

The New Rules on International Jurisdiction: Focusing on Rules relating to Foreign Corporations and Contractual Obligations (Summary)

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1. Fundamental View Point: Predictability and Flexibility

The new rules on international jurisdictions for civil cases, which were enacted in April 2012 by amending the Civil Procedure Code, are considered to increase the predictability about the jurisdiction of Japanese courts. However, when we interpret these rules and apply them to actual cases, we should be careful not to put too much stress on the value of predictability, because, in my opinion, flexibility of rules to achieve the reasonable result is more important than predictability especially for the rules on international jurisdictions which have to deal with very variety of cases.

2. General Jurisdiction for Foreign Corporation

According to the new Article 3-2 (3) of Civil Procedure Code, a foreign corporation which doesn't have its principal office in Japan is not subject to the general jurisdiction (jurisdiction to hear any kind of disputes) of Japanese courts. When a corporation established under a foreign law has its office for central administration in Japan, it will be subject to the general jurisdiction of Japanese courts. In my view, a Japanese corporation which has its office for central administration in a foreign country should also be subject to the general jurisdiction of Japanese courts. It should be sufficient if either its registered office or principal place of business locates in Japan to find the general jurisdiction.

3. Special Jurisdiction based on the Location of Property

According to the new Article 3-3 (iii), for claims which request payment of money, Japanese courts have special jurisdiction if a defendant owns a property which may be attached in Japan, excluding the case where the value of the property is extremely low. Here, "property" includes not only real property or other tangible assets, but also intangibles such as personal claims against debtors in Japan and intellectual properties recognized under Japanese laws. This provision will have a great practical impact for foreign corporations which have offices in Japan.

4. Special Jurisdiction based on the Location of Offices and Business Activities

According to the new Article 3-3 (iv), when a foreign company has its office in Japan, Japanese courts have special jurisdiction only for claims which relate to the business of that office. However, it is uncertain how to determine if a claim relates to the business of that office. For example, there are conflicting views about the necessity of actual involvement of the Japanese office to the relevant transaction.

According to the new Article 3-3 (v), when a foreign company conducts its business in Japan, Japanese courts have special jurisdiction for claims relating to such business in Japan. This special jurisdiction is useful to deal with a case when a foreign corporation conducts its business with Japanese customers without a physical office but through internet. This jurisdiction also may be found when a foreign corporation does its business through its subsidiary or agent as far as the claim relates to the business of the foreign corporation.

5. Special Jurisdiction based on the Location of the Place of Performance of Contractual Obligations

According to the new article 3-3 (i), Japanese courts have special jurisdiction for a contractual claim when the place of performance of the disputed contractual obligation locates in Japan. However, this jurisdiction is limited to cases where the contract stipulates that the performance of the obligation shall be made in Japan (where the contract provides several places of performance for the obligation, it should be sufficient if one of them locates in Japan) or when the place of performance locates in Japan according to the governing law of the contract which is expressly or impliedly chosen by the parties.