Law of the PRC on the Application of Laws to Foreign-Related Civil Relations

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purpose of specifying the application of laws to foreign-related civil relations, reasonably resolving foreign-related civil disputes, and protecting the lawful rights and interests of the parties concerned.

Article 2 — The laws applicable to foreign-related civil relations 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 special provisions shall prevail. Where this Law and other laws do not contain provisions on the application of laws to foreign-related civil relations, the law that has the closest connection with the foreign-related civil relation shall apply.

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

Article 4 — Where mandatory provisions of the laws of the People's Republic of China exist with respect to foreign-related civil relations, such mandatory provisions shall apply directly.

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

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

Article 7 — The applicable law for a limitation period shall be the law applicable to the foreign-related civil relation to which the limitation period pertains.

Article 8 — Classification of a foreign-related civil relation shall be determined in accordance with the law of the forum.

Article 9 — A foreign law to be applied to a foreign-related civil relation shall not include the conflict-of-laws rules of that foreign country.

Article 10 — A foreign law to be applied to a foreign-related civil relation shall be ascertained by the people's court, the arbitration institution, or an administrative organ. Where the parties have chosen to apply a foreign law, they shall provide the content of the law of that country. Where a foreign law cannot be ascertained, or the country concerned has no such statutory provisions, the law of the People's Republic of China shall apply.

Chapter II — Civil Subjects

Article 11 — The law of the habitual residence of a natural person shall be the applicable law to govern his or her capacity for civil rights.

Article 12 — The law of the habitual residence of a natural person shall be the applicable law to govern his or her capacity for civil conduct. Where a natural person engaging in civil activities is deemed to have no capacity for civil conduct or restricted capacity for civil conduct under the law of his or her habitual residence, but is deemed to have full capacity for civil conduct under the law of the place where the act was performed, the law of the place where the act was performed shall apply; however, this does not apply to acts concerning marriage, family, or succession.

Article 13 — The law of the habitual residence of a natural person shall be the applicable law to govern his or her declaration of disappearance or declaration of death. Where a natural person's property is located within the territory of the People's Republic of China, or a civil relation is formed within the territory of the People's Republic of China, his or her declaration of disappearance or declaration of death may be subject to the law of the People's Republic of China.

Article 14 — Matters concerning the capacity for civil rights, capacity for civil conduct, organizational structure, rights and obligations of shareholders and other matters of a legal person and its branch organs shall be governed by the law of the place of registration. Where the principal business place of a legal person is inconsistent with the place of registration, the law of the principal business place may apply. The habitual

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residence of a legal person is its principal business place.

Article 15 — The law of the habitual residence of a right holder shall be the applicable law to govern the content of his or her right of personality.

Article 16 — Agency shall be governed by the law of the place where the agency act was performed; however, the civil relationship between the principal and the agent shall be governed by the law of the place where the agency relationship was formed. The parties may choose the law applicable to entrusted agency by agreement.

Article 17 — The parties may choose the law applicable to a trust by agreement. Where no choice of law has been made by the parties, the law of the place of the trust property or the law of the place where the trust relationship was formed shall apply.

Article 18 — The parties may choose the law applicable to an arbitration agreement by agreement. Where no choice of law has been made by the parties, the law of the place where the arbitration institution is located or the law of the seat of arbitration shall apply.

Article 19 — Where the law of the state of nationality is to apply in accordance with this Law, and a natural person has two or more nationalities, the law of the state of nationality in which he or she has habitual residence shall apply; where 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 has no nationality or his or her nationality is unclear, the law of his or her habitual residence shall apply.

Article 20 — Where the law of the habitual residence is to apply in accordance with this Law, and the habitual residence of a natural person is unclear, the law of his or her current residence shall apply.

Chapter III — Marriage and Family

Article 21 — The conditions for marriage shall be governed by the law of the common habitual residence of the parties; where there is no common habitual residence, the law of the common state of nationality shall apply; where there is no common state of nationality, the law of the place where the marriage was concluded shall apply, provided that the marriage was concluded at the place where one party's habitual residence is located or in the state of one party's nationality. The formal validity of a marriage shall be governed by the law of the place where the marriage was concluded or the law of the habitual residence or the law of the state of nationality of either party.

Article 22 — Marriage formalities shall be valid if they comply with the law of the place where the marriage was concluded or the law of the habitual residence or the law of the state of nationality of either party.

Article 23 — The personal relations between husband and wife shall be governed by the law of their common habitual residence; where there is no common habitual residence, the law of their common state of nationality shall apply.

Article 24 — The property relations between husband and wife may be governed by the law chosen by the parties by agreement if either party's habitual residence or state of nationality or the place where the principal property is located is connected therewith. Where no choice of law has been made by the parties, the law of their common habitual residence shall apply; where there is no common habitual residence, the law of their common state of nationality shall apply.

Article 25 — The personal and property relations between parents and children shall be governed by the law of their common habitual residence; where there is no common habitual residence, the law of the habitual residence or the law of the state of nationality of either party that is more favorable to protecting the rights and interests of the weaker party shall apply.

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Article 26 — Divorce by agreement may be governed by the law chosen by the parties by agreement if either party's habitual residence or state of nationality is connected therewith. Where no choice of law has been made by the parties, the law of their common habitual residence shall apply; where there is no common habitual residence, the law of their common state of nationality shall apply; where there is no common state of nationality, the law of the place where the institution handling the divorce formalities is located shall apply.

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

Article 28 — The conditions for and formal validity of adoption shall be governed by the law of the habitual residence of the adopter and the adoptee, respectively. The effect of adoption shall be governed by the law of the habitual residence of the adopter at the time of adoption. The termination of an adoptive relationship shall be governed by the law of the habitual residence of the adoptee at the time of adoption or by the law of the forum.

Article 29 — Maintenance shall be governed by the law of the habitual residence, the law of the state of nationality of either party, or the law of the place where the principal property is located, whichever is more favorable to protecting the rights and interests of the maintenance obligee.

Article 30 — Guardianship shall be governed by the law of the habitual residence or the law of the state of nationality of either party, whichever is more favorable to protecting the rights and interests of the ward.

Chapter IV — Succession

Article 31 — Statutory succession shall be governed by the law of the habitual residence of the decedent at the time of death; however, the law of the state of nationality of the decedent at the time of death shall apply to the statutory succession of immovable property.

Article 32 — The formal validity of a will shall be governed by the law of the habitual residence, the law of the state of nationality, or the law of the place where the testamentary act was performed, whichever is sufficient to establish the formal validity of the will.

Article 33 — The effect of a will shall be governed by the law of the habitual residence or the law of the state of nationality of the testator at the time of making the will or at the time of death of the testator.

Article 34 — The administration of an estate and other related matters shall be governed by the law of the place where the estate is located.

Article 35 — Where there is no heir to an estate, the property of the estate located within the territory of the People's Republic of China shall be governed by the law of the People's Republic of China.

Chapter V — Property Rights

Article 36 — Rights in rem over immovable property shall be governed by the law of the place where the immovable property is located.

Article 37 — The parties may choose the law applicable to rights in rem over movable property by agreement. Where no choice of law has been made by the parties, the law of the habitual residence of the party obligated to deliver the movable property at the time of the occurrence of the legal fact shall apply.

Article 38 — The parties may choose the law applicable to any change in rights in rem over movable property in transit by agreement. Where no choice of law has been made by the parties, the law of the place of destination of the movable property in transit shall apply.

Article 39 — Securities shall be governed by the law of the place where the rights relating to the securities are to be realized or by another law that has the closest connection with the securities.

Article 40 — A pledge of rights shall be governed by the law of the place where the pledge was created.

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Chapter VI — Obligations

Article 41 — The parties may choose the law applicable to a contract by agreement. Where no choice of law has been made by the parties, the law of the habitual residence of the party whose performance of an obligation best characterizes the contract, or another law that has the closest connection with the contract, shall apply.

Article 42 — A consumer contract shall be governed by the law of the habitual residence of the consumer; where the consumer has chosen to apply the law of the place where goods or services are provided, or the business operator has no relevant business activities in the consumer's habitual residence, the law of the place where the goods or services are provided shall apply.

Article 43 — An employment contract shall be governed by the law of the place where the employee performs work; where the place where the employee performs work is difficult to determine, the law of the principal business place of the employer shall apply. Labor dispatch may be governed by the law of the place of dispatch.

Article 44 — Tort liability shall be governed by the law of the place where the tort was committed; however, where the parties have a common habitual residence, the law of their common habitual residence shall apply. Where the parties choose the applicable law by agreement after the occurrence of a tort, such agreement shall prevail.

Article 45 — Product liability shall be governed by the law of the habitual residence of the injured party; where the injured party has chosen to apply the law of the principal business place of the tortfeasor or the law of the place where the injury occurred, or the tortfeasor has no relevant business activities in the injured party's habitual residence, the law of the principal business place of the tortfeasor or the law of the place where the injury occurred shall apply.

Article 46 — Where a right of personality such as the right to name, right to portrait, right to reputation, or right to privacy is infringed upon via the internet or by other means, the law of the habitual residence of the injured party shall apply.

Article 47 — Unjust enrichment and negotiorum gestio (management of another's affairs) shall be governed by the law chosen by the parties by agreement. Where no choice of law has been made by the parties, the law of the common habitual residence of the parties shall apply; where there is no common habitual residence, the law of the place where the unjust enrichment or the negotiorum gestio occurred shall apply.

Chapter VII — Intellectual Property Rights

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

Article 49 — The parties may choose the law applicable to the transfer and licensing of an intellectual property right by agreement. Where no choice of law has been made by the parties, the relevant provisions of this Law on contracts shall apply.

Article 50 — Tort liability for infringement of an intellectual property right shall be governed by the law of the place where protection is sought; the parties may also choose the law of the forum by agreement after the occurrence of an infringement.

Chapter VIII — Supplementary Provisions

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

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

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