

Modern Banking Business on Japanese Law of Conflict of Laws — in the area of inheritance deposit and credit extension businesses (summary)

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1. Introduction

The purpose of this article is to introduce some problems on Japanese Law of Conflict of Laws, by discussing the modern banking businesses on Japanese Law of Conflict of Laws in the cases of ① a dispute example of foreign deposit inheritance and ② the process of selecting an applicable law to credit extension to overseas local firms.

2. Inheritance Deposit

In current banking practices, bank customers sometimes complain about the procedures in relation to inheritance deposit because of the burden of producing an inheritance agreement document and the submission of many kinds of certificates at the time of deposit withdrawal, the procedures in which vary among banks.

In the inheritance deposit withdrawal the selection of an applicable law that must be in accordance to the inheritee's country is necessary in addition to the complications in domestic legal system.

However, there are no standard procedures or formula among banks.

This chapter shows a dispute case relating to the inherited deposit of a Korean who lived in Japan. The case was filed to Japanese Bankers Association (JBA)'s Alternative Dispute Resolution (ADR).

In the case, one of the Korean inheritors living in Japan made a withdrawal request for the inheritance deposit at a bank without an agreement from the other inheritors to do so and the bank paid the deposit to the inheritor.

Later the other inheritors pleaded to JBA's ADR that the payment of the deposit was made against duty of the diligence of a good custodian of the bank.

In the case, the procedures of JBA's ADR system and the reconciliation proposal which was made by a mediation committee on the case were introduced.

In such a situation, the committee members of JBA's ADR must examine certificates of family members to select an applicable law (i.e. Korean laws) to the case and consider a reconciliation proposal, which is in line with the laws.

The committee needs to make some research on foreign laws, but they should not spend too much time on the research because one of the basic principles of JBA's ADR is expeditious resolutions to cases.

Both banks and JBA are expected to enhance investigative and research capacities to foreign laws to deal with international dispute cases in a smooth and quick manner.

3. Corporate transactions (Credit Extension)

When banks give overseas local firms credit extension (a loan and securities lending), forms of loans, the kinds and contents of collateral, which are stipulated in a credit extension agreement, differ depending on the credit rating of the firm and contents of pertinent laws selected as applicable laws.

For example, Japanese banks usually require borrowers to provide their lands as collateral in Japan, while in the country whose land is state-owned and its private possession is not allowed, Japanese banks must require borrowers to provide the right of land use.

In the country where there is no concept of assignment-of-claim security, banks have to seek for other collaterals by legal composition such as assignment of claim of conditioning, pledge of claim, etc.

In addition, applicable laws and securities can be different depending on the country is subject to a civil law or a common law.

This chapter, by introducing the examples of credit extension (currency option tradings) in Vietnam, Singapore, and Indonesia, shows the examples of possible contractual collaterals, examples of potential applicable laws, the laws that are actually applied, and the examples of the dispute settlement systems, which have been chosen.

Whether credit analysis of overseas local firms can be performed appropriately depends on banks' expertise to grasp local laws, business practices, etc. correctly.

Banks are supposed to work to study legal systems in major countries, in which major corporate customers are operating.

They also need to consider to widen dispute settlements means, including not only court trials but international arbitrations, in which manner of mutual deference in ADR is respected.