

International Asset Securitization and Conflict of Laws (summary)

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This article inquires into whether the rules and theories of Japanese conflict of laws must change in response to developments in the law and practice concerning receivables financing.

The first chapter deals with the rise in international asset securitizations which was the moving force prompting the reform of the Japanese financial system. The reforms, in turn, caused the private law to change.

In the second chapter, I briefly describe the rules and theories of Japanese conflict of laws. Japanese private international law rules are codified in a statute (known as "Horei") entitled Act on the Application of Laws (General), Law No. 10 of 1898. There have been constant modifications, but a major modification was that which occurred in 1989. In Japan, the accepted understanding is that Horei Article 12 governs the effect of any notification vis-à-vis debtors and third parties. The current rule as found in Article 12 is that the debtor's domicile is the connecting factor. However, Article 12 does not govern contractual or proprietary aspects of an assignment. In this connection, the general view in Japanese doctrine is that the contractual aspects of an assignment are governed by the law applicable to the contract between assignor and assignee (original contract), and the proprietary aspects are governed by the law governing the assigned claims.

Article 12 has been much criticized by the scholars. The Ministry of Justice is currently working on a revision, expected to be completed in 2005. Under consideration are as follows. The effect of an assignment against third parties is governed by (i) the law governing the assigned claims, and (ii) the law of the assignor's habitual residence. The latter rule is the only one that truly facilitates financing based on claims; the former rule impedes efficient assignments of claims in bulk and precludes assignments of future claims. Only the latter rule provides *ex ante* certainty to a prospective lender or buyer in a manner that supports effective financing mechanisms in the contemporary marketplace. In addi-

tion, the current Article 12 does not adequately cover the legal questions raised in securitizations. And the law governing the assigned claims makes the legal relationship even more complicated when applied to bulk assignments of claims.

In the third chapter, I briefly explain the current rules and theories of international assignment of claims under the Rome Convention of 1980 on the Law Applicable to Contractual Obligations.

This article also compares the rules in the Rome Convention of 1980 with the current Japanese rules on international assignments of claims. The present author's main conclusions on the question of international assignment of claims are as follows. The effect of an assignment against the debtor is governed by the law governing the assigned claims. The effect of an assignment against third parties is governed by the law of the assignor's habitual residence.