

The Amendment to Japanese Private International Law in 2006 : The Law Applicable to Contracts and Forms (Summary)

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The *Horei*, the basic statute of Japanese Private International Law which was enacted in 1898, has been amended throughout and the new law whose name is the *Ho-no-tekiyo-ni-kansuru-Tsusokuho*, passed the National Diet in June 5, 2006. It will be effective from January 1, 2007. There have been no major changes except for the amendment to the *Horei* of 1989 in the field of Marriage and of Parent and Child.

This paper deals with the amendment in 2006, especially examines the reasons and process, and discusses the rules of the law applicable to the material validity and the effect of a juristic act whose typical example is a contract, and the formal validity of a juristic act.

According to the extra explanation attached to the Interim Draft of the Private International Law which was published in March 2005, the reasons for this amendment are followings: (1) the *Horei* should be made corresponded with the present international society because more than 100 years have passed since its enactment, (2) the *Horei* should be made congruent with new legislation for private international law which has recently adopted in many countries, and (3) it is necessary to change the rule of the law applicable to international assignment of claims for promoting international asset securitization.

In 2003 the Private International Law Committee (for Modernization) was established within the Legislative Council of the Ministry of Justice and started to discuss new rules. The interim draft was published in March 2005, and the Tentative Draft of New Private International Law was adopted in the Council in September 2005. It seems to me that the only six months from March to September were very short for discussing nationwide and revising one of basic laws.

The new law maintains the party autonomy in selecting the governing law in contracts (Article 7). When there is no selection of the governing law in accordance with Article 7, the new law applies to contracts the law of the most closely

connected place (Article 8). It has adopted the theory of the “characteristic performance” and use the term in Article 8(2). The new law admitted that the parties can change the applicable law after the conclusion of the contract (Article 9). It also provides special rule of consumer contracts and labor contracts. Although the party autonomy is admitted in consumer contracts, the mandatory law of the place of the habitual residence of a consumer applies to the contracts if the consumer expresses the intention of applying the law toward traders or professions (Article 11). In the same way, the party autonomy applies to labor contracts, and the mandatory law of the most closely connected place applies to the contracts if a worker expresses the intention of applying the law toward a employer (Article 12(1)). The most closely connected place to labor contracts is presumed the place of carrying out work (Article 12(2)).

The *Horei* provided that a juristic act was formally valid if it complied either with the law governing its effect or with the law of the place of acting. However, since the form of an act is more closely related with validity than with effect, the new law has adopted that a juristic act is formally valid if it complies either with the law governing the validity of the act or with the law of the place of acting (Article 10).