

# Decree of the President of the People's Republic of China

No. 36

It is hereby promulgated that the Law of the People's Republic of China on the Laws Applicable to Foreign-related Civil Relations has been adopted on 28 October 2010 at the 17th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China, which will come into effect as from 1 April 2011.

HU Jintao, President of the People's Republic of China  
28 October 2010

## LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE LAWS APPLICABLE TO FOREIGN-RELATED CIVIL RELATIONS

(Adopted at the 17th session of the Standing Committee of the 11th National People's Congress, 28 October 2010)

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### CHAPTER ONE GENERAL PROVISIONS

**ARTICLE 1** This law is formulated with a view to specifying the laws applicable to foreign-related civil relations, resolving foreign-related civil disputes fairly and safeguarding the legitimate rights and interests of the parties.

**ARTICLE 2** The laws applicable to foreign-related civil relations shall be specified in accordance with this law. Where other statutes have a special and different provision on the law applicable to a foreign-related civil relation, that provision shall be followed.

Where no applicable law to a foreign-related civil relation has been specified in this

law or other statutes, the law that is most closely connected with the foreign-related civil relation shall be applied.

**ARTICLE 3** The parties may explicitly choose the law applicable to their foreign-related civil relation in accordance with the provisions of this law.

**ARTICLE 4** Where a mandatory provision of the law of the People's Republic of China ("PRC") exists with respect to a foreign-related civil relation, that mandatory provision shall be applied directly.

**ARTICLE 5** Where the application of a foreign law will be prejudicial to the social and public interest of the PRC, the PRC law shall be applied.

**ARTICLE 6** Where a foreign law is applicable to a foreign-related civil relation and different laws are implemented in the different regions of that country, the law of the region that is most closely connected with the foreign-related civil relation shall be applied.

**ARTICLE 7** Limitation period is governed by the law that should be applicable to the foreign-related civil relation.

**ARTICLE 8** Classification of foreign-related civil relations is governed by the law of the forum.

**ARTICLE 9** The foreign law applicable to a foreign-related civil relation does not include the conflict rules of that country.

**ARTICLE 10** The foreign law applicable to a foreign-related civil relation will be ascertained by the relevant people's court, arbitration institution or the administrative agency. Where the parties have chosen a foreign law to be applicable, they shall adduce the law of that country.

Where the foreign law cannot be ascertained or the law of that country does not have a relevant provision, the PRC law shall be applied.

## **CHAPTER TWO CIVIL ENTITIES**

**ARTICLE 11** Civil capacity of a natural person is governed by the law of the place where the person habitually resides.

**ARTICLE 12** Civil competence of a natural person is governed by the law of the place where the person habitually resides.

Where a natural person engaging in civil activities is deemed incompetent pursuant to the law of the place where the person habitually resides but competent according to

the law of the place where the act is performed, the law of the place where the act is performed shall be applied, with the exception of those related to marriage, family or succession.

**ARTICLE 13** Declaration of missing or declaration of death are governed by the law of the place where the natural person habitually resides.

**ARTICLE 14** Items such as the civil capacity, civil competence, organizational structure and shareholder rights, etc. of a juridical person and its branches are governed by the law of the place of registration.

The law of the principal place of business of a juridical person may be applicable where such principal place of business is different from the place of registration. The principal place of business of a juridical person shall be deemed to be its habitual residence.

**ARTICLE 15** The content of personality right is governed by the law of the obligee's habitual residence.

**ARTICLE 16** Agency is governed by the law of the place where the act of agency occurs. However, the civil relation between the principal and agent will be governed by the law of the place where the agency relationship is established.

The parties may by agreement choose the law applicable to their relation of commissioned agency.

**ARTICLE 17** The parties may by agreement choose the law applicable to trust. Absent any choice by the parties, the law of the place where the trust asset locates or where the trust relation is established shall be applied.

**ARTICLE 18** The parties may by agreement choose the law applicable to their arbitration agreement. Absent any choice by the parties, the law of the place where the arbitration institution locates or the law of the seat of arbitration shall be applied.

**ARTICLE 19** Where national law is applicable pursuant to this law and a natural person has dual or multiple nationalities, the national law of the country where the natural person has his/her habitual residence shall be applied. Where no habitual residence can be found in any country of his/her nationalities, the national law of the country with which he/she is most closely connected shall be applied. Where a natural person is stateless or his/her nationality is unknown, the law of his/her habitual residence shall be applied.

**ARTICLE 20** Where the law of the habitual residence is applicable pursuant to this

law and a natural person's habitual residence cannot be ascertained, the law of his/her present residence shall be applied.

### **CHAPTER THREE      MARRIAGE AND FAMILY**

**ARTICLE 21** Conditions of marriage are governed by the law of the parties' common habitual residence. Absent common habitual residence, the law of their common nationality shall be applied. Absent common nationality, the law of the place where the marriage is concluded shall be applied, if the marriage is concluded in a party's habitual residence or in the country of a party's nationality.

**ARTICLE 22** Formalities of marriage are valid if they conform to the law of the place where the marriage is concluded, or the law of a party's habitual residence or nationality.

**ARTICLE 23** Personal relation of spouses is governed by the law of their common habitual residence. Absent common habitual residence, the law of their common nationality shall be applied.

**ARTICLE 24** In respect of spousal property, the parties may by agreement choose to apply the law of a party's habitual residence or nationality, or the law of the place where the main property locates. Absent any choice by the parties, the law of their common habitual residence shall be applied; absent common habitual residence, the law of their common nationality shall be applied.

**ARTICLE 25** Personal and property relations between parents and children are governed by the law of their common habitual residence. Absent common habitual residence, the law of a party's habitual residence or nationality, which better protects the rights and interests of the weaker party, shall be applied.

**ARTICLE 26** In respect of consented divorce, the parties may by agreement choose to apply the law of a party's habitual residence or nationality. Absent any choice by the parties, the law of their common habitual residence shall be applied; absent common habitual residence, the law of their common nationality shall be applied; absent common nationality, the law of the place where the agency responsible for completing the divorce formalities locates shall be applied.

**ARTICLE 27** Divorce decided by a court is governed by the law of the forum.

**ARTICLE 28** Conditions and formalities of adoption are governed by the laws of the habitual residence of the adopter and the adoptee. The effect of adoption is governed by the law of the adopter's habitual residence when the adoption occurs. The termination of adoption relation is governed by the law of the adoptee's habitual residence when the adoption occurs or by the law of the forum.

**ARTICLE 29** Support<sup>1</sup> is governed by the law of a party's habitual residence, or the law of a party's nationality, or the law of the place where the main property locates, which better protects the rights and interests of the person being supported.

**ARTICLE 30** Guardianship is governed by the law of a party's habitual residence or nationality, which better protects the rights and interests of the person under custody.

#### **CHAPTER FOUR SUCCESSION**

**ARTICLE 31** Statutory succession is governed by the law of the habitual residence of the deceased when he/she dies. However, statutory succession of immovable property is governed by the law where the immovable property locates.

**ARTICLE 32** A will is considered formed if the testamentary form conforms to the law of the habitual residence of the testator when he/she creates the will or when he/she dies, or to the law of his/her nationality, or to the law of the place where the act of creating the will occurs.

**ARTICLE 33** The effect of a will is governed by the habitual residence of the deceased when he/she creates the will or when he/she dies, or by the law of his/her nationality.

**ARTICLE 34** Matters of estate administration, etc. are governed by the law of the place where the estate locates.

**ARTICLE 35** Ownership of estate without a successor is governed by the law of the place where the estate locates when the deceased dies.

#### **CHAPTER FIVE RIGHTS *IN REM***

**ARTICLE 36** Rights *in rem* in immovable property is governed by the law of the place where the immovable property locates.

**ARTICLE 37** The parties may by agreement choose the law applicable to rights *in rem* in movable property. Absent any choice by the parties, the law of the place where the property locates when the legal fact occurs shall be applied.

**ARTICLE 38** The parties may by agreement choose the law applicable to the change of the rights *in rem* in movable property which is in transit. Absent any choice by the parties, the law of the destination of transportation shall be applied.

**ARTICLE 39** Valuable papers are governed by the law of the place where the rights

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<sup>1</sup> The concept of "support" used herein embraces marital maintenance and support of a minor or elderly dependent.

in a valuable paper are realized or by another law which is most closely connected to such valuable paper.

**ARTICLE 40** Pledge of a right is governed by the law of the place where such pledge is created.

## CHAPTER SIX OBLIGATIONS

**ARTICLE 41** The parties may by agreement choose the law applicable to their contract. Absent any choice by the parties, the law of the habitual residence of a party whose performance of obligation is most characteristic of the contract or the law that most closely connected with the contract shall be applied.

**ARTICLE 42** A consumer contract is governed by the law of the consumer's habitual residence. Where the consumer chooses the law of the place where the commodity or the service is provided, or where the business operator does not engage in any business activity in the habitual residence of the consumer, the law of the place where the commodity or service is provided shall be applied.

**ARTICLE 43** An employment contract is governed by the law of the place where the employee works. Where the working place of the employee cannot be ascertained, the law of the principal place of business of the employer shall be applied. Labour service placement may be governed by the law of the place where the service placement is arranged.

**ARTICLE 44** Tortious liability is governed by the law of the place of tortious act. Where the parties have common habitual residence, the law of their common habitual residence shall be applied. Where the parties have chosen by agreement an applicable law after the tortious act occurs, the agreement shall be followed.

**ARTICLE** Products liability is governed by the law of the habitual residence of the victim. Where the victim chooses the law of the place of tortfeasor's principal place of business or the law where the damage occurs, or the tortfeasor does not engage in any business activity in the victim's habitual residence, the law of the tortfeasor's principal place of business or the place where the damage occurs shall be applied.

**ARTICLE 46** Infringement via Internet or by other means of personality rights such as right to name, right to image, right of reputation and privacy right are governed by the law of the habitual residence of the victim.

**ARTICLE 47** Unjust enrichment and *Negotiorum gestio* are governed by the law chosen by the parties by agreement. Absent any choice by the parties, the law of their common habitual residence shall be applied. Absent common habitual residence, the law of the place where the unjust enrichment or *Negotiorum gestio* occurs shall be applied.

## **CHAPTER SEVEN INTELLECTUAL PROPERTY RIGHTS**

**ARTICLE 48** Proprietorship and content of intellectual property rights are governed by the law of the place where protection is sought.

**ARTICLE 49** The parties may by agreement choose the law applicable to the transfer and license of intellectual property rights. Absent any choice by the parties, the relevant provisions of this law on contract are applicable.

**ARTICLE 50** Liability for infringing intellectual property rights is governed by the law of the place where protection is sought. The parties may also choose to apply the law of the forum after the infringement occurs.

## **CHAPTER EIGHT MISCELLANEOUS PROVISIONS**

**ARTICLE 51** Where Article 146, Article 147 of the General Principles of Civil Law of the PRC and Article 36 of the Succession Law of the PRC are inconsistent with the provisions of this law, this law shall prevail.

**ARTICLE 52** This law shall take effect as from 1 April 2011.

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