

Promulgation of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of International Treaties and International Practices in the Trial of Foreign-related Civil and Commercial Cases

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On December 28, 2023, the Supreme People's Court (SPC) held a press conference on Judicial Interpretations and Typical Cases on the Application of International Treaties and International Practices in Foreign-related Civil and Commercial Cases, deliberating the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of International Treaties and International Practices in the Trial of Foreign-related Civil and Commercial Cases (Interpretation) and some related typical cases. The Interpretations was adopted by the Trial Committee of the Supreme People's Court at its 1908th meeting on December 5, 2023, which will come into force on January 1, 2024. We translated the press announcement as follows:

Background and Significance of the Interpretation

People's courts face the important issue of how international treaties and international practices are applied domestically in foreign-related civil and commercial trials. With the implementation of the Civil Code of the People's Republic of China on January 1, 2021, the provisions of the General Principles of the Civil Law of the People's Republic of China on the application of international treaties and international practices have been repealed, and the Civil Code has

not made specific provisions on this issue. As a result, courts around the world as well as academics have called for an early clarification of the relevant rules on the application of international treaties and international practices by the people's courts in foreign-related civil and commercial cases.

To this end, the Supreme People's Court has comprehensively summarized the experience of judicial practice and, after thorough research, repeated argumentation, and extensive solicitation of suggestions, formulated this Interpretation, which is of the following significance:

Firstly, the formulation of the Interpretation is a major initiative to accelerate the construction of the rule of law in relation to foreign affairs and to serve and safeguard a high level of opening up to the outside world. Since the 18th Communist Party of China (CPC) National Congress, the construction of the "Belt and Road", the pilot free trade zone and Hainan Free Trade Port, and other major strategies of opening up to the outside world have achieved remarkable results. "Opening up to the outside world to push forward one step, foreign-related rule of law construction should follow one step". The enactment of the Interpretation is an important measure for the people's courts to fully implement the spirit of the Twentieth National Congress of the CPC, to study and implement in-depth the spirit of the important speeches made by President Xi Jinping, and to actively participate in the construction of a foreign-related legal system, which provides an important basis for the steady expansion of systematic opening-up.

Secondly, the formulation of the Interpretation is a concrete practice of firmly upholding the international order based on international law and promoting the rule of law in international relations. "Pacta sunt servanda" is a fundamental principle in treaty law. Article 26 of the Vienna Convention on the Law of Treaties stipulates: "Every treaty in force is binding upon the parties thereto and must be performed by them in good faith." The issuance of the Interpretation fully demonstrates China's good image of actively fulfilling its international obligations, highlights China's commitment as a major country to firmly upholding the international order based on international law, and is conducive to enhancing China's right to speak and influence in the transformation of the global governance system.

Thirdly, the enactment of the Interpretation is an important guarantee for the accurate application of international treaties and international practices and the

enhancement of the quality and efficiency of foreign-related trials. The Interpretation regulates and guides how to accurately grasp the conditions and scope of application of international treaties and international practices, provides the people's courts with a basis for correctly adjudicating foreign-related civil and commercial cases, effectively unifies the standards for the application of the law, and is of great significance in enhancing the quality and efficiency of China's foreign-related civil and commercial adjudications, expanding the international credibility and influence of China's judiciary, and creating a first-rate business environment characterized by the rule of law, internationalization and marketization.

The main content of the Interpretation

The Interpretation consists of nine articles, embodying three principles for the application of international treaties and international practices in foreign-related civil and commercial trials, namely, the principle of fulfilling treaty obligations in good faith, the principle of respecting international practices, and the principle of safeguarding national sovereignty, security, and social public interests. The main contents include:

First, the basis of adjudication for the application of international treaties should be clarified. Article 30 of the Foreign Relations Law of the People's Republic of China clearly stipulates: "The State concludes or participates in treaties and agreements in accordance with the Constitution and the law, and performs in good faith the obligations stipulated in the relevant treaties and agreements." According to the characteristics of international treaties in the field of civil and commercial affairs in adjusting the personal and property relations between equal subjects, and based on the principle of good faith performance stipulated in the Foreign Relations Law, Paragraph 2 of Article 1 of the Interpretation makes it clear that foreign-related civil and commercial cases outside the scope of adjustment of the maritime law, bill of lading law, civil aviation law, maritime traffic safety law, etc. shall apply international treaties in the manner of "referring to the provisions of the separate law". This effectively solves the problem of insufficient basis for adjudication in the field of foreign-related civil and commercial affairs in the application of international treaties; at the same time, it inherits the spirit of the former General Principles of Civil Law and makes it clear that where international treaties concluded or participated by China have different provisions from those of the laws of the People's Republic of China, the

provisions of the international treaties shall be applied, with the exception of the provisions for which the People's Republic of China has declared its reservation.

Secondly, it clarifies the principle of application when multiple international treaties are involved. In response to the situation in judicial practice where the same dispute involves two or more international treaties, Article 2 of the Interpretation stipulates that the People's Court shall determine the international treaty to be applied on the basis of the applicable relationship clause in the international treaty.

Thirdly, the relationship between the application of international treaties and party autonomy should be clarified. Among the international treaties to be applied in foreign-related civil and commercial relations, some international treaties allow the parties to exclude the application of the convention or change the effect of the application of its provisions by agreement, but there are also some international treaties that are mandatory in the application and do not allow the parties to exclude their application by agreement. Article 3 of the Interpretation makes it clear that the parties may exclude or partially exclude the application of an international treaty by agreement only to the extent permitted by the international treaty.

Fourthly, it is clear that if the parties invoke an international treaty that has not yet entered into force for China, it can be used as a basis for determining contractual rights and obligations. International treaties that have not yet entered into force for China cannot be used as a legal basis for the people's courts to make decisions. However, if the parties in the contract unanimously invoke provisions of a civil and commercial international treaty that China has not ratified to determine the relevant rights and obligations, the provisions should be deemed as part of the parties' contract. Article 4 of the Interpretation allows the People's Court to use the treaty as a basis for determining the rights and obligations of the parties to the contract, on the premise that does not violate China's laws, administrative regulations of the mandatory provisions of China's sovereignty, social security and public interests.

Fifthly, it clarifies the express optional application and gap-filling application of international practice. Articles 5 and 6 of the Interpretation provide for two types of application of international practice. On the one hand, where the parties have expressly opted for the application of international practice, the rights and

obligations between the parties to the contract can be directly determined in accordance with international practice. On the other hand, where the parties have not made a clear choice, and where there is no corresponding provision in the laws of China or in international treaties concluded or participated in by China, the People's Court may apply international practice.

Sixthly, it adheres to the principle of safeguarding State sovereignty, security, and social public interests. The Interpretation carries out the provisions of Article 31 of the Foreign Relations Law that the implementation and application of treaties and agreements shall not jeopardize national sovereignty, security, and social public interests, and makes it clear in Article 7 that "the People's Court shall not apply an international treaty or international practice if its application jeopardizes the sovereignty, security, and social public interests of the People's Republic of China". This fully demonstrates the clear judicial position of the people's courts in firmly safeguarding State sovereignty, security, and the public interests of society.

Actions to promote the implementation of the interpretation

After the promulgation of the Interpretation, the Supreme People's Court will also carry out work in the following areas to promote the implementation of the Interpretation:

Firstly, SPC will issue a publication on the understanding and application of the Interpretation, so as to make it easier for all sectors of the community to accurately grasp the meaning of the provisions of the Interpretation.

Secondly, SPC will compile international treaties and international practices and their authoritative translations, sorting out the conditions of application, entry into force and reservations, etc., so as to guarantee the accurate application of international treaties and international practices.

Thirdly, SPC will strengthen case guidance and regularly issue typical cases on the application of international treaties and international practices to standardize adjudication criteria.

Lastly, strengthening training will be carried out to enhance the awareness and ability of foreign-related commercial maritime judges in applying international treaties and international practices.

Translators' Comments

The issuance of the Interpretation demonstrates the Supreme People's Court's insistence on promoting the rule of law at the domestic level and the rule of law relating to foreign affairs in an integrated manner, actively and accurately applying international treaties and international practices in civil and commercial trials relating to foreign affairs, ensuring that the internationally accepted rules are effectively complied with and vigorously demonstrating China's international image as a country that adheres to reform, opening-up and multilateralism, and contributing to China's rule of law wisdom and strength for the reform and construction of the global governance system.

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