

《武大国际法评论（第10卷）》

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内容概要

《武大国际法评论(第10卷)》内容简介：本卷延续了前几卷的文章选择标准与栏目安排，精心挑选了十几篇有质量的学术文章，设置了“专论”、“专题一：CISG在成员国的适用与解释国际研讨会”、“专题二：中国国际私法全球论坛”、“专题三：司法与仲裁实践”四个栏目，反映了国际法领域最前沿最热门的研究方向与问题。该书可供各大专院校作为教材使用，也可供从事相关工作的人员作为参考用书使用。

书籍目录

一、专论 国际反垄断的冲突法进路 承包商获偿措施研究——国际视野 国际能源法——国际法的新分支 《海牙取证公约》在中国大陆的施行二、专题一：CISG在成员国的适用与解释国际研讨会 CISG周年庆与CISG研究——兼及中华人民共和国的法治进程 商人、法律人与法治 CISG与Incoterms 2000 CISG与PICC——互为补充的两个法律文件 CISG下合同无效的性质与效果 CISG视角下的合同缔结 CISG与电子商务问题 日本加入CISG——亚洲动因三、专题二：中国国际私法全球论坛 国际私法上“调适”的概念 中国仲裁法的发展——兼评最高人民法院2006司法解释 外国裁决与判决在摩尔多瓦共和国的执行四、专题三：司法与仲裁实践 外国法查明在中国大陆法院之实践 PICC在国际商事仲裁中适用之成案研究

章节摘录

It should be stressed that , although foreign law is regarded as "law" , it does not mean that the responsibility to ascertain the content of foreign law should be borne by judges. The principle of *inra novit curia* can not be applied to the laws of foreign countries. Hence , suggestions should be pragmatic but not dogmatic.

Mainland China judges should have the effect of giving positive and directive guidance in proving and verifying the content of foreign law , such as the judges "personal knowledge" of foreign law. They may also request the parties to aid them in discovering the contents and enforceability of the foreign law. When requested by Mainland China judges , the parties must bring forth evidence to prove the relevant foreign legal rules , and if parties refuse to do so without justifiable reasons , they should bear the consequences of not being able to discharge the burden of proof. As the latest judicial interpretation , the Interpretation on Several Issues Regarding Applicable Law in Civil or Commercial Contract Cases Involving Foreign Elements was promulgated by the Supreme Peoples Court on August 8th , 2007. Article 9 (1) of the Interpretation provides that it is the parties liability to offer and prove the contents of related foreign law , where they have chosen it to govern the disputed contract. The advantage of this solution lies in the fact that the parties are the participants in civil and commercial activities and they should be the persons who know the relevant foreign law best , irrespective of the circumstances in which they have agreed in the contract to apply foreign law to govern the dispute , or in which foreign law should be the applicable law based on the closest connection principle. The parties would have more opportunities to acquire information about such foreign law. Therefore , they should have the duty and the ability to prove it. The judge should avail of this advantage and request the parties to offer assistance , in order to expeditiously discover its contents and reduce unnecessary time and resources.

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