

## **Debt Crisis and German Private International Law (summary)**

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Means of financing through the international finance market has been changed into direct finance like bonds from indirect finance like loan. Transactions of foreign public bond are also active in the Japanese capital market. In the trend of financing, what kinds of legal problems will occur when a country that has issued the bonds would fall into a debt crisis?

One of these legal problems is related to sovereign immunity. An applicable law for that public bond is also one of these problems. Legal problems about a debt crisis are important not only in US and EU but also in Japan because Japan is one of the worldwide creditors and the impact of a debt crisis of foreign public bond might be not small in Japanese capital market. Therefore, I would like to introduce and analyze a German case about a debt crisis in order to obtain some legal suggestions for solving legal issues based on a debt crisis.

### 1. The case held on March 14, 2003 at Frankfurt am Main District Court

When the Argentina Republic had fallen into the debt crisis, those public bonds have not been paid at all. Then bondholders of the Argentina Republic in Germany filed the suit against the Argentina Republic in order to demand to repay for those bonds. Frankfurt am Main District Court has admitted the demand of the plaintiffs against the Argentina Republic.

First issue in this case was whether or not the plea based on sovereign immunity would be admitted because the defendant Argentina Republic is a country with sovereignty itself. The court held that this plea has been denied because the public bond was not *acta jure imperii* but *acta jure gestionis*.

Second issue was whether or not the Article 8(2) b IMF-Agreement would be applicable to this case. The court held that the Article 8(2) b should not be applied to the case because the public bond should be categorized in capital transaction and capital transaction should not be included in "exchange contract".

Third issue was whether or not the debt crisis would fall the state of necessity in the international law. The court held that this plea has been denied. However

many problems about the state of necessity have not settled yet.

Final issue was the whether or not the Argentina law which has a rule of order to interrupt public bond payment would be applicable to the case in German court. The court held to deny the effect of Argentina law to this case because of some reasons one of which is that foreign public law itself is ineffective in Germany.

## 2. Article 8(2) b IMF-Agreement

Courts in Germany had traditionally held the wide interpretation of the definition of “exchange contract.” However, in 1993, German Supreme Court held that capital transaction has not been included in the range of Article 8(2) b IMF-Agreement. It means that the applicable range of the Article 8(2) b has been interpreted narrower in Germany than ever. With the interpretation in its case held in 1993, the stance of German judgment on the applicable range of Article 8(2) b IMF-Agreement has been become to close to judgments held in US and UK.

The judgment on March 14, 2003 at Frankfurt am Main District Court has followed the above case held by German Supreme Court in 1993. In this case at Frankfurt am Main, the court held that the Article 8(2) b of IMF-Agreement has not applied to the foreign public bond case because the foreign public bond should be categorized into the capital transaction.

Finally, in the light of argument above, the remaining issues might be related to the interpretation about the Article 8(2) b IMF-Agreement in Japan because Japanese courts have not held directly cases related to the Article 8(2) b IMF-Agreement. In addition those German courts' judgments above are helpful not only for prospective real cases in Japan but also for academic analyses in order to clarify the remaining issues about a debt crisis of foreign public bond in detail.