THE SELECTED TOPICS OF PRIVATE INTERNATIONAL LAW IN CHINA

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The Basic Principles of Chinese Private International Law

As a result of China's integration into the World Trade Organization (WTO) on December 11, 2001, the development in the relations of foreign trade between Chinese and European partners has caused a great number of civil and commercial cases relating to the matters with "foreign element". The WTO entry has brought about unprecedented opportunities and challenges to the adjudication of foreign related civil and commercial cases in the People's Republic of China.

The People's Republic of China belongs to the countries with several different legal systems and in practice it means the problem of dealing with the issue of "inter-regional conflict of laws". Inter-regional conflict of laws is a new conception in private international law in China. It is a result of the conclusion of the Joint Declaration of the Government of People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong (1984) and the Joint Declaration of the Government of People's Republic of China and the Government of the Republic of Portugal on the Question of Macao (1987), and the promulgation of *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and *Basic Law of the Macao Special Administrative Region of the People's Republic of China*.

China has become from previous country with a single legal district to country with multiple legal regions. Such plural legal system includes socialist law in Mainland China, common law in Hong Kong based on British common law tradition and civil law in Macao as heritage of Portuguese settlement.

The different legal systems adopted in Mainland China, Hong Kong and Macao call

for question which regional law should be applied and whether courts in different regions will recognize and enforce the judgments of the courts of other regions. China does not have a formal federal system. Article 31 of the People's Republic of China Constitution declares that China may establish special administrative regions. These are the Hong Kong and Macao Special Administrative Regions. The most articles of the People's Republic of China Constitution will not be applicable in Hong Kong and Macao. Both special administrative regions continue to exercise independent legislative, judicial and adjudicate powers to maintain the prosperity and stability.

China does not have a private international code, but Chinese scholars have proposed *"Model Law of Private International Law of the People's Republic of China"*. China has not any legislative jurisdiction for making national uniform inter-regional conflict of laws and the legislative jurisdiction in this area belongs to Hong Kong and Macao. As a result, China, Hong Kong and Macao have their own private international law.

Choice of Law in Contracts

Choice of law in contracts determinates the substantive law which will be applicable on the dispute with foreign element. Choice of law issues raise in the People's Republic of China not only between China and other countries, but also between Mainland China and its administrative regions.

Chinese private international law is in the process of its development. There is no private international law code and with the relationships with foreign elements deal the 1999 Contract Law of the People's Republic of China and the 1986 Civil Code of the People's Republic of China.

Until 1980`s foreign law was not applied before the Chinese courts. After Mao Ce-tung's era China has started to move closer to the rest of the world economically and necessary legal provisions were adopted by Chinese government. The first choice of law rules were provided in the 1985 *Foreign Economic Contract Law*. The most important provision in choice of law in contracts is presented in the 1999 *Contract Law of China*. Under this instrument Chinese citizens may make contracts with foreign parties for the first time in the legal Chinese history.

Chinese choice of law in contracts is based on party autonomy. According to the Article 126 of the Contract Law, the parties of the contract feel free to decide the law applicable to the contract.

In the case that parties do not make choice of law on their contract, the law which has *"the closest relationship"* to the contract is to be applied. "The closest relationship" is in China neither defined in the 1986 Civil Code nor the 1999 Contract Law and the courts follow the interpretation of the Supreme People's Court.

Notwithstanding these rules, Chinese courts may apply the law of the place to which the contract was found to be the most closely related. Under this approach, China follows flexible approach in determination of governing law with subjective evaluation of the case by judge.

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