

The New Chinese Tort Law: Conflict Rules on Tort Untouched

I am grateful to Fang Xiao, a postdoctoral fellow and lecturer at the Renmin University School of Law in Beijing, for contributing this report.

The Tort Law of the People's Republic of China was adopted at the 12th session of the Standing Committee of the Eleventh National People's Congress on December 26, 2009 and promulgated on the same day according to President Decree No. 21. It shall come into force on July 1, 2010.

The Tort Law consists of 12 chapters and 92 articles, divided into General Provisions, Constituting Liability and Methods of Assuming Liability, Circumstances to Waive Liability and Mitigate Liability, Special Provisions on Tortfeasors, Product Liability, Liability for Motor Vehicle Traffic Accident, Liability for Medical Malpractice, Liability for Environmental Pollution, Liability for Ultrahazardous Activity, Liability for Harm Caused by Domestic Animal, Liability for Harm Caused by Object and Supplementary Provision.

Different from the Contract Law of the P.R.C. (1999), which stipulates in Article 126 a conflict rule on the law applicable to contract, this new legislation does not include clause on the law applicable to tort. The present system of law application on tort will not be changed in waiting for the new Chinese legislation of the conflict rules on foreign related commercial and civil relations.

The present rules on choice of law in tort matters were established by Article 146 of the General Principles of the Civil Law of the P.R.C. (1986) and Article 187 of the "Interpretations" of the Supreme People's Court on its implementation (1988). According to these rules, an act committed outside the P.R.C. shall not be treated as an infringing act if under Chinese law it is not considered an infringing act (the rule of double actionability); the tort will be governed by the law of the place of the tort, which includes the place where an infringing act was committed and the place where the damage occurred, if the two places are different, the judge can make a choice between them; if both parties are citizens of or have established domicile in the same country, their common *lex personalis* may also be applied.

In practice, these rules vest a large discretion in courts which may use several

connecting factors: place where the infringing act was committed, place where the damage occurred, common nationality and common domicile of the parties. The generally accepted suggestion on the amendment of the present rules is, in addition to the above connecting factors, that the law with the most significant relationship with the tort should be applied in priority.