

China Law Update

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[New Law Integrates China's Scattered Private International Law Rules For Foreign-Related Civil Relationships](#)

On October 28, 2010, the Standing Committee of the National People's Congress promulgated the "Law of the People's Republic of China on the Application of Law for Foreign-related Civil Relationships" (the "Law"). It will become effective on April 1, 2011. Until now, China's civil code had buried its choice-of-law provisions within the substantive laws, causing uncertainty and confusion. The Law established a clearer standard of what the applicable law is in foreign-related civil relationships. The most significant provisions of the Law are summarized below.

Contracts

For foreign-related contracts, China's contract law provisions allow parties to choose the applicable law that will govern disputes related to that contract. However, the general provisions of the Law provide that parties may now choose the governing law for the entire contract. More specifically for creditors' rights, if the parties do not choose the governing law, the laws that apply will be determined by 1) the habitual residence of the party who must perform the obligations of the contract, or 2) the laws with the closest relation to the contract.

Despite the emphasis of the Law on the ability of the parties to choose the applicable law, Article 4 limits such an ability by requiring that relevant mandatory provisions in the laws of the PRC trump the rules in this Law. For example, mandatory provisions exist in PRC's laws governing contracts for Chinese-foreign joint ventures, Chinese-foreign joint enterprises, and enterprises that involve developing natural resources in China. Article 2 reinforces the deference to other choice of law provisions in the PRC civil code to supplement gaps or to resolve conflicts with the Law.

Intellectual Property Rights

The Law dealt with foreign-related intellectual property rights for the first time. The Law requires that the applicable laws for the ownership and contents of intellectual property rights be determined by the place where protection of such rights is requested. As for the assignment and licensing of intellectual property rights, parties may choose the applicable law or defer to the standards set forth in the contract provisions of the Law.

Legal Persons

The civil acts capacity for legal persons and its affiliates is governed by the laws of the place of registration. The Law further clarified that if the legal person's primary place of business is different from the place of registration, then the laws of the primary place of business will apply. The primary place of business is equivalent to the habitual residence of the legal person. In addition, the same rule applies when determining the applicable law of the civil rights capacities, the institutional mechanisms, and the rights and obligations of shareholders of a legal person and its affiliates.

Personal Property Rights

The Law allows the parties to mutually agree upon the applicable law for personal property rights. If they fail to choose, the laws of the place where the property is located when the cause of action occurred apply. In the case of transporting property, the laws of the final destination of the property will apply if the parties made no choice as to the applicable law.

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