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中华人民共和国涉外民事关系法律适用法

Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations

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《中华人民共和国涉外民事关系法律适用法》已由中华人民共和国第十一届全国人民代表大会常务委员会第十七次会议于 2010 年 10 月 28 日通过，现予公布，自 2011 年 4 月 1 日起施行。

The Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations, adopted at the 17th Session of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on October 28, 2010, is hereby promulgated and shall come into force on April 1, 2011.

中华人民共和国主席 胡锦涛

Hu Jintao, President of the People's Republic of China

第一章 一般规定

Chapter I General Provisions

第一条 为了明确涉外民事关系的法律适用，合理解决涉外民事争议，维护当事人的合法权益，制定本法。

Article 1 This Law is formulated for the purposes of clarifying the laws applicable to foreign-related civil relations, reasonably resolving foreign-related civil disputes, and safeguarding the legitimate rights and interests of the parties.

第二条 涉外民事关系适用的法律，依照本法确定。其他法律对涉外民事关系法律适用另有特别规定的，依照其规定。

Article 2 The law applicable to a foreign-related civil relation shall be determined in accordance with this Law. Where other laws contain special provisions on the application of laws to foreign-related civil relations, such provisions shall apply.

本法和其他法律对涉外民事关系法律适用没有规定的，适用与该涉外民事关系有最密切联系的法律。

Where neither this Law nor other laws provide for the law applicable to a foreign-related civil relation, the law that has the closest connection with the foreign-related civil relation shall apply.

第三条 当事人依照法律规定可以明示选择涉外民事关系适用的法律。

Article 3 The parties may, in accordance with the law, expressly choose the law applicable to a foreign-related civil relation.

第四条 中华人民共和国法律对涉外民事关系有强制性规定的，直接适用该强制性规定。

Article 4 Where the laws of the People's Republic of China contain mandatory provisions on a foreign-related civil relation, such mandatory provisions shall apply directly.

第五条 外国法律的适用将损害中华人民共和国社会公共利益的，适用中华人民共和国法律。

Article 5 Where the application of a foreign law would harm the public interests of the People's Republic of China, the law of the People's Republic of China shall apply.

第六条 涉外民事关系适用外国法律，该国不同区域实施不同法律的，适用与该涉外民事关系有最密切联系区域的法律。

Article 6 Where a foreign law applies to a foreign-related civil relation and different laws are implemented in different regions of that country, the law of the region that has the closest connection with the foreign-related civil relation shall apply.

第七条 诉讼时效，适用相关涉外民事关系应当适用的法律。

Article 7 The limitation of actions shall be governed by the law applicable to the relevant foreign-related civil relation.

第八条 涉外民事关系的定性，适用法院地法律。

Article 8 The characterization of a foreign-related civil relation shall be governed by the law of the forum.

第九条 涉外民事关系适用的外国法律，不包括该国的法律适用法。

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

第十条 涉外民事关系适用的外国法律，由人民法院、仲裁机构或者行政机关查明。当事人选择适用外国法律的，应当提供该国法律。

Article 10 The foreign law applicable to a foreign-related civil relation shall be ascertained by the people's court, arbitration institution, or administrative organ. Where the parties choose to apply a foreign law, they shall provide the law of that country.

不能查明外国法律或者该国法律没有规定的，适用中华人民共和国法律。

Where the foreign law cannot be ascertained or the law of that country contains no relevant provision, the law of the People's Republic of China shall apply.

第二章 民事主体

Chapter II Civil Subjects

第十一条 自然人的民事权利能力，适用经常居所地法律。

Article 11 The capacity for civil rights of a natural person shall be governed by the law of his or her habitual residence.

第十二条 自然人的民事行为能力，适用经常居所地法律。

Article 12 The capacity for civil conduct of a natural person shall be governed by the law of his or her habitual residence.

自然人从事民事活动，依照经常居所地法律为无民事行为能力，依照行为地法律为有民事行为能力的，适用行为地法律，但涉及婚姻家庭、继承的除外。

Where a natural person engaged in civil activities has no capacity for civil conduct under the law of his or her habitual residence but has such capacity under the law of the place of the act, the law of the place of the act shall apply, except in matters involving marriage, family, or succession.

第十三条 宣告失踪或者宣告死亡，适用自然人经常居所地法律。

Article 13 A declaration of disappearance or a declaration of death shall be governed by the law of the natural person's habitual residence.

第十四条 法人及其分支机构的民事权利能力、民事行为能力、组织机构、股东权利义务等事项，适用登记地法律。

Article 14 Matters such as the capacity for civil rights, capacity for civil conduct, organizational structure, and shareholders' rights and obligations of a legal person and its branches shall be governed by the law of the place of registration.

法人的主营业地与登记地不一致的，可以适用主营业地法律。法人的经常居所地，为其主营业地。

Where the principal place of business of a legal person is inconsistent with its place of registration, the law of the principal place of business may apply. The habitual residence of a legal person is its principal place of business.

第十五条 人格权的内容，适用权利人经常居所地法律。

Article 15 The content of personality rights shall be governed by the law of the right holder's habitual residence.

第十六条 代理适用代理行为地法律，但被代理人与代理人的民事关系，适用代理关系发生地法律。

Article 16 Agency shall be governed by the law of the place where the act of agency is performed; however, the civil relation between the principal and the agent shall be governed by the law of the place where the agency relationship arises.

当事人可以协议选择委托代理适用的法律。

The parties may choose by agreement the law applicable to an entrusted agency.

第十七条 当事人可以协议选择信托适用的法律。当事人没有选择的，适用信托财产所在地法律或者信托关系发生地法律。

Article 17 The parties may choose by agreement the law applicable to a trust. Absent such choice, the law of the place where the trust property is located or the law of the place where the trust relationship arises shall apply.

第十八条 当事人可以协议选择仲裁协议适用的法律。当事人没有选择的，适用仲裁机构所在地法律或者仲裁地法律。

Article 18 The parties may choose by agreement the law applicable to an arbitration agreement. Absent such choice, the law of the place where the arbitration institution is located or the law of the seat of arbitration shall apply.

第十九条 依照本法适用国籍国法律，自然人具有两个以上国籍的，适用有经常居所的国籍国法律；在所有国籍国均无经常居所的，适用与其有最密切联系的国籍国法律。自然人无国籍或者国籍不明的，适用其经常居所地法律。

Article 19 Where the law of the state of nationality applies under this Law and a natural person has two or more nationalities, the law of the state of nationality in which he or she has a habitual residence shall apply; if he or she has no habitual residence in any of the states of nationality, the law of the state of nationality with which he or she has the closest connection shall apply. Where a natural person is stateless or his or her nationality is unknown, the law of his or her habitual residence shall apply.

第二十条 依照本法适用经常居所地法律，自然人经常居所地不明的，适用其现在居所地法律。

Article 20 Where the law of the habitual residence applies under this Law and the habitual residence of a natural person is unknown, the law of his or her present place of residence shall apply.

第三章 婚姻家庭

Chapter III Marriage and Family

第二十一条 结婚条件，适用当事人共同经常居所地法律；没有共同经常居所地的，适用共同国籍国法律；没有共同国籍，在一方当事人经常居所地或者国籍国缔结婚姻的，适用婚姻缔结地法律。

Article 21 The conditions for marriage shall be governed by the law of the parties' common habitual residence; absent a common habitual residence, the law of the common state of nationality shall apply; where there is no common nationality and the marriage is concluded in the habitual residence or state of nationality of one party, the law of the place where the marriage is concluded shall apply.

第二十二条 结婚手续，符合婚姻缔结地法律、一方当事人经常居所地法律或者国籍国法律的，均为有效。

Article 22 The formalities of marriage shall be valid if they conform to the law of the place where the marriage is concluded, the law of the habitual residence of one party, or the law of the state of nationality of one party.

第二十三条 夫妻人身关系，适用共同经常居所地法律；没有共同经常居所地的，适用共同国籍国法律。

Article 23 The personal relationship between husband and wife shall be governed by the law of their common habitual residence; absent a common habitual residence, the law of their common state of nationality shall apply.

第二十四条 夫妻财产关系，当事人可以协议选择适用一方当事人经常居所地法律、国籍国法律或者主要财产所在地法律。当事人没有选择的，适用共同经常居所地法律；没有共同经常居所地的，适用共同国籍国法律。

Article 24 As to the property relationship between husband and wife, the parties may choose by agreement to apply the law of the habitual residence of one party, the law of the state of nationality, or the law of the place where the principal property is located. Absent such choice, the law of their common habitual residence shall apply; absent a common habitual residence, the law of their common state of nationality shall apply.

第二十五条 父母子女人身、财产关系，适用共同经常居所地法律；没有共同经常居所地的，适用一方当事人经常居所地法律或者国籍国法律中更有利于保护弱者权益的法律。

Article 25 The personal and property relations between parents and children shall be governed by the law of their common habitual residence; absent a common habitual residence, the law of the habitual residence or state of nationality of one party that is more favorable to the protection of the rights and interests of the weaker party shall apply.

第二十六条 协议离婚，当事人可以协议选择适用一方当事人经常居所地法律或者国籍国法律。当事人没有选择的，适用共同经常居所地法律；没有共同经常居所地的，适用共同国籍国法律；没有共同国籍的，适用办理离婚手续机构所在地法律。

Article 26 For divorce by agreement, the parties may choose by agreement to apply the law of the habitual residence or state of nationality of one party. Absent such choice, the law of their common habitual residence shall apply; absent a common habitual residence, the law of their common state of nationality shall apply; absent a common nationality, the law of the place where the institution handling the divorce formalities is located shall apply.

第二十七条 诉讼离婚，适用法院地法律。

Article 27 Divorce by litigation shall be governed by the law of the forum.

第二十八条 收养的条件和手续，适用收养人和被收养人经常居所地法律。收养的效力，适用收养时收养人经常居所地法律。收养关系的解除，适用收养时被收养人经常居所地法律或者法院地法律。

Article 28 The conditions and formalities of adoption shall be governed by the law of the habitual residence of the adopter and the adoptee. The effects of adoption shall be governed by the law of the adopter's habitual residence at the time of adoption. The termination of an adoptive relationship shall be governed by the law of the adoptee's habitual residence at the time of adoption or the law of the forum.

第二十九条 扶养，适用一方当事人经常居所地法律、国籍国法律或者主要财产所在地法律中更有利于保护被扶养人权益的法律。

Article 29 Maintenance shall be governed by the law, among the law of the habitual residence of one party, the law of the state of nationality, or the law of the place where the principal property is located, that is most favorable to the protection of the rights and interests of the person entitled to maintenance.

第三十条 监护，适用一方当事人经常居所地法律或者国籍国法律中更有利于保护被监护人权益的法律。

Article 30 Guardianship shall be governed by the law, among the law of the habitual residence or state of nationality of one party, that is most favorable to the protection of the rights and interests of the person under guardianship.

第四章 继 承

Chapter IV Succession

第三十一条 法定继承，适用被继承人死亡时经常居所地法律，但不动产法定继承，适用不动产所在地法律。

Article 31 Statutory succession shall be governed by the law of the decedent's habitual residence at the time of death; however, statutory succession to immovable property shall be governed by the law of the place where the immovable property is located.

第三十二条 遗嘱方式，符合遗嘱人立遗嘱时或者死亡时经常居所地法律、国籍国法律或者遗嘱行为地法律的，遗嘱均为成立。

Article 32 A will shall be established as to its form if it conforms to the law of the testator's habitual residence or state of nationality at the time the will is made or at the time of death, or the law of the place where the act of making the will is performed.

第三十三条 遗嘱效力，适用遗嘱人立遗嘱时或者死亡时经常居所地法律或者国籍国法律。

Article 33 The validity of a will shall be governed by the law of the testator's habitual residence or state of nationality at the time the will is made or at the time of death.

第三十四条 遗产管理等事项，适用遗产所在地法律。

Article 34 Matters such as the administration of an estate shall be governed by the law of the place where the estate is located.

第三十五条 无人继承遗产的归属，适用被继承人死亡时遗产所在地法律。

Article 35 The disposition of an estate to which no heir succeeds shall be governed by the law of the place where the estate is located at the time of the decedent's death.

第五章 物 权

Chapter V Real Rights

第三十六条 不动产物权，适用不动产所在地法律。

Article 36 Real rights in immovable property shall be governed by the law of the place where the immovable property is located.

第三十七条 当事人可以协议选择动产物权适用的法律。当事人没有选择的，适用法律事实发生时动产所在地法律。

Article 37 The parties may choose by agreement the law applicable to real rights in movable property. Absent such choice, the law of the place where the movable property is located at the time the legal fact occurs shall apply.

第三十八条 当事人可以协议选择运输中动产物权发生变更适用的法律。当事人没有选择的，适用运输目的地法律。

Article 38 The parties may choose by agreement the law applicable to a change of real rights in movable property in transit. Absent such choice, the law of the destination of the transportation shall apply.

第三十九条 有价证券，适用有价证券权利实现地法律或者其他与该有价证券有最密切联系的法律。

Article 39 Negotiable securities shall be governed by the law of the place where the rights embodied in the securities are realized, or by any other law that has the closest connection with the securities.

第四十条 权利质权，适用质权设立地法律。

Article 40 A pledge of rights shall be governed by the law of the place where the pledge is established.

第六章 债 权

Chapter VI Obligations (Creditor's Rights)

第四十一条 当事人可以协议选择合同适用的法律。当事人没有选择的，适用履行义务最能体现该合同特征的一方当事人经常居所地法律或者其他与该合同有最密切联系的法律。

Article 41 The parties may choose by agreement the law applicable to a contract. Absent such choice, the law of the habitual residence of the party whose performance of obligations is most characteristic of the contract, or any other law that has the closest connection with the contract, shall apply.

第四十二条 消费者合同，适用消费者经常居所地法律；消费者选择适用商品、服务提供地法律或者经营者在消费者经常居所地没有从事相关经营活动的，适用商品、服务提供地法律。

Article 42 A consumer contract shall be governed by the law of the consumer's habitual residence; where the consumer chooses to apply the law of the place where the goods or services are provided, or the business operator

carries out no relevant business activities in the consumer's habitual residence, the law of the place where the goods or services are provided shall apply.

第四十三条 劳动合同，适用劳动者工作地法律；难以确定劳动者工作地的，适用用人单位主营业地法律。劳务派遣，可以适用劳务派遣地法律。

Article 43 An employment contract shall be governed by the law of the place where the employee works; where the place of work is difficult to determine, the law of the employer's principal place of business shall apply. Labor dispatch may be governed by the law of the place from which the labor is dispatched.

第四十四条 侵权责任，适用侵权行为地法律，但当事人有共同经常居所地的，适用共同经常居所地法律。侵权行为发生后，当事人协议选择适用法律的，按照其协议。

Article 44 Tort liability shall be governed by the law of the place where the tortious act occurs; however, where the parties have a common habitual residence, the law of the common habitual residence shall apply. Where the parties choose the applicable law by agreement after the tortious act occurs, their agreement shall prevail.

第四十五条 产品责任，适用被侵权人经常居所地法律；被侵权人选择适用侵权人主营业地法律、损害发生地法律的，或者侵权人在被侵权人经常居所地没有从事相关经营活动的，适用侵权人主营业地法律或者损害发生地法律。

Article 45 Product liability shall be governed by the law of the habitual residence of the infringed person; where the infringed person chooses to apply the law of the tortfeasor's principal place of business or the law of the place where the damage occurs, or the tortfeasor carries out no relevant business activities in the habitual residence of the infringed person, the law of the tortfeasor's principal place of business or the law of the place where the damage occurs shall apply.

第四十六条 通过网络或者采用其他方式侵害姓名权、肖像权、名誉权、隐私权等人格权的，适用被侵权人经常居所地法律。

Article 46 Where personality rights such as the right of name, right of portrait, right of reputation, or right of privacy are infringed through the Internet or by other means, the law of the habitual residence of the infringed person shall apply.

第四十七条 不当得利、无因管理，适用当事人协议选择适用的法律。当事人没有选择的，适用当事人共同经常居所地法律；没有共同经常居所地的，适用不当得利、无因管理发生地法律。

Article 47 Unjust enrichment and negotiorum gestio shall be governed by the law chosen by the parties' agreement. Absent such choice, the law of the parties' common habitual residence shall apply; absent a common habitual residence, the law of the place where the unjust enrichment or negotiorum gestio occurs shall apply.

第七章 知识产权

Chapter VII Intellectual Property Rights

第四十八条 知识产权的归属和内容，适用被请求保护地法律。

Article 48 The ownership and content of intellectual property rights shall be governed by the law of the place where protection is sought.

第四十九条 当事人可以协议选择知识产权转让和许可使用适用的法律。当事人没有选择的，适用本法对合同的有关规定。

Article 49 The parties may choose by agreement the law applicable to the assignment and licensing of intellectual property rights. Absent such choice, the relevant provisions of this Law on contracts shall apply.

第五十条 知识产权的侵权责任，适用被请求保护地法律，当事人也可以在侵权行为发生后协议选择适用法院地法律。

Article 50 Tort liability for intellectual property rights shall be governed by the law of the place where protection is sought; the parties may also choose by agreement, after the tortious act occurs, to apply the law of the forum.

第八章 附 则

Chapter VIII Supplementary Provisions

第五十一条 《中华人民共和国民法通则》第一百四十六条、第一百四十七条，《中华人民共和国继承法》第三十六条，与本法的规定不一致的，适用本法。

Article 51 Where Articles 146 and 147 of the General Principles of the Civil Law of the People's Republic of China and Article 36 of the Succession Law of the People's Republic of China are inconsistent with the provisions of this Law, this Law shall apply.

第五十二条 本法自 2011 年 4 月 1 日起施行。

Article 52 This Law shall come into force on April 1, 2011.