

Practical Assessments on “the Act on General Rules for Application of Law” from a Viewpoint of Banking Businesses (summary)

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The Act on General Rules for Application of Law, which has been in effect for over a decade, is being given a high evaluation among Japanese bankers, in that it makes it easier to predict applicable laws in banking business cases.

The author gives the following four main points to discuss.

First of all, the gimmick of characteristic performance in the article eight paragraph two would be effective in reaching “implicit intentions” in applicable laws by narrowing relevant areas, thus making the business easier.

During the discussion prior to the enactment of the Act, it was suggested that based on the assumption of the concept of characteristic performance, the applicable law to a guarantee contract would fall on the guarantor’s habitual residence law, which is usually not the case in banking practices, however, guarantor’s habitual residence law could be chosen. The theory would not be a big hindrance.

The second point is about the exception clause on the consumer contract in the article 11, which has not yet been applied in Japanese banking businesses. There was a case, in which bank customer, due to his ignorance, did not argue for his habitual residence law to be applied to his case during a Japanese Bankers Association’s Alternative Dispute Resolution discussion.

Given this, bank customers are expected to be informed of the article and bank staff had better make research on consumer protection laws in major countries to prepare for the customers applicable law preference.

The third point is the assignment of claim in the article 23, which goes well with bank practices, worthy of high evaluation.

It has been reported that the European Commission is studying an amendment¹ to an EU regulation, which would stipulate in the article four, “the third party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time.” The developments in overseas jurisdiction keep to be observed.

The fourth point is about inheritance, in which the effects from the revision to the Japanese inheritance law in 2018 (effective from July 1 2019) need due attentions.

In particular business procedures should be in place for the withdrawal of inheritance deposits by the Koreans living in Japan under, if, the application of Korean law, in addition, taking into account the effects of the revised Japanese law.

Lastly the issues for future considerations are publicity of the Act and actions to financial digitalization in relation to the Act, such as a decision of an applicable law to crypto assets businesses, residency of the assets, cross border transfer of the assets, a loan in the assets, and setting of security right (execution) to the assets to name some.

Plenty remains to be considered for the Act interpretations and administrations.

- 1 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the law applicable to the third-party effects of assignments of claims (Brussels, 12.3.2018 COM (2018) 96 final 2018/0044 (COD))