

## ARTICLES

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# Reshaping Private International Law in China: The Statutory Reform of Tort Conflicts

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*This article reviews the statutory reform of Chinese private international law from the perspective of tort conflicts which concludes that notwithstanding the significant improvement, the new Private International Law Act of China are fraught with various defects. In the field of tort, Article 44 are problematic in three aspects: first, the key term 'habitual residence' lacks an objective definition; second, the rationality of an automatic preference to the law of the common habitual residence over the lex loci delicti is open to doubt; third, there is little, if any, practicability to introduce the notion that the parties may choose the applicable law after the tort has happened. Moreover, there are a number of defects or problems with Article 45, Article 46 and Article 50 of the Act, respectively. What's more, the Act neglects some other important types of torts which call for special treatment, say, unfair competition, and environmental pollution, nuclear damage and traffic accidents. In the end, the article puts forward the corresponding suggestions for improvement.*

### Keywords

China's New Private International Law Act, Tort Conflicts, Lex Loci Delicti, Double actionability, Common Habitual Residence, Party Autonomy, Particular Torts

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## I. Introduction

The People's Republic of China adopted its first statute on Private International Law titled, "Act on the Application of Laws on Foreign-related Civil Relationships" (hereinafter Private International Law Act) at the seventeenth Session of the Standing Committee of the Eleventh National People's Congress ("NPC") on October 28, 2010. It came into force on April 1, 2011.<sup>1</sup> The enactment of the Private International Law Act is a historic event in Chinese legislative history, as it indicates China has modernized its conflict-of-law rules after many years of unremitting efforts made by legislators and scholars. More importantly, it represents a major political accomplishment in establishing "a socialist legal system with Chinese characteristics."<sup>2</sup>

The Private International Law Act contains 52 articles arranged under eight chapters, with headings that are indicative of their respective scope.<sup>3</sup> Among those 52 articles, there are four articles that deal with torts. In Chapter IV, Article 44 lays down the main rules on the law applicable to a tort claim, Articles 45 and 46 provide the choice-of-law rules for two particular torts respectively, i.e., product liability and internet defamation; In Chapter VII, Article 50 specifies the choice-of-law rules for infringement of intellectual property. Moreover, it is worth emphasizing that Article 51 in Chapter VIII states ambiguously that Article 146 of the General Principles of the Civil Law of the People's Republic of China ("GPCL") shall be replaced by the relevant articles of the Private International Law Act.<sup>4</sup>

<sup>1</sup> See *Zhonghua Renmin Gongheguo Shewai Minshi Falvguanxi Shiyongfa* [Act on the Application of Laws on Foreign-related Civil Relationships/Private International Law Act] (2010); *Zhonghua Renmin Gongheguo Zhuxi Ling* [Order of the President of The People's Republic of China], No 36, available at [http://www.npc.gov.cn/huiyi/cwh/1116/2010-08/28/content\\_1593162.htm](http://www.npc.gov.cn/huiyi/cwh/1116/2010-08/28/content_1593162.htm) (last visited on Jan. 2, 2012).

<sup>2</sup> At the 15<sup>th</sup> National Congress of the Communist Party of China, the rule of law principle was established as a fundamental principle for the administration of the country. In order to implement the principle the Party put forward a legislative plan pursuant to which the socialist legal system with Chinese characteristics would be shaped up by 2010. To ensure the accomplishment of the legislative plan, the National People's Congress, China's supreme legislature, has accelerated legislation after 2005. See *Zhongguo Gongchandang Dishiwuci Quanguo Daibiaodahui Wenjian Huibian* [Collection of Documents of the Fifteenth National Congress of the Communist Party of China], 5-6 (1997). See also Zhengxin Huo, *China's Codification of Conflicts Law: Latest Efforts*, 51 *SEOUL L.J.* 279, 283 (2010).

<sup>3</sup> Chapter I(General Provisions), Chapter II(Civil Subjects), Chapter III(Marriage and Family), Chapter IV(Succession), Chapter V(Property), Chapter VI(Obligations), Chapter VII(Intellectual Property), Chapter VIII(Supplementary Provisions). For detailed discussion of the Private International Law Act, see Zhengxin Huo, *An Imperfect Improvement: The New Conflict of Laws Act of the People's Republic of China*, 60 *INT'L & COMP. L.Q.* 1065-1093 (2011).

<sup>4</sup> The GPCL was adopted at the 4<sup>th</sup> Session of the Sixth National People's Congress on April 12, 1986, coming into force on January 1, 1987. It is still effective, assuming a prominent role in the area of civil law in China. The GPCL has devoted an entire chapter to regulating the conflict of laws (i.e., Chapter VIII, Application of Law in Foreign-related Civil Relations), where only Article 146 is dealing with tort. See *Zhonghua Renmin Gongheguo Minfa Tongze* ("GPCL") art. 146 (1986).