A Study on the Scope of Application of the Incorporation Theory (summary)

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Recently, discussions surrounding international company law have been accumulated in Japan. Which country's law should be applied to the legal issues in an organization of the company? In Japan, through revisions for Companies Act in 2005 and Act on General Rules for Application of Laws in 2006, we don't have any clear provisions about such a question, because coverage under the governing law is uncertain.

In Japan, the incorporation theory is the generally accepted theory on the choice of law for company issues. To improve the predictive possibility of the interested party, this report mainly focuses on the scope of the incorporation theory in Japan after having considered the argument over the U.S.

In the U.S., most states including Delaware adopt the incorporation theory based on the internal affairs doctrine (IAD). Internal affairs include those matters that are peculiar to the relationships among or between the corporation and its officers, directors and shareholders. The Restatement (Second) of Conflict of Laws § 302 provides that the local law of the state of incorporation will be applied to determine such issues involving the rights and liabilities of a corporation, except in the unusual case where some other state has a more significant relationship to the occurrence and the parties. Important cases on the Federal Supreme Court and the Delaware Supreme Court maintain the incorporation theory based on the IAD firmly from the point of view on application of uniform law.

In Japan, first of all, on the scope of application of the incorporation theory, I would like to suggest that the classification of internal and external matters of the company is basically appropriate referring to the Restatement (Second) of Conflict of Laws in the U.S. The law of the country of incorporation is applied to the internal relations of the company as a general rule.

This report examines the way of the rule in the form to enumerate concrete application matters about the regulation of the incorporation theory. For example, matters falling within the scope of the rule of the internal affairs include steps taken in the course of the original incorporation, the adoption of by-laws, the election or appointment of directors, the issuance of corporate shares, the holding of directors' and shareholders' meetings,

mergers, the issuance of bonds, payment of dividends, etc.

Secondly, the supplementary resolution of revisions for the Companies Act in 2005 in Japan expected to review the regulation of Pseudo-Foreign Company, but there are few instances of the argument after the revision. This report examines two directions in the case that the regulation of Pseudo-Foreign Company is abolished or revised. Pseudo-Foreign Company may not carry out transactions continuously in Japan, so I believe that new regulations should be imposed to Pseudo-Foreign Company after allowing continuous transactions such as Foreign Company.