

# Legal issues on Pledges and Accounts Receivable in China

continued from page 12

procuity. The foreign judgment may only be enforced in China if the court finds that such judgment 'does not violate the basic principles of the laws of the PRC and its sovereignty, security or social and public interest', and makes a ruling recognising its validity and issues an enforcement order.<sup>22</sup>

According to the judicial interpretation of the Chinese Supreme Court, the applicable foreign law may be ascertained via the following ways:

- through the parties;
- through the central authority of the foreign country which entered into or acceded to a judicial assistance international treaty with China;
- through the Chinese embassy or consulate in such a foreign country;
- through the embassy of such foreign country in the PRC;
- through legal experts from China and such foreign country.

In accordance with the judicial interpretations of the Supreme Court, the relevant Chinese laws will apply if the foreign law cannot be ascertained.

Furthermore, if the application of a foreign law will result in the violation of the basic principles of Chinese law and social public interest, or if the selection of foreign law as the governing law is for the purpose of evading mandatory or prohibitory Chinese regulations, then such foreign law will not apply and the relevant Chinese law will apply.<sup>23</sup>

Presently, there are quite a number of regulations pertaining to banking security, many of which may be interpreted as 'mandatory or prohibitory', or as relating to 'the basic principles of Chinese law and social public interest'. Therefore it may be concluded that even if the parties to a security contract select a foreign law as the governing law, and a foreign court as the jurisdictional court, Chinese legal stipulations and requirements should not be ignored if the security is to be enforced or realised in China.

## ENDNOTES

1. Articles 63, 64 and 69 of the *Security Law*.

2. Article 75 of the *Security Law*.
3. Article 76 of the *Security Law*.
4. Articles 35 (2), 81 and 94 of the *Negotiable Instruments Law*.
5. Article 78 (1) of the *Security Law*.
6. Article 147 of the *Company Law*, art 8 of the *Provisional Regulations on Several Issues concerning the Establishment of Foreign Companies Limited by Shares*.
7. Article 19 of the *Provisional Regulations on Administration of State Owned Assets in Trial Share Formulated Enterprises*.
8. Article 4 of the *Regulations on Foreign Shares of the Company Limited by Shares Listed within the Territory of the PRC*.
9. Article 78 (3) of the *Security Law*.
10. Articles 35 and 18 of the *Company Law*, art 4 of the *Law on Sino-foreign Equity Joint Venture Enterprises*.
11. Articles 53, 66 and 81 of the *Security Law*.
12. Article 71 (2) of the *Security Law*.
13. Article 91 of the *General Principles of Civil Law*, art 26 of the *Foreign Economic Contract Law*.
14. Article 91 of the *General Principles of Civil Law*, art 27 of the *Foreign Economic Contract Law*.
15. Article 11 of the *Opinion of the Supreme People's Court on Several Issues Relating to Implementation of the PRC General Principles of Civil Law (Trial Implementation)*.
16. Article 20 of the *Provisions of the Supreme People's Court on Several Issues relating to Guaranteed in respect of Trial of Economic Contract Disputes*.
17. Articles 21, 46, 67, 52, and 74 of the *Security Law*.
18. Article 89 (1) of the *General Principles of Civil Law*, art 31 and 32 of the *Security Law*.
19. Articles 57 and 72 of the *Security Law*.
20. Article 144 of the *General Principles of Civil Law*.
21. Articles 34 and 244 of the *Civil Procedure Law*.
22. Article 268 of the *Civil Procedure Law*.
23. Article 150 of the *General Principles of Civil Law*.

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