

## New Legislation on the International Jurisdiction of Japanese Courts — Evaluation from a Practitioner's Perspective (summary)

Hiroyuki TEZUKA

Partner, Nishimura & Asahi

The new legislation on the international jurisdiction of Japanese courts introduced by the 2011 amendments to the Code of Civil Procedure and the Civil Provisional Remedies Act (the “New Law”) has endeavored to make the rules applicable to issues concerning Japanese court jurisdiction in international civil litigation cases more transparent and predictable by codifying such rules. Essentially, it has relied upon case law based on the Supreme Court’s decision in the Malaysian Airlines case and subsequent court precedents, with some exceptional provisions to limit a court’s authority and prevent excessive jurisdiction in international cases. The new legislation has also introduced clauses to protect consumers and employees so as to reflect modern international trends.

There are, however, certain areas in which the new legislation has failed to resolve disagreements concerning the appropriate rules; consequently, those disputed issues are left for interpretation by the courts. Some argue that these unresolved issues should be resolved by relying upon established interpretation in the domestic jurisdiction, but legislative history indicates that there has been no such decision to follow domestic rules.

These unresolved issues include (i) the meaning of the requirement that “a claim is related to a business undertaken” by an office/branch in connection with the special jurisdiction against a foreign corporation, etc., with an office/branch in Japan, (ii) the conditions where a choice of court agreement is invalid due to public policy violation, and (iii) the scope of the concept of “individual labor-related civil disputes” for which there is very extensive employee protection (including very narrow exceptions for a choice of court agreement to be enforceable in favor of employers).