

Developments of China's Private International Law in the Past Decade

HUANG Jin

President, China Society of Private International Law
Professor, China University of Political Science and Law



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CHINA UNIVERSITY OF
POLITICAL SCIENCE AND LAW



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CONTENTS

1. **Milestone:** The Law of the People's Republic of China on the Application of Law for Foreign-related Civil Relationships (**LAL**)
2. **Judicial Interpretations** issued by the Supreme People's Court of the PRC (**LAL Judicial Interpretations (1)**) - *Facilitate* the Implementation of the LAL
3. **International Commercial Court System**
- *Promote* the Settlement of International Commercial Disputes

1. LAL– the Milestone

- *Put* an end to the history characterized by no separate and unified law on the application of law for foreign-related civil relationships
- *Innovate* China's system concerning the application of law for foreign-related civil relationships
- *Demonstrate* China's more openness through the people-oriented, people-friendly, confident and open-minded legislation



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1.1 LAL and the history

Regulations on the Application of Law in 1918

- 7 chapters divided into 27 articles
- marking the first statute of private international law in China
- one of the earliest statutes in the field of private international law in the world

LAL in 2010

- 8 chapters divided into 52 articles
- General Provisions, Civil Subjects, Marriage and Family, Inheritance, Property Rights, Creditor's Rights, Intellectual Property Rights and Supplementary Provisions.

1.2 Innovations

- a) People First Orientation - the “personal law” parts are placed before the “property law” and “debt law”
- b) Avoid loopholes - the principle of the most significant connection
- c) Outstanding and noticeable - the law of habitual residence
- d) Expand the scope of the choice of law - broaden the parties’ autonomy
- e) Direct application of mandatory provisions - for the first time
- f) Pioneering initiative - allow the parties to agree on the choice of the applicable law for movable property rights
- g) IP rights - the law of place where protection is requested

1.3 Openness

- a) adheres to the parallelism of internal and external laws
- b) equally protects the lawful rights and interests of internal and external parties
- c) promotes harmonious international civil relations
- d) seeks to resolve foreign-related civil disputes more fairly, equitably and reasonably
- e) people-orientation and protection of the interests of disadvantaged parties
- f) concise and clear as possible, easy to approach and understand

1.4 Further Discussion

- a) Relationship with other provisions concerning the application of the law
- b) Relationship between the new law and the old laws
- c) Fails to provide for certain contents
- d) Sequential order and logical structure
- e) Further simplified and optimized

2. LAL Judicial Interpretations (1)

2.1 How to **define** foreign-related civil relationships?

2.2 The relationship between the **new law and the old**

2.3 Application of **treaties and international practice**

2.4 Expansive application of the **Parties' Autonomy**

2.5 Direct application of **Mandatory Provisions**



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2. LAL Judicial Interpretations (1)

2.6 Evasion of law

2.7 Preliminary issues & the application of law where various relations are involved

2.8 Interpretation of habitual residence

2.9 Ascertaining and application of foreign law

2.10 Solution to Interregional conflict of laws



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2.1 How to Define Foreign-Related Civil Relationships?

Three-element Theory

- Subject
- Object
- Content

2.2 Relationship between the New Law and the Old Laws

- a) LAL- Art. 2 & 51
- b) LAL Judicial Interpretations (1)- Art. 2 & 3
- c) Legal Principles: non-retroactivity of law, *lex posterior derogat priori*, *lex specialis derogat generali* and no legal vacuum for the covered subject matters

2.3 Application of Treaties and International Practice

- a) Foreign Economic Contract Law of the PRC in 1985- Art. 6
- b) General Principles of Civil Law in 1986- Art. 142
- c) LAL Judicial Interpretations (1)- Art. 4 & 5
- d) Civil Code of the PRC in 2020 (effective date: 1 Jan. 2021)

2.4 Expansive Application of the Parties' Autonomy

- a) LAL Judicial Interpretations (1)- Art. 4
- b) LAL Judicial Interpretations (1)- Art. 5
- c) LAL Judicial Interpretations (1)- Art. 6
- d) LAL Judicial Interpretations (1)- Art. 7

2.5 Direct Application of Mandatory Provisions

a) LAL- Art. 4

b) LAL Judicial Interpretations (1)- Art. 8

2.6 Evasion of Law

a) LAL Judicial Interpretations (1)- Art. 9



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2.7 Preliminary Issues and the application of law where various relations are involved

a) LAL Judicial Interpretations (1)- Art. 10 & 11

b) LAL- Art. 18 & LAL Judicial Interpretations (1)- Art. 12

2.8 Interpretation of Habitual Residence

- a) LAL Judicial Interpretations (1)- Art. 13 & 14
- b) LAL- Art. 14(2)

2.9 Ascertaining and Application of Foreign Law

a) LAL- Art. 10

b) LAL Judicial Interpretations (1)-Art. 15 & 16

2.10 Solution to Interregional Conflict of Laws

a) LAL Interpretations (1)- Art. 17

For issues concerning the application of law in civil relations involving the Hong Kong Special Administrative Region and the Macao Special Administrative Region, this provision shall be applied as reference.

3. International Commercial Court System

- Background
- The **basic principles** for the establishment of an international commercial court system
- **Jurisdiction** of the International Commercial Courts
- International Commercial **Expert Committee**
- Construction of the **One-Stop** Dispute Resolution Mechanism
- Reform of the **Evidence System**

Background

- a) Central Leading Group on Comprehensive Deepening of Reform hosted by Chairman Xi Jinping reviewed and approved the Opinions on the Establishment of “Belt & Road” International Commercial Dispute Resolution Mechanism and Institutions. - 23 Jan. 2018
- b) President Zhou Qiang of the SPC appointed the first eight judges of the International Commercial Court. On the same day, the First and the Second International Commercial Court International Commercial Courts were launched in Shenzhen and Xi’an respectively, and officially inaugurated. - 28 June 2018

3.1 Basic principles

- a) Extensive Consultation, Joint Contribution and Shared Benefits
- b) Fairness, Efficiency and Convenience
- c) Respecting the Parties' Autonomy
- d) Diversified Dispute Resolution Methods

3.2 Jurisdiction of the International Commercial Courts

- a) Civil Procedure Law Art. 34, RMB 300 million, First-instance
- b) Deemed necessary, First-instance under High People's Court
- c) Significant National Impact, First instance
- d) “One-stop” Dispute Resolution Mechanism for Arbitration
- e) Others

3.3 International Commercial Expert Committee of the SPC

- a) In order to improve the professional level of international commercial trials, strengthen international exchanges and cooperation, facilitate and promote the trial work of International Commercial Court, it is decided by the SPC to establish the International Commercial Expert Committee (ICEC).
- b) This committee is composed of Chinese and foreign experts appointed by the SPC. They are all noble, fair and upright experts, who have profound knowledge in international trade, investment and other international commercial law fields and have high international reputation.



3.3 International Commercial Expert Committee of the SPC

- a) Thirty-one Chinese and foreign experts were appointed as the first and second group of members of the Expert Committee: 55 members.
- b) The two groups of expert members come from different countries and regions with different legal systems, including leaders of important international organizations, legal experts, eminent scholars, experienced judges, outstanding lawyers, etc. The makeup of the Committee reveals a broad representation in respect of both geographic region and professional field.

3.3 International Commercial Expert Committee of the SPC

- a) Preside over the mediation of international commercial cases
- b) Provide advisory opinions
- c) Provide opinions and suggestions on the development plan of the International Commercial Court
- d) Provide opinions and suggestions on the formulation of relevant judicial interpretations and judicial policies by the SPC
- e) Other matters

3.4 Construction of the One-Stop Dispute Resolution Mechanism

- a) Facilitate the access of the parties to a dispute to the resolution platform that organically links mediation, arbitration, and litigation
- b) CIETAC, SIETAC, SCIA, BAC, CMAC, CCPIT Mediation Center, SETC Mediation Center
- c) Mediated Agreement and Judgement
- d) Evidence, property or behavior preservation
- e) Enforce or annul arbitral awards

3.5 Reform of the Evidence System

- a) Facilitate litigation
- b) Removed in the form of judicial interpretation the mandatory requirements for notarization and authentication of extraterritorial evidence
- c) With the consent of both parties, the Chinese translation of the English evidence materials may not be furnished
- d) May use information network methods and make full use of the achievements of “Smart Court” construction in the country

3.6 Further Discussion

a) Difficulties, Problems and Shortcomings

b) Hainan First and Second Foreign-related Civil and Commercial Courts- 26

Sep. 2019

c) Suzhou International Commercial Court- 29 Nov. 2020



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HUANG Jin

huangjin@cupl.edu.cn

Thanks! 感谢!