

Interpretation by the Supreme People's Court of 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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Announcement of the Supreme People's Court of the
People's Republic of China

中华人民共和国最高人民法院公告

The Interpretation by the Supreme People's Court of
Several Issues Concerning the Application of International
Treaties and International Practices in the Trial of Foreign-
Related Civil and Commercial Cases, as adopted at the
1908th meeting of the Judicial Committee of the Supreme
People's Court on December 5, 2023, is hereby issued,
and shall come into force on January 1, 2024.

《最高人民法院关于审理涉外民事案件适用国际条约和国际惯例若干问题的解释》已于2023年12月5日由最高人民法院审判委员会第1908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

December 28, 2023

2023年12月28日

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最高人民法院关于审理涉外民事案件适用国际条约和国际惯例若干问题的解释

(Adopted at the 1908th meeting of the Judicial Committee of the Supreme People's Court on December 5, 2023, coming into force on January 1, 2024, SPC Interpretation No. 15 [2023])

(2023年12月5日最高人民法院审判委员会第1908次会议通过，自2024年1月1日起施行 法释〔2023〕15号)

This Interpretation is developed in accordance with the Law on Foreign Relations of the People's Republic of China, the [Law of the People's Republic of China on Choice of Law for Foreign-Related Civil Relationships](#), and other laws, based on trial practices for the purposes of correctly hearing foreign-related civil and commercial cases.

为正确审理涉外民事案件，根据《中华人民共和国对外关系法》、《中华人民共和国涉外民事关系法律适用法》等法律，结合审判实践，制定本解释。

Article 1 Where a people's court hears a foreign-related civil or commercial case governed by the [Maritime Law of the People's Republic of China](#), the [Negotiable Instruments Law of the People's Republic of China](#), the [Civil Aviation Law of the People's Republic of China](#), or the [Maritime Traffic Safety Law of the People's Republic of China](#), and it involves the application of an international treaty, the people's court shall apply it according to [Article 268](#) of the [Maritime Law of the People's Republic of China](#), [Article 95](#) of the [Negotiable Instruments Law of the People's Republic of China](#), [Article 184](#) of the [Civil Aviation Law of the People's Republic of China](#), or [Article 121](#) of the [Maritime Traffic Safety Law of the People's Republic of China](#).

第一条 人民法院审理《中华人民共和国海商法》、《中华人民共和国票据法》、《中华人民共和国民用航空法》、《中华人民共和国海上交通安全法》调整的涉外民事案件，涉及适用国际条约的，分别按照《中华人民共和国海商法》第二百六十八条、《中华人民共和国票据法》第九十五条、《中华人民共和国民用航空法》第一百八十四条、《中华人民共和国海上交通安全法》第一百二十一条的规定予以适用。

If a people's court hears a foreign-related civil or commercial case other than that governed by an above law, and it involves the application of an international treaty, the provisions of the above law shall apply mutatis mutandis. In the case of any discrepancy between the international treaty and the law of the People's Republic of China, the international treaty shall apply, subject to any reservation declared by the People's Republic of China.

Article 2 In a foreign-related civil or commercial case involving the application of two or more international treaties, the people's court shall determine the applicable international treaty based on the choice-of-law clauses in those treaties.

Article 3 If an international treaty permits parties to agree to exclude the application of some provisions of a treaty, or of the treaty as a whole, and the parties request such exclusion based on their agreement, the people's court shall uphold the request. If an international treaty prohibits parties from agreeing to exclude the application of all or part of the treaty, and the parties request such exclusion based on their agreement, the people's court shall not uphold the request.

人民法院审理上述法律调整范围之外的其他涉外民商事案件，涉及适用国际条约的，参照上述法律的规定。国际条约与中华人民共和国法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

第二条 涉外民商事案件涉及两项或多项国际条约的适用时，人民法院应当根据国际条约中的适用关系条款确定应当适用的国际条约。

第三条 国际条约规定当事人可以约定排除或部分排除国际条约的适用，当事人主张依据其约定排除或部分排除国际条约适用的，人民法院予以支持。国际条约限制当事人排除或部分排除国际条约的适用，当事人主张依据其约定排除或部分排除国际条约适用的，人民法院不予支持。

Article 4 If the parties cite in the contract an international treaty that is not binding on the People's Republic of China, the people's court may determine the rights and obligations of the parties based on the international treaty, unless it violates the mandatory provisions of the laws and administrative regulations of the People's Republic of China or harms the sovereignty, security, and public interest of the People's Republic of China.

Article 5 If the parties to a foreign-related civil or commercial contract expressly choose an international practice and request that their rights and obligations be determined based on the international practice, the people's court shall uphold the request.

Article 6 If the laws of the People's Republic of China and the international treaties concluded or acceded to by the People's Republic of China are silent, the people's court may apply international practices. If a party requests the exclusion of an international practice only on the grounds of failure to make an express choice, the people's court shall not uphold the request.

Article 7 If the application of an international treaty or international practice harms the sovereignty, security, and public interest of the People's Republic of China, the people's court shall not apply it.

Article 8 This Interpretation shall come into force on January 1, 2024.

第四条 当事人在合同中援引尚未对中华人民共和国生效的国际条约的，人民法院可以根据该国际条约的内容确定当事人之间的权利义务，但违反中华人民共和国法律、行政法规强制性规定或者损害中华人民共和国主权、安全和社会公共利益的除外。

第五条 涉外民商事合同当事人明示选择适用国际惯例，当事人主张根据国际惯例确定合同当事人之间的权利义务的，人民法院应予支持。

第六条 中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，人民法院可以适用国际惯例。当事人仅以未明示选择为由主张排除适用国际惯例的，人民法院不予支持。

第七条 适用国际条约和国际惯例损害中华人民共和国主权、安全和社会公共利益的，人民法院不予适用。

第八条 本解释自2024年1月1日起施行。

Article 9 In case of any discrepancy between this Interpretation and any judicial interpretation previously issued by the Supreme People's Court, this Interpretation shall prevail.

第九条 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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