Practical Issues on Renunciation of Inheritance with Foreign Elements (summary)

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This treatise examines some practical issues on international jurisdiction and governing (applicable) law regarding renunciation of inheritance cases in Japan with factors outside of Japan (foreign elements).

Firstly, the author refers to domestic cases. In cases where only the laws of Japan govern, renunciation of inheritance functions as a simple and effective means of waiver of a decedent's liability by the heir after the commencement of inheritance. The author also mentions whether or not other countries have inheritance renunciation systems. Some countries have no system similar to the renunciation of inheritance under Japanese law due to the difference between (i) the legal system based on Roman laws (Universal Succession or Civil law Succession, i.e., the "damnosa hereditas" of Roman Law), which the hairs obtain all rights and obligations of the decedent at the same time of the decedent's death and (ii) the inheritance laws based on Common Law Succession, which is based on Anglo-American laws, is that all rights and obligations of the decedent are transferred to a third party, such as a personal representative, at the time of the decedent's death, and distributes them to the heirs after its liquidation.

Secondly, concerning international jurisdiction, the amended Domestic Relations Case Procedure Act, Act No. 52 of May 25, 2011, amended by Act No. 72. of 2018, (effective on April 1st, 2019) currently applies to jurisdiction over renunciation of inheritance. The author introduces the practical views that, before the amendment, grounds of the international jurisdiction derived from the rationale must be accepted and that international jurisdiction of renunciation of inheritance cases should be recognized broader than in regular inheritance cases. (ex. Dividing and distribution of estate cases). The amendment stipulates the jurisdiction only over the last domicile of a decedent although many practitioners (especially lawyers) have contrary opinions. The author discusses how to interpret international jurisdiction if Japan does not have any recognized(stipulated) jurisdiction in accordance with the amendment. The author does not agree on both opinions: (i) emergency jurisdiction should be applied in order to recognize international jurisdiction in such cases and (ii) the Tokyo Family Court should accept international jurisdiction. The

author thinks that emergency jurisdiction lacks legal stability, and the acceptance of the Tokyo Family Court lacks legal basis. In many cases courts do not provide written reasons for international jurisdiction and applicable law in cases of renunciation of inheritance, hence, it is more difficult to collect, analyze and categorize similar cases. The author reports that this practice needs to be rectified.

Thirdly, the law governing the renunciation of inheritance in Japan will be basically decided in accordance with the laws of the country (nationality) of a deceased, and then if the private international law in the country of the deceased stipulates the laws of Japan as governing law of such case, Japanese laws govern in accordance with the policy of "Renvoi" (remission). The author provides the case in which heirs do not succeed to the debt of the decedent under its governing law (the nationality of the decedent is Filipino). In such case, there is a need to accept the renunciation for the sake of simplicity to handle creditors in Japan. The author concludes legislative proposals that, in addition to the connecting factor of the decedent's nationality, Japanese law (i.e., lex foli) should be applied by making a supplementary connecting factor, from the perspective of the possibility of resolving the matter by public order (there are other problems in easily applying Japanese laws based on public order) and convenience for heirs, etc. residing in Japan.