

examples of ‘any other necessary matters regarding custody’ and ‘in the agreement, the child’s interests shall be considered as the paramount consideration.’, by which parents who are going to divorce by agreement should talk focusing on the child’s interests and make an agreement about the matters regarding custody, including the examples newly prescribed in it (Article 766, Paragraph 1).

4. Law of Civil Procedure and Bankruptcy

Partial Revision of the Code of Civil Procedure and the Civil Execution Act

Law No. 36, May 2, 2011 (effective on April 1, 2012)

Background:

Under the terms of the Code of Civil Procedure prior to the revision by this Act, there were no provisions concerning jurisdiction applicable to an international dispute, although there were provisions for domestic territorial jurisdiction. In practice, the structure of the jurisdiction of international disputes has been essentially equivalent to the provisions for domestic territorial jurisdiction, but has denied Japanese jurisdiction in special circumstances. Additionally, judicial precedents, such as the judgments of October 16, 1981, 35(7)MINSHU 1224, and November 11, 1997, 51(10)MINSHU 4055, have been a source of guidance for determining this matter. However, in order to increase parties’ possibility of presupposition and the stability of legal relationships in international civil disputes, the Code of Civil Procedure has been amended, to provide clear and accurate rules. This amendment is believed to contribute to expeditious and appropriate dispute resolution.

The need for improvement in the law on international jurisdiction was highlighted repeatedly and provisions regarding property disputes were examined in 1996, when the Code of Civil Procedure was significantly amended. Nevertheless, this move was suspended as the Hague Conference on Private International Law was held at that time, aiming to provide a treaty which covered a broad area of international jurisdiction.

However, these negotiations failed to produce an adequate conclusion and in 2005 only a minor treaty was drawn up on jurisdiction. Therefore, there was little expectation of concluding a treaty covering broader international jurisdiction and the only way to control international jurisdiction was by reliance on rules in domestic law. This amendment was presented to the Diet twice following the first presentation in 2010, but the deliberations were not finalised and they were shelved both times. Eventually it was established in 2011.

Main Provisions:

This amendment was not the result of new legislation, but by partial amendment of the existing Code of Civil Procedure. The new provisions relating to international jurisdiction are inserted in front of those concerning domestic territorial jurisdiction, at the beginning of the Chapter 2.

1. The outline of the amendment is as below.

(1) Rules settled according to different types of action.

Different rules are provided for different types of action, such as an action to seek fulfilment of a contractual obligation, or one to seek a remedy for an unlawful action. In each category, the law provides the occasions on which Japanese courts keep their jurisdiction.

(2) Special provisions for an action concerning consumer and employment contracts

New provisions on international jurisdiction are set out so that consumers and workers are adequately protected.

(3) Regulations on agreements concerning international jurisdiction

The effects and form of an agreement concerning international jurisdiction are clearly determined in the new law.

(4) Rules when deciding jurisdiction

According to the newly established rules, the Court may dismiss a complaint when there is a special reason not to hear the case, such as the nature of a case, or the geographical location of a party.

(5) Provisions stipulating a temporary restraining order

The law sets out occasions when a Japanese court has jurisdiction when examining whether or not a temporary restraining order should be issued.

2. In this article, questions of international jurisdiction when an action concerning a consumer or employment contract is brought will be discussed as they are significant reforms.

- (1) International jurisdiction when an action regarding a consumer contract is brought before the court

Under this section, different procedural rules are provided depending on which party brings a case, a consumer or a business owner. When a consumer files an action against a business owner, a Japanese court may exercise jurisdiction as long as either the domicile of the consumer in a contract at the time of conclusion of the contract or at the time the action is brought is in Japan. However, where an action is brought by a business owner, there is no special rule granting jurisdiction for a certain venue, only provisions on a general venue, agreed jurisdiction, and jurisdiction by appearance apply.

Additionally, the effects of an agreement concerning jurisdiction are limited by the law on certain occasion. An agreement on international jurisdiction which was reached at the same time as concluding a contract does not have a binding power. The exception to this policy is when the agreement states that the parties have agreed to bring any action to a court close to the domicile of the consumer, or where the consumer invokes the agreement when a business owner issues proceedings in an agreed court in the agreement. This limitation is imposed; seeking to protect the consumer, who usually enters into a contract without appreciating that it contains an agreement concerning jurisdiction.

On the other hand, in cases where an agreement is reached after a dispute has arisen, no limiting rules apply as a consumer is expected at this stage to give careful consideration when reaching an agreement.

- (2) International jurisdiction when an action concerning an employment contract is brought before the court

This part covers an individual labour dispute; therefore, disputes outside this category would not be covered, such as a dispute between a group of workers and an employer, or a dispute arising from recruitment. The law supplies different provisions according to the party who brings the action. The treatment of the procedure is almost

identical to that of disputes concerning consumer contracts. When an employee brings an action against an employer, the Japanese court exercises jurisdiction as long as the employee's services are offered in Japan. On the contrary, when a business owner brings an action, there is no special rule on jurisdiction.

As to an agreement concerning jurisdiction, the conditions required to activate the agreement are settled as below. An agreement needs to be reached when an employment contract is terminated and the agreed court is in a country where the employee's service was offered. Otherwise, an employee invokes the agreement when an action is brought to an agreed court by the employer. In these circumstances, the agreement concerning jurisdiction is effective. These provisions have been made in order to protect workers as generally speaking they rarely refuse to agree to or request to amend an article on jurisdiction which is referred to in an employment contract. However, an agreement reached after a dispute arose is effective, as even an employee is expected to think carefully at this stage before agreeing on jurisdiction.

Editorial Note:

Under this amended law, the clearly stated provisions are settled which serve in judging whether Japanese courts exercise their jurisdiction or not in each type of action. Two improvements are expected to occur, as mentioned below. The first expectation is that an international dispute, which has complicated the question of jurisdiction matter for a long period, would be brought to a resolution in a shorter term and settled in an appropriate way. The second one is the negotiation and conclusion of an international contract would be more stable and proceed more smoothly as well in such a globalized society. This is because parties to a contract and those involved easily make an assumption on a jurisdiction problem when a dispute arises.

While these changes are highly anticipated, there remains another problem on jurisdiction. It is a provision which covers the jurisdiction for family disputes which attracts people's attention these days, such as a divorce suit caused by an international marriage or an action to correct / confirm a parent-child relationship. New legislation which would cover this area is now looked forward to.