

Introduction of Detailed Rules of International Adjudicatory Jurisdiction in Korea: Proposed Amendments of the Private International Law Act

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I. Introduction

The current Private International Law Act of Korea (“KPILA”) includes three articles on international jurisdiction that were introduced in 2001. Art. 2 in Chapter 1 (General Provisions) lays down general rules on international jurisdiction (hereinafter “jurisdiction” refers to “adjudicatory jurisdiction” or “jurisdiction to adjudicate”). Arts. 27 and 28 set forth special rules to protect consumers and employees. In June 2014, the Ministry of Justice of Korea (“KMOJ”) established an expert committee (“Committee”) in charge of preparing the draft amending the KPILA, the term of which has expired on December 31, 2015. The Committee consisted of ten experts including myself. The most important task of the Committee was to prepare an official draft of the amended KPILA. As of May 31, 2016, however, an official draft of the amended KPILA has not been published. I hope the KMOJ will arrange for the remaining works to be completed as soon as possible and publish the official draft during the course of 2016.

When I accepted last December the request of Professor Takasugi to make a presentation on the proposed detailed rules of international jurisdiction in Korea, I reasonably believed that by the end of May 2016, I could have the final draft of the amended KPILA. Unfortunately, however, that is not the case. The final draft has not yet prepared. Therefore, to my regret, an unofficial English translation of the draft is not available today. In this article, I would like to discuss the major contents of the unofficial draft of the amended KPILA. I also would like to highlight the differences in jurisdiction rules between the KPILA and the Civil Procedure Act of Japan (“JCPA”). Unlike Japan, which added in 2012 detailed rules on international jurisdiction only on property law matters in the JCPA and Civil Enforcement Act of Japan (“JCEA”), respectively, Korea will insert the rules on international jurisdiction on not only property law matters, but also family law and succession law matters in the KPILA, in parallel with existing rules on applicable law. I reasonably believe that detailed and refined rules on international jurisdiction in the KPILA will take effect in 2 or 3 years.

II. Direction and the Regime of the Future Jurisdiction Rules

1. Current Regime: Transitory Codification in 2001

Art. 2 of the KPILA states that detailed rules on international jurisdiction should be developed by consulting, but without being bound by, the provisions on domestic territorial (or local) jurisdiction (or the venue provisions) of Korean law, such as Arts. 2 to 25, Arts. 29 to 31 of the Civil Procedure Act of Korea (“KCPA”) in civil or commercial matters. However, it is necessary to take into account the special characteristics of international jurisdiction, as distinct from local jurisdiction. Insertion of these articles was a transitory measure which implied that detailed rules on international jurisdiction would follow in the succeeding years. The reason why the Korean legislators were satisfied in 2001 with the transitory measure was that the “Judgment Project” aimed at developing a comprehensive worldwide convention dealing with international jurisdiction and recognition and enforcement of foreign judgments in civil and commercial matters was underway under the auspices of the Hague Conference on Private International Law. However, since the Judgment Project has failed, it is time for the Korean legislators to complete their plan to provide detailed rules on international jurisdiction in the KPILA.

2. Direction of Amendment

A. Concretization and Individualization of Art. 2

The purpose of the amendment of the KPILA is to insert detailed and refined rules on international jurisdiction in the KPILA. This means that the abstract principles declared by Art. 2 should be replaced by more concrete and individual rules.

B. Rules on Direct Jurisdiction of Korea

Since the international jurisdiction rules of the KPILA will be binding upon Korean courts only, the Committee decided to insert in principle rules on direct jurisdiction, provided, however, there are exceptions. For example, in order to set forth neutral and fair jurisdiction rules, the Committee agreed to insert rules of choice of court agreement both for Korean and foreign courts. Since the KCPA (Art. 217(1)) expressly provides that the rules on indirect jurisdiction are the same as those on direct jurisdiction, the rules on direct jurisdiction of the KPILA to be inserted will also have important meaning for indirect jurisdiction in the context of recognition and enforcement of foreign judgments.

3. Structure

Chapter 1 of the KPILA will be amended as follows:

Current Provisions	Future Structure
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Ch. 1	General provisions (§§1-10) Art. 1 (Purpose) Art. 2 (General Principles) Arts. 3-10 Articles on Governing Law	Ch. 1	Section 1. Art. 1 (Purpose)
			Section 2 International Jurisdiction Art. 2 (General Principles) plus New Articles to be added here: general jurisdiction, jurisdictions based upon presence of property, office or activity, jurisdiction agreement, appearance, jurisdiction based upon relationship, counter-claim, <i>lis pendens</i> , provisional measures, exception, <i>forum non conveniens</i> , non-contentious matters
			Section 3 Governing Law. Existing Articles

In each chapter, new Section 1 on international jurisdiction will be added in Chapters 2 through 9 (except for Chapter 3) and existing articles on governing law will be moved to new Section 2.

Current Provisions		Future Structure	
Ch. 2	Person (§§11-16)	Ch. 2	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Articles on Governing Law
Ch. 3	Juridical Act (§§17-18)	Ch. 3	No change
Ch. 4	Rights <i>in Rem</i> (§§19-23)	Ch. 4	Section 1 New Articles on Int'l Jurisdiction
	Section 2 Existing Articles on Governing Law		
Ch. 4	Protection of Intellectual Property (§24)	Ch. 5	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Article on Governing Law
Ch. 5	Obligations (§§25-35)	Ch. 6	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Articles on Governing Law
Ch. 6	Family (§§36-48)	Ch. 7	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Articles on Governing Law
Ch. 7	Succession (§§49-50)	Ch. 8	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Articles on Governing Law
Ch. 8	Bills of Exchange, Promissory Notes and Checks (§§51-59)	Ch. 9	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Articles on Governing Law
Ch. 9	Maritime Matters (§§60-62)	Ch. 10	Section 1 New Articles on Int'l Jurisdiction
			Section 2 Existing Articles on Governing Law

*** Difference between Korea and Japan**

Structure of the rules on international jurisdiction of the JCPA closely follows that of the local jurisdiction (or the venue provisions) of Japan. This is not the case with Korea, where articles on international jurisdiction will be inserted in the KPILA, rather than KCPA. The decision to insert articles on international jurisdiction in the KPILA was made in 2001 when several articles on international jurisdiction including Art. 2 were inserted in the KPILA.

III. General Provisions on International Jurisdiction (Chapter 1)

Here I will discuss the rules on international jurisdiction to be inserted in Chapter 1 of the KPILA in the order of the articles.

1. Existing Art. 2: General Principles

Current Status

<p>(1) The courts shall have international jurisdiction if the parties or the case in dispute has a substantial connection with the Republic of Korea. In determining whether or not such substantial connection exists, the courts shall follow the reasonable principles in conformity with the ideas underlying the allocation of international jurisdiction to adjudicate.</p> <p>(2) The courts shall determine whether or not they have international jurisdiction by reference to the provisions on jurisdiction of domestic laws, having full regard for the special characteristics of international jurisdiction in light of the provisions of paragraph (1).</p>

Art. 2 states that detailed and refined rules on international jurisdiction should be developed by consulting, but without being bound by Arts. 2 to 25 and Arts. 29 to 31 of the KCPA in civil or commercial matters. At the same time, it is necessary to take into account the special characteristics of international jurisdiction, as distinct from domestic territorial (or local) jurisdiction. The idea underlying Art. 2 is to require Korean judges to establish more detailed and refined rules on international jurisdiction after considering the special characteristics of international jurisdiction, instead of mechanically assuming that the ‘rules on international jurisdiction’ are equal to the ‘venue provisions’ of the KCPA. Accordingly, the venue provisions of the KCPA could be used as a reference for Korean courts in developing detailed and refined international jurisdiction rules.

Amendment / Legislation

Art. 2 will be amended to read as follows:

<p>(1) The courts shall have international jurisdiction if the parties or the case in dispute has a substantial connection with the Republic of Korea. In determining whether or not such substantial connection exists, the courts shall follow the reasonable principles in conformity with the ideas underlying the allocation of international jurisdiction <u>i.e., fairness to the parties, justice, promptness and economy of trial.</u></p> <p>(2) <u>Where there is no provision on international jurisdiction in this Act, other acts or treaty,</u> the courts shall determine whether or not they have international jurisdiction by reference to the provisions on jurisdiction of domestic laws, having full regard for the special characteristics of international jurisdiction in light of the provisions of paragraph (1).</p>

Art. 2 will have two functions. First, it will declare the general principles regulating the international jurisdiction of Korean courts. Second, Art. 2(2) will have a positive function whereby Korean courts

can have international jurisdiction by reference to the venue provisions of Korean law where there is no provision on international jurisdiction under Korean law or treaty. Art. 2(1) will also have a positive function whereby Korean courts can have international jurisdiction solely based upon substantial connection where there is neither provision on international jurisdiction under Korean law or treaty nor venue provision of Korean law. In this sense, Art. 2 is an open-ended provision with the nature of a general clause. On the other hand, Art. 2 will not have a negative function, which will be left to a separate article dealing with the doctrine of *forum non conveniens*.

*** Difference between Korea and Japan**

The JCPA has no provision comparable to Art. 2 of the KPILA.

2. General Jurisdiction

Current Status

The KCPA provides that an action is subject to the jurisdiction of the court located at the place where the defendant has his domicile (in the case of a natural person) or its principal place of business (in the case of a legal person; Arts. 2, 3 and 5 of the KCPA). It is generally recognized that this rule (*actor sequitur forum rei*) applies to international jurisdiction.

Amendment / Legislation

An article setting forth the *actor sequitur forum rei* rule will be added in the KPILA.

The scope of cases where the *actor sequitur forum rei* rule is valid is not entirely clear. In particular, it is not clear whether the rule will also hold true for non-contentious matters. The Committee agreed to insert a provision in Chapter 1 that articles in the Chapter will apply, *mutatis mutandis*, to non-contentious matters unless their application is against the nature.

Exclusive Jurisdiction: An action relating to nullity or dissolution of a legal person or an association, or the validity or nullity of the decisions of a legal person or an association established by Korean law may be filed solely before Korean courts.

*** Difference between Korea and Japan**

In the case of association or legal person, the KPILA confers general jurisdiction to Korean courts if it has its principal place of business, statutory seat or central administration in Korea or it was incorporated or formed under Korean law. The JCPA confers general jurisdiction to Japanese courts if the defendant which is not a natural person has its principal place of business in Japan or if it has no office or if the location of its office is unknown, in the circumstances where its representative or any other principal person in charge of its business is domiciled in Japan.

3. Jurisdiction based upon the Presence of Property of the Defendant

How to limit the scope of this ground of international jurisdiction?

Current Status

An action relating to property rights against a person who does not have a domicile in Korea may be brought before the court located in the area where the subject matter of the claim, the subject matter for security or any attachable property of the defendant, is located (Art 11. KCPA). This appears to confer local jurisdiction merely on the grounds of the location of any specified subject matter or property. Despite majority view criticizing such a position as allowing exorbitant jurisdiction, the Supreme Court admitted in 1988 that Art. 11 of the KCPA may be applied to international jurisdiction. Majority view take the position that it should apply only when the defendant has had property in Korea for a certain period of time and whose value is sufficient to cover the plaintiff's claim. However, considering a recent case of 2014, the Supreme Court now appears to depart from its previous position.

Amendment / Legislation

The Committee had no objection against the rule that the presence of the defendant's property could constitute a ground of international jurisdiction for an action relating to property rights where the subject matter of the claim or the subject matter for security is located in Korea. On the other hand, there was much discussion in the Committee as to whether the presence of the defendant's property could constitute a ground of international jurisdiction for an action relating to property rights in general which has nothing to do with that property. The conclusion was that the presence of property could constitute a ground of international jurisdiction for an action relating to property if the property can be a subject of arrest or seizure and the case in dispute has a substantial connection with Korea unless the value of the property is substantially small. An arrest of a ship by a Korean court could constitute a ground of international jurisdiction over the case against the owner of the arrested ship, which will be set forth in the chapter dealing with maritime matters.

4-1. Jurisdiction based upon the Presence of Office or Branch

How to limit the scope of this ground of international jurisdiction?

Current Status

An action against a person maintaining an office or a business office can be filed before the court located in that area only if the action concerns the business affairs of such office or business office (Art. 12 of the KCPA). It is generally recognized that this rule applies to international jurisdiction. Art 5(2) of the KCPA also provides that the general forum for a foreign corporation shall be the place in Korea where it has an office or a business office. According to this provision, it is not material to the exercise of jurisdiction by the court located in the general forum whether such office or place has any relation to the action. Despite a strong opposing view, Korean courts tend to hold that if a foreign

corporation establishes an office or a business office in Korea, it will be subject to Korean international jurisdiction generally without regard to whether the particular cause of action is connected with the operation of the Korean office or business office, which can be viewed as supporting the American concept of doing business. However, it is not clear whether the Supreme Court still maintains the position expressed in the past, because in a recent case of 2010, the Supreme Court apparently did not follow the approach of a judgment of 2000 in a comparable dispute.

Amendment / Legislation

An article along the lines of the following will be added in the KPILA (Cf. Brussels I *bis* (Art. 7(5)), the 1999 Preliminary Draft (Art. 9) and the JCPA (Art. 3-3(4)):

An action against a person having an office or establishment in Korea and relates to the activities of that office may be filed in Korea.

4-2. Jurisdiction based upon the Activity of the Defendant

How to limit the scope of this ground of international jurisdiction?

Current Status

There is no provision on this head of international jurisdiction.

Amendment / Legislation

An article along the lines of the below will be inserted in the KPILA (Cf. The 1999 Preliminary Draft (Art. 9) and the JCPA (Art. 3-3(5)):

An action against a defendant may be filed in Korea where the defendant has continuously and systematically carried on commercial or business activity in, or towards, Korea; provided that the dispute relates to that commercial or business activity.

Even in the absence of such article, under Art. 2 of the current KPILA, one could allow such international jurisdiction based upon “substantial connection” with Korea. However, in order to enhance legal certainty and clarity, the Committee agreed to insert such a provision. Art. 3-3(5) of the JCPA is a good model of such jurisdiction. One could justify such ground of international jurisdiction because foreign companies can conduct business in Korea without establishing any office or establishment in Korea through internet and by other means. This could be described as so-called “transacting business” jurisdiction (*i.e.* special jurisdiction) as opposed to “doing business” jurisdiction (*i.e.* general jurisdiction). The Committee wanted to make clear that it is a ground of international jurisdiction based upon a so-called “targeted activity criterion”. There were several concerns of the Committee. The first concern was that the text should be further clarified, so that mere operating of a website by a foreign company where Korean residents could access should not be

regarded as carrying on business or commercial activity in Korea. The second concern was that the “targeted activity criterion” in the context of B2B should be more stringent than that applicable to consumer contracts. This is because the KPILA has already introduced international jurisdiction based upon a “targeted activity criterion” for consumer contracts (Art. 27). Otherwise, the international jurisdiction based upon a “targeted activity criterion” for consumer contracts would be redundant.

We should pay attention to the relationship between the activity-based jurisdiction to be newly introduced on the one hand, and the traditional contract jurisdiction and the tort jurisdiction, respectively, on the other. In particular, certain contract disputes and tort disputes arising from a foreign company’s activities targeted towards Korea could be subsumed under the head of the activity-based jurisdiction in the future.

* Difference between Korea and Japan

The KPILA mentions “targeting” or “directing,” whereas the JCPA does not. The relationship between the “targeted activity criterion” in the contexts of B2B and B2C is not a concern under JCPA since the protective jurisdiction for consumer contracts under the JCPA does not require any “targeting” or “directing” activities on the part of the business.

5. Jurisdiction Agreement (Choice of Court Agreement)

Current Status

In practice, the parties’ agreement on international jurisdiction plays a very important role. The validity of the parties’ agreement on international jurisdiction in a cross-border action is generally accepted in Korea, although there is no express provision on point in the KCPA. However, the Supreme Court held on September 9, 1997 that in order for a jurisdiction clause conferring exclusive jurisdiction upon a foreign court to be valid, (i) the case does not fall under the exclusive jurisdiction of Korea, (ii) the agreed upon foreign court has valid international jurisdiction under its law, (iii) the case should have a reasonable relationship with the chosen foreign court, and (iv) the jurisdiction agreement is not egregiously unreasonable or unfair. Although the condition (iii) has been criticized by legal commentators, the Supreme Court maintains its position.

Amendment / Legislation

In relation to the requirement mentioned in (iii) above, the Committee agreed not to follow the position of the Supreme Court. In addition, considering the entry into force of the “Convention on Choice of Court Agreements” on October 1, 2005 at the Hague Conference, the Committee agreed to specify as below.

A Korean court shall dismiss proceedings where there is an exclusive choice of court agreement in favor of a foreign court, unless (i) the agreement is null and void under the law

(including choice of law rules) of the State of the chosen court; (ii) a party lacked the capacity to conclude the agreement; iii) giving effect to the agreement would be manifestly contrary to the public policy of Korea; or iv) the chosen court has decided not to hear the case or there is a situation in which the agreement cannot properly be performed.

*** Difference between Korea and Japan**

As to the law applicable to the choice of court agreement, the KPILA will adopt the approach of the Hague Convention, whereas the JCPA does not have any express provision.

6. Appearance

Current Status

Even if a person is not otherwise subject to the international jurisdiction of Korean courts, if he appears before the Korean court and responds to the merits without objecting to the jurisdiction, the Korean court will assume international jurisdiction since he can be deemed to have consented to the international jurisdiction of the Korean courts (Art. 30).

Amendment / Legislation

An article along the lines of the Brussels I *bis* (Art. 26(1)), the 1999 Preliminary Draft (Art. 5) and the JCPA (Art. 3-8) will be inserted in the KPILA.

7-1. Jurisdiction based upon the Relationship between Claims

Current Status

The KCPA contains a provision allowing an action involving several claims to be filed before the court having local jurisdiction over one of the claims (§25(1)). Some legal commentators take the view that the provision could be applicable to cross-border actions as well. However, the Brussels I and the 1999 Preliminary Draft do not contemplate such possibility at all.

Amendment / Legislation

An article along the lines of the below will be inserted in the KPILA.

Where two or more claims are made jointly in a single action and Korean courts have international jurisdiction over one of them, the action may be filed before Korean courts only if the claims have a close connection between them.

* A question arises as to the interaction between the so-called “mosaic rule” (applicable to torts or infringement of intellectual property rights) on the one hand, and international jurisdiction based upon relationship between claims on the other. Under the ‘mosaic rule’, a plaintiff may file an action either in the courts of the State where the damage originated or the domicile or habitual residence of the

defendant, in respect of the whole of the damage suffered, or in the courts of the States where the damage actually occurred, but only in respect of the damage suffered in the States concerned.

* family matters: principal (or anchor) claim v. incidental claim

The Committee decided to apply to family matters the rules on international jurisdiction based upon the relationship between claims but with some qualifications. Accordingly, Korean courts having international jurisdiction over a principal (or anchor) claim such as divorce or adoption can have international jurisdiction over an incidental claim such as a claim for appointment of custodian or a claim for child support. However, Korean courts having international jurisdiction only for an incidental claim cannot have international jurisdiction over a principal claim.

7-2. Jurisdiction based upon the Relationship between Parties

Current Status

The KCPA contains a provision allowing an action by, or against, several persons to be filed before the court having jurisdiction over one of the defendants (§25(2)). Some legal commentators take the view that the provision could be applicable to cross-border actions as well. The Brussels I and the 1999 Preliminary Draft also allow such possibility but under stricter conditions.

Amendment / Legislation

An article along the lines of the following will be inserted in the KPILA:

A plaintiff filing an action against a defendant before a Korean court in which that defendant is habitually resident may also file an action before that court against other defendants not habitually resident in Korea only if the claims against the defendant habitually resident in Korea and the other defendants are so closely connected that they should be adjudicated together to avoid a serious risk of inconsistent judgments.

* **Difference between Korea and Japan**

The KPILA will only refer to multiple defendants, whereas the JCPA refers to multiples plaintiffs as well as multiple defendants.

8. Counter-claims

An article along the lines of the below will be inserted in the KPILA (Cf. Brussels I (Art. 8(3)), the 1999 Preliminary Draft (Art. 15)(these two are a little bit narrower) and the JCPA (Art. 146(3)):

A defendant may file a counter-claim before a Korean court, if the counter-claim has a close connection with the original claim or with the defense thereto, and the proceedings will not be significantly delayed thereby; provided, however, that the foregoing shall not apply where the counter-claim falls within the exclusive jurisdiction of a foreign court.

9. *Lis Pendens*

Current Status

There is no provision on this issue in the KPILA or KCPA. Although there is a split of opinion, majority of lower courts appear to take the priority rule coupled with a positive predicted recognition.

Amendment / Legislation

Rules on *lis pendens* along the lines of the below will be inserted in the KPILA, which resembles Art. 21 of the 1999 Preliminary Draft.

When an action that is the same as the case pending before a foreign court is filed before a Korean court, the Korean court may, *ex officio* or upon application of a party, suspend the proceedings if the foreign court is expected to render a judgment capable of being recognized in Korea, unless the Korean court has jurisdiction pursuant to a exclusive jurisdiction agreement or it is manifest that the Korean court is more appropriate to resolve the dispute than the foreign court. A party can file an immediate appeal against the Korean court's decision to suspend the proceedings. Upon application of a party, the Korean court may proceed with the case if the plaintiff in the foreign court has failed to take the necessary steps or if the foreign court has not rendered such a decision within a reasonable time. The Korean court shall dismiss the case as soon as it is presented with a judgment rendered by the foreign court that satisfies the requirements for recognition under Korean law. For the purpose of this Article, the timing when the action has been filed before the foreign and Korean courts is decisive in determining which action has been filed first.

*** Difference between Korea and Japan**

The KPILA will expressly set forth the rules on *lis pendens*, whereas there is no comparable provision in the JCPA.

10. Exceptions in relation to Family Matters and Succession Matters

Current Status

There is no provision on this issue in the KPILA or KCPA.

Amendment / Legislation

Several new articles to be inserted in Chapter 1 of the KPILA (such as choice of court agreement and jurisdiction based upon appearance) will not be applied in the case of family matters and succession matters.

11. Provisional Measures

Current Status

There is no provision other than provisions on local jurisdiction in the KCPA and KCEA.

Amendment / Legislation

An article along the lines of the below will be inserted in the KPILA. (Cf. The 1999 Preliminary Draft (Art. 13) and the JCPA (Art. 11)):

A petition for an order of provisional relief may be made before a Korean court where Korean courts have international jurisdiction over an action on the merits or where the asset to be provisionally attached or seized or the object of the dispute is located in Korea. In addition, a petition for an order of provisional relief may be made before a Korean court where there is an urgent need, in which case the effect shall be limited within Korea.

* Art. 12(1) of the Child Protection Convention: “Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.”

* Similar provision in Art. 11(1) of the Convention on the International Protection of Adults

12. *Forum non Conveniens*: Special Circumstances Theory

Current Status

At present there is a split of opinion among legal commentators as to whether or not the doctrine of *forum non conveniens*, under which the Korean court may refuse to exercise international jurisdiction even if Korean courts have international jurisdiction according to the standard established by the KPILA, is permitted. In the past, Korean judges could have some amount of flexibility by resorting to the so-called “special circumstances theory” modeled on the Japanese court precedents.

Amendment / Legislation

An express article permitting the *forum non conveniens* doctrine will be added in the amended KPILA. The purpose is to give Korean judges some amount of discretion in concrete cases in exercising international jurisdiction. Unlike the 1999 Preliminary Draft which expressly enumerates the factors which the courts seized should consider in determining whether to exercise the international jurisdiction, the KPILA will not list the factors.

Article * (Declining of International Jurisdiction)

(1) Even if Korean courts have international jurisdiction under this Act, in exceptional circumstances, a Korean court may, on application by the defendant made no later than at the time of the first defense on the merits, suspend its proceedings or dismiss the case if it is clearly inappropriate for the court to exercise jurisdiction and if a court of another State has jurisdiction and is clearly more appropriate to resolve the dispute, unless the jurisdiction of the court seized is founded on a choice of court agreement.

(2) In the case of para. 1, before suspending the proceedings or dismissing the case, the court should give the plaintiff the opportunity to challenge the application of the defendant.

(3) The parties may bring an immediate appeal against the decision of the court under para. 1.

Under Korean law, recognition or enforcement of a foreign judgment may not be refused on the ground that the Korean court considers that the foreign court should have declined international jurisdiction according to the criterion under the KPILA. In such case, Korean courts cannot deny that the foreign court had international jurisdiction.

*** Difference between Korea and Japan**

The KPILA will expressly set forth the doctrine of *forum non conveniens*, whereas the JCPA sets forth the special circumstances theory (Art. 3-3(9)).

13. Non-contentious Matters

Are detailed rules on international jurisdiction for non-contentious matters available?

Current Status

There is no provision other than provisions on local jurisdiction in Family Litigation Act and the Act on Procedures of Non-contentious Matters.

Amendment / Legislation

The Committee agreed to take the below approach.

As to family matters, succession matters and personal matters, KPILA will set forth rules on international jurisdiction for non-contentious matters as well as contentious matters. As to the other matters, the KPILA will set forth rules on international jurisdiction for contentious matters. Articles in the former category will provide that “Korean courts shall have international jurisdiction over certain matters”, whereas articles in the latter category will provide that “An action on certain issues may be filed before Korean courts.” In addition, an article on non-contentious matters in Chapter 1 will provide that the rules on international jurisdiction for contentious matters will apply, *mutatis mutandis*, to non-contentious matters unless it is against their nature. However, there was an opposing view to the effect that as to non-contentious matters of the latter category, the rules on local jurisdiction (or

venue provisions), rather than the rules on international jurisdiction for contentious matters set forth in the KPILA, should apply, *mutatis mutandis*. There was no final decision.

14. Exclusive Jurisdiction

Current Status

The KCPA does not contain provisions on exclusive international jurisdiction of Korean courts. However, a majority of commentators take the position that Korean courts have exclusive international jurisdiction in the following cases:

(i) in proceedings relating to rights *in rem* in immovable property, if the property is situated in Korea; (ii) in proceedings relating to the validity of the constitution, nullity or dissolution of companies or the validity of the decisions of their organs, if the company has been established under Korean law; (iii) in proceedings relating to the validity of entries in public registers, if the register is kept in Korea; and (iv) in proceedings relating to the registration or validity of patents, trademarks, or other similar rights required to be registered, if the registration has been applied for or has taken place in Korea.

This is very similar to the list of the exclusive jurisdiction under the Brussels I Regulations (§22). With regard to (iv) above, there was a dispute whether proceedings where the Korean plaintiff requires the Japanese defendant to transfer and register the transfer of the patents registered in Japan pursuant to the contract between the parties is subject to the exclusive jurisdiction of Japan or not. While the Supreme Court admitted that the proceedings where the subject matter is the validity or existence of patents generally fall under the exclusive jurisdiction of the country of registration (in that case in Japan), the Supreme Court held that the proceedings in question did not fall under the exclusive jurisdiction of Japan, because the principal subject matters of the dispute were the interpretation of the contract, and the rights and obligations of the parties under the contract. The judgment was welcomed by legal commentators in Korea.

Amendment / Legislation

Rules on exclusive jurisdiction will be added. However, the articles dealing with exclusive jurisdiction will be added in the respective related chapters, rather than in Chapter 1. Rules on the proceedings mentioned in (ii) above will be inserted in Chapter 2 dealing with person. Rules on the proceedings mentioned in (iii) above will be inserted in Chapter 4 dealing with rights *in rem*. Rules on the proceedings mentioned in (iv) above will be inserted in Chapter 5 dealing with intellectual property. As to the proceedings mentioned in (i) above, there was much discussion as to whether Korean courts should have exclusive jurisdiction or not. Some members supported the position of the Brussels I and the 1999 Preliminary Draft, whereas other members were in favor of the position of the JCPA according to which Korea would not have exclusive jurisdiction.

* Difference between Korea and Japan

The KPILA will reflect the position of the Supreme Court of Korea on the international jurisdiction over the matters relating to the registration or validity of patents, trademarks, or other similar rights required to be registered, whereas the JCPA has no comparable exception.

IV. Special Provisions on Jurisdiction: Articles to be inserted in Chapters 2 through 10 (except for Chapter 3): Rules on Exclusive Jurisdiction and Special Jurisdiction

Here I will discuss the rules on exclusive jurisdiction and special international jurisdiction in the order of the articles to be inserted in Chapters 2 through 10 (except for Chapter 3) of the KPILA. In principle, the rules on international jurisdiction in Chapter I and the rules on special jurisdiction of each chapter include exhaustive rules on international jurisdiction for the matters falling under each Chapter. However, there are exceptions in matters falling under Chapter 5 (Intellectual Property) and Chapter 10 (Maritime Matters).

1. Person (Chapter 2)

Current Status

There is no provision other than the below venue provisions under the KCPA.

An action by a company or other association against its member, or an action by a member against a member, each of which is based on his status as a member may be filed before Korean courts if Korean courts have general jurisdiction over the company or other association (Art. 15(1) of the KCPA). An action by an association or foundation against its officer based on his/her status as an officer, or an action by a company against its founder or inspector may be filed before Korean courts if Korean courts have general jurisdiction over the association, the foundation or the company, respectively (Art. 15(2) of the KCPA). An action by a creditor of a company or other association against its present or former member, based on his/her status as a member may be filed before Korean courts if Korean courts have general jurisdiction over the company or other association (Art. 16 of the KCPA).

Amendment / Legislation

Declaration of Disappearance: Korean courts shall have international jurisdiction over matters relating to declaration of disappearance of natural person in any of the following cases: (i) where the absentee is a Korean national, (ii) where the last habitual residence of the absentee was in Korea, or (iii) where the absentee has property in Korea or there is a legal relationship governed by Korean law or other justifiable ground (the international jurisdiction to be limited to the relevant property and the legal

relationship).

Management of Property: Korean courts shall have international jurisdiction over matters relating to management of the absentee's property if the absentee was last habitually resident in Korea or has property in Korea.

Exclusive Jurisdiction: An action relating to nullity or dissolution of a legal person or an association, or the validity or nullity of the decisions of a legal person or an association established by Korean law may be filed only before Korean courts.

Special Jurisdiction: Special jurisdiction mirroring the venue provisions of the KCPA (Arts. 15 and 16) mentioned above will be inserted in the KPILA (Cf. Art. 3-3(7) of the JCPA).

2. Real Property (Chapter 4)

Current Status

There is no provision other than venue provisions in the KPCA (Art. 20).

Amendment/Legislation

An action relating to immovable property may be filed in Korea if the immovable is located in Korea. An action relating to the ownership of immovables falls under this sub-paragraph. The international jurisdiction is not exclusive, although if the action relates to the registration of immovables to be effected in Korea, the international jurisdiction is exclusive except where such registration should be effected by a contract between the parties and the principal subject matters of the dispute are the interpretation of the contract, and the rights and obligations of the parties under the contract.

3. Intellectual Property Rights (Chapter 5)

Current Status

There is no provision other than venue provisions in the KPCA (Art. 24).

The most problematic disputes relating to intellectual property are those involving the registration or validity of patents or other similar rights requiring registration. It has been generally thought that Korean courts have exclusive international jurisdiction in proceedings relating to the registration or validity of patents or other similar rights, if the registration has taken place in Korea. However, in a recent case of 2011 mentioned above, the Supreme Court distinguished (i) proceedings whose subject matter is the validity or existence of patents on the one hand, and (ii) proceedings whose subject matters are the interpretation and effects of the contractual obligations between the parties on the other, and clearly held that only the first category falls under the exclusive jurisdiction of the country of registration.

Amendment / Legislation

The position of the Supreme Court will be maintained by the amended KPILA. The Committee agreed to insert three articles along the lines of the below.

First, an action relating to validity and extinction of intellectual property that are created by registration may be filed before Korean courts only when they are registered in Korea. However, the foregoing shall not apply when those matters arise as incidental questions. In addition, the foregoing shall not apply when the transfer or registration being the subject matter of the proceedings should be performed by a contract between the parties. Second, an action relating to contractual matters such as assignment or license of intellectual property rights may be filed before Korean courts if such rights are protected, exploited or registered in Korea. Third, an action relating to the infringement of intellectual property rights may be filed before Korean courts if the infringement took place in Korea or the infringement has been directed towards Korea.

The relationship between the rule on the infringement of intellectual property rights in Chapter 5 and the rules on tort in general in Chapter 6 need to be clarified.

*Interaction between mosaic system on the one hand, and international jurisdiction based upon relationship between claims on the other

The Committee could not come to a final conclusion as to whether to introduce the so-called “mosaic rule”. If such a rule is adopted, a question arises as to whether international jurisdiction based upon relationship between claims could still be permitted in such cases. If permitted, the mosaic rule (*i.e.* quantitative limitation of international jurisdiction) would be meaningless.

*** Difference between Korea and Japan**

The JCPA has no separate provisions on an action relating to contractual matters such as assignment or license of intellectual property rights and an action relating to the infringement of intellectual property rights. In Japan, the rules on contracts and torts in general shall be applicable to those issues, respectively.

4. Obligations (Chapter 6)

A. Contract

Current Status

The KCPA provides that an action relating to property rights may be brought before the court located in the place of abode or the place of performance (Art. 8). In a case involving payment of contractual obligations, the Supreme Court held in 1972 that Art. 8 could be a basis of international jurisdiction. Although Art. 8 on its face is not limited to the performance of a contractual obligation, the majority view maintains that the provision should not apply to non-contractual obligations. It is not clear whether the Supreme Court still maintains the former position expressed in 1972, because in a recent

case of 2006 the Supreme Court apparently did not follow the approach of the 1972 Judgment in a dispute based upon contractual obligations.

Amendment / Legislation

An article along the lines of the following will be added under the strong influence of Art. 6 of the 1999 Preliminary Draft:

An action relating to contracts may be filed before Korean courts if:

- a) in matters relating to the supply of goods, the goods were supplied in Korea;
- b) in matters relating to the provision of services, the services were provided in Korea; or
- c) in matters relating both to the supply of goods and the provision of services, performance of the principal obligation took place in Korea.

This means that the place of performance of a contractual obligation can be a ground of international jurisdiction in a very limited situation. The reason for such limitation was that the factual situations of contracts were so diverse that the international jurisdiction based upon the place of performance of a contractual obligation cannot always be justified. In addition, if we base international jurisdiction on the place of performance in question, two different States can have international jurisdiction over the disputes arising from one contract depending upon who files an action as plaintiff. For example, under a sales contract between a Korean seller and a Japanese buyer, Korea or Japan may have special jurisdiction depending upon whether the Korean seller files an action seeking payment of the purchase price or the Japanese buyer files an action seeking delivery of the goods.

How about other types of contract? Even under a contract other than those to be enlisted in the KPILA, one could argue that an action could be filed in Korea if Korea has a substantial connection with the parties or the dispute, even if the place of performance of the contractual obligation in question is not located in Korea. This is a situation where Art. 2 of the KPILA could play a positive role.

*** Difference between Korea and Japan**

International jurisdiction based upon the place of performance of the contractual obligation is widely accepted under the JCPA (Art. 3-3(1)). In addition, under the JPCA international jurisdiction based upon the place of performance is also accepted for non-contractual obligations such as an action arising from *negotiorum gestio* performed in connection with a contractual obligation or an action relating to unjust enrichment arising in connection with a contractual obligation.

B. Protection of Socio-Economically Weaker Parties: Consumer Contracts

Current Status

In order to protect socio-economically weaker parties, the KPILA sets forth special rules on international jurisdiction in respect of passive consumer contracts and individual employment contracts (Arts. 27 and 28), which are modelled on the Brussels Convention (Arts. 13 through 15), the Brussels I Regulation (Arts. 15 through 17) and on the 1999 Hague Draft Convention (Arts. 7 and 8). This is so-called “protective jurisdiction”.

In the case of a consumer contract falling under Art. 27(1), a consumer may also bring an action in the country of his habitual residence; on the other hand, an action against the consumer may be brought by the other party only in the country of the consumer’s habitual residence. In addition, the choice of court agreement by the parties to a consumer contract is effective only if such agreement is entered into after the dispute has arisen; or if it allows the consumer to bring an action before another court in addition to those having international jurisdiction under Art. 27.

In order for a consumer contract to be eligible for protection under Art. 27, the contract should be entered into by a consumer for a purpose that can be deemed to be outside his profession or business activity, and it should be a so-called ‘passive consumer contract’, *i.e.*, falling into one of the categories mentioned below: (i) where, prior to the conclusion of the contract, the other party engaged in or directed to that country professional or business activities including soliciting business through publicity, and the consumer had taken in that country steps necessary for the conclusion of the contract; (ii) where the other party received the consumer’s order in that country; or (iii) where the other party arranged the consumer’s journey to a foreign country for the purpose of inducing the consumer to order.

Amendment / Legislation

Scope of consumers under Art. 27 of the KPILA modeled on the Rome Convention will be slightly expanded along the lines of the Brussels I and the Rome I.

* Relationship between the head of international jurisdiction on consumer contracts and the activity-based jurisdiction to be newly introduced

*** Difference between Korea and Japan**

Under the KPILA, only so-called “passive consumers” are protected, whereas under the JCPA, all consumers are protected. In practice, however, Japanese courts are expected to limit the excessive scope by operation of Art. 3-9 of the JCPA.

C. Protection of Socio-Economically Weaker Parties: Employment Contract

Current Status

Art. 28 sets forth special rules on employment contracts. Whereas the consumer's habitual residence is relevant in consumer contracts, the place where the employee habitually performs his work is relevant in individual employment contracts.

Amendment / Legislation

There will be no amendment except for the structural change in order to split the provisions on applicable law and the provisions on international jurisdiction.

D. Torts: no separate rules on Jurisdiction for special types of tort

Current Status

An action for tort may be filed before the court of the place where the tortious act occurred (Art. 18 of the KCPA). It is generally recognized that Art. 18 of the KCPA could apply in determining the question of international jurisdiction. Where the tortious act occurred in one place and the consequence of the injury occurred in another, each of them could be a ground for international jurisdiction. The majority view maintains that the places should be determined rationally from the viewpoint of international jurisdiction and that, in the case of product liability in particular, it should be taken into account whether the place of acting or the place of injury was one of the areas that the defendant was reasonably able to foresee. The Supreme Court endorsed such a view in the product liability case of 1995. This judgment was apparently influenced by the idea of 'reasonable foreseeability' and 'purposeful availment' appearing in the decisions of the Supreme Court of the US (*World-Wide Volkswagen Corp v Woodson*, 444 U.S. 286 (1980) and *Asahi Metal Industry Co v Superior Court*, 480 U.S. 102 (1987)).

Amendment / Legislation

An article along the lines of the Brussels I *bis* (Art. 7(2)), the 1999 Preliminary Draft (Art. 10) and the JCPA (Art. 3-3(8)) will be inserted in the KPILA. The 'mosaic rule', as in the *Shevill* case of 1995 (C-68/93) of the ECJ, is not contemplated. There will be no separate rules on special types of tort, such as product liability or defamation, etc.

5. Family (Chapter 7)

Current Status

In its leading case of 1975, the Supreme Court held that (i) in principle, the domicile of the defendant should be located in Korea in order for Korean courts to have international jurisdiction, because the *forum rei* principle is also valid for family matters including divorce cases; and that (ii) however, by way of exception, the Korean courts may have international jurisdiction even if the domicile of the

defendant is located outside of Korea, where the refusal to entertain the action could amount to a denial of justice. As situations amounting to a denial of justice, the Supreme Court mentioned cases where the defendant fails to appear or a comparable situation exists, or the defendant actively responds to the action. Obviously such position has been strongly influenced by the Japanese court precedents.

However, it is not clear whether the Supreme Court still maintains such position after the amendment of the KPILA in 2001, because a subsequent judgment of the Supreme Court did not mention the foregoing jurisdiction rules. The position of the lower courts is split into two classes: (i) one to make efforts to establish the international jurisdiction rules on a case-by-case analysis under the KPILA, instead of following the international jurisdiction rules established by the Supreme Court in the case of 1975 and (ii) the other one adhering to international jurisdiction rules established by the Supreme Court in the case of 1975.

Amendment / Legislation

Articles dealing with international jurisdiction (i) on marriage, establishment of parent-child relationship, (ii) matters relating to adoptive parent-child relationship, parental right (parental responsibility), (iii) maintenance and (iv) adult guardianship will be added, respectively.

A. Matters relating to Marriage

Korean courts have international jurisdiction over the matters relating to marriage in any one of the following cases: (i) the applicant and one or all of the minor children are habitually resident in Korea, (ii) either of the spouses is habitually resident in Korea and the spouses were last habitually resident in Korea, (iii) both spouses have Korean nationality or (iv) a Korean applicant with a habitual residence in Korea files an action solely for the purpose of dissolving the marriage relationship. Separate rules will be added for cases where both spouses are respondent. However, the Korean nationality of either of the spouses (in particular the applicant) cannot be a ground of international jurisdiction. In addition, Korean courts have international jurisdiction if the respondent is habitually resident in Korea. This is because the article on general jurisdiction in Chapter 1 is also applicable to contentious matters relating to marriage.

However, the KPILA will not permit *forum actoris* such as that in the Brussels II *bis* (the habitual residence of the applicant coupled with his residence for one year) or *forum actoris* in the home country such as that in the Brussels II *bis* (the habitual residence of the applicant coupled with his residence for six months in the home country) on the ground that it is not fair to the respondent.

Considering that matrimonial property is closely related to the matters of property, the Committee considered inserting an article permitting a choice of court agreement between the parties

concerned. However, the idea has been finally abandoned. This means that the foregoing rules on international jurisdiction applicable to marriage-related matters will apply to matrimonial property matters.

B. Matters relating to Establishment of parent-child relationship

Korean courts have international jurisdiction over the matters relating to establishment of parent-child relationship and its dissolution if the child has his habitual residence in Korea or the child and one of the parents have Korean nationality.

C. Matters relating to Adoptive parent-child relationship

Korean courts have international jurisdiction over the matters relating to establishment of adoption if a prospective adoptee or the prospective adoptive parent has his or her habitual residence in Korea. Korean courts have international jurisdiction over matters relating to confirmation of adoptive parent-child relationship or its dissolution if the child has his habitual residence in Korea or the child and one of the adoptive parents have Korean nationality. Although Korea has signed the Adoption Convention in May 2013, Korea has not ratified the same.

D. Matters relating to Parental right (parental responsibility)

Korean courts have international jurisdiction over the matters relating to parental rights, custody, rights of visitation or guardianship of a minor child if the child is habitually resident in Korea; provided, however, that the foregoing shall not apply if the child is settled in its new environment after the expiration of the period of one year from the date when the child has been wrongfully removed or retained. The rationale behind this jurisdiction rule is that it enables the authorities to take necessary measures as promptly as possible and lower the burden of the child in need, and the place is near evidence and assistance to children and youths. That is also the position taken by the “Convention on the Civil Aspects of International Child Abduction” (“Abduction Convention”) to which Korea is a party and the “Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children” (“Child Protection Convention”).

Korean courts also have international jurisdiction over the matters relating to guardianship for a minor child if the ward has his assets in Korea and there is a need to protect the ward.

It is noteworthy that different jurisdiction rules will apply to the guardianship for minor children on the one hand and the guardianship for adults on the other, the difference being that the nationality constitutes a ground of jurisdiction in the case of adults, whereas that is not the case with minor children. In this context a question was raised whether such a distinction could be justified

because in the context of applicable law the KPILA refers the guardianship for minor children and the guardianship for adults to the same connecting principles. The majority of the member of the Committee accepted that such a distinction was inevitable.

E. Matters relating to Maintenance

At present, it is not clear whether the courts for the place where the creditor is habitually resident have international jurisdiction. The Committee agreed to insert an article which expressly grants international jurisdiction on the courts for the place where the creditor has his habitual residence. Apparently, it is to protect weaker parties on the level of private international law. In addition, Korean courts have international jurisdiction if the respondent is habitually resident in Korea. This is because the article on general jurisdiction in Chapter 1 is also applicable to contentious matters relating to maintenance. This ground of international jurisdiction will bring about an important change in that the jurisdictional obstacle for the so-called “Kopinos” could be overcome. Of course, there are other obstacles such as lack of reciprocity between Korea and the Philippines. In addition, the parties may enter into a choice of court agreement on maintenance matter; provided, however, the foregoing shall not apply where the maintenance creditor is a minor or an adult ward or the place selected by the parties have no connection with the dispute. Such a choice of court agreement shall satisfy the formal requirement applicable to a choice of court agreement in Chapter 1.

F. Adult Guardianship

Korean courts have international jurisdiction over the matters relating to guardianship for adults in any of the following cases: (i) where the ward is habitually resident in Korea; (ii) where the ward is a Korean; or (iii) where the ward has his assets in Korea and there is a need to protect the ward.

G. Jurisdiction based upon nationality of the parties

In certain family matters, Korea has international jurisdiction if both parties have Korean nationality. This is the case with marriage-related matters, whereas this is not the case with establishment of parent-child relationship or maintenance. Accordingly, we should pay more attention so that the rules on jurisdiction based upon nationality would be consistent in diverse family matters.

H. Overall Assessment and Future Task

Compared with European Union, which has the “Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000” (the “Brussels II *bis*”), the “Council Regulation (EC) No 4/2009 of 18 December 2008

on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations” (the “Maintenance Regulation”), the “Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession” (the “Succession Regulation”), those rules to be inserted in the KPILA are very much brief. In addition, many countries of the EU are parties to some of the Hague Conventions, such as the Abduction Convention and the Child Protection Convention. Accordingly, one may doubt whether it is desirable for Korea to insert insufficient rules on international jurisdiction for family matters. However, I am confident that those rules to be inserted in the KPILA could improve the current situation and will constitute the basis upon which we could establish more detailed rules in the future.

*** Difference between Korea and Japan**

I understand that the Ministry of Justice and experts of Japan are in the course of making concerted efforts to prepare international jurisdiction rules for family matters which will be enacted in the future. The international jurisdiction rules to be inserted in the KPILA will also set forth international jurisdiction for non-contentious matters in the area of family law.

6. Succession (Chapter 8)

Current Status

An action relating to a succession, a bequest (or a testamentary gift) or other acts taking effect upon death may be filed before the court located in the area where the general forum of the deceased was located at the time when such succession commenced (Art. 22 of the KCPA). In addition, an action relating to a succession claim and the liability of an estate, which does not fall under Art. 22 of the KCPA, may be filed before such court, if the whole or part of the estate is located in the jurisdiction area of the court under Art. 22 of the KCPA. It is generally recognized in Korea that these rules apply to international jurisdiction.

Amendment / Legislation

Korean courts shall have international jurisdiction to rule on the succession as a whole if the deceased had his habitual residence in Korea at the time of death. The same applies where the deceased had his last habitual residence at the time of death if his habitual residence is unknown. In addition, Korean courts shall have international jurisdiction to rule on the succession as a whole if the deceased has his estate in Korea; provided, however, that the foregoing is not applicable when the value of the estate is significantly small.

In addition, the Committee agreed to set forth international jurisdiction for matters relating to

wills. Korean courts shall have international jurisdiction to rule on the will if the deceased had his habitual residence in Korea at the time of the will or the property which is the subject of will is located in Korea. Under Korean law, matters relating to wills generally fall within the category of non-contentious matters. Finally, considering that succession is closely related to the property and the KPILA permits party autonomy within a certain limit in the context of applicable law, the Committee agreed to insert an article permitting a choice of court agreement between the parties concerned, except where the parties are a minor or an adult ward or the place chosen has no substantial connection with the dispute. The scope of the “parties concerned” is not entirely clear especially in the case of non-contentious matters (Cf. Recital 28 of the EU Succession Regulation). Such a choice of court agreement should satisfy the formal requirement applicable to a choice of court agreement in Chapter 1. I am not sure whether allowing a choice of court agreement in the context of succession matters is desirable.

According to the principle established by the Committee, the article on general jurisdiction in Chapter 1 should also be applicable to succession matters. However, it is not clear whether that is correct without any limitation.

* Difference between Korea and Japan

The international jurisdiction rules to be inserted in the KPILA will also set forth international jurisdiction for non-contentious matters in the area of succession law. Most of the matters on wills will fall under the category of non-contentious matters. There are no comparable rules in Japan if my understanding is correct.

7. Promissory Notes, Bills of Exchange and Checks (Chapter 9)

Current Status

There is no provision other than the venue provision in the KCPA (Art. 9).

Amendment / Legislation

An action relating to a bill of exchange, promissory note or check may be filed in Korea if the place of payment of the bill, promissory note or check is located in Korea. This provision mirrors Art. 9 of the KCPA.

8. Maritime Matters (Chapter 10)

Current Status

There is no provision other than the venue provision of the KCPA (Arts. 10, 13 and 14).

Amendment / Legislation

An action relating to limitation of liability of the shipowner, charterer, manager, operator or other users (hereinafter referred to as the “shipowner and others”) of the ship may be filed before Korean courts if any one of the following places is located in Korea: (i) the place of registration of the ship in respect of which the accident took place; (ii) habitual residence or principal place of business of the shipowner and others; (iii) the place of accident (including place of injury); (iv) the first place at which the ship arrived after an accident; (v) the place where assets of the shipowner and others has been arrested; or (vi) an action based upon limitation claim has been filed against the shipowner and others.

An action against a shipowner and others relating to ship or navigation may be filed before Korean courts if the arrest of the ship has been effected in Korea (so-called “*forum arresti*”). The venue provision whereby an action based on a claim secured by maritime lien or any other security interest in a ship (such as a ship mortgage) may be filed in the place where the ship is located, will not be transformed into a rule on international jurisdiction. In other words, Art. 3-3(6) of the JCPA will not be inserted in the KPILA. The reason is that mere presence without attachment or arrest is not sufficient to secure the creditor’s exercise of his right against the ship.

An action relating to general average may be filed before Korean courts if any one of the following places is located in Korea: (i) the location of the ship; (ii) the place where the arrest of the ship has been effected; or (iii) the first place at which the ship arrived.

An action relating to a collision of ships or any other accident at sea may be filed before Korean courts if any one of the following places is located in Korea: (i) the place of registration, or the location, of the damaging ship; (ii) the place of collision; (iii) the first place at which the damaged ship arrived; or (iv) the place where the damaging ship has been arrested. The relationship between the rules on the collision of ship in Chapter 10 and the rules on tort in general in Chapter 6 need to be clarified.

An action relating to salvage may be filed before Korean courts if any one of the following places is located in Korea: (i) the place where the salvage was performed; or (ii) the first place at which the salvaged ship arrived.

Although Korea is not a party to the “International Convention on Arrest of Ships” (“Arrest Convention”), the Committee accepted the proposal that *forum arresti* be a ground for international jurisdiction for maritime matters, such as limitation of liability of the shipowner and others, general salvage, collision of ships and salvage. The place of arrest in this context encompasses place of arrest or provisional arrest and the place where the ship could have been arrested, but bail or other security has been given in lieu of the arrest or provisional arrest.

* Difference between Korea and Japan

The JCPA has no separate chapter dealing with international rules on maritime matters. However, the JCPA also has several rules on maritime matters such as an action based on a maritime-lien claim and any other claim secured by a ship, an action seeking damages arising from a collision of ships and an action relating to salvage (Arts. 3-3(6), (9) and (10)).

9. Trust and Insurance Contracts

Current Status

There is no provision.

Amendment / Legislation

The Committee considered inserting in the KPILA rules on trust and insurance contracts. However, the conclusion was not to insert those rules.

IV. Concluding Remarks

Thus far, I have reviewed the major contents of the rules on international jurisdiction to be inserted in the KPILA in the near future. As I have mentioned at the beginning of my presentation, unfortunately the Committee could not succeed in preparing the final draft of the amended KPILA. However, the Committee could reach agreement on various tricky issues including structure of the jurisdiction rules, the introduction of *forum non conveniens*, *lis pendens*, family matters (albeit unsatisfactory) and non-contentious matters. The areas which have caused major difficulties were family matters and non-contentious matters. I understand that in the near future the KMOJ will take necessary measures to complete the preparation of the final draft in due course.