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(By Hand)

17 April 2007

Mrs Percy Ma  
Clerk to Bills Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Mrs Ma,

**Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill**

Thank you for your letter of 30 March 2007.

By reference to the Minutes of the second meeting of the Bill Committee held on 29 March 2007, please find enclosed the following papers prepared by the Administration –

- (a) a table showing the clauses in the Bill which correspond with the Articles of the “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned” signed on 14 July 2006 (“the Arrangement”) (Annex I);
- (b) an extract of the Hague Convention on Choice of Court Agreement where reference has been made in drafting Clauses 3 and 4 of the Bill (Annex II), please note that no authentic Chinese translation of the Convention is available; and

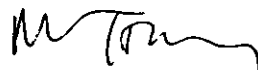
- (c) a note setting out the relevant provisions of the Civil Procedure Law of the PRC and the *Opinions of the Supreme People's Court on Several Issues Concerning the Application of the Civil Procedure Law of the People's Republic of China* (最高人民法院頒布《關於適用中華人民共和國民事訴訟法若干問題的意見》) concerning jurisdiction of the Mainland courts (Annex III).

Please be informed that the Administration has contacted the Supreme People Court for a copy of the draft judicial interpretation to be promulgated for the implementation of the Arrangement, both before and after the meeting of 29 March 2007. The Supreme People's Court advised that the judicial interpretation is still under preparation and no draft is ready for release at this stage. The Administration will continue to pursue this request and will provide a copy thereof to the Bills Committee as soon as we receive one from the Supreme People's Court.

With respect to the expression of "designating a court", it is the Administration's intent that the phrase should mean "a court" or "courts" so designated, following the interpretation rule prescribes in section 7(2) of the Interpretation and General Clause Ordinance (Cap. 1). We will however review the expression in the context of Clause 3 to ensure it properly reflects the Administration's intention.

A softcopy of the Annexes (in pdf format) will be separately sent via e-mail to your designated address.

Yours sincerely,



(Miss Michelle Tsang)  
Senior Assistant Solicitor General  
(China Law)

## MAINLAND JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL

### COMPARISON WITH THE ARRANGEMENT ON RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS BY THE COURTS OF THE MAINLAND AND OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION PURSUANT TO CHOICE OF COURT AGREEMENTS BETWEEN PARTIES CONCERNED (“the Arrangement”)

|   |  |
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| <b>Clause 2: Interpretation</b>   |  |
| Clause 2(1):  |  |
| “choice of Hong Kong court agreement”<br>(選用香港法院協議)<br>“choice of Mainland court agreement”<br>(選用內地法院協議)   | <ul style="list-style-type: none"> <li>▪ See <u>Art. 3</u> of the Arrangement</li> </ul>                   |
| “designated court” (指定法院)   | <ul style="list-style-type: none"> <li>▪ See <u>Art. 2</u> and <u>Annex</u> to the Arrangement</li> </ul>  |
| “Hong Kong judgment” (香港判決)<br>“Mainland judgment” (內地判決)   | <ul style="list-style-type: none"> <li>▪ See <u>Art. 2</u> of the Arrangement</li> </ul>                   |
| “recognized Basic People’s Court” (認可基層人民法院)  | <ul style="list-style-type: none"> <li>▪ See <u>Art. 2 (1)(i)</u> and Annex to the Arrangement.</li> </ul> |
| “specified contract” (指明合約)   | <ul style="list-style-type: none"> <li>▪ See <u>Art. 3</u> of the Arrangement</li> </ul>                   |
| <b>Clause 3: “choice of Hong Kong court agreement” and “choice of Mainland court agreement”</b>             | <ul style="list-style-type: none"> <li>▪ See <u>Art. 3</u> of the Arrangement</li> </ul>                   |
| <b>Clause 4: Severability of choice of Hong Kong court agreement and choice of Mainland court agreement</b> | <ul style="list-style-type: none"> <li>▪ See <u>Art. 3(5)</u> of the Arrangement</li> </ul>                |
| <b>Clause 5: Application for registration of Mainland judgments</b>   |  |
| Clause 5(2)   | <ul style="list-style-type: none"> <li>▪ See <u>Art. 4</u> of the Arrangement</li> </ul>                   |

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| <b>Clause 6 : Finality of Mainland judgments</b> |  |
| Clause 6(1)                                      | ▪ See <u>Art. 2(1)(i)</u> of the Arrangement   |
| Clause 6(2)                                      | ▪ See <u>Art. 6(1)(iii)</u> of the Arrangement |

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| <b>Clause 7: Time limit for application for registration of Mainland judgments</b> |   |
| Clause 7(1)  | ▪ See <u>Art. 8(2)</u> of the Arrangement |
| Clause 7(2)  | ▪ See <u>Art. 8(3)</u> of the Arrangement |

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| <b>Clause 8: Application fee</b> | ▪ See <u>Art. 15</u> of the Arrangement |
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| <b>Clause 12: Interest, costs, etc., to be included in registration of Mainland judgments</b> | ▪ See <u>Art. 16(1)</u> of the Arrangement |
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| <b>Clause 13: Cases in which Mainland judgments are required to be performed in stages</b> |   |
| Clause 13(1)   | ▪ See <u>Art. 8(3)</u> of the Arrangement |

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| <b>Clause 14: Effect of registration</b> |   |
| Clause 14(1)                             | ▪ See <u>Art. 11</u> of the Arrangement |

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| <b>Clause 18: Cases in which registration of registered judgments shall be set aside</b> |  |
| Clause 18(1)(c)  | ▪ See <u>Art. 9(1)(i)</u> of the Arrangement   |
| Clause 18(1)(d)  | ▪ See <u>Art. 9(1)(ii)</u> of the Arrangement  |
| Clause 18(1)(e)  | ▪ See <u>Art. 9(1)(iii)</u> of the Arrangement |
| Clause 18(1)(f)  | ▪ See <u>Art. 9(1)(iv)</u> of the Arrangement  |
| Clause 18(1)(g)  | ▪ See <u>Art. 9(1)(v)</u> of the Arrangement   |
| Clause 18(1)(h)&(i)  | ▪ See <u>Art. 9(1)(vi)</u> of the Arrangement  |
| Clause 18(1)(j)  | ▪ See <u>Art. 9(2)</u> of the Arrangement      |
| Clause 18(2)   | ▪ See <u>Art. 9(1)(iv)</u> of the              |

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|  | Arrangement   |
| <b>Clause 19: Cases in which registration of registered judgments may be set aside or application to set aside registration may be adjourned</b> | <ul style="list-style-type: none"> <li>See <u>Art. 10(2)</u> of the Arrangement</li> </ul>                              |
| <b>Clause 21: Jurisdiction to issue certified copies of Hong Kong judgments and certificate for Hong Kong judgments</b>                          |   |
| Clauses 21(1) & 21(2)  | <ul style="list-style-type: none"> <li>See <u>Art. 2, 6(1)(ii) &amp; 15</u> of the Arrangement.</li> </ul>              |
| Clause 21(3)   | <ul style="list-style-type: none"> <li>See <u>Art. 6(1)(iii)</u> of the Arrangement.</li> </ul>                         |
| <b>Clause 22: Restrictions on proceedings</b>  |   |
| Clauses 22(1)(a)   | <ul style="list-style-type: none"> <li>See <u>Art. 13(1)</u> of the Arrangement.</li> </ul>                             |
| Clauses 22(1)(b)   | <ul style="list-style-type: none"> <li>See <u>Art. 13(2)</u> of the Arrangement</li> </ul>                              |
| <b>Clause 23: Rules of court</b>   |   |
| Clause 23(1)(b)  | <ul style="list-style-type: none"> <li>See <u>Art.14</u> of the Arrangement</li> </ul>                                  |
| Clause 23(1)(d)  | <ul style="list-style-type: none"> <li>See <u>Art. 5(2)</u> of the Arrangement</li> </ul>                               |
| Clause 23(1)(g)  | <ul style="list-style-type: none"> <li>See <u>Art. 2(1)(ii), 6(1)(ii) &amp; 6(1)(iii)</u> of the Arrangement</li> </ul> |
| Clause 23(2)(a)  | <ul style="list-style-type: none"> <li>See <u>Art. 5(2)</u> of the Arrangement</li> </ul>                               |
| Clause 23(2)(b)  | <ul style="list-style-type: none"> <li>See <u>Art. 2(1)(ii), 6(1)(ii) &amp; 6(1)(iii)</u> of the Arrangement</li> </ul> |
| <b>SCHEDULE 1 - Designated Courts</b>  | <ul style="list-style-type: none"> <li>See <u>Art. 2(1)</u> of and Annex to the Arrangement</li> </ul>                  |

## SCHEDULE 2

### CONSEQUENTIAL AMENDMENTS

#### The Rules of the High Court

#### ORDER 71A

#### RECIPROCAL ENFORCEMENT OF MAINLAND JUDGMENTS

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| <b>Clause 3: Evidence in support of application for registration of Mainland judgments (O. 71A, r. 3)</b> |
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| Clause 3(1)(a) | ▪ See <u>Art. 2(1), 6(1)(ii) &amp; 6(1)(iii)</u> of the Arrangement |
| Clause 3(2)    | ▪ See <u>Art. 6(1)(iv)</u> of the Arrangement.                      |

ORDER 71B

CERTIFIED COPIES OF JUDGMENTS GIVEN BY COURT OF FINAL APPEAL  
AND HIGH COURT

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| <b>Clause 2: Certified copies of judgments</b> | ▪ See <u>Art. 6(1)(ii) &amp; 6(1)(iii)</u> of the Arrangement |
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## CONVENTION ON CHOICE OF COURT AGREEMENTS<sup>1</sup>

*(Concluded 30 June 2005)*

(Extract)

### *Article 3 Exclusive choice of court agreements*

For the purposes of this Convention –

- a)* "exclusive choice of court agreement" means an agreement concluded by two or more parties that meets the requirements of paragraph *c)* and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts;
- b)* a choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise;
- c)* an exclusive choice of court agreement must be concluded or documented –
  - i)* in writing; or
  - ii)* by any other means of communication which renders information accessible so as to be usable for subsequent reference;
- d)* an exclusive choice of court agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid.

### *Article 4 Other definitions*

1. In this Convention, "judgment" means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs

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<sup>1</sup> No authentic Chinese translation of the Convention is available.

or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

2. For the purposes of this Convention, an entity or person other than a natural person shall be considered to be resident in the State –

*a)* where it has its statutory seat;

*b)* under whose law it was incorporated or formed;

*c)* where it has its central administration; or

*d)* where it has its principal place of business.

#333356



(Translation)

***Mainland Judgments (Reciprocal Enforcement) Bill***  
**Information Paper on the**  
**Civil Jurisdiction of Mainland People's Courts**

Chapter II of the *Civil Procedure Law of the People's Republic of China* provides for the exercise of civil jurisdiction by the people's courts in the Mainland, and the provisions cover jurisdiction by forum level, territorial jurisdiction, and transfer and designation of jurisdiction. In 1992, the Supreme People's Court promulgated the *Opinions of the Supreme People's Court on Several Issues Concerning the Application of the Civil Procedure Law of the People's Republic of China* for the delivery of judicial work by the people's courts at all levels. Part I of the *Opinions of the Supreme People's Court* sets out the supplementary provisions concerning jurisdiction in the *Civil Procedure Law*. Provisions governing choice of court agreements can be found in Article 25 of the *Civil Procedure* and Articles 23 and 24 of the *Opinions of the Supreme People's Court*.

The relevant provisions on jurisdiction in the *Civil Procedure Law* and the *Opinions of the Supreme People's Court* are extracted below:

***Civil Procedure Law of the People's Republic of China*<sup>1</sup>**

(Adopted at the Fourth Session of the  
Seventh National People's Congress on 9 April, 1991)

**(Extract)**

**Chapter II Jurisdiction**

**Section 1 Jurisdiction by Forum Level**

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<sup>1</sup> The English translation of the provisions of the *Civil Procedure Law* quoted in this paper is based on the translation adopted by the Legislative Affairs Commission of the NPCSC.

Article 18 The basic people's courts shall have jurisdiction as courts of first instance over civil cases, unless otherwise provided in this Law.

Article 19 The intermediate people's courts shall have jurisdiction as courts of first instance over the following civil cases:

- (1) major cases involving foreign element;
- (2) cases that have major impact on the area under their jurisdiction; and
- (3) cases as determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts.

Article 20 The high people's courts shall have jurisdiction as courts of first instance over civil cases that have major impact on the areas under their jurisdiction.

Article 21 The Supreme People's Court shall have jurisdiction as the court of first instance over the following civil cases:

- (1) cases that have major impact on the whole country; and
- (2) cases that the Supreme People's Court deems it should try.

## **Section 2 Territorial Jurisdiction**

Article 22 A civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court of the place where the defendant has his domicile; if the place of the defendant's domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of his habitual residence.

A civil lawsuit brought against a legal person or any other organization shall be under the jurisdiction of the people's court of the place where the defendant has his domicile.

Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit.

Article 23 The civil lawsuits described below shall be under the jurisdiction of the people's court of the place where the plaintiff has his domicile; if the place of the plaintiff's domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of the plaintiff's habitual residence:

- (1) those concerning personal status brought against persons not residing within the territory of the People's Republic of China;

- (2) those concerning the personal status of persons whose whereabouts are unknown or who have been declared as missing;
- (3) those brought against persons who are undergoing rehabilitation through labour; and
- (4) those brought against persons who are in imprisonment.

Article 24 A lawsuit brought on a contract dispute shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or where the contract is performed.

Article 25 The parties to a contract may agree to choose in their written contract the people's court of the place where the defendant has his domicile, where the contract is performed, where the contract is signed, where the plaintiff has his domicile or where the object of the action is located to exercise jurisdiction over the case, provided that the provisions of this Law regarding jurisdiction by forum level and exclusive jurisdiction are not violated.

Article 26 A lawsuit brought on an insurance contract dispute shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or where the insured object is located.

Article 27 A lawsuit brought on a bill dispute shall be under the jurisdiction of the people's court of the place where the bill is to be paid or where the defendant has his domicile.

Article 28 A lawsuit arising from a dispute over a railway, road, water, or air transport contract or over a combined transport contract shall be under the jurisdiction of the people's court of the place of dispatch or the place of destination or where the defendant has his domicile.

Article 29 A lawsuit brought on a tortious act shall be under the jurisdiction of the people's court of the place where the tort is committed or where the defendant has his domicile.

Article 30 A lawsuit brought on claims for damages caused by a railway, road, water transport or air accident shall be under the jurisdiction of the people's court of the place where the accident occurred or where the vehicle or ship first arrived after the accident or where the aircraft first landed after the accident, or where the defendant has his domicile.

Article 31 A lawsuit brought on claims for damages caused by a collision at sea or by any other maritime accident shall be under the jurisdiction of the people's court of the place where the collision occurred or where the ship in collision first docked after the accident or where the ship at fault was detained, or where the defendant has his domicile.

Article 32 A lawsuit instituted for expenses of maritime salvage shall be under the jurisdiction of the people's court of the place where the salvage took place or where the salvaged ship first docked after the disaster.

Article 33 A lawsuit brought for general average shall be under the jurisdiction of the people's court of the place where the ship first docked or where the adjustment of general average was conducted or where the voyage ended.

Article 34 The following cases shall be under the exclusive jurisdiction of the people's courts herein specified:

- (1) a lawsuit brought on a dispute over real estate shall be under the jurisdiction of the people's court of the place where the estate is located;
- (2) a lawsuit brought on a dispute over harbour operations shall be under the jurisdiction of the people's court of the place where the harbour is located; and
- (3) a lawsuit brought on a dispute over succession shall be under the jurisdiction of the people's court of the place where the decedent had his domicile upon his death, or where the principal part of his estate is located.

Article 35 When two or more people's courts have jurisdiction over a lawsuit, the plaintiff may bring his lawsuit in one of these people's courts; if the plaintiff brings the lawsuit in two or more people's courts that have jurisdiction over the lawsuit, the people's court in which the case was first entertained shall have the jurisdiction.

### **Section 3 Transfer and Designation of Jurisdiction**

Article 36 If a people's court finds that a case it has entertained is not under its jurisdiction, it shall refer the case to the people's court that has jurisdiction over the case. The people's court to which a case has been referred shall entertain the case, and if it considers that, according to the relevant regulations, the case referred to it is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not independently refer the case again to another people's court.

Article 37 If a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for special reasons, a superior people's court shall designate another court to exercise jurisdiction.

In the event of a jurisdictional dispute between two or more people's courts, it shall be resolved by the disputing parties through consultation; if the dispute cannot be so resolved, it shall be reported to their common superior people's court for the designation of jurisdiction.

Article 38 If a party to an action objects to the jurisdiction of a people's court after the court has entertained the case, the party must raise the objection within the period prescribed for the submission of defence. The people's court shall examine the objection. If the objection is established, the people's court shall order the case to be transferred to the people's court that has jurisdiction over it; if not, the people's court shall reject it.

Article 39 The people's courts at higher levels shall have the power to try civil cases over which the people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer civil cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.

If a people's court at a lower level that has jurisdiction over a civil case as court of first instance deems it necessary to have the case to be tried by a people's court at a higher level, it may submit it to and request the people's court at a higher level to try the case.

# Opinions of the Supreme People's Court on Several Issues Concerning the Application of the *Civil Procedure Law of the People's Republic of China*

(Adopted at the 528<sup>th</sup> meeting of the Judicial Committee of the Supreme People's Court)

(Extract)

For the proper application of the *Civil Procedure Law of the People's Republic of China* (hereinafter referred to as “the *Civil Procedure Law*”) and in accordance with the provisions of the *Civil Procedure Law* and practical judicial experience, the following opinions are put forward for application by the people's courts at all levels in their delivery of judicial work.

## I. Jurisdiction

1. “Major cases involving foreign element” referred to in Article 19(1) of the *Civil Procedure Law* means cases involving foreign elements in which the amount in dispute is large, or the facts are complicated, or the parties comprise a large number of persons residing abroad.

2. Patent dispute cases shall be under the jurisdiction of an intermediate people's court designated by the Supreme People's Court. Admiralty and maritime cases shall be under the jurisdiction of maritime courts.

3. The high people's courts of all provinces, autonomous regions and municipalities directly under the central government may, in accordance with the provisions of Article 19 (2) and Article 20 of the *Civil Procedure Law*, taking local realities as a starting point and having regards to such factors as complexity of the case, monetary amount involved in the action and impact on the locality, submit opinions on the jurisdiction by forum level in respect of cases of first instance in the area under their jurisdiction to the Supreme People's Court for approval.

4. The place of domicile of the citizen refers to the place of registered permanent residence of the citizen while the place of domicile of the legal person refers to the principal place of business of the legal person or the place where the principal business office is located.

5. The habitual residence of the citizen refers to the place inhabited by the citizen for a continuous period of over one year after he leaves his place of domicile and before the institution of the lawsuit, the place for the citizen's hospitalization being excluded.

6. The jurisdiction over a case in which the registered permanent residence in cities and towns of the defendant has been cancelled shall be determined in accordance with Article 23 of the *Civil Procedure Law*. Where the registered permanent residence of both parties has been cancelled, the case shall be under the jurisdiction of the people's court of the place where the defendant has his domicile.

7. Where a party to an action has not completed move-in registration in another place after moving out of his registered place of permanent residence, but has habitual residence, the case shall be under the jurisdiction of the people's court of the place of his habitual residence. Where the party has no habitual residence, the case shall be under the jurisdiction of the people's court of his original registered place of permanent residence if he has moved out of his registered place of permanent residence for less than a year, and shall be under the jurisdiction of the people's court of the place where he has his domicile if he has moved out of his registered place of permanent residence for over a year.

8. Where both parties to an action are in imprisonment or undergoing rehabilitation through labour, the case shall be under the jurisdiction of the people's court of the original place where the defendant has his domicile. Where the defendant has been in imprisonment or undergoing rehabilitation through labour for more than a year, the case shall be under the jurisdiction of the people's court of the place where the defendant is in imprisonment or undergoing rehabilitation through labour.

9. A case of claims for maintenance in which the domiciles of several defendants are in the areas under the jurisdiction of different people's courts shall be under the jurisdiction of the people's court of the place where the plaintiff has his domicile.

10. A case of objection to designated guardianship or change of guardianship shall be under the jurisdiction of the people's court of the place where the ward has his domicile.

11. A divorce lawsuit brought by a non-serviceman against a serviceman who is not a civilian serviceman shall be under the jurisdiction of the people's court of the place where the plaintiff has his domicile.

Where both parties to a divorce lawsuit are servicemen, the lawsuit shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or the place where the unit above the regiment level to which the defendant belongs is stationed.

12. A divorce lawsuit brought by one party against another party who has left the place of domicile for more than a year shall be under the jurisdiction of the people's court in the place where the plaintiff has his domicile. Where both parties have left the place of domicile for more than a year and one party files a divorce lawsuit, the lawsuit shall be under the jurisdiction of people's court of the place of the defendant's habitual residence; where the defendant does not have a place of habitual residence, the people's court in the place of the plaintiff's residence at the time of filing the lawsuit shall have jurisdiction over the case.

13. For overseas Chinese who has married in the PRC and settled abroad, where the court in their country of settlement refuses to handle their divorce lawsuit on the ground that lawsuits of the kind shall be under the jurisdiction of the court in the place where the marriage is contracted, and where the parties file a divorce lawsuit with a people's court, the people's court in the place where the marriage is contracted or which is the final residence in the PRC of one of the parties shall have jurisdiction over the case.

14. For overseas Chinese who has married and settled abroad, where the court in their country of settlement refuses to handle their lawsuit on the ground that divorce lawsuits shall be under the jurisdiction of the court in their country of nationality, and where the parties file a divorce lawsuit with a people's court, the people's court in the place which is the original place of domicile or the final residence in the PRC of one of the parties shall have jurisdiction over the case.

15. Where a divorce lawsuit is brought in a people's court by one Chinese citizen residing abroad against another Chinese citizen residing in China or vice versa, the people's court of the place where the party residing in China has his domicile shall have jurisdiction over the lawsuit. Where the party residing abroad brings a lawsuit in the court of the country of his residence, while the party residing in China brings a lawsuit in a people's court, the people's court entertaining the lawsuit shall have jurisdiction over it.

16. Where both parties to a divorce lawsuit brought in a people's court are Chinese citizens living but not settled abroad, the lawsuit shall be under the jurisdiction of the people's court of the place where the plaintiff or defendant originally has domicile.

17. A lawsuit brought against a partnership or an association operated in the form of partnership formed by citizens which has no place of business shall be under the jurisdiction of the people's court of the place of registration of the defendant. Where the partnership or association has not been registered and the domiciles of several defendants are in the areas under the jurisdiction of different people's courts, all of those people's courts shall have jurisdiction over the lawsuit.



18. A lawsuit brought on a dispute arising from a contract which has not been substantially performed shall be under the jurisdiction of the people's court of the place where the defendant has his domicile if neither of the parties to the lawsuit has his domicile in the place of performance as agreed in the contract.

19. Where both parties to a purchase and sale contract have agreed on a place of delivery in the contract, the agreed place of delivery shall be deemed to be the place of performance of the contract. Otherwise, the place of performance of the contract shall be determined according to the mode of delivery: where the goods are to be delivered, the place to which the goods are delivered shall be deemed to be the place of performance of the contract; where the goods are to be collected by the purchaser himself, the place in which the purchaser collects the goods shall be deemed to be the place of performance of the contract; where the goods are to be consigned for transport or delivered in accordance with the measures for the delivery of timber and coal, the place from which the goods are transported shall be deemed to be the place of performance of the contract.

Where the place in which a contract is substantially performed is different from the place of delivery as agreed in the contract, the place in which the contract is substantially performed shall be deemed to be the place of performance of the contract.

20. For processing contracts, the place where the processing work is carried out shall be deemed to be the place of performance of the contract, unless agreed otherwise in the contract.

21. For property lease contracts and finance lease contracts, the place where the leased article is utilized shall be deemed to be the place of performance of the contract, unless agreed otherwise in the contract.

22. For compensation trade contracts, the place where the party accepting the investment performs his major obligations shall be deemed to be the place of performance of the contract.

23. The agreement in a written contract provided under Article 25 of the *Civil Procedure Law* refers to a clause for the choice of court in the contract or a choice of court agreement reached before the lawsuit is brought.

24. Where the choice of court agreement between the parties to the contract is ambiguous or more than two people's courts stipulated in Article 25 of the *Civil Procedure Law* have

been chosen, the choice of court agreement shall be void and the jurisdiction over the lawsuit shall be determined in accordance with Article 24 of the *Civil Procedure Law*.

25. A lawsuit brought on an insurance contract dispute in which the insured object is a conveyance or are goods under transportation shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or the conveyance is registered, where the goods are destined for or where the insured event occurred.

26. The place where the bill is to be paid as stipulated in Article 27 of the *Civil Procedure Law* refers to the place of disbursement stated in the bill. Where the place of disbursement is not stated in the bill, the place of domicile or the principal place of business of the bill payer (including the payer by proxy) shall be deemed to be the place where the bill is to be paid.

27. The creditor's application for a payment warrant, to which Article 22 of the *Civil Procedure Law* is applicable, shall be under the jurisdiction of the basic people's court of the place where the creditor has his domicile.

28. The place where the tort is committed as stipulated in Article 29 of the *Civil Procedure Law* covers the place in which the tortious act is committed and the tortious consequences are produced.

29. A lawsuit brought on damages to other people's property and personal injury caused by unqualified products is under the jurisdiction of the people's court of the place where the products are manufactured or sold, or where the tort is committed, or where the defendant has his domicile.

30. A lawsuit brought on a dispute over a railway transport contract or a tortious act relating to railway transport shall be under the jurisdiction of the Railway Transport Court.

31. Any application for pre-action property preservation shall be made to the people's court of the place where the property is situated. After the people's court has adopted pre-action property preservation measures, the applicant may bring a lawsuit in the same people's court or any other people's court which has jurisdiction over the lawsuit.

32. Where a party has applied for pre-action property preservation, but fails to bring a lawsuit within the statutory period, thereby incurring loss of property to the person against

whom the application is made, any lawsuit so arising shall be under the jurisdiction of the people's court which has adopted the pre-action property preservation measures.

33. Where two or more people's courts have jurisdiction over a lawsuit, the people's court in which the case was first entertained shall not refer the case to another people's court which has jurisdiction over the case. Where a people's court, before entertaining a case, finds that the case has already been entertained by another people's court which has jurisdiction over the case, it shall not repeatedly entertain the case. Where a people's court, after entertaining a case, finds that the case has already been entertained by another people's court which has jurisdiction over the case, it shall make a decision to refer the case to the people's court in which the case was first entertained.

34. After a case was entertained, the jurisdiction of the court entertaining the case shall not be affected by any change of the places of domicile or habitual residence of the parties.

35. After entertaining the case, the people's court which has jurisdiction over the case shall not, on the grounds that the administrative area has changed, refer the case to another people's court which has jurisdiction over the case as a result of the change. An appeal against a judgment or a case brought up for trial in accordance with the procedure for trial supervision shall be tried by a people's court at a higher level than the one which originally tried the case. A retrial of a case remanded by the people's court of second instance or a retrial directed by a people's court at a higher level shall be conducted by the people's court which originally tried the case.

36. Pursuant to Article 37(2) of the *Civil Procedure Law*, where two people's courts fail to resolve a jurisdictional dispute between them through consultation, it shall be reported to their common superior people's court for the designation of jurisdiction. Where the two courts are basic people's courts in the same prefecture or municipality, the intermediate people's court of that prefecture or municipality shall designate the jurisdiction promptly. Where the two people's courts are in the same province, autonomous region or municipality directly under the central government, the high people's court of that province, autonomous region or municipality directly under the central government shall designate the jurisdiction promptly. Where the two courts are people's courts in different provinces, autonomous regions or municipalities directly under the central government and the high people's courts fail to resolve the dispute through consultation, the Supreme People's Court shall designate the jurisdiction promptly.

Reports made to a higher level of people's court for the designation of jurisdiction pursuant to the preceding clause shall proceed from court at one level to the next.

37. Where a higher level of people's court designates jurisdiction pursuant to Article 37 of the *Civil Procedure Law*, it shall notify in writing the people's court filing the report and the people's court so designated. Upon receipt of the notification, the people's court filing the report shall inform the litigants without delay.

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