

Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations (II)

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People's Republic of China

中华人民共和国最高人民法院公告

The Interpretation of the Supreme People's Court on
Several Issues Concerning the [Application of the Law of
the People's Republic of China on the Application of Laws
to Foreign-Related Civil Relations](#) (II), as adopted at the
1,898th Session of the Judicial Committee of the Supreme
People's Court on August 30, 2023, is hereby issued, and
shall come into force on January 1, 2024.

《最高人民法院关于适用〈中华人民共和国涉外民事关系法律适用法〉若干问题的解释（二）》已于2023年8月30日由最高人民法院审判委员会第1898次会议通过，现予公布，自2024年1月1日起施行。

Supreme People's Court

最高人民法院

November 30, 2023

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最高人民法院关于适用《中华人民共和国涉外民事关系法律适用法》若干问题的解释（二）

(Interpretation No. 12 [2023] of the Supreme People's Court, adopted at the 1,898th Session of the Judicial Committee of the Supreme People's Court on August 30, 2023, and coming into force on January 1, 2024)

(2023年8月30日最高人民法院审判委员会第1898次会议通过，自2024年1月1日起施行 法释〔2023〕12号)

This Interpretation is developed, in light of the judicial practice, with respect to the ascertainment of foreign laws by people's courts in the trial of foreign-related civil and commercial cases, for the purpose of correctly applying the [Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations](#).

为正确适用《中华人民共和国涉外民事关系法律适用法》，结合审判实践，就人民法院审理涉外民商事案件查明外国法律制定本解释。

Article 1 Where a people's court tries a foreign-related civil or commercial case to which a foreign law applies, it shall ascertain the law of the foreign country in accordance with paragraph 1 of [Article 10](#) of the [Law on the Application of Laws to Foreign-related Civil Relations](#).

第一条 人民法院审理涉外民商事案件适用外国法律的，应当根据[涉外民事关系法律适用法](#)第十条第一款的规定查明该国法律。

If the parties choose to apply a foreign law, they shall provide the law of such a foreign country.

当事人选择适用外国法律的，应当提供该国法律。

If the parties have not chosen to apply a foreign law, the people's court shall ascertain the law of such a foreign country.

当事人未选择适用外国法律的，由人民法院查明该国法律。

Article 2 The people's court may ascertain a foreign law by the following means:

第二条 人民法院可以通过下列途径查明外国法律：

(1) Provision by the parties.

(一) 由当事人提供；

(2) Provision by the central organ or appropriate authority of the other party through judicial assistance channels.

(二) 通过司法协助渠道由对方的中央机关或者主管机关提供；

(3) Provision by China's embassy or consulate stationed in the foreign country or the embassy or consulate of the foreign country in China upon the request of the Supreme People's Court.

(三) 通过最高人民法院请求我国驻该国使领馆或者该国驻我国使领馆提供;

(4) Provision by participants in the law ascertainment cooperation mechanism established or participated by the Supreme People's Court.

(四) 由最高人民法院建立或者参与的法律查明合作机制参与方提供;

(5) Provision by experts of the International Commercial Expert Committee of the Supreme People's Court.

(五) 由最高人民法院国际商事专家委员会专家提供;

(6) Provision by a law ascertainment service institution or Chinese or foreign legal experts.

(六) 由法律查明服务机构或者中外法律专家提供;

(7) Other appropriate means.

(七) 其他适当途径。

If a people's court is unable to obtain a foreign law through any of the channels specified in the preceding paragraph, or the content of the obtained foreign law is unclear or insufficient, the people's court shall make supplementary ascertainment through different means specified in the preceding paragraph.

人民法院通过前款规定的其中一项途径无法获得外国法律或者获得的外国法律内容不明确、不充分的, 应当通过该款规定的不同途径补充查明。

If a people's court requires a party to assist in providing a foreign law in accordance with subparagraph (1) of paragraph 1 of this Article, the people's court may not determine that the foreign law cannot be ascertained simply because the party has not provided assistance.

人民法院依据本条第一款第一项的规定要求当事人协助提供外国法律的, 不得仅以当事人未予协助提供为由认定外国法律不能查明。

Article 3 Where a party provides a foreign law, the party shall submit the specific provisions of the law of the foreign country and explain the way of access, the effectiveness, and the relevance with the dispute in the case, among others. If a foreign law is a case law, the full text of the case shall also be submitted.

Article 4 A law ascertainment service institution or a legal expert that provides a foreign law shall, in addition to the materials specified in Article 3 of this Interpretation, submit the qualification certificate of the law ascertainment service institution or the identity and qualification certificate of the legal expert, and attach a written statement that the institution or the expert has no interest in the case.

Article 5 Materials related to an ascertained foreign law shall be presented in court. The people's court shall hear the opinions of all parties on the content, understanding, and application of the foreign law.

Article 6 A people's court may determine the scope of a foreign law that needs to be ascertained through convening a pre-trial meeting or other appropriate means.

Article 7 A people's court may, if it deems necessary, notify a law ascertainment service institution or a legal expert providing a foreign law that it or he should appear in court and accept inquiries. If a party applies for the court appearance of a law ascertainment service institution or a legal expert and the people's court deems it necessary, such an application may be approved.

第三条 当事人提供外国法律的，应当提交该国法律的具体规定并说明获得途径、效力情况、与案件争议的关联性等。外国法律为判例法的，还应当提交判例全文。

第四条 法律查明服务机构、法律专家提供外国法律的，除提交本解释第三条规定的材料外，还应当提交法律查明服务机构的资质证明、法律专家的身份及资历证明，并附与案件无利害关系的书面声明。

第五条 查明的外国法律的相关材料均应当在法庭上出示。人民法院应当听取各方当事人对外国法律的内容及其理解与适用的意见。

第六条 人民法院可以召集庭前会议或者以其他适当方式，确定需要查明的外国法律的范围。

第七条 人民法院认为有必要的，可以通知提供外国法律的法律查明服务机构或者法律专家出庭接受询问。当事人申请法律查明服务机构或者法律专家出庭，人民法院认为有必要的，可以准许。

If it is indeed difficult for the law ascertainment service institution or the legal expert to appear in court, the institution or expert may accept inquiries online, unless the law of the country where the law ascertainment service institution or the legal expert is located has prohibitive provisions on transnational online participation in court trials.

The law ascertainment service institution or legal expert appearing in court shall give his or her opinions only on the foreign law and the understanding thereof and shall not participate in other court trial activities.

Article 8 A people's court shall handle the content, understanding, and application of a foreign law according to the following circumstances respectively:

(1) If the parties have no objection to the content, understanding, and application of the foreign law, the people's court may make confirmation.

(2) If a party has any objection to the content, understanding, and application of a foreign law, it shall give the reasons therefor. If the people's court deems it necessary, it may make supplementary ascertainment or require the parties to provide additional materials. If the party still has any objection after supplementary ascertainment or provision of additional materials, the people's court shall conduct an examination and make a determination.

法律查明服务机构或者法律专家现场出庭确有困难的，可以在线接受询问，但法律查明服务机构或者法律专家所在国法律对跨国在线参与庭审有禁止性规定的除外。

出庭的法律查明服务机构或者法律专家只围绕外国法律及其理解发表意见，不与其他法庭审理活动。

第八条 人民法院对外国法律的内容及其理解与适用，根据以下情形分别作出处理：

（一）当事人对外国法律的内容及其理解与适用均无异议的，人民法院可以予以确认；

（二）当事人对外国法律的内容及其理解与适用有异议的，应当说明理由。人民法院认为有必要的，可以补充查明或者要求当事人补充提供材料。经过补充查明或者补充提供材料，当事人仍有异议的，由人民法院审查认定；

(3) If the content of a foreign law has been determined by an effective judgment of a people's court, the people's court shall make confirmation, unless there is overwhelming evidence to the contrary.

(三) 外国法律的内容已为人民法院生效裁判所认定的，人民法院应当予以确认，但有相反证据足以推翻的除外。

Article 9 A people's court shall determine the time limit for the parties to provide a foreign law according to the time required for undergoing the relevant formalities to ascertain the foreign law. If a party has specific reasons to explain that he or she is unable to provide a foreign law within the period determined by the people's court and applies for an appropriate extension of the period, the people's court may approve the application according to actual circumstances.

第九条 人民法院应当根据外国法律查明办理相关手续等所需时间确定当事人提供外国法律的期限。当事人有具体理由说明无法在人民法院确定的期限内提供外国法律而申请适当延长期限的，人民法院视情可予准许。

If a party chooses to apply a foreign law but fails to provide the foreign law within the time limit determined by the people's court without justifiable reasons, the people's court may determine that the foreign law cannot be ascertained.

当事人选择适用外国法律，其在人民法院确定的期限内无正当理由未提供该外国法律的，人民法院可以认定为不能查明外国法律。

Article 10 When a people's court legally applies a foreign law in the trial of a case, it shall indicate in the adjudicative document the process of ascertaining the foreign law and the content of the foreign law; and if the people's court determines that a foreign law cannot be ascertained, it shall specify the reasons therefor.

第十条 人民法院依法适用外国法律审理案件，应当在裁判文书中载明外国法律的查明过程及外国法律的内容；人民法院认定外国法律不能查明的，应当载明不能查明的理由。

Article 11 Where the parties have agreed on the assumption of expenses for ascertaining a foreign law, such an agreement shall prevail; and if there is no agreement, the people's court may determine the assumption of the aforesaid reasonable expenses when making a judgment based on the claims of the parties and the specific circumstances of the case.

第十一条 对查明外国法律的费用负担，当事人有约定的，从其约定；没有约定的，人民法院可以根据当事人的诉讼请求和具体案情，在作出裁判时确定上述合理费用的负担。

Article 12 When the people's court ascertains the laws of the Hong Kong Special Administrative Region and the Macao Special Administrative Region, this Interpretation may apply mutatis mutandis. If the relevant laws and judicial interpretations otherwise provide for the ascertainment of laws of the Hong Kong Special Administrative Region and the Macao Special Administrative Region, such provisions shall prevail.

第十二条 人民法院查明香港特别行政区、澳门特别行政区的法律，可以参照适用本解释。有关法律和司法解释对查明香港特别行政区、澳门特别行政区的法律另有规定的，从其规定。

Article 13 This Interpretation shall come into force on January 1, 2024.

第十三条 本解释自2024年1月1日起施行。

For any discrepancies between any judicial interpretation previously issued by the Supreme People's Court and this Interpretation after this Interpretation comes into force, this Interpretation shall prevail.

本解释公布施行后，最高人民法院以前发布的司法解释与本解释不一致的，以本解释为准。

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