

## Issues regarding International Jurisdiction over Trust Disputes (summary)

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The rules pertaining to international jurisdiction over trust disputes are increasingly becoming a matter of great importance, and are giving rise to numerous controversial issues. This article, in two parts, considers the rules affecting international jurisdiction over trust disputes, focusing principally on Article 7 (6) and Article 25 (3) of the Regulation (EU) No 1215/2012 (hereinafter referred to as the 'Brussels I Regulation (recast)'), which replaced Article 5 (6) and Article 23 (4) of the Council Regulation (EC) No 44/2001 on 10 January 2015 (the basic rules which relate specifically to trusts are actually unchanged by this transition). In this article, initially, the issues surrounding international jurisdiction over internal trust disputes are addressed, and thereafter the rules related to the jurisdiction clauses in trust instruments are examined. This analysis attempts to elucidate the implications of these issues to provide a coherent scheme of justice for international jurisdiction over internal trust relationships, and to apply them to the interpretation of Japan's rules on international jurisdiction of Japanese courts in civil and commercial matters.

Through a review of questions on what types of proceedings and trusts should Article 7 (6) of the Brussels I Regulation (recast) be applied to, and who can be sued under Article 7 (6), this article suggests that these issues should be discussed to ensure that Article 7 (6) provides 'one stop' resolution for all internal trust matters. Therefore, with a view to the efficacious conduct of the proceedings concerning the internal trust matters, it is highly desirable that Article 7 (6) should be applied to resulting trusts or constructive trusts created by virtue of express written trusts. This rule should also be applied to all parties internal to the trust relationship, including not only three prototypes such as the settlor, trustee or beneficiary, but also other holders of fiduciary powers under the terms of the trust, such as an appointer or protector. Furthermore, it is appropriate that the court called upon to hear proceedings concerning the internal trust relationships should be a court of a state in which the principal place of administration of the trust is situated or whose law is applicable to the trust, for dealing with the trust matter efficaciously. And as for the interpretation of Japan's rules on international jurisdiction of Japanese courts in civil and commercial matters, based on the analogy with trusts and associations or foundations without

legal personality, there is some possibility of analogical application of item (vii) of Article 3-3 of the Code of Civil Procedure to proceedings concerning internal trust relationships.

As for jurisdiction clauses in trust instruments, based on the arguments on the issues concerning Article 25 (3) of the Brussels I Regulation (recast), the provisions of Article 3-7 of the Japan's Code of Civil Procedure shall apply *mutatis mutandis* to cases where the trust instrument confers jurisdiction on the courts of Japan or other countries. In such cases, the jurisdiction clauses in trust instruments should be construed to bind not only the settlor, trustee, and beneficiary but also any person having fiduciary powers, such as an appointer or protector, whose powers and duties were close enough to be regarded as akin to those of a trustee. In addition, it should be decided by the law applicable to the trust as to whether someone should be capable of being sued in the courts of the designated state as the trustee, settlor, beneficiary, or other holder of trust powers.