

## Choice-of-law and "Public" Regulations (summary)

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This paper aims to examine whether or not "public" laws and regulations of one State are applied and, if any, how they are applied even when law of another State is designated as applicable law under the present choice-of-law rules in Japan.

In the era of the Internet, an individual consumer can easily conduct cross-border transactions with a business entity located in a foreign State. Now cross-border B-to-C transactions are actually emerging through the Internet all over the world. In Japan, however, many of the consumers and the business entities hesitate to do so because the issue described above is unclear under the present private international law. Which State's laws and regulations for consumer protection will apply to their cross-border transactions? It is practically important to clarify the issue in the contemporary business scenes<sup>(1)</sup>.

Similar problems have occurred in other areas of the contemporary business scenes. Which State's laws and regulations for protection of corporate bondholders will apply to an issue of corporate bonds in a foreign market? Which State's laws and regulations for avoiding fraudulent transfers will apply to a cross-border transfer in bankruptcy? Which State's laws and regulations of intellectual property will apply to a cross-border infringement of a foreign patent, trademark or copyright?

On one hand, some Japanese scholars assert that governing laws on these matters should be designated by the traditional choice-of-law approach that has been mainly used in "private" law field. On the other hand, other scholars assert that they should be regulated by the mandatory application of laws and regulations of the forum State that has been mainly used in "public" law field.

Where is the border between two different approaches and which approach should be used for each problem described above? What is the exact range the traditional choice-of-law approach, which has been mainly used in "private" law field, covers? What is the exact range the mandatory application of the laws and regulation of forum State, which has been mainly used in "public" law field, cov-

ers? This paper aims to clarify the rules on these matters under the present private international law in Japan.

- (1) For more details, see Yoshihisa Hayakawa, *Japanese Law in the Era of the Internet*, 45 JAIL 61 at 75-77 (2002).