

International Jurisdiction over Corporate Matter, Land and Registration Actions (summary)

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1. Introduction

On September 3, 2008, the Legislative Council was consulted about international judicial jurisdiction (hereinafter called "IJ") for upcoming legislation. This treatise considers the direction of such legislation, focusing on jurisdiction over corporate matters, and land and registration actions. The argument herein is based on the intermediate bill proposal on IJ announced through the Ministry of Justice by the Council on July 28, 2009 ("Bill Proposal"), and the research and study paper on IJ which was distributed as Document 2 at the 1st meeting on October 17, 2008 of the IJ legislation expert committee of the Council ("Study Paper").

At the current moment, certain provisions including Items (viii), (xii) and (xiii) of Article 5 of the Code of Civil Procedure provide for the basis of internal venue. These provisions authorize courts to exercise jurisdiction specifically over actions relating to domestic corporate matters, land and registration matters. With respect to IJ, on the other hand, the Japanese case law seems to have adopted the theory that the IJ should be deduced reversely from the internal venue provisions on civil procedure, modifying it with the exceptional circumstances doctrine. According to the case law, therefore, until the new statute on IJ is enacted, if any basis of internal venue is found under the said Article 5 (viii), (xii) or (xiii) or other internal venue provisions and no exceptional circumstance is recognized, the Japanese court may exercise IJ.

This treatise argues how the new rule on IJ should be, especially, (1) whether or not it should adopt exclusive jurisdiction, and (2) whether the basis of jurisdiction over corporate matters should be the company's incorporation within the state, or the existence of substantial principal place of business therein.

2. IJ over Actions Relating to Company or Other Association/ Foundation

(1) International Trend and Legislative Proposal

Regarding IJ over actions on companies or other legal persons, the international legislative trend is to provide for exclusive jurisdiction of the state where the company is incorporated or where the company has its seat (principal place of business). This trend is found, for example, in the June 2001 text of the Proposed Hague Convention on Jurisdiction and Recognition of Judgments, the Brussels I Regulation, the Brussels Convention and the Lugano Convention.

In a manner consistent with the trend, the said Bill Proposal and Study Paper propose IJ, as an occasion of specific jurisdiction, for actions based on Chapter II of Part VII of the Companies Act and other equivalent actions. It includes actions concerning the organization of a company, actions for pursuing the liability, etc. of a stock company, actions seeking the dismissal of an officer of a stock company, and so on. The Bill Proposal and Study Paper propose that the courts of Japan have exclusive jurisdiction where the company is incorporated under Japanese law.

(2) Exclusiveness of IJ

Exclusiveness of IJ might be admitted in a limited manner subject to its reasonableness. However, the exclusiveness is likely not to be appropriate to an action for pursuing liability of officers under Article 847 (1) of the Companies Act. The reason comes from the fact that the action will pursue the liability for damages against an individual for his/ her office of officer. It is very like a tort action against an individual, for which the exclusiveness is not adopted.

Although Article 848 of the Companies Act provides for exclusivity of the district court having jurisdiction over the location of the head office of the stock company, internal venue provisions are not necessarily applicable to the IJ. Especially, the issue in question is about defense of an individual person. Under such exclusivity, it might be against the "balance between the parties" to require the individual defendant to defend himself/ herself abroad. It might result in a judgment unrecognizable in other countries. However, if the IJ were non-exclusive, the IJ could be also exercised by the court of his/ her domicile, especially in the case where defending abroad would be likely to infringe his/ her due-process protection interest severely. Such a judgment would be recognizable in other countries.

The Bill Proposal proposes exclusive jurisdiction over both actions concerning

the organization of a company and actions for pursuing the liability against an individual officer. Such a proposal is not acceptable.

(3) Incorporation Place's Exercising IJ

Regarding actions concerning the organization of companies or other legal persons, IJ legislation trends toward exclusive IJ of the place/ state where the entity has its seat, as shown in Article 22 (2) of the Brussels I Regulation, or where it is incorporated legally, as shown in Article 12 (2) of June 2001 text of the Proposed Hague Convention on Jurisdiction and Recognition of Judgments.

Differently from a physical person, a company or any other legal person is an entity generated by law. The state which blesses the company with the juridical life should determine any disputes about the internal organization of the entity, through interpreting its own company law governing the incorporation, which reflects the state policy. People involved in the dispute will predict so. In principle, regarding actions dealing with such an organizational dispute, the courts of the state whose law governs the legal person should exercise exclusive jurisdiction.

As an alternative proposal, it might be feasible to allow the courts of the state where the company has its substantial principal place of business to exercise the IJ. However, the seat of administration or head office might be relocated easily in accordance with the company's activities after its incorporation. Compared with the incorporation law standard, such a seat standard is less stable as a law and less predictable for the related people.

Although the said incorporation law standard is recommendable for the new legislation, it has a weakness that it might be not necessarily harmonized with the current rule based on the fundamental principles of "justice and efficiency of proceedings" and "balance between the parties" because the place might be scarce of evidence

3. IJ over Land Actions/ IJ over Actions Relating to Registration

(1) IJ over Land Actions

Regarding actions involving immovable property (land), the Bill Proposal and the Study Paper proposes that the courts of Japan shall have IJ when the land is situated in Japan. The Paper made two proposals, one provides for exclusive ju-

isdiction and the other provides for non-exclusive one. The Bill Proposal adopts the latter.

Considering the nature of land, it is reasonable to allow the court of the situs to exercise IJ. The parties to the dispute, who well know about the nature of immovable property, will usually bring an action in the situs. The issue is whether the IJ should be exclusive or not.

A precedent of Japan announced there is no international customary law. Some commentators suggest the exclusivity of the situs has been generally admitted in the world. The ground is that it is related to the registration system, that there are a lot of interested parties, and that the evidence is well-connected with the situs. However, those look like the ground for IJ, but not for the exclusivity. While Article 12 (1) of June 2001 text of the Proposed Hague Convention on Jurisdiction and Recognition of Judgments, Article 22 (1) of the Brussels I Regulation, Article 16 (1) (a) of the Brussels Convention and Article 16 (1) (a) of the Lugano Convention provide for the exclusivity in principle, they also provide for some exception to the principle.

Provision for the exclusivity of IJ will deprive the courts of their flexibility. The desire to concentrate land actions at the situs only can be almost achieved by using the exceptional circumstances doctrine. In globalization, rather, it is not amazing that international concerns or businessmen deal simultaneously with a lot of immovable properties all over the world. It is inefficient to spread only the judicial actions strictly to each situs. Non-exclusivity seems to encourage international transaction smoothly.

(2) IJ over Actions Relating to Registration

It is reasonable to provide for exclusive jurisdiction of the courts of the state where the registration is made. The reason is why the actions relating to any registration require the state to take certain governmental procedure such as entries in public registers. There seems no sense for the courts of any other state to exercise IJ. The Proposed Hague Convention on Jurisdiction and Recognition of Judgments, the Brussels I Regulation, the Brussels Convention and the Lugano Convention provide for the exclusive jurisdiction of the registering state.

4. Conclusion

As a conclusion, it should be evaluated that the Bill Proposal makes reasonable proposals for the new statute legislation on IJ with respect to the three specific jurisdictions mentioned above. Provided, however, that, regarding IJ over the corporate matter, the new legislation should provide separately for exclusive jurisdiction over actions concerning the organization of a company and non-exclusive jurisdiction over actions for pursuing the liability against an individual officer.