

Private International Law and Inter-region Law in Taiwan (summary)

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1. This article is to give an overview of private international law and inter-region law in Taiwan. As to the latter, discussion will be focused on “The Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area” and “The Act Governing Relations with Hong Kong and Macau”, which were enacted to deal with legal issues arising under interrelationship with Mainland China, Hong Kong and Macau.

2. The main statute of the private international law in Taiwan is “The Law Governing the Application of Laws to Civil Matters Involving Foreign Elements”, which, enacted in 1953, consists of 31 articles which cover 24 of main legal issues in private law area including capacity, formality, contract, torts, property rights, marriage, matrimonial property, divorce, legitimation, adoption, guardianship, maintenance, succession and will. Chapter 2 of this article presents an outline of this law.

For example, Art. 2 of this law provides that *lex patriae* of a recognized foreign corporation shall be *lex domicilii*. The explanatory comment says that *lex domicilii* in this provision means law of the main office of relevant foreign corporation. However, the terminology of *lex patriae* is so controversial that even some commentators mention this provision in the context of determination of nationality of a corporation.

As to the field of contract, while Art. 6 Para. 1 of this law establishes the principle of party autonomy, under which parties’ freedom of choice is given, Para. 2 of this provision stipulates the rules to deal with the case where the intention of the parties is unclear. The rules say that where the parties are of the same nationality, *lex patriae* governs, but if it is not the case, then *lex loci contractus* governs.

In the first part of this chapter, the feature of this law is stated in comparison with *Horei*, which is the main statute of the private international law in Japan.

3. While “The Law Governing the Application of Laws to Civil Matters Involving Foreign Elements” had never been amended after its enactment, the judicial authority in Taiwan organized a committee in 1998 to set out to amend this law to introduce important theories which has been developed since the enactment. The committee has released the second draft of the amendment which consists of 67 articles as far. The aim of this draft seems to establish the basic stipulations regarding civil procedure in international context and to make a broad revision of the provisions regarding rules of the respective legal issues as well as rules regarding general matters. For example, the draft introduces the doctrine of “*forum non conveniens*” as well as the doctrine of “evasion of law”. However, in the latest version of amendment draft which officially released, the draft provisions regarding these doctrines have been deleted.

In the second part of chapter 2, the feature of the draft is presented.

4. The inter-region law in Taiwan, which should be deemed as one of important factors composing the conflict of law rules in Taiwan, is to deal with legal issues arising in the course of interchange between Taiwan and Mainland china, Hong Kong, Macau. The main statutes of inter-region law in Taiwan are “The Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area”, enacted in 1992, and “The Act Governing Relations with Hong Kong and Macau”, enacted in 1997.

While both acts consist of provisions regarding legal issues in the administrative, economic, penal law and private law field, discussions in this article will be focused on private law issues.

The mechanism of private law in these two acts is the division of conflict of law rules and material law. While the former is to establish the rules for determination of the applicable law, the latter is to give special legal treatments in some legal cases which are different from those under Taiwan legal system. The aim of this material law in the two acts is to give certain protections of the interests of residents in Taiwan, which are demanded as an important policy of the enactments to meet the special circumstances arising from political split and economic disparity between Taiwan and the other areas. For example, while a

bigamous marriage is prohibited under Taiwan law, Art. 64 of the Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area gives room for an exception which recognizes a bigamous marriage under the condition that the spouses, whose marriage was concluded before the political split of two area, had been unable to live together due to the political split and one of the spouses concluded the other marriage before Nov. 1, 1987, the date on which the Taiwan government removed the ban on passage to Mainland China. However, if both of the spouses had concluded bigamous marriage, the original marriages shall be deemed to vanish. Another example is the limitation of succession by residents of Mainland China to certain amount. However, it has been criticized that stipulation of this sort would be inconsistent with the principle of equality under the Constitution.

Chapter 3 of this article gives an outline of the rules for determination of the applicable law in the two acts in comparison with those in private international law in Taiwan as well as overview of the above-mentioned material law.