Forthcoming Rules on International Jurisdiction

Masato DOGAUCHI
Professor of Law at Waseda University Law School

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I. Introduction

Japanese rules on international judicial jurisdiction have been formulated based on case law[1]. According to the Supreme Court judgment entered on 16 October 1981 (referred to as *Malaysian Airlines System case*)[2] and the Supreme Court Judgment entered on 11 November 1997 (referred to as *Family Company* case)[3], the general rules of international jurisdiction, with regard to civil and commercial matters, are as follows:[4]

(1) If there are any applicable rules regarding jurisdiction in a treaty to which Japan is a party, such rules shall apply;
(2) If no applicable treaty exists, the determination of international jurisdiction should be made in accordance with the principle of justice which requires that fairness be maintained as between the parties, and a proper and prompt trial be secured;
(3) Although the provisions in the Civil Procedure Code addressing the venue of local courts do not provide for rules regarding international jurisdiction, they reflect, in principle, the above principle of justice. Thus, a defendant should be, in principle, subject to the jurisdiction of a Japanese court when any one of Japan's courts would have jurisdiction in accordance with provisions of the Civil Procedure Code.
(4) However, a determination that international jurisdiction is to be admitted over a case simply in accordance with (3) should be reversed if it is found to be contrary to the

principle of justice, as mentioned in (2), in consideration of the special circumstances of such case.

With regard to (1) above, there are no treaties on jurisdiction with general scope of application to which Japan is a party. Though Japan is a party to a few treaties having provisions which address jurisdiction and foreign judgments, the respective scopes of their application are very limited.[(5)] Application of the principle of justice, as mentioned in (2), is generally recognized as the appropriate method for Japanese courts to decide international jurisdiction. However, some commentators have criticized the purport of (3). The problem is whether all provisions on venue, as they are written in the Civil Procedure Code, in fact reflect the principle of justice required for determination of international jurisdiction. Some lower courts, influenced by the above-mentioned criticism, have held that some provisions of the Civil Procedure Code should not be applied as they were written to determine international jurisdiction.[(6)] The last step (4) has been called the "special circumstances consideration". This last step was not mentioned in *Malaysian Airlines System* holding; only steps (1) to (3) were mentioned. However, since 1981, many lower courts have added this fourth step and applied it widely. And finally, the Supreme Court recognized the application of step (4) in its judgment in the *Family Company* case in 1997. Although some commentators are concerned about the risk that predictability might be denied by application of this step (4), it is generally recognized that such step is indispensable to secure an adequate conclusion on jurisdiction. Whereas among district courts within Japan, cases are transferred to the appropriate court "when [the court] finds it necessary in order to avoid substantial delay in the suit or ensure equity between the parties" in accordance with Article 17 of the Civil Procedure Code,[(7)] among courts of different countries such mechanism for transferring cases is not possible. By way of compensation for the lack of such a mechanism, it is thought that a certain degree of flexibility is necessary when deciding international jurisdiction issues.

The above-mentioned situation in Japan will be changed when the Bill for Partial Revision of the Code of Civil Procedure and the Civil Provisionary Remedies Act becomes law.[(8)]

The main purpose of this note is to highlight the significances of the new rules. Part II covers the relevant factual background related to the new rules. The salient features of the forthcoming rules are pointed out in Part III.

II. Background

The Legislative Council, an advisory board for the Minister of Justice, considered the inclusion of a provision on international jurisdiction at the time when the complete amendment of the Code of Civil Procedure which was put into effect in 1998. However, the movement to include such a provision was abandoned because a feasible provision prepared at that time, which was drafted in very general terms, was deemed not useful to attain foreseeable determination regarding the issue of international jurisdiction. Another reason for the abandonment was that a project to establish a global uniform convention on international jurisdiction and recognition and enforcement of foreign judgments in civil and Commercial matters in general was in progress under the auspices of the Hague Conference on Private International Law.(9)

Since the project at The Hague ended with the adoption of a more narrow convention addressing just the choice of court, Japan was required to enact a set of rules on international jurisdiction by its own initiative in order to secure foreseeable determination on the issue of international jurisdiction when addressed by Japanese courts.

In November 2005, a working group was formed at the Commercial Law Center, which is a non-governmental non-profit entity that, in general, conducts research on commercial law. The working group consisted of law professors, practicing lawyers and government officials. It produced a report on ideas for rules of international jurisdiction in April 2008.

In September 2008, the Minister of Justice consulted with the Legislative Council regarding the rules of international judicial jurisdiction to be enacted. The General Assembly of the Legislative Council established a special division to address this issue. In July 2009, the Division on International Jurisdiction held ten meetings and published its preliminary draft rules, which included various alternative proposals regarding jurisdictional rules and were accompanied with comments explaining the intent of the drafters when preparing the proposals, for public comment. After consideration of the comments by the courts, bar associations, various industries, law professors and so on, the Division held six more sessions and submitted its final draft of the rules to the General Assembly of the Legislative Council in January 2010. The draft was adopted and submitted to the Minister of Justice in February 2010.

The Bill for Partial Amendment of the Code of Civil Procedure and the Civil Provi-

sionary Remedies Act was submitted to the Parliament by the Government in March 2011. However, it was not adopted because of a political turbulence. It was re-submitted to the Parliament in October 2011, but failed to be adopted for a similar reason. Although it has not yet been adopted by the Parliament, it will likely be adopted in 2011 in light of the fact that no significant opposing opinions were asserted during the discussion of the committee of the Parliament

Some features of the Japan's forthcoming rules on international jurisdiction are introduced in the next section.

III. Features

The forthcoming rules have several salient features from the viewpoint of existing Japanese rules on jurisdiction and in comparison with foreign rules on the same subject. The following seven points are to be noted.

1. Structure of the Rules

First, the basic structure of the forthcoming rules is identical to the structure of the provisions on venue of local courts provided for in the Civil Procedure Code. Thus, the combination of provisions addressing general jurisdiction[10] and special jurisdiction[11] found in Articles 4 and 5[12] of the Code will be followed by corresponding provisions of the forthcoming Article 3-2 and 3-3.

2. Reference to Foreign Rules

Second, various foreign rules were referred to in the process of drafting the forthcoming rules. Especially, the Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters prepared by the Hague Conference on Private International Law in 1999 (hereinafter referred to as "1999 Hague Draft Convention")[13] and the EC Regulation No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "Brussels I Regulation")[14] were frequently mentioned and discussed at the working group meetings and the meetings of the Division of International Jurisdiction. Thus, Article 3-4 and Article 3-7, Paragraphs 5 and 6 on jurisdiction over actions relating to consumer contracts and labor relationships have their roots in the above rules.

3. Internationality

Third, the forthcoming rules are not strictly bound by the principles underlying the rules regarding proper venue for adjudication of claims among district courts within Japan. As mentioned above, the Supreme Court has clearly held that international jurisdiction must be determined in accordance with the principle of justice that requires fairness be maintained between parties and a proper and prompt trial be secured. Indeed, these requirements are essential not only when determining internal jurisdictional rules but also international jurisdictional rules. However, in respect of the latter rules, they are not enough.

Sovereignty must be considered when drafting rules on international jurisdiction. Article 3-5 provides for exclusive jurisdiction. Three kinds of actions are addressed: actions relating to certain matters involving companies or other corporate legal entities established in accordance with Japanese law; actions relating to public registration when the registry book is kept or the system is located in Japan; and actions relating to the existence and/or validity of patents, or certain other kinds of intellectual property rights, which are registered in Japan. Article 22, Paragraphs 2 to 4 of Brussels I Regulation and Article 12, Paragraphs 2 to 4 of 1999 Hague Draft Convention provide that these types of actions are subject to the exclusive jurisdiction of the courts of the respective country. However, while the text of these authorities also provides that, in proceedings *in rem* with respect to immovable property, the courts of the country where the property is situated shall have exclusive jurisdiction,(15) the forthcoming Japanese rules do not provide for such exclusive jurisdiction. According to the majority view, it is not necessary to have such proceedings subject to exclusive jurisdiction since the *res judicata* effect of judgments in such proceedings is only applicable to the parties to such proceedings.(16)

4. Uniqueness from a Comparative Law Perspective

Some grounds for jurisdiction in the forthcoming rules are unique from a comparative law perspective.

For instance, Article 3-3, Item (i) provides that, with regard to an action which has its object claim of performance of an obligation under a contract,(17) jurisdiction shall be vested in the Japanese courts in a case where the place of performance of the contractual obligation is located in Japan, or the place of performance is determined to be located in Japan in accordance with the law chosen in the contract. The significant features of this

rule are that (a) the action must be related to an obligation under a contract, the performance of which has been or is to be done in Japan and (b) the place of performance of the obligation must be provided for in the contract or the place of performance must be determined to be located in Japan in accordance with the law chosen in the contract.[18] Accordingly, even when there may be many obligations that arise under a contract, jurisdiction over an action relating to claim A is admitted only if the place of performance of claim A is in Japan.[19] On the other hand, the objective of the restriction set forth in (b) above is to give predictability to parties in their transactions. As a whole, Article 3-3, Item (i) is unique from a comparative law perspective but it seems to be well balanced.

In addition, the combination of Article 3-3, Item (iv) and Item (v) thereof is also unique from a comparative law viewpoint. The former, regarding jurisdiction that is based on the location of an office of the defendant in an action arising out of the defendant's business performed at such office, is commonly found in the rules of civil law countries.[20] On the other hand, an United States court retains personal jurisdiction over a defendant if the defendant carries on activities which can be viewed as minimum contacts with the state in which the U. S. court sits, which is of a sufficient nature to justify an inference that the defendant is present there. This is called "doing-business" jurisdiction. It is notorious from the civil law countries' viewpoint because it is a kind of general jurisdiction.[21] In contrast, Article 3-3, Item (v), in Japan provides for "doing-business" jurisdiction, but in this case it is one of the special jurisdictional grounds. This means that a court can assert jurisdiction over a defendant in an action relating just to the defendant's business in Japan. This can be called the Japanese version of "doing-business" jurisdiction. The introduction of this new concept of jurisdiction will be an epoch-making event for Japanese civil procedure law which has its origins in German law.

One of the reasons why Japan is going to introduce the Japanese version of "doing business" jurisdiction is because presently it is possible for foreign companies to do business in Japan without establishing any office in Japan thanks to the advancement of information technology. Accordingly, it seems unreasonable to cling tenaciously to the legal principal that jurisdictional rule requires the presence of an office within the jurisdiction. Another reason is to harmonize the principals of jurisdiction with certain regulations of the Company Act. The relevant provisions thereof are as follows:

> Article 817 (1) When a Foreign Company intends to carry out transactions continuously in Japan, it shall specify its representatives in Japan. In such cases, one or more

of such representatives in Japan shall be those whose domiciles are in Japan.

...

Article 818 (1) A Foreign Company may not carry out transactions continuously in Japan before completing registration of a Foreign Company.

(2) A person who has carried out transactions in violation of the provisions of the preceding paragraph shall be liable, jointly and severally with the Foreign Company, to perform any obligations that have arisen from such transactions to the counterparty.

If a foreign company did carry out transactions continuously in Japan without specifying its representative in Japan or its registered office in Japan, and if the Japanese counterparties to such transactions asserted monetary claims against such foreign company, and if the person who performed such transactions for the benefit of the foreign company does not have enough assets to satisfy his/her liability to such counterparties under Article 818, Paragraph 2 above, then the counterparties must file lawsuits against the foreign company. Under Article 3-3, Item (iv) of the Civil Procedure Code, any such actions filed with the Japanese courts would be dismissed since the defendant has no office in Japan. In order to make the above regulation under the Company Act enforceable, Article 3-3, Item (v) is necessary.(22)

5. Relationship with Recognition and Enforcement of Foreign Judgments

Fifth, while the forthcoming rules address the international jurisdiction of Japanese courts, they will also apply as the criteria for determining whether a foreign court had international jurisdiction in the context of recognition and enforcement of foreign judgments in Japan. In fact, much discussion regarding such function of the rules occurred in the drafting process. Without such consideration, the international jurisdiction of Japanese courts would naturally be expanded for the benefit of plaintiffs, the majority of whom are Japanese persons or entities. The dual function of the rules seems to have the effect of making them appear reasonable to some extent.

For instance, Article 3-3, Item (viii) provides that, if a tortious act occurring in a foreign state causes a harmful result in Japan, Japanese courts would have jurisdiction over an action relating to such tort, provided, however, that this rule may not be persuasive when such harm in Japan was not normally foreseeable under the circumstances. This proviso seems to take into consideration the aspect of recognition and enforcement of foreign judgments in Japan.

6. Dismissal of Action on Account of Special Circumstances

Sixth, consistent with Japanese case law, Article 3-9 provides the court with the power to dismiss actions in special circumstances.(23) This provision was drafted in large part to follow the wording of Article 17 which provides for the transfer of a case from one district court to another district court if the transferring court determines such transfer is necessary in order to avoid an undue delay in the proceedings, taking into consideration: (a) the domicile of each party and witness to be examined; (b) the location of any subject of a observation to be used in the proceedings; and (c) any other relevant circumstances.(24) This is because, as mentioned above, the situation which would result in a transfer of a proceeding under Article 17 is similar to the situation envisaged under Article 3-9. A critical difference between the two situations is that a transfer is impossible between courts of difference countries without an international agreement. Although it cannot be denied that Article 3-9 is necessary to have a sound determination on international jurisdiction, its existence seems to make the result of a Japanese court's application of the jurisdictional rules ambiguous. In order to try to maintain transparency with respect to a court's application of these rules, Article 3-9 has one clear exception: this provision will not apply when an action is filed with a Japanese court in accordance with an agreement between the parties that Japanese courts shall have exclusively jurisdiction over such claim. The objective of this proviso is to permit the enforcement of such exclusive choice of court agreements in accordance with their terms. However, as a whole, there seems to be a risk that Article 3-9 might impair the foreseeability of the parties with respect to how courts will determine issues of jurisdiction.

7. Abandoned Proposals

Seventh, because of the occurrence of significant conflicts of opinions, certain other proposals for rules were abandoned, most notably, a rule regulating concurrent litigations.(25)

At the final stage of the discussions regarding such rule, which were held by the Division on International Jurisdiction established within the Legislative Council, two options were considered. Option A was to completely exclude from the rules any provision addressing this issue; and option B was to recommend that Japanese courts suspend their proceedings over matters which were already being litigated in or addressed by foreign courts if such Japanese courts determine suspension to be necessary, taking into consider-

ation the following factors: (a) the progress of the proceeding in the foreign court vis-à-vis the proceeding in Japan; (b) the likelihood that the final foreign judgment to be issued in the foreign proceeding would be recognized by courts in Japan; and (c) other relevant circumstances. According to option B, the suspension of a court proceeding should be limited to four months and such suspension, if necessary, can be extended by another determination by the court. Further, no appeal from a court's decision to suspend a proceeding would be permitted. Some professors supported option B in order to avoid a "race to judgment by parties in different countries" situation from occurring. On the other hand, bar associations supported option A for the reason that in some cases the filing of a claim with a court in Japan may be necessary to fight the filing of the same claim in an inconvenient foreign court. Also, the bureau of the Supreme Court was of the opinion that option B would not be acceptable from the viewpoint of the daily management of cases. Ultimately, option A was adopted.

IV. Conclusion

The forthcoming rules on international jurisdiction will change the practice of Japanese courts. Ambiguity under the case law addressing international jurisdiction will, to some extent, be diminished. The rules are the fruits of substantial discussion among persons representing various sectors of Japan's legal community that addressed the problems of the current case law as pointed out by commentators, as well as foreign rules addressing international jurisdiction. Accordingly, it might be difficult to find a consistent theme in the provisions, taken as a whole, but the rules should be analyzed in the context of comparative law and from a historical viewpoint to find a path that leads to a sound application thereof.

(1) References to articles written in Japanese are omitted from this note.

(2) Supreme Court judgment entered on 16 October 1981 (*Michiko Goto, et al. v. Malaysian Airline System Berhad*), *Minshu*, Vol. 35, No. 7, p. 1224; 26 Japanese Annual of International Law 122 (1983). In this case, a Japanese woman and members of her family living in Japan brought an action in Japan seeking an award of damages against a foreign airline company which had an office located in Japan, based on the death of the woman's husband in an airplane accident in Malaysia where he purchased his ticket in Kuala Lumpur for his local trip. The Nagoya District Court dismissed the case for lack of international jurisdiction on March 15, 1979.

On November 12, 1979, the Nagoya High Court, however, reversed the lower court's judgment and concluded that the lower court had jurisdiction. Following a general discussion on international jurisdiction, the Supreme Court confirmed that the lower court had jurisdiction based upon Article 4, Item (v) (Article 4, Paragraph 3 at that time) which provides that venue lies where a branch of the foreign company is located. For Article 4, Item (v), see Appendix 1.

(3) Supreme Court judgment entered on 11 November 1997 (*Family Co. Ltd. v. Shin Miyahara*), *Minshu*, Vol. 51, No. 10, p. 4055; 41 Japanese Annual of International Law 117 (1998).

(4) In addition to the aforementioned two Supreme Court judgments, with respect to a choice of court clause for international jurisdiction cases, see, Supreme Court judgment entered on 28 November 1975 (*Koniglike Java China Paletvaat lijnen B.V. Amsterdam* (*Royal Interocean lines*) *v. Tokyo Marine and Fire Insurance Co.*), *Minshu*, Vol. 21, No. 10, p. 1554; 20 Japanese Annual of International Law 106 (1976). In that case, it was held that: the requirements to validate the agreement on the choice of forum set forth on the bill of lading of an international sea shipping courier should be determined in accordance with the principles of justice; Article 11 (Article 25 at that time) of the Civil Procedure Code was a mere guideline; and the requirements for validation of an agreement on international jurisdiction should be deemed to be satisfied if a court of a certain country is at least expressly designated on the document prepared by either of the parties, and if the existence of such an agreement between the parties is confirmed and the provisions thereof are explicitly stated. In addition, the court clarified, as *obita dictum*, the basis for denying, on the merits, a claim that Japan should have international jurisdiction over a case: (a) the case was not subject to the exclusive jurisdiction of a Japanese court; and (b) the designated foreign court had jurisdiction over such a case under its own law. Moreover, the court held that an agreement regarding exclusive international jurisdiction designating a foreign court should be held to be valid, in principle, unless such conclusion would lead to unacceptable result that violates public policy. In this case, the choice of the Amsterdam court was held to be valid.

(5) There are several such provisions in international treaties of which Japan is a party, such as the International Convention on Civil Liability for Oil Pollution Damage of 1969 (Articles 5, Paragraph 3 and 9, Paragraph 1), the Convention for the Unification of Certain Rules Relating to international Carriage by Air (Montreal Convention) of 1999 (Article 33), and so on.

(6) For example, the Tokyo District Court, in its preliminary judgment entered on 15 February 1984 (*Greenlines Shipping Company Ltd. v. California First Bank*), 525 *Hanrei Times* 132; 28 Japanese Annual of International Law 243 (1985), held that the court should reject assuming jurisdiction solely on the basis that the place of performance of the obligation was within the

areas of such court, at least in international tort cases, even if Article 4, Item (i) (Article 5 at that time) of the Civil Procedure Code provided that a suit concerning a pecuniary claim could be brought before the court situated in the place where the obligation was to be performed. See also, the Tokyo District Court judgment entered on 28 July 1987 (*Nagan (Panama), S. A. and Shinwa Shipping Co., Ltd. v. Attica Shipping Co., S. A.*), 1275 *Hanrei Jiho* 77; 32 Japanese Annual of International Law 161 (1989) in which the court held that Article 5, Item (iv) (Article 8 at that time), which provided for the *forum bonae rei sitae* (the forum in the area of which the defendant's property is situated), did not reflect the principle of justice in cases of negative declaration of a debt in an international dispute. This latter court also held that Article 7 (Article 21 at that time), which provided for ancillary jurisdiction for actions against defendants joined together in one suit, unlike in cases of a purely domestic character, was not appropriate, in principle, as a basis for deciding international jurisdiction.

(7) For Article 17 of the Civil Procedure Code, see Appendix 1.

(8) See, Appendix 2 for the text of the forthcoming provisions on international jurisdiction to be incorporated into the Civil Procedure Code and Civil Provisional Remedies Act.

(9) At The Hague, after conducting preliminary studies beginning in 1994, the decision was made in 1996 to start the project. Although a preliminary draft convention was adopted in October 1999, in June 2001, it was decided to postpone the decision on whether further work should be undertaken. Then, it was decided to scale down the objective of the convention to address only choice of court agreements, which convention was adopted by the diplomatic conference in 2005. This Convention of 30 June 2005 on Choice of Court Agreements has not yet been put into effect.

(10) General jurisdiction is based on the court-defendant nexus. When a defendant has his/her domicile or, in the case of entity, its principal office in the area of a court, that court has jurisdiction over actions against the defendant based on all types of claims, except those which are subject to the exclusive jurisdiction of other courts.

(11) In general, special jurisdiction is based on the court-claim nexus. When a claim has a certain connection with the area of a court, such as the fact that a tort was committed within such area, the court in that area will have jurisdiction over an action related to such claim. However, the Japanese concept of special jurisdiction deviates somewhat from this principle because of the existence of Article 7 of the Civil Procedure Code. Article 7 provides that where two or more claims are to be asserted in a single action, such action may be filed with the court which, in principle, shall have jurisdiction over one of those claims pursuant to the provisions of Article 4 to Article 6 (jurisdiction over a joint claim). The problem is that Article 7 applies not

only to cases where the same claims are asserted against different defendants (jurisdiction over subjectively joint claims) but also to cases where different claims are asserted against the same defendant (jurisdiction over objectively joint claims). The former is admitted in Article 6, Paragraph 1 of the Brussels I Regulation and Article 14 of the 1999 Hague Draft Convention. However, the latter is unique. According to this rule, if two different claims are combined together and filed against one defendant and one of the claims is subject to the jurisdiction of a court based on the application of a special jurisdiction provision, that court would also have jurisdiction over the other claim, notwithstanding the fact that the latter claim would not be subject to the jurisdiction of such court if it were filed alone. This means the provision on special jurisdiction operates beyond the former claim. This jurisdiction over objectively joint claims seems to have a fundamental effect on the legal thinking of Japanese lawyers. For Article 7 of the Civil Procedure Code, see Appendix 1.

(12) For these provisions, see Appendix 1. The main portion of the forthcoming rules is to be inserted in front of Article 4.

(13) For the text of this draft convention, see Proceedings of the Twentieth Session, Vol. 2 – Choice of Court (2005).

(14) Official Journal L 012, 16/01/2001, p. 1.

(15) See, Article 22, Paragraph 1 of the Brussels I Regulation and Article 12, Paragraph 1 of the 1999 Hague Draft Convention, both of which provide for exclusive jurisdiction over proceedings which have, as their object rights, tenancies of immovable property, as well under certain conditions.

(16) However, the author of this note is of the opinion that the sovereign rights of the country where the immovable property is situated would be infringed if a foreign court determines who is the owner of such property, irrespective of the fact that the judgment has no *erga onmes* effect.

(17) According to Article 3-3, Item (i), the following action is also covered by this provision: an action which has as its object a claim in relation to an obligation under a contract, including a claim based on an act by management performed without mandate or unjust enrichment arising in relation to such obligation, and a claim for compensation for damages caused by the non-performance of such obligation.

(18) Article 5, Item (i) of the Civil Procedure Code, which governs venue of the district courts within Japan, is a very simple provision. It provides that, with regard to the determination of which court has jurisdiction over an action seeking to assert a property right, in general, jurisdiction will lie with the court located at the place of performance of the contractual obligation. This provision has been referenced when determining international jurisdiction, even in some

tort cases, where the place of the performance of the damage claims was held to be located in the country of domicile of the victims who were the plaintiffs in such actions. Such holdings have been criticized as exorbitant by commentators.

(19) This rule is different from that of the Brussels I Regulation. Article 5, Item 1 (a) and (b) thereof gives jurisdiction over any action relating to a contract to the courts of the Member State, in principle, where the place of delivery of goods is in the Member State, in the case of a contract for the sale of goods, and where the place of provision of services is in the Member State, in the case of a contract for the provision of services.

(20) Article 5, Paragraph 5 of the Brussels I Regulation provides that "as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated." According to Schotte *v. Parfums Rothschild*, 218/86 [1987] ECR 4905, the term "establishment" includes a subsidiary of the defendant. But, in Japan, a separate legal entity, even if it is a 100% subsidiary of the defendant, cannot be included in the term of "office" in Article 5, Item (v) of the Civil Procedure Code.

(21) The 1999 Hague Draft Convention lists this "doing-business" jurisdiction in the black list, which enumerates prohibited jurisdictional grounds (Article 18, Paragraph 2, e).

(22) One may consider that Article 3-3, Item (iv) would not be necessary because of the existence of Item (v) thereof. But, that is not the case. If the territorial scope of business of a foreign company's office in Japan is East Asia and a dispute arises from the office's Korean business, an action against the foreign company filed with a Japanese court would be dismissed under Article 3-3, Item (v), since such action is not related to its business in Japan. Article 3-3, Item (iv) confers jurisdiction over such action to a Japanese court on the ground that the location of the foreign company's office is located in Japan.

(23) See, supra note 6.

(24) For Article 17 of the Civil Procedure Code, see Appendix 1.

(25) Another proposal that was abandoned was the proposal to confer jurisdiction onto a court in an emergency situation. This would makes it possible for Japanese courts, which lack jurisdiction under normal application of the rules, to accept jurisdiction over a matter if it is determined that the claim asserted by the plaintiff should be adjudicated and no other appropriate foreign court is able to accept such claim. However, the non-existence of an express rule or authority permitting a Japanese court to accept jurisdiction in such a case does not mean that a Japanese court may not do so. See, Supreme Court Judgment entered on 24 June 1996, 40 Japanese Annual of International Law, 132 (1997).

◇ Appendix 1

Code of Civil Procedure (Act No. 109 of June 26, 1996)

(Jurisdiction by General Venue)

Article 4 An action shall be subject to the jurisdiction of the court that has jurisdiction over the location of the general venue of the defendant.

(2) The general venue of a person shall be determined by his/her domicile, by his/her residence if he/she has no domicile in Japan or his/her domicile is unknown, or by his/her last domicile if he/she has no residence in Japan or his/her residence is unknown.

(3) If an ambassador, minister or any other Japanese national in a foreign state who enjoys immunity from the jurisdiction of that state has no general venue pursuant to the provision of the preceding paragraph, his/her general venue shall be deemed to be located in the place specified by the Rules of the Supreme Court.

(4) The general venue of a juridical person or any other association or foundation shall be determined by its principal office or business office, or by the domicile of its representative or any other principal person in charge of its business if it has no business office or other office.

(5) The general venue of a foreign association or foundation, notwithstanding the provision of the preceding paragraph, shall be determined by its principal office or business office in Japan, or by the domicile of its representative or any other principal person in charge of its business assigned in Japan if it has no business office or other office in Japan.

(6) The general venue of a state shall be determined by the location of a government agency that represents the state in a suit.

(Jurisdiction over Action on Property Right, etc.)

Article 5

Article 5 Actions listed in the following items may be filed with the court that has jurisdiction over the place specified in the respective items:

(i) An action on a property right:	The place of performance of the obligation
(ii) An action to claim payment of money for a bill or note or a check:	The place of payment of the bill or note or the check
(iii) An action on a property right against a mariner:	The location of the registry of the ship

(iv) An action on a property right against a person who has no domicile (in the case of a juridical person, business office or other office; hereinafter the same shall apply in this item) in Japan or whose domicile is unknown:	The location of the subject matter of the claim or security thereof or of any seizable property of the defendant
(v) An action against a person who has a business office or other office, which relates to the business conducted at such business office or other office:	The location of the business office or other office in question
(vi) An action relating to a ship or voyage, which is against the shipowner or any other person who uses the ship:	The location of the registry of the ship
(vii) An action based on a ship claim or any other claim secured by a ship:	The location of the ship
(viii) The following actions relating to a company or any other association or foundation: (a) An action brought by a company or any other association against its member or a person who was its member, an action brought by a member against another member or a person who was a member or an action brought by a person who was a member against a member, which is based on his/her status as a member (b) An action brought by an association or foundation against its officer or a person who was its officer, which is based on the status as an officer (c) An action brought by a company against its incorporator or a person who was its incorporator or against its inspector or a person who was its inspector, which is based on the status as an incorporator or inspector (d) An action brought by a creditor of a company or any other association against	The location of the general venue of the association or foundation:

its member or a person who was its member, which is based on his/her status as a member	
(ix) An action relating to a tort:	The place where the tort was committed
(x) An action for damages due to ship collision or any other accident at sea:	The first place where the damaged ship docked
(xi) An action relating to salvage:	The place where the salvage was performed or first place where the salvaged ship docked
(xii) An action relating to real property:	The location of the real property
(xiii) An action relating to a registration:	The place where the registration should be made
(xiv) An action relating to a right of inheritance or statutory reserved shareor an action relating to a testamentary gift or any other act that shall become effective upon death:	The location of the general venue of the decedent at the time of commencement of inheritance
(xv) An action relating to a claim on the decedent or other burden on inherited property, which does not fall under the category of action set forth in the preceding item (limited to cases where the whole or part of the inherited property is located within the jurisdictional district of the court that has jurisdiction over the place specified in said item):	The place specified in said item

(Jurisdiction over Joint Claim)

Article 7 Where two or more claims are to be made by a single action, such action may be filed with the court which shall have jurisdiction over one of those claims pursuant to the provisions of Article 4 to the preceding Article (excluding Article 6 (3)); provided, however, that with regard to an action brought by two or more persons or an action brought against two or more persons, this shall apply only in the case specified in the first sentence of Article 38.

（Transfer to Avoid Delay, etc.）

Article 17 The court of first instance, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to another court with jurisdiction, when it finds it necessary in order to avoid substantial delay in the suit or ensure equity between the parties, while taking into consideration the domicile of each party and witness to be examined, the location of any subject of a observation to be used and any other circumstances concerned.

◇ Appendix 2

〈改正法の日英対訳〉

民事訴訟法等改正法（日英語対訳）*

民事訴訟法及び民事保全法の一部を改正する法律	Act for Partial Revision of Code of Civil Procedure and Civil Provisional Remedies Act**
民事訴訟法	Code of Civil Procedure
（被告の住所等による管轄権） 第３条の２ １　裁判所は，人に対する訴えについて，その住所が日本国内にあるとき，住所がない場合又は住所が知れない場合にはその居所が日本国内にあるとき，居所がない場合又は居所が知れない場合には訴えの提起前に日本国内に住所を有していたとき（日本国内に最後に住所を有していた後に外国に住所を有していたときを除く。）は，管轄権を有する。	**（Jurisdiction by the domicile of defendant, etc.）** **Article 3-2** (1) The courts shall have jurisdiction over an action against a person: - if he/she has his/her domicile in Japan; - if he/she has residence in Japan, when he/she has no domicile or his/her domicile is unknown; or - if he/she has ever had his/her domicile in Japan before the filing of the action, when he/she has no residence in Japan or his/ her residence is unknown (excluding cases where he/she had his/her domicile in a foreign state after the date when he/she had his/her last domicile in Japan).
２　裁判所は，大使，公使その他外国に在ってその国の裁判権からの免除を享有する日本人に対する訴えについて，前項の規定にかかわらず，管轄権を有する。	(2) Notwithstanding the provision of the preceding paragraph, the courts shall have jurisdiction over an action against an ambassador, minister or any other Japanese national in a foreign state who enjoys immunity from the jurisdiction

*This Act has not yet adopted by the parliament of Japan. This translation was made by Professors Masato Dogauchi (Waseda University) with the assistance of others.

<table>
<tr><td colspan="2"></td><td colspan="2">of that state.</td></tr>
<tr><td colspan="2">3　裁判所は，法人その他の社団又は財団に対する訴えについて，その主たる事務所又は営業所が日本国内にあるとき，事務所若しくは営業所がない場合又はその所在地が知れない場合には代表者その他の主たる業務担当者の住所が日本国内にあるときは，管轄権を有する。</td><td colspan="2">(3) The courts shall have jurisdiction over an action against a juridical person or any other association or foundation, if its principal office or business office is located in Japan, or if its representative or any other principle person in charge of its business has his/her domicile in Japan, when it has no business office or other office or its location is unknown.</td></tr>
<tr><td colspan="2">(契約上の債務に関する訴え等の管轄権)

第3条の3
次の各号に掲げる訴えは，それぞれ当該各号に定めるときは，日本の裁判所に提起することができる。</td><td colspan="2">(Jurisdiction over an action relating to an obligation under a contract, etc.)
Article 3-3
Actions listed in the following items may be filed with the courts of Japan in the cases specified in the respective items:</td></tr>
<tr><td>1　契約上の債務の履行の請求を目的とする訴え又は契約上の債務に関して行われた事務管理若しくは生じた不当利得に係る請求，契約上の債務の不履行による損害賠償の請求その他契約上の債務に関する請求を目的とする訴え</td><td>契約において定められた当該債務の履行地が日本国内にあるとき，又は契約において選択された地の法によれば当該債務の履行地が日本国内にあるとき。</td><td>(i) An action which has as its object a claim for performance of an obligation under a contract, or an action which has as its object a claim in relation to an obligation under a contract, including a claim pertaining to management performed without mandate or unjust enrichment arising in relation to such obligation, and a claim for compensation for damages caused by the non-performance of such obligation</td><td>In cases where the place of performance of the obligation provided for in the contract is located in Japan, or the place of performance of the obligation is determined to be located in Japan in accordance with the law chosen in the contract.</td></tr>
<tr><td>2　手形又は小切手による金銭の支払の請求を目的とする訴え</td><td>手形又は小切手の支払地が日本国内にあるとき。</td><td>(ii) An action to claim payment of money for a bill or note or a check</td><td>In cases where the place of payment of the bill or note or the check is located in Japan.</td></tr>
</table>

3 財産権上の訴え	請求の目的が日本国内にあるとき，又は当該訴えが金銭の支払を請求するものである場合には差し押さえることができる被告の財産が日本国内にあるとき（その財産の価額が著しく低いときを除く。）。	(iii) An action on a property right	In cases where the subject matter of the claim is located in Japan, or, if the action is to claim payment of money, seizable property of the defendant is located in Japan (excluding cases where the value of such property is extremely low).
4 事務所又は営業所を有する者に対する訴えでその事務所又は営業所における業務に関するもの	当該事務所又は営業所が日本国内にあるとき。	(iv) An action against a person who has a business office or other office, which relates to the business conducted at such business office or said other office	In cases where the business office or said other office is located in Japan.
5 日本において事業を行う者（日本において取引を継続してする外国会社（会社法（平成十七年法律第八十六号）第二条第二号に規定する外国会社をいう。）を含む。）に対する訴え	当該訴えがその者の日本における業務に関するものであるとき。	(v) An action against a person engaged in business in Japan (including a foreign company (provided for in Article 2, Item 2 of Companies Act, Act No. 86 of 2005) carrying out transactions continuously in Japan)	In cases where the action is related to the business of the person in Japan.
6 船舶債権その他船舶を担保とする債権に基づく訴え	船舶が日本国内にあるとき。	(vi) An action based on a ship claim or any other claim secured by a ship	In cases where the ship is located in Japan.
7 会社その他の社団又は財団に関する訴えで次に掲げるもの イ 会社その他の社	社団又は財団が法人である場合にはそれが日本の法令により設立されたものであるとき，法人でない場合にはその主たる	(vii) The following actions relating to a company or any other association or foundation: (a) An action brought	In cases where, if the association or foundation is a judicial person, it was incorporated under laws and regulations of Japan, or

団からの社員若しくは社員であった者に対する訴え，社員からの社員若しくは社員であった者に対する訴え又は社員であった者からの社員に対する訴えで，社員としての資格に基づくもの	事務所又は営業所が日本国内にあるとき。	by a company or any other association against its member or a person who was its member, an action brought by a member against another member or a person who was a member or an action brought by a person who was a member against a member, which is based on his/her status as a member	if it is not a judicial person, its principle office or business office is located in Japan.
ロ　社団又は財団からの役員又は役員であった者に対する訴えで役員としての資格に基づくもの		(b)　An action brought by an association or foundation against its officer or a person who was its officer, which is based on the status as an officer	
ハ　会社からの発起人若しくは発起人であった者又は検査役若しくは検査役であった者に対する訴えで発起人又は検査役としての資格に基づくもの		(c)　An action brought by a company against its incorporator or a person who was its incorporator or against its inspector or a person who was its inspector, which is based on the status as an incorporator or inspector	
ニ　会社その他の社団の債権者からの社員又は社員であった者に対する訴えで社員としての資格に基づくもの		(d)　An action brought by a creditor of a company or any other association against its member or a person who was its member, which is based on his/her status	

		as a member	
8　不法行為に関する訴え	不法行為があった地が日本国内にあるとき（外国で行われた加害行為の結果が日本国内で発生した場合において，日本国内におけるその結果の発生が通常予見することのできないものであったときを除く。）。	(viii)　An action relating to a tort	In cases where the place where the tort was committed is located in Japan (excluding cases where a harmful act was committed in a foreign state but where the occurrence of consequence of said act in Japan was not normally foreseeable).
9　船舶の衝突その他海上の事故に基づく損害賠償の訴え	損害を受けた船舶が最初に到達した地が日本国内にあるとき。	(ix)　An action for damages due to ship collision or any other accident at sea	In cases where the first place where the damaged ship docked is located in Japan.
10　海難救助に関する訴え	海難救助があった地又は救助された船舶が最初に到達した地が日本国内にあるとき。	(x)　An action relating to salvage	In cases where the place where the salvage was performed or first place where the salvaged ship docked is located in Japan.
11　不動産に関する訴え	不動産が日本国内にあるとき。	(xi)　An action relating to real property	In cases where the real property is located in Japan
12　相続権若しくは遺留分に関する訴え又は遺贈その他死亡によって効力を生ずべき行為に関する訴え	相続開始の時における被相続人の住所が日本国内にあるとき，住所がない場合又は住所が知れない場合には相続開始の時における被相続人の居所が日本国内にあるとき，居所がない場合又は居所が知れない場合には被相続人が相続開始の前に日本国内に住所を有していたとき（日本国	(xii)　An action relating to a right of inheritance or statutory reserved share or an action relating to a testamentary gift or any other act that shall become effective upon death	In cases where, - the domicile of the decedent at the time of commencement of inheritance was located in Japan; - if the decedent had no domicile or his/her domicile is unknown, his/her residence at the time of commencement of inheritance was located in Japan; or

<table>
<tr><td></td><td>内に最後に住所を有していた後に外国に住所を有していたときを除く。)。</td><td></td><td>- if the decedent has no residence or his/her residence is unknown, he/she had ever had his/her domicile in Japan before the time of commencement of inheritance (excluding cases where he/she had his/her domicile in a foreign state after the date when he/she had his/her last domicile in Japan).</td></tr>
<tr><td>13　相続債権その他相続財産の負担に関する訴えで前号に掲げる訴えに該当しないもの</td><td>同号に定めるとき。</td><td>(xiii)　An action relating to a claim on the decedent or other burden on inherited property, which does not fall under the category of action set forth in the preceding item</td><td>In case specified in said item.</td></tr>
<tr><td colspan="2">(消費者契約及び労働関係に関する訴えの管轄権)
第3条の4
1　消費者(個人(事業として又は事業のために契約の当事者となる場合におけるものを除く。)をいう。以下同じ。)と事業者(法人その他の社団又は財団及び事業として又は事業のために契約の当事者となる場合における個人をいう。以下同じ。)との間で締結される契約(労働契約を除く。以下「消費者契約」という。)に関する消費者からの事業者に対する訴えは，訴えの提起の時又は消費者契約の締結の時における消費者の住所が日本国内にあるときは，日本の裁判所に提起することができる。</td><td colspan="2">(Jurisdiction over actions relating to consumer contract and labor relationship)
Article 3-4
(1)　An action brought by a consumer (meaning an individual (excluding cases where he/she becomes a party to a contract as a business or for the purpose of business); the same shall apply hereinafter) against a business operator (meaning a juridical person or other association or foundation, or an individual who becomes a party to a contract as a business or for the purpose of business; the same shall apply hereinafter) with respect to a contract concluded between the consumer and the business operator (excluding a labor contract) (hereinafter referred to as a "consumer contract") may be filed with the courts of Japan, if the domicile of the consumer at the time of the filing or at the time of the conclusion of the consumer</td></tr>
</table>

	contract is located in Japan.
2 労働契約の存否その他の労働関係に関する事項について個々の労働者と事業主との間に生じた民事に関する紛争（以下「個別労働関係民事紛争」という。）に関する労働者からの事業主に対する訴えは，個別労働関係民事紛争に係る労働契約における労務の提供の地（その地が定まっていない場合にあっては，労働者を雇い入れた事業所の所在地）が日本国内にあるときは，日本の裁判所に提起することができる。	(2) An action brought by an individual employee against an employer in relation to a civil dispute arisen between them with respect to the existence or non-existence of a labor contract and other matters concerning labor relationships (hereinafter referred to as an "individual labor-related civil dispute") may be filed with the courts of Japan, if the place of performance of his/her labor under the labor contract pertaining to the individual labor-related civil dispute or, when such place is not fixed, the place of office at which the employee was employed is located in Japan.
3 消費者契約に関する事業者からの消費者に対する訴え及び個別労働関係民事紛争に関する事業主からの労働者に対する訴えについては，前条の規定は，適用しない。	(3) The preceding article shall not apply to an action brought by a business operator against a consumer relating to a consumer contract and an action brought by an employer against an employee relating to an individual labor-related civil dispute.
（管轄権の専属） **第3条の5** 1 会社法第七編第二章に規定する訴え（同章第四節及び第六節に規定するものを除く。），一般社団法人及び一般財団法人に関する法律（平成十八年法律第四十八号）第六章第二節に規定する訴えその他これらの法令以外の日本の法令により設立された社団又は財団に関する訴えでこれらに準ずるものの管轄権は，日本の裁判所に専属する。	**(Exclusive Jurisdiction)** **Article 3-5** (1) Actions provided for in Part VII, Chapter II (excluding those provided for in Sections 4 and 6 of the same Chapter) of Companies Act, in Chapter VI, Section 2 of Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006) or any other similar actions in relation to association or foundation incorporated under other laws and regulations of Japan shall be exclusively subject to the jurisdiction of the courts of Japan.
2 登記又は登録に関する訴えの管轄権は，登記又は登録をすべき地が日本国内にあるときは，日本の裁判所に専属する。	(2) Actions relating to a registration shall be exclusively subject to the jurisdiction of the courts of Japan, if the place where the registration should be made is located in Japan.
3 知的財産権（知的財産基本法（平成十四年法律第百二十二号）第二条第二項に規定する知的財産権をいう。）のうち設定の登録により発生するものの存否又は効力に関する訴えの管轄権は，その登録が日本	(3) Actions relating to the existence or non-existence or the validity of intellectual property rights (meaning "intellectual property rights" provided for in Article 2, Paragraph (2) of Intellectual Property Basic Act (Act No. 122 of 2002))

においてされたものであるときは，日本の裁判所に専属する。	which become effective by registration for their establishment shall be exclusively subject to the jurisdiction of the courts of Japan, if the registration is done in Japan.
（併合請求における管轄権） **第3条の6** 一の訴えで数個の請求をする場合において，日本の裁判所が一の請求について管轄権を有し，他の請求について管轄権を有しないときは，当該一の請求と他の請求との間に密接な関連があるときに限り，日本の裁判所にその訴えを提起することができる。ただし，数人からの又は数人に対する訴えについては，第三十八条前段に定める場合に限る。	**(Jurisdiction over Joint Claim)** **Article 3-6** Where two or more claims are to be made by a single action, and the courts of Japan have jurisdiction over one but not all of the claims, such action may be filed with the courts of Japan only if the claim for which Japanese jurisdiction exists is closely connected to the other claims; provided, however, that with regard to an action brought by or against two or more persons, this shall apply only in the case specified in the first sentence of Article 38.
（管轄権に関する合意） **第3条の7** 1　当事者は，合意により，いずれの国の裁判所に訴えを提起することができるかについて定めることができる。	**(Agreement on Jurisdiction)** **Article 3-7** (1)　The parties may determine by agreement the state with whose court or courts an action between them may be filed.
2　前項の合意は，一定の法律関係に基づく訴えに関し，かつ，書面でしなければ，その効力を生じない。	(2)　The agreement set forth in the preceding paragraph shall not become effective unless it is made with respect to an action based on certain legal relationships and made in writing.
3　第一項の合意がその内容を記録した電磁的記録（電子的方式，磁気的方式その他人の知覚によっては認識することができない方式で作られる記録であって，電子計算機による情報処理の用に供されるものをいう。以下同じ。）によってされたときは，その合意は，書面によってされたものとみなして，前項の規定を適用する。	(3)　If the agreement set forth in Paragraph (1) is made by means of an electromagnetic record (meaning a record made in an electronic form, a magnetic form or any other form not recognizable to human perception, which is used in information processing by computers; the same shall apply hereinafter), the provision of the preceding paragraph shall be applied by deeming such agreement to have been made in writing.
4　外国の裁判所にのみ訴えを提起することができる旨の合意は，その裁判所が法律上又は事実上裁判権を行うことができないときは，これを援用することができない。	(4)　an agreement to the effect that an action can be exclusively filed with a court or courts of a foreign state may not be invoked, if such court or courts are unable to exercise their jurisdiction by law or in fact.

5　将来において生ずる消費者契約に関する紛争を対象とする第一項の合意は，次に掲げる場合に限り，その効力を有する。 一　消費者契約の締結の時において消費者が住所を有していた国の裁判所に訴えを提起することができる旨の合意（その国の裁判所にのみ訴えを提起することができる旨の合意については，次号に掲げる場合を除き，その国以外の国の裁判所にも訴えを提起することを妨げない旨の合意とみなす。）であるとき。 二　消費者が当該合意に基づき合意された国の裁判所に訴えを提起したとき，又は事業者が日本若しくは外国の裁判所に訴えを提起した場合において，消費者が当該合意を援用したとき。	(5) The agreement set forth in Paragraph (1) with respect to a dispute arising in the future from a consumer contract shall be effective only in the cases specified in the following items: (i) In cases where it is agreed that action can be filed with a court or courts of the state where the consumer had his/her domicile at the time of conclusion of the consumer contract (an agreement to the effect that such action can be filed only with the court or courts of such state shall be deemed not to disturb the filing of actions with the courts of other states, excluding the cases listed in the following Item); (ii) In cases where a consumer files an action with a court of the state agreed in the agreement, or in cases where a business operator files an action in Japan or a foreign state and a consumer invokes the agreement in the proceedings in his/her favor.
6　将来において生ずる個別労働関係民事紛争を対象とする第一項の合意は，次に掲げる場合に限り，その効力を有する。 一　労働契約の終了の時にされた合意であって，その時における労務の提供の地がある国の裁判所に訴えを提起することができる旨を定めたもの（その国の裁判所にのみ訴えを提起することができる旨の合意については，次号に掲げる場合を除き，その国以外の国の裁判所にも訴えを提起することを妨げない旨の合意とみなす。）であるとき。 二　労働者が当該合意に基づき合意された国の裁判所に訴えを提起したとき，又は事業主が日本若しくは外国の裁判所に訴えを提起した場合において，労働者が当該合意を援用したとき。	(6) An agreement set forth in Paragraph (1) with respect to an individual labor-related civil dispute arising in the future shall be effective only in the cases specified in the following items: (i) In cases where it is agreed at the time of termination of a labor contract and it is agreed that an action can be filed with a court or courts of a state where the place of performance of his/her labor at that time is located (an agreement to the effect that such action can be filed only with the court or courts of such state is deemed not to disturb filing an action with the courts of other states, excluding the cases listed in the following Item); (ii) In cases where an employee files an action with a court of the state agreed in the agreement, or in cases where a employer files an action in Japan or a foreign state and an employee invokes the agreement in the proceedings in his/her favor.
（応訴による管轄権） **第3条の8** 被告が日本の裁判所が管轄権を有しない旨	**(Jurisdiction by Appearance)** **Article 3-8** If a defendant, without filing a defense that the

の抗弁を提出しないで本案について弁論をし，又は弁論準備手続において申述をしたときは，裁判所は，管轄権を有する。	courts of Japan have no jurisdiction, has presented oral arguments on the merits or made statements in preparatory proceedings, the court shall have jurisdiction.
（特別の事情による訴えの却下） **第3条の9** 裁判所は，訴えについて日本の裁判所が管轄権を有することとなる場合（日本の裁判所にのみ訴えを提起することができる旨の合意に基づき訴えが提起された場合を除く。）においても，事案の性質，応訴による被告の負担の程度，証拠の所在地その他の事情を考慮して，日本の裁判所が審理及び裁判をすることが当事者間の衡平を害し，又は適正かつ迅速な審理の実現を妨げることとなる特別の事情があると認めるときは，その訴えの全部又は一部を却下することができる。	**(Dismissal of Action on Account of Special Circumstances)** **Article 3-9** Even where the courts of Japan have jurisdiction over an action (excluding cases where the action is filed on the ground of choice of court agreement designating the courts of Japan exclusively), the court may dismiss the whole or a part of such action when it finds special circumstances under which a trial and judicial decision by the courts of Japan would undermine equity between the parties or disturb realization of a proper and prompt trial, taking into consideration the nature of the case, the degree of the defendant's burden of submitting defense, the location of the evidence and any other circumstances.
（管轄権が専属する場合の適用除外） **第3条の10** 第三条の二から第三条の四まで及び第三条の六から前条までの規定は，訴えについて法令に日本の裁判所の管轄権の専属に関する定めがある場合には，適用しない。	**(Exclusion of Application in Case of Exclusive Jurisdiction)** **Article 3-10** The provisions of Article 3-2 to Article 3-4 and Article 3-6 to the preceding Article shall not apply where exclusive jurisdiction of the courts of Japan over an action in question is provided for in laws or regulations.
（職権証拠調べ） **第3条の11** 裁判所は，日本の裁判所の管轄権に関する事項について，職権で証拠調べをすることができる。	**(Examination of Evidence by Court's Own Authority)** **Article 3-11** The court may conduct examination of evidence by its own authority with regard to the matters concerning the jurisdiction of the courts of Japan.
（管轄権の標準時） **第3条の12** 日本の裁判所の管轄権は，訴えの提起の時を標準として定める。	**(Base Time for Determining Jurisdiction)** **Article 3-12** The jurisdiction of the courts of Japan shall be determined on the basis of the time of the filing of an action.

（管轄裁判所の特例） **第10条の2** 前節の規定により日本の裁判所が管轄権を有する訴えについて，この法律の他の規定又は他の法令の規定により管轄裁判所が定まらないときは，その訴えは，最高裁判所規則で定める地を管轄する裁判所の管轄に属する。	**(Special Provision for Court with Jurisdiction)** **Article 10-2** When the courts of Japan have jurisdiction over an action pursuant to the provisions of the preceding Section but a court with jurisdiction is not determined under other provisions of this Code or provisions of other laws and regulations, the action shall be subject to the jurisdiction of the court designated by the Rules of the Supreme Court.
（中間確認の訴え）* **第145条** 1　裁判が訴訟の進行中に争いとなっている法律関係の成立又は不成立に係るときは，当事者は，請求を拡張して，その法律関係の確認の判決を求めることができる。ただし，その確認の請求が他の裁判所の専属管轄（当事者が第十一条の規定により合意で定めたものを除く。）に属するときは，この限りでない。	**(Action for Interlocutory Declaration)** ** **Article 145** (1) If a judicial decision which is sought in a suit relates to the validity or invalidity of the legal relationships that are in dispute in the process of the suit, a party may expand his/her claim and seek a declaratory judgment on such legal relationships; provided, however, that this shall not apply where such claim for declaration is subject to the exclusive jurisdiction of another court (excluding one determined by an agreement between the parties pursuant to the provision of Article 11).
2　前項の訴訟が係属する裁判所が第六条第一項各号に定める裁判所である場合において，前項の確認の請求が同条第一項の規定により他の裁判所の専属管轄に属するときは，前項ただし書の規定は，適用しない。	(2) Where the suit set forth in the preceding paragraph is pending before the court specified in any of the items of Article 6 (1), if the claim for declaration set forth in the preceding paragraph is subject to the exclusive jurisdiction of another court pursuant to the provision of paragraph (1) of said Article, the provision of the proviso to the preceding paragraph shall not apply.
3　日本の裁判所が管轄権の専属に関する規定により第一項の確認の請求について管轄権を有しないときは，当事者は，同項の確認の判決を求めることができない。	(3) When the courts of Japan have no jurisdiction over a claim for declaration set forth in Paragraph (1) pursuant to the provisions concerning exclusive jurisdiction, the party may not seek a declaratory judgment set forth in said paragraph.
4　第百四十三条第二項及び第三項の規定は，第一項の規定による請求の拡張について準用する。	(4) The provisions of Article 143 (2) and (3) shall apply mutatis mutandis to the expansion of a claim under the provision of paragraph (1).

（反訴） 第146条 1　被告は，本訴の目的である請求又は防御の方法と関連する請求を目的とする場合に限り，口頭弁論の終結に至るまで，本訴の係属する裁判所に反訴を提起することができる。ただし，次に掲げる場合は，この限りでない。	**(Counterclaim)** **Article 146** (1) The plaintiff, only for the purpose of making a claim relevant to the claim that is the subject matter of the principal action or to the allegations and evidence for defense, may file a counterclaim with the court where the principal action is pending, until oral argument is concluded; provided, however, that this shall not apply in the following cases:
一　反訴の目的である請求が他の裁判所の専属管轄（当事者が第十一条の規定により合意で定めたものを除く。）に属するとき。	(i) Where the claim that is the subject matter of the counterclaim is subject to the exclusive jurisdiction of another court (excluding one determined by an agreement between the parties pursuant to the provision of Article 11).
二　反訴の提起により著しく訴訟手続を遅滞させることとなるとき。	(ii) Where the filing of a counterclaim would substantially delay the court proceedings.
2　本訴の係属する裁判所が第六条第一項各号に定める裁判所である場合において，反訴の目的である請求が同項の規定により他の裁判所の専属管轄に属するときは，前項第一号の規定は，適用しない。	(2) Where the principal action is pending before the court specified in any of the items of Article 6 (1), if the claim that is the subject matter of the counterclaim is subject to the exclusive jurisdiction of another court pursuant to the provision of paragraph (1) of said Article, the provision of item (i) of the preceding paragraph shall not apply.
3　日本の裁判所が反訴の目的である請求について管轄権を有しない場合には，被告は，本訴の目的である請求又は防御の方法と密接に関連する請求を目的とする場合に限り，第一項の規定による反訴を提起することができる。ただし，日本の裁判所が管轄権の専属に関する規定により反訴の目的である請求について管轄権を有しないときは，この限りでない。	(3) When the courts of Japan have no jurisdiction over the claim that is the subject matter of the counterclaim, the plaintiff, only for the purpose of making a claim closely relevant to the claim that is the subject matter of the principal action or to the allegations and evidence for defense, may file a counterclaim pursuant to the provision of Paragraph (1); provided, however, that this shall not apply when the courts of Japan have no jurisdiction over the claim that is the subject matter of the counterclaim pursuant to the provisions concerning exclusive jurisdiction.
4　反訴については，訴えに関する規定による。	(4) A counterclaim shall be governed by the provisions concerning an action.

（時効中断等の効力発生の時期） 第147条 時効の中断又は法律上の期間の遵守のために必要な裁判上の請求は，訴えを提起した時又は第百四十三条第二項（第百四十四条第三項及び第百四十五条第四項において準用する場合を含む。）の書面を裁判所に提出した時に，その効力を生ずる。	(Time When Interruption of Prescription, etc. Becomes Effective) Article 147 A demand by litigation necessary for the interruption of the prescription or observance of a statutory term shall become effective when an action is filed or when a document set forth in Article 143 (2) (including cases where applied mutatis mutandis pursuant to Article 144(3) or Article 145 (4)) is submitted to the court.
（上告の理由） 第三百十二条 1　上告は，判決に憲法の解釈の誤りがあることその他憲法の違反があることを理由とするときに，することができる。	(Reasons for Final Appeal) Article 312 (1) A final appeal may be filed by reason that a judgment contains a misconstruction of the Constitution or any other violation of the Constitution.
2　上告は，次に掲げる事由があることを理由とするときも，することができる。ただし，第四号に掲げる事由については，第三十四条第二項（第五十九条において準用する場合を含む。）の規定による追認があったときは，この限りでない。 一　法律に従って判決裁判所を構成しなかったこと。 二　法律により判決に関与することができない裁判官が判決に関与したこと。 三　専属管轄に関する規定に違反したこと（第六条第一項各号に定める裁判所が第一審の終局判決をした場合において当該訴訟が同項の規定により他の裁判所の専属管轄に属するときを除く。）。 四　法定代理権，訴訟代理権又は代理人が訴訟行為をするのに必要な授権を欠いたこと。 五　口頭弁論の公開の規定に違反したこと。	(2) A final appeal may also be filed by reason of the existence of any of the following grounds; provided, however, that this shall not apply to the grounds set forth in item (iv) where ratification is made under the provision of Article 34(2) (including cases where applied mutatis mutandis pursuant to Article 59): (i) The court rendering judgment was not composed under any Acts. (ii) A judge who may not participate in making the judgment under any Acts participated in making the judgment. (iii) The judgment was made in violation of the provisions concerning exclusive jurisdiction (excluding cases where any of the courts specified in the items of Article 6(1) made a final judgment in the first instance when the suit is subject to the exclusive jurisdiction of another court pursuant to the provision of Article 6(1)). (iv) The judgment was made in the absence of the authority of statutory representation, authority of representation in a suit or the delegation of powers necessary for performing procedural acts. (v) The judgment was made in violation of the provision on the opening of oral argument to the

六　判決に理由を付せず，又は理由に食違いがあること。	public. (vi) The judgment lacks reasons, or the reasons attached to the judgment are inconsistent.
2の2　日本の裁判所の管轄権の専属に関する規定に違反したこと。	(2-2) The judgment was made in violation of the provisions concerning exclusive jurisdiction of the courts of Japan.
3　高等裁判所にする上告は，判決に影響を及ぼすことが明らかな法令の違反があることを理由とするときも，することができる。	(3) A final appeal to a high court may also be filed by reason that there is a violation of laws or regulations that apparently affects a judgment.
民事保全法	**Civil Provisional Remedies Act**
(保全命令事件の管轄) **第11条** 保全命令の申立ては，日本の裁判所に本案の訴えを提起することができるとき，又は仮に差し押さえるべき物若しくは係争物が日本国内にあるときに限り，することができる。	**(Jurisdiction of Case of Temporary Restraining Order)** **Article 11** A petition for a temporary restraining order may be filed with the courts of Japan only when an action on the merits may be filed with the courts of Japan or the property to be provisionally seized or the subject matter in dispute is located in Japan.

＊ 網掛けのある条文は改正なし。

** The shaded texts are not subject to this amendment.