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JAPAN UPDATE

## 2011 AMENDMENT TO JAPANESE CODE OF CIVIL PROCEDURE CONCERNING JURISDICTION OVER ACTIONS ON PROPERTY RIGHTS WITH INTERNATIONAL ELEMENTS

Civil disputes over property rights that have international elements are on the rise because of further internationalization of economic activities. However, the Japanese Code of Civil Procedure (Act No. 109 of June 26, 1996, hereinafter referred to as the “Code”) does not have specific provisions defining the jurisdiction of Japanese courts over such disputes. The question of jurisdiction has, therefore, been individually decided by the Japanese courts on the basis of the principles laid out by two Japanese Supreme Court decisions (as described below). A comprehensive legislative solution to such questions has long been advocated by those in Japanese legal and business circles.

Consequently, the amendment to the Code and to the Japanese Civil Provisional Remedies Act (Act No. 91 of December 22, 1989, hereinafter referred to as the “Amendment”) was passed by the Japanese Diet (Parliament) on April 28, 2011 and promulgated on May 2, 2011<sup>1</sup>. Below are the background and main features of the Amendment, which is to enter into effect in 2012.

*(For detailed information on the Amendment or specific issues related to jurisdiction over international civil disputes, please contact Sidley Austin Nishikawa Foreign Law Joint Enterprise.)*

### Background of Amendment

Due to the lack of specific legal provisions on the jurisdiction of Japanese courts over disputes with international elements, those courts have thus far relied on the principles laid down by two Supreme Court decisions: the decision by the Second Division of the Supreme Court on October 16, 1981 and the decision by the Third Division of the Supreme Court on November 11, 1997. The first decision states:

“Given the lack of an international convention or generally accepted and clear international legal principles on the matter, it is appropriate to decide the question of jurisdiction in accordance with order based on the

<sup>1</sup> With regard to the jurisdiction of Japanese courts over disputes involving a foreign state or a governmental institution of a foreign state, the Act on Civil Jurisdiction of Japan with Respect to a Foreign State, Etc., (Act No. 24 of April 24, 2009) entered into effect on April 1, 2010.

concepts of fairness among the parties and due and prompt justice. When a venue exists within Japan pursuant to the provisions of the Code of Civil Procedure concerning territorial jurisdiction, *e.g.*, the defendant's residence (Article 2<sup>2</sup> of the Code), the principal office or business office of a juridical person or any other association or foundation (Article 4 of the Code), the place of performance of the obligation (Article 5 of the Code), the location of the defendant's property (Article 8 of the Code), the place where the tort was committed (Article 15 of the Code), etc., or any other provisions thereof, it is in compliance with such order to subject the defendant to the jurisdiction of a Japanese court."

The second decision sets an exception to the general principle of the above decision:

"While it is appropriate, in principle, to subject the defendant to the jurisdiction of a Japanese court when a venue exists within Japan pursuant to the provisions of the Code of Civil Procedure, such jurisdiction should be denied in a case where special circumstances are deemed to exist that render a trial in a Japanese court contradictory to the concepts of fairness among the parties and of due and prompt justice."

The number of disputes involving international commercial transactions, parties or property located overseas and acts committed overseas has increased, thus bringing into greater focus the need for specific legal provisions clearly establishing the jurisdiction of Japanese courts.

The possibility of incorporating such specific provisions into the draft Code was explored before it was enacted in 1996. Nevertheless, none were included in the final draft due to divergence of views on their details. It was thus considered preferable to wait for the results of the ongoing negotiations at the Hague Conference on Private International Law (HCCH) on an international convention concerning the rules of jurisdiction and recognition of foreign judgments on international civil disputes. Unfortunately, the negotiations at the HCCH, while producing a draft text in 1999 covering a range of jurisdictional matters, failed to reach consensus<sup>3</sup>.

After consultation by the Minister of Justice in September 2008, the Legislative Council of the Ministry of Justice (*Hosei Shingi-kai*), through its Committee on Legislation on International Jurisdiction, began outlining legislation on the jurisdiction of Japanese courts over civil disputes concerning property rights with international elements. The Council adopted the "Outline for Legislation on International Jurisdiction" and submitted it to the Minister in February 2010. The draft Amendment based on the Outline was submitted to the Japanese Diet on October 13, 2010 and passed on April 28, 2011. It will become effective in 2012.

## Main Features of Amendment

The principles set forth by the Amendment include the following:

(1) Jurisdiction by Defendant's Domicile

(i) Action Against a Person

An action against a person may be filed with a Japanese court provided the person has his/her domicile/residence in Japan.

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<sup>2</sup> The provision is of the former Code of Civil Procedure. The same applies to the other provisions quoted by the two Supreme Court decisions.

<sup>3</sup> The Convention on Choice of Court Agreements, much narrower in scope than the draft text as it only concerns exclusive choice of court agreements in civil or commercial matters, was subsequently adopted in June 2005. This Convention has yet to enter into effect, with only one member state (Mexico) having ratified it in 2007. The United States and the European Commission signed the Convention in 2009.

(ii) Action Against a Judicial Person or Other Association or Foundation

An action against a juridical person, or other association or foundation, may be filed with a Japanese court provided such an entity has its principal office or business office in Japan.

(2) Jurisdiction Over Actions Concerning Contractual Obligations

(i) Action Seeking the Performance of Contractual Obligations or the Compensation of Damages Caused by Default

An action seeking the performance of contractual obligations or the compensation of damages caused by default, may be filed with a Japanese court provided the place of performance of such obligations is in Japan.

(ii) Action Concerning Property Rights

An action concerning property rights may be filed with a Japanese court provided the subject matter of the claim is located in Japan, or the defendant's assets that may be seized in relation to an action for monetary claims, are located in Japan.

(iii) Action Against an Office or a Business Office Concerning its Operations

An action against an office or a business office concerning its operations may be filed with a Japanese court provided said office is located in Japan.

(iv) Action Concerning a Tort

An action concerning a tort may be filed with a Japanese court provided the place where said tort was committed is located in Japan.

(v) Action Concerning Real Property

An action concerning real property may be filed with a Japanese court provided the property is located in Japan.

(3) Jurisdiction Over Actions Concerning Consumer Contracts and Labor Relations

(i) Action Concerning Consumer Contract

A consumer may file an action with a Japanese court against a business operator concerning a consumer contract (*i.e.*, a contract between a consumer and a business operator) provided the consumer has his/her domicile in Japan at the time of the filing or at the time of conclusion of the consumer contract.

(ii) Action Concerning Labor Relations

An employee may file an action with a Japanese court against an employer over a labor dispute provided the place where the services were rendered, as set forth by his/her employment contract, is located in Japan.

(iii) The rules of jurisdiction set forth in (2) above shall not be applicable to an action by a business operator against a consumer or by an employer against an employee.

(4) Exclusive Jurisdiction

Jurisdiction shall belong exclusively to Japanese courts over an action pursuant to the provisions of the Companies Act concerning the organization of a company, the pursuit of liability of officers or the dismissal of officers, with regard to an entity established under the Japanese law.

Jurisdiction shall belong exclusively to Japanese courts over an action concerning the existence or effect of an intellectual property right that becomes valid by registration, provided the registration was done in Japan.

(5) Agreement on Jurisdiction

(i) General Rule

The parties may determine a court with jurisdiction by written agreement, provided the agreement giving jurisdiction only to a foreign court shall not be applicable in a case where the foreign court cannot by law, or in effect, exercise such jurisdiction.

(ii) Specific Rule for Consumer Contract

An agreement determining a court with jurisdiction over future disputes concerning a consumer contract shall be effective provided the agreement allows the consumer to file with the court of the country in which he/she had domicile at the time of the contract's execution. It shall also be effective if the consumer filed an action with the court set forth in the agreement, or if the consumer invokes such an agreement in an action filed with a Japanese or foreign court by a business operator.

(iii) Specific Rule for Labor Relations

An agreement determining a court with jurisdiction over future specific labor disputes shall be effective provided the agreement is made at the time the labor contract is terminated, and that it allows the filing with a court of a country where the labor services were rendered at the time. It shall also be effective when an employee filed an action with the court set forth in such an agreement, or an employee invokes such an agreement in an action filed with a Japanese or foreign court by an employer.

(6) Jurisdiction by Appearance

A Japanese court shall have jurisdiction over an action provided the defendant does not file a defense of lack of jurisdiction, and presents oral arguments on the merits or makes statements in preparatory proceedings.

(7) Dismissal Due to Special Circumstances

Even where an action is subject to jurisdiction of a Japanese court (except for those filed with an agreement to only allow filing with a Japanese court), the court may dismiss all or part of an action if it finds special circumstances exist that render the court proceedings and decisions harmful to fairness among the parties or to due and prompt execution of procedures. The court will take into consideration elements such as the nature of the dispute, the defendant's burden of his/her appearance, and the location of evidence.

(8) Amendment to Civil Provisional Remedies Act

An action for civil provisional remedies may be filed with a Japanese court provided that an action on the merits may be filed with a Japanese court or that the object to be provisionally seized, or the subject matter in dispute, is located in Japan.

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