

China enacting the Law on Choice of Laws to Foreign-related Civil Relations

Description

China has promulgated a very important law governing foreign-related legal matters, entitled “Law of the People’s Republic of China on Choice of Law to Foreign-related Civil Relations”, set to be effective as from April 1, 2011.

This new law is organized into eight chapters:

Chapter 1 General provisions;

Chapter 2 Civil subjects;

Chapter 3 Marriage and Family;

Chapter 4 Succession;

Chapter 5 Property Rights;

Chapter 6 Creditor Rights;

Chapter 7 Intellectual Property Rights;

Chapter 8 Miscellaneous provisions.

This new law will for sure have an important impact on foreign individual and business communities as it will give foreign persons better expectation or anticipation of the legal consequences of their conducts in China. For instance, cross-border marriages have been a commonplace phenomena throughout China. It has been unclear whether the parties can choose foreign laws to govern their pre-nuptial agreements. However, this new law makes it clear that the parties can choose the law in the place of the regular residence of each party, or the place of seat of the major properties.

With regard to inheritance of estates in China, this Law has further developed the relevant provisions in China Succession Law, and is now devoting two separate articles for dealing with the form and validity of wills and testaments. However, much is unclear pending further guidelines from China Supreme Court. For example, regarding validity of will, the law provides:

The laws at the habitual residence or of the state of nationality when the testament is made or at the time of death of the testator shall apply to the validity of a testament.

It is well a good possibility that in the same matter, different applicable laws may be applied with distinct outcomes. For example, some countries' estate laws have the "forced heirship" rules that may negate part of the arrangements made by the testator in the testament. How the Chinese courts will choose the final applicable law remains to be seen in the future.

It is clear that those simple articles in the Section of inheritance will cause a lot of trouble for heirs in practice as in cases involving foreign elements, foreign laws will be applied, which can be a big headache for China notary offices and Chinese courts.

However, as like most other Chinese laws, this law is very general in its wording and will definitely need implementation rules to be issued by China Supreme Court. We are sure that before the law comes into force, these judicial interpretations will be put into place then.

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