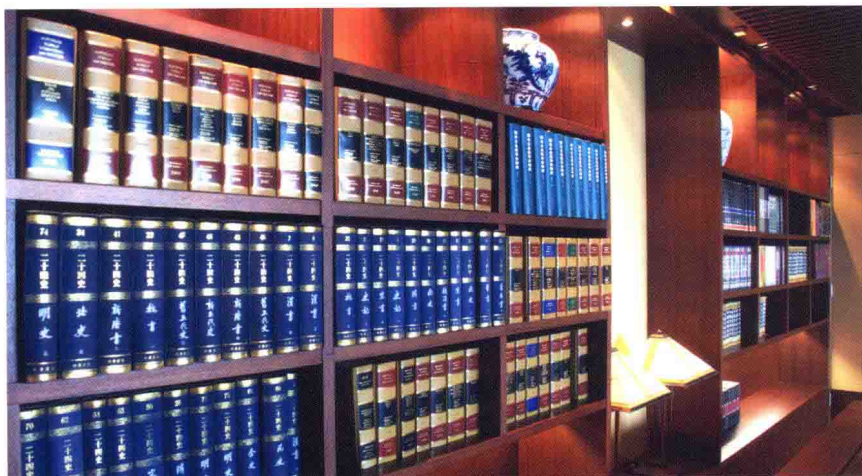
一、最具影响力中国涉外百强律师事务所、港  
    澳台律师事务所（风采）  
向驻华商会、使馆、外向型机构推选  
    100 位优秀涉外律师（风采）

KING & WOOD  
MALLESONS  
金杜律师事务所

北京财富中心地址：北京市朝阳区东三环中路7号财富中心写字楼A座40层  
(邮政编码：100020)

北京 WFC 地址：北京市朝阳区东三环中路1号环球金融中心办公楼东楼20层  
(邮政编码：100020)

电话：(010) 5878-5588 传真：(010) 5878-5599



#### 关于金杜

金杜律师事务所是在中国和亚洲地区居于领先地位的综合性律师事务所，拥有众多中外法律业务领域内公认的专家，致力于为中外客户提供优质高效的法律服务。我们在专业领域取得的杰出业绩和对中国法律的深入理解是我们为客户提供高质量的商业解决方案的保证。

经过近20年的成长和发展，金杜已经成为中国最大的律师事务所之一，现共有合伙人210名、法律专业人员近1000名。

2012年3月1日，金杜律师事务所与澳大利亚顶尖律师事务所万盛国际律师事务所结成紧密联盟，共同为客户提供包含中国法、澳洲法、香港法、英国法律法律服务。国际联盟将采用“金杜律师事务所 / King & Wood Mallesons”的统一品牌。

#### 办公机构

金杜总部设在北京，在内地设有10家分支机构（上海、深圳、成都、广州、重庆、杭州、天津、苏州、青岛、济南），并在香港、纽约、硅谷、东京设有办公室。

金杜立足于中国和亚洲市场，竭诚为客户提供全方位、国际水准的专业法律服务。

#### 金杜理念和业务领域

金杜的服务理念为“客户至上、团队合作、专业精神、追求卓越”。

金杜的法律服务业务分六大领域，分别是公司、银行及融资、资本市场和证券、国际贸易、争议解决和知识产权，几乎涵盖了法律服务的各个领域。为向客户提供高质量的法律服务，金杜实行专业化分工，金杜独特的一体化的统一运作体制能够实现金杜律师的集中统一调配，各业务部门的密切配合，确保了金杜法律服务的质量和效率。

金杜的具体业务领域有：银行融资、项目融资、并购融资、外商在华投资、境外投资、证券发行与上市、公司并购、国际贸易、海关事务、美国337条款调查、WTO争端解决、商标、专利、知识产权保护、知识产权诉讼、劳动法、反垄断、税务、公司合规业务、破产重整、资产证券化、诉讼、国际仲裁等。

#### 金杜团队

金杜追求卓越：卓越的人才、卓越的制度和卓越的法律服务。金杜自建所开始就本着广招人才的原则，大力吸收在各个专业领域卓有建树的优秀人才加入并成

为合伙人。与此同时，金杜尤其注重自身员工的培养，对那些经过多年勤奋努力卓有成绩、对金杜文化有着深刻认识的年轻律师大力提拔，并建立了一套系统的员工晋升政策和程序，以保证留住人才，鼓励进步，使金杜得以健康、持续的发展。

金杜绝大多数律师毕业于国内外著名的法律学府，其中很多律师都曾有过在国际知名律师事务所工作或执业的经历，部分合伙人、律师还曾在政府机关、大型国企、跨国公司和社会组织担任要职。

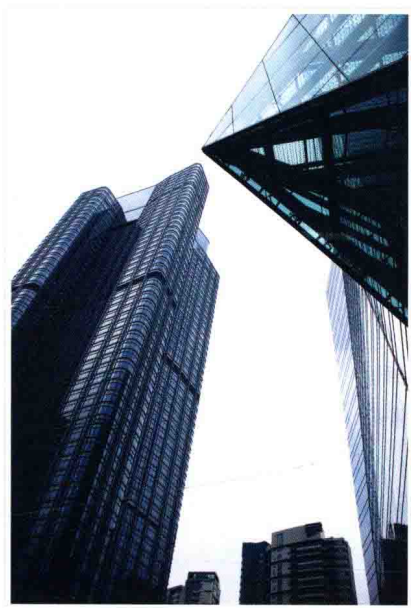
#### 金杜管理体制

金杜实行高效、统一的公司化管理体制，目前已建立了一套科学的综合管理体制，在人才引进、业务支持、内部协作、法律服务产品质量控制、国际交流合作、培训机制、市场拓展和服务网络规划等方面都建立了一套比较完备的体系和制度。作为国内法律业界领先的平台之一，金杜的管理体制能够集合具备多领域专业背景的律师团队，为客户提供全方位的法律服务，内部的专业化分工又使金杜律师各有所长，使金杜的客户在各法律领域都可以享受到真正的专家级、稳定、优质的服务。

#### 金杜社会责任

服务社会、回报社会是金杜人的责任，也是金杜文化的血脉和渊源。金杜在自身业务快速发展的同时不忘社会责任，不断探索新社会组织可持续有效的承担社会责任的发展机制。多年来，金杜投入大量的人力物力，组织、参与了多项社会公益活动，设立了“金杜公益基金会”，为社会赈灾积极募捐，将公益事业和社会责任制度化、系统化，确保了金杜公益活动的可持续发展。

金杜参与了多项代表国家利益的重大项目建设，如担任北京奥组委中国法律顾问；协助商务部代表中国政府解决WTO贸易争端；代表中国企业处理在欧美的反倾销反补贴等贸易争端，为中国企业“走出去”保驾护航。



# King & Wood Mallesons

**Fortune Plaza:** 40th Floor, Office Tower A Fortune Plaza, 7 Dongsanhuan Zhonglu, Chaoyang District Beijing 100020, China

**WFC:** 20th Floor, East Tower, World Financial Center 1, Dongsanhuan Zhonglu, Chaoyang, Beijing, 100020, PRC  
Tel: (010) 5878-5588 Fax: (010) 5878-5599

(PRC) are divided into six major practice areas: Corporate, Banking & Finance, Capital Markets & Securities, International Trade, Dispute Resolution and Intellectual Property, covering near all areas of legal services. In order to provide high quality legal services to clients, King & Wood Mallesons (PRC) adopts professional divisions. The unique and integrated operation system can realize centralized and unified deployment of lawyers within the firm. The close cooperation among each department ensures the quality and efficiency of the legal services provided by King & Wood.

The specific practices of King & Wood Mallesons (PRC) include banking and finance, project finance, M&A finance, foreign investment in China, outbound investment, securities issuance & listings, M&A of companies, international trade, customs affairs, U.S. Section 337 investigations, WTO dispute settlement, trademark, patent, protection of intellectual property, IP litigation, labor & employment, antitrust, taxation, corporate compliance, bankruptcy & restructuring, asset securitizations, litigation and international arbitration, etc.

## About King & Wood Mallesons (PRC)

King & Wood PRC Lawyers is a leading comprehensive law firm in China and Asia. With numerous recognized experts in domestic and international practice areas, we aim to provide quality and efficient legal services to Chinese and foreign clients. Our excellent performance in professional areas and deep understanding of Chinese laws allow us to provide clients with high quality business solutions.

With the growth and development in the past two decades, King & Wood has grown into one of the largest law firms in China with 210 partners and nearly 1000 legal professionals in total.

On March 1, 2012, King & Wood PRC Lawyers combined with the leading Australian law firm Mallesons Stephen Jaques, and began to jointly offer clients with legal services covering PRC law, Australian law, Hong Kong law and UK law. The combination also launched a new brand—King & Wood Mallesons.

## Offices

Headquartered in Beijing, King & Wood Mallesons (PRC) has 10 branches in mainland China: Shanghai, Shenzhen, Chengdu, Guangzhou, Chongqing, Hangzhou, Tianjin, Suzhou, Qingdao and Ji'nan, and also has offices in Hong Kong, New York, Silicon Valley and Tokyo.

Based on the market of China and Asia, King & Wood Mallesons (PRC) is dedicated to provide clients with multifaceted professional legal services of international standard.

## Philosophy and Practice

The service philosophy of King & Wood Mallesons (PRC) is that "Client First, Team Work, Professionalism, and Excellence".

Legal services in King & Wood Mallesons

## Team

King & Wood Mallesons (PRC) is committed to excellence: excellent talents, excellent system and excellent legal services. King & Wood Mallesons (PRC) insists on the principle of "broadly hiring the best people" since its establishment, and tries to attract prominent talents in each practice area to join and become partners. Meanwhile, King & Wood Mallesons (PRC) pays attention to the training of its employees, and actively promotes young lawyers who have made achievements after years of efforts and have a profound understanding of the culture of King & Wood Mallesons (PRC). Moreover, we have established a set of systematic promotion policies and procedures, so as to keep talents, encourage progress, and ensure healthy and continuous career development.

Most lawyers at King & Wood Mallesons (PRC) graduated from reputable law schools at home and abroad. Many of them have experiences or have practiced in leading international law firms, and some of the partners and lawyers have even taken important positions in government agencies, large state-owned enterprises, multinational corporations and social organizations.

## Management System

King & Wood Mallesons (PRC) carries out an efficient and unified management system, and has currently established a set of scientific and comprehensive management systems, as well as complete systems and mechanisms with respect to talent introduction, business support, internal cooperation, quality control of legal service products, international communication and cooperation, training system, market development and service network planning, etc. As one of the leading platforms in domestic legal profession, the management system of King & Wood Mallesons (PRC) can organize lawyer's team with professional background in multiple fields to provide clients with multifaceted legal services. Moreover, internal specialized division encourages lawyers at King & Wood Mallesons (PRC) to have their own expertise, which allows clients to enjoy stable and high-quality services in each area.

## Social Responsibility

Serving the society and repaying the society is the duty of King & Wood Mallesons (PRC), as well as the root of our culture. With the rapid development of business, King & Wood Mallesons (PRC) has never neglected its social responsibilities, and constantly explores a system for new social organizations to continuously and effectively take on social responsibilities. Over the years, King & Wood Mallesons (PRC) invested substantial human and material resources to organize and participate in various public interest activities. We have also established the "King & Wood Public Welfare Foundation", through which we actively donate for social relief causes, and institutionalize the firm's public interest affairs and social responsibilities efforts. It also ensures the sustainable development of public interest activities of King & Wood Mallesons (PRC).

King & Wood Mallesons (PRC) has participated in numerous major projects that represent the interest of the State. For instance, we have acted as the PRC legal counsel for the Beijing Organizing Committee for the Games of the XXIX Olympiad ("BOCOG"); assisted the Ministry of Commerce to resolve WTO trade disputes on behalf of the Chinese governments; resolved anti-dumping and anti-subsidy trade disputes in Europe and the United States on behalf of Chinese enterprises; and protected the interests of Chinese enterprises in the course of outbound investment.