

Protective Jurisdiction for Consumers or Employees (summary)

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As the growing recognition of the principle of autonomy, there is international acknowledgment that economically 'weaker parties' need protection. This is evidenced by the new special provisions for choice of law in respect of certain consumer and employment contracts in the Act on General Rules for Application of Laws (Act No. 78 of 2006; hereinafter AG). In Article 11 of AG, which is to protect one of the 'weaker parties', here the consumer, by providing limited party autonomy as to choice of law rules, a consumer is defined as "an individual who becomes a contractual party neither in nor for the purpose of business", on the other hand a business operator is defined as "a juridical person or other association or foundation, or an individual who becomes a contractual party in or for the purpose of business". In Article 12 of AG, which is to protect the other 'weaker party', here the employee, there is no definition as to the employee. As to the domestic employment contracts, however, in Article 2(1) of the Labor Contract Act (Act No. 128 of December 5, 2007), the employee is defined as "a person who works by being employed by an employer and to whom wages are paid".

Unlike what occurred in the part of substantive law, in the part of procedural law, especially in respect of the international adjudicate jurisdiction, little progress doesn't occur in Japan. It must be fumble after, therefore, the rules of international jurisdiction more favorable to the interests of the 'weaker parties' than assumed for by the general rules.

In brief, in respect of the consumer contract, provided the contract falls within the scope of application of Article 11 of AG, the other party to the contract can only sue the consumer in the court of the place where the consumer is domiciled. On the other hand, the consumer can institute proceedings against the other party to the contract either in the court of the place where the consumer is domiciled, or in the court of the place where the other party is domiciled. Furthermore, to protect consumers, it seems that a jurisdiction clause in a consumer

contract covered by Article 11 of AG is valid provided it has been entered into after the dispute has arisen and it is likewise valid provided it allows the consumer to bring proceedings in courts other than those places indicated above.

In respect of the individual contract of employment, provided the contract falls within the scope of application of Article 2 of the Labor Contract Act, the employer can only sue the employee in the court of the place where the employee is domiciled or the place where employee is to be carried out according to the contract of employment, which is called habitual work place. On the other hand, the employee can institute proceedings against the employer either in the court of the place where the employee is domiciled or the place where employee is to be carried out according to the contract of employment, or in the court of the place where the employer is domiciled. In addition, the effects of jurisdiction clauses should be limited only when it should be entered into after the dispute has arisen or provided it only allows the employee to bring proceedings in courts other than those places indicated above.