

# Translation of Japan's Private International Law: Act on the General Rules of Application of Laws

Translation by

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## INTRODUCTION TO TRANSLATION

Japan's conflict of laws or private international law rules are, generally speaking, codified in a single act: the Act on the General Rules of Application of Laws (Application of Laws Act).<sup>i</sup> This law, originally enacted in 1898, was comprehensively revised in 2006, effective as of 1 January 2007.<sup>ii</sup> This single act provides Japanese courts with the basic rules for identifying the applicable law in contract, property, tort,

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\*\* A German translation of the Act on the General Rules of Application of Laws can be found in: ZJapanR / J.Japan.L. 22 (2006) 265 ff. (*the editors*).

i *Hô no tekiyô ni kansuru tsûsoku-hô* [Act on the General Rules of Application of Laws], Law No. 10 of 1898 [hereinafter Application of Laws Act] (amended by Law No. 78 of 2006), <http://law.e-gov.go.jp/announce/H18HO078.html>. See Y. OKUDA, Reform of Japan's Private International Law: Act on the General Rules of the Application of Laws, in: Yearbook of Private International Law 8 (forthcoming 2007); K. TAKAHASHI, A Major Reform of Japanese Private International Law, in: Journal of Private International Law. 2 (2006) 311.

ii Application of Laws Act, *Fusoku* [Supplementary Provisions], art. 1; *Seirei* [Cabinet Order], No. 289 of 2006 (Sept. 8, 2006).

as well as special rules for product liability, consumer contracts, and labor agreements. The law also covers such topics as the effective date of statutes, when custom should be treated as law, and the law applicable in family and succession conflicts. Given this coverage, the practical significance of this law – and the importance of its translation – should be obvious to foreign lawyers.

In 2002 we provided a new, nuanced translation of the old conflicts statute.<sup>iii</sup> We outlined there our translation approach and particularly our attempt to provide a translation informed by a solid understanding of private international law. Our translation of the new wholly reformed law is consistent with that earlier translation, but also differs in two important ways. First, the 2006 reformed law uses modern Japanese rather than the formal 19<sup>th</sup> Century Japanese found in the early version. Thus, while still erring on the side of a strict translation, we have tried to use a less formal style. Second, in 2006 the Japanese government completed the *Standard Bilingual Dictionary*<sup>iv</sup> to promote consistency in the translation of Japanese laws into English. In this translation, we strived to be consistent with that dictionary and the principles outlined in its introduction.<sup>v</sup> Consistent with that we provide the standard disclaimer regarding the authority of the translation.<sup>vi</sup> Finally, translations are subtle and organic things. Therefore, we encourage colleagues to contact us regarding any suggested improvements, revisions, or corrections that we might incorporate into future versions.

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iii K. ANDERSON / Y. OKUDA, Horei, Act on the Application of Laws, Law No. 10 of 1898, in: *Asian-Pacific Law and Policy Journal* 3 (2002) 230. Please note that the LexisNexis and Westlaw online legal research services both list this translation as starting from page 8 and not page 230.

iv WORKING GROUP, CABINET SECRETARIAT, *Hôrei yôgo nichî-ei hyôjun taiyaku jisho* [Japanese-English Legal Terms Standard Bilingual Dictionary] (March 2006), <<http://www.cas.go.jp/jp/seisaku/hourei/dictionary.pdf>>.

v *Id.* at 1-16.

vi The English translation of this law (through the revisions of Act No. 78 of 2006) has been translated in compliance with the Standard Bilingual Dictionary (March 2006 edition). This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

## Act on the General Rules of Application of Laws

[*Hô no tekiyô ni kansuru tsûsoku-hô*],

Law No. 10 of 1898

(as newly titled and amended 21 June 2006)

### CHAPTER 1 GENERAL RULES

#### *Article 1 [Purpose]*

This law shall provide the general rules for the application of laws.

### CHAPTER 2 GENERAL RULES FOR STATUTES

#### *Article 2 [Effective Date of Statutes]*

A statute shall come into force from the twentieth day after its promulgation. However, where a different effective date is provided by the statute, that date shall apply.

#### *Article 3 [Customs with the Same Effect as Law]*

Customs not contrary to public policy (*ordre public*)<sup>vii</sup> shall have the same effect as law, to the extent that they are authorized by a statute or a statutory instrument, or that they concern matters not otherwise prescribed by a statute or a statutory instrument.

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vii This is the Japanese set phrase “*ôyake no chitsujo matawa zenryô no fûzoku*” originating from the German *öffentliche Ordnung und gute Sitten*. Often translated literally in English as “public order and good morals”, it is regarded to have the same meaning as the French term *ordre public*. Public policy in Article 3 of the Application of Laws Act pertains to domestic law and is used with the same connotation in Article 92 of the *Minpô* [Civil Code]. This should be distinguished from the public policy of private international law found in Article 42 of the Application of Laws Act. JAPANESE ASSOCIATION OF INTERNATIONAL LAW, *Kokusai kankei-hô jiten* [Dictionary of International Relations Law] (2<sup>nd</sup> ed., Tokyo 2005) 238-39.

## CHAPTER 3 GENERAL RULES ON APPLICABLE LAW

## SECTION 1 PERSON

*Article 4 [A Person's Legal Capacity]*

- (1) The legal capacity of a person shall be governed by his or her national law.<sup>viii</sup>
- (2) Notwithstanding the preceding paragraph, where a person who has performed a juristic act is of full capacity under the law of the place where the act was done (*lex loci actus*), that person shall be regarded as having full capacity to the extent that at the time of the juristic act, all the parties were situated in a place under the same law.
- (3) The preceding paragraph shall not apply either to a juristic act governed by family law<sup>ix</sup> or succession law,<sup>x</sup> or to a juristic act regarding immovables situated in a place where the law differs from the *lex loci actus*.

*Article 5 [Initiation of Guardianship or Similar Proceedings]*

The court may initiate proceedings for guardianship, curatorship, or assistance (hereinafter referred to as “initiation of guardianship or similar proceedings”) under Japanese law where the person to be subject to the guardianship, curatorship, or assistance has a domicile or residence in Japan or is a Japanese national.

*Article 6 [Declaration of Disappearance]*

- (1) The court may declare a person to have disappeared under Japanese law where the person was domiciled in Japan or was a Japanese national at the time when he or she was last recognized as alive.
- (2) Even where the preceding paragraph is not applicable, the court may declare a person to have disappeared under Japanese law with regards only to the property that the person had in Japan and only to the person's legal relations governed by Japanese law or otherwise connected to Japan in light of their nature, the domicile or nationality of the persons concerned, or other circumstances.

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viii “National law” refers in general to the law of one's nationality. *See also* Application of Laws Act, arts. 38, 40(1). This is a widespread civil law test of connection with a country, in contrast to the common law's use of domicile. *See Kokusai kankei-hô jiten, supra* note vii, 813; C.M.V. CLARKSON / J. HILL, *Jaffey on the Conflict of Laws* (London 1997) 49-51; K.H. NADLEMANN, Mancini's Nationality Rule and Non-Unified Legal Systems: Nationality versus Domicile, in: *American Journal of Comparative Law* 17 (1969) 418.

ix *See* Application of Laws Act, arts. 24-35.

x *See* Application of Laws Act, arts. 36-37.

## SECTION 2 JURISTIC ACTS

*Article 7 [Choice of Applicable Law by the Parties]*

The formation and effect of a juristic act shall be governed by the law of the place chosen by the parties at the time of the act.

*Article 8 [In the Absence of a Choice of Applicable Law by the Parties]*

(1) Where there is no choice under the preceding Article, the formation and effect of a juristic act shall be governed by the law of the place with which the act is most closely connected at the time of the act.

(2) For the purpose of the preceding paragraph, where only one party is to effect the characteristic performance of the juristic act, it shall be presumed that the juristic act is most closely connected with the law of his or her habitual residence (i.e., the law of his or her place of business where that place of business is related to the act, or the law of his or her principal place of business where he or she has two or more places of business related to the act and where those laws differ).

(3) For the purpose of the first paragraph of this Article, where the subject matter of the juristic act is immovables, notwithstanding the preceding paragraph, it shall be presumed that the act is most closely connected with the law of the place where the immovables are situated.

*Article 9 [Variation of Applicable Law by the Parties]*

The parties may vary the law otherwise applicable to the formation and effect of a juristic act. However, such variation shall not be asserted against third parties where it would be prejudicial to their rights.

*Article 10 [Formalities of a Juristic Act]*

(1) The formalities of a juristic act shall be governed by the law applicable to the formation of the act (where under the preceding Article the law was varied after the juristic act, the law applicable before the variation shall govern).

(2) Notwithstanding the preceding paragraph, formalities that satisfy the requirements of the law of the place where the act was done (*lex loci actus*) shall be effective.

(3) For the purpose of the preceding paragraph, where a declaration of intent is addressed to a person situated in a place under a different law, the place from where the notice was sent shall be deemed as the place of the act (*locus actus*).

(4) The second and third paragraphs of this Article shall not apply to the formalities of a contract concluded between parties situated in places having different laws. In this case, notwithstanding the first paragraph of this Article, contract formalities that satisfy the requirements of either the law of the place from where the notice of offer was sent or the law of the place from where the notice of acceptance was sent shall be effective.

(5) The second, third, and fourth paragraphs of this Article shall not apply to the formalities of a juristic act that establishes or disposes of a right *in rem* to movables or immovables, or of a right requiring registration.

*Article 11 [Special Rules for Consumer Contracts]*

(1) Regarding the formation and effect of a contract (excluding labor contracts; hereinafter referred to in this Article as “consumer contract”) between a consumer (i.e., an individual, excluding those cases where the party acts as a business or for a business) and a business operator (i.e., a juridical person or other corporate association, or an individual in those cases where the party acts as a business or for a business), even where by choice under Article 7 or variation under Article 9, the applicable law would be a law other than that of the consumer’s habitual residence, when the consumer indicates to the business operator his or her intention that a particular mandatory rule from within the law of the consumer’s habitual residence should apply, this mandatory rule shall also apply to the matters covered by the rule concerning the consumer contract’s formation and effect.

(2) Notwithstanding Article 8, where no choice under Article 7 has been made, the formation and effect of a consumer contract shall be governed by the law of the consumer’s habitual residence.

(3) In regards to the formation of a consumer contract, even where a law other than the law of a consumer’s habitual residence is chosen under Article 7, when the consumer indicates to the business operator his or her intention that a particular mandatory rule from within the law of the consumer’s habitual residence should apply to the formalities of the consumer contract, only the mandatory rule shall apply to the matters covered by the rule concerning the consumer contract’s formalities, irrespective of Article 10, paragraphs 1, 2, and 4.

(4) Where the law of a consumer’s habitual residence is chosen under Article 7 with regards to the formation of a consumer contract, and when the consumer indicates to the business operator his or her intention that the law of the consumer’s habitual residence should only apply to the formalities of a consumer contract, the formalities of the consumer contract shall be governed only by the law of the consumer’s habitual residence, irrespective of Article 10, paragraphs 2 and 4.

(5) Notwithstanding Article 10, paragraphs 1, 2, and 4, where there is no choice under Article 7 with regards to the formation of the contract, the formalities of a consumer contract shall be governed by the law of the consumer’s habitual residence.

(6) The preceding paragraphs shall not apply in any of the following cases:

(i) Where the business operator’s place of business that is associated with a consumer contract is in a place under a law that is different from the law of the consumer’s habitual residence, and where the consumer comes to a place that has the same law as that place of business to conclude the contract. However, excluding cases where the consumer, who is in the place of his or her habitual residence, is invited by the business operator to conclude the consumer contract in the place that has the same law as the place of business;

- (ii) Where the business operator's place of business that is associated with a consumer contract is in a place under a law that is different from the law of the consumer's habitual residence, and where the consumer has received or should receive the performance of all obligations under the consumer contract in a place that has the same law as that place of business. However, excluding cases where the consumer, who is in the place of his or her habitual residence, is invited by the business operator to have all obligations performed under the consumer contract in a place that has the same law as that place of business;
- (iii) Where at the time of contracting the business operator did not know the consumer's habitual residence and there were reasonable grounds for not knowing this; or
- (iv) Where at the time of contracting the business operator mistook the other party of the contract for not being a consumer and there were reasonable grounds for this mistake.

*Article 12 [Special Rules for Labor Contracts]*

(1) Even where by choice under Article 7 or variation under Article 9, the applicable law to the formation and effect of a labor contract is a law other than the law with which the contract is most closely connected, when the employee indicates to the employer his or her intention that a particular mandatory rule from within the law of the place with which the employee is most closely connected should apply, this mandatory rule shall also apply to the matters covered by the rule concerning the labor contract's formation and effect.

(2) For the purpose of the preceding paragraph, it shall be presumed that a labor contract is most closely connected with the law of the place where the work should be carried out under the contract (i.e., the law of the place of business through which the employee was engaged, where the work is not to be carried out in a particular place. The same applies for the next paragraph).

(3) Notwithstanding Article 8, paragraph 2, where no choice under the provision of Article 7 has been made with regards to the formation and effect of a labor contract, it shall be presumed that regarding its formation and effect the contract is most closely connected with the law of the place where the work should be carried out under the contract.

SECTION 3 RIGHTS *IN REM* AND SO FORTH

*Article 13 [Rights in Rem and Rights Requiring Registration]*

(1) Rights *in rem* to movables and immovables and any other rights requiring registration shall be governed by the law of the place where the property is situated (*lex rei sitae*).

(2) Notwithstanding the preceding paragraph, the acquisition and loss of the rights mentioned in the preceding paragraph shall be governed by the place where the property is situated (*lex rei sitae*) at the time when the events causing the acquisition or loss were completed.

## SECTION 4 CLAIMS

*Article 14 [Agency by Necessity and Unjust Enrichment]*

The formation and effect of claims arising from agency by necessity (*negotiorum gestio*)<sup>xi</sup> or unjust enrichment shall be governed by the law of the place where the events causing the claims occurred.

*Article 15 [Exception for Cases with a Clearly Closer Connection to Another Place]*

Notwithstanding the preceding Article, the formation and effect of claims arising from agency by necessity (*negotiorum gestio*) or unjust enrichment shall be governed by the law of the place with which they are clearly more closely connected in light of circumstances such as where at the time of the occurrence of events causing the claims both of the parties had their habitual residence in a place with the same law, or where the agency by necessity (*negotiorum gestio*) or unjust enrichment arose relating to a contract between the parties.

*Article 16 [Variation of Applicable Law by the Parties]*

After the events causing the claims occur, the parties to an agency by necessity (*negotiorum gestio*) or unjust enrichment may vary the law that would otherwise be applicable to the formation and effect of the claims. However, such variation shall not be asserted against third parties where it would be prejudicial to their rights.

*Article 17 [Tort]*

The formation and effect of claims arising from tort shall be governed by the law of the place where the results of the acts causing the damage arose. However, where the occurrence of the results in such place would usually be unforeseeable, the law of the place where the acts causing the damage occurred shall govern.

*Article 18 [Special Rules for Product Liability]*

Notwithstanding the preceding Article, where a claim against a producer (i.e., a person who produces, processes, imports, exports, distributes, or sells a product in the course of trade) or a person who makes a representation that leads others to believe he or she is a producer of a product (hereinafter referred to jointly in this Article as “producer or similar person”) arises from a tort injuring the life, body, or property of others caused by the defect of a delivered product (i.e., a produced or processed thing), the formation and effect of those claims shall be governed by the law of the place where the injured person has been delivered the product. However, where the delivery of the product to that place could not usually be foreseen, the

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xi This refers to Roman law concept of *negotiorum gestio* or *jimu kanri* in Japanese, also sometimes referred to as “management of affairs without mandate” in English. That is, quasi-contractual obligations arising when one voluntarily undertakes liabilities on behalf of another who is either incapacitated or absent. D.M. WALKER, *Oxford Companion to Law* (Oxford 1980) 874. There is no exact equivalent under the common law though in effect it is roughly similar to liability for agency by necessity. *Id.*

law of the principal place of business of the producer or similar person (or the law of his or her habitual residence where he or she has no place of business) shall govern.

*Article 19 [Special Rules for Defamation]*

Notwithstanding Article 17, the formation and effect of claims arising from the tort of defamation<sup>xii</sup> of another shall be governed by the law of the injured person's habitual residence (i.e., the law of its principal place of business where the injured person is a juridical person or other corporate association).

*Article 20 [Exception for Cases with a Clearly Closer Connection to Another Place]*

Notwithstanding Articles 17, 18, and 19, the formation and effect of claims arising from tort shall be governed by the law of the place with which they are clearly more closely connected in light of the circumstances such as where at the time of the tort both of the parties had their habitual residence in a place under the same law, or where the tort occurred by breaching obligations in a contract between the parties.

*Article 21 [Variation of Applicable Law by the Parties]*

After a tort occurs, the parties to the tort may vary the law that would otherwise be applicable to the formation and effect of claims. However, such variation shall not be asserted against third parties where it would be prejudicial to their rights.

*Article 22 [Public Policy Limits in Tort]*

(1) Where events that should otherwise be governed by the foreign law applicable in tort do not constitute a tort under Japanese law, recovery of damages or any other remedy under the foreign law may not be demanded.

(2) Even where the events that should otherwise be governed by the foreign law applicable in tort constitute a tort both under the foreign law and under Japanese law, the injured person may not demand recovery of damages or any other remedy not recognized under Japanese law.

*Article 23 [Assignment of Claims]*

The effect on a debtor or other third parties of an assignment of a claim shall be governed by the law that is applicable to the claim.

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xii This is the Japanese set phrase “*meiyo matawa shin'yô no kison*,” literally translated as “injury to honor or reputation.” The injury to honor portion is regulated by Articles 710 and 723 of the *Minpô* [Civil Code] and Articles 230 to 232 of the *Keihô* [Penal Code], and the injury of reputation aspect is regulated by Article 233 of the Penal Code. Injury to honor concerns the honor of an individual, and injury to reputation concerns the reputation of an enterprise with regards to business. Other similar rights relating to personality such as privacy are not expressly regulated in the Civil Code, the Penal Code, or other Japanese statutes. The Application of Laws Act covers these other statutes and regulates only the injury to honor or reputation. Article 19, however, is also applicable *mutatis mutandis* to other rights relating to personality, although remedies not recognized under Japanese law are excluded under Article 22.

## SECTION 5 FAMILY

*Article 24 [Formation and Formalities of Marriage]*

- (1) For each party, the formation of a marriage shall be governed by his or her national law.
- (2) The formalities of a marriage shall be governed by the law of the place of the ceremony (*lex loci celebrationis*).
- (3) Notwithstanding the preceding paragraph, formalities that satisfy the requirements of either of the parties' national law shall be effective, unless the marriage is celebrated in Japan and one of the parties is a Japanese national.

*Article 25 [Effect of Marriage]*

The effect of a marriage shall be governed by the spouses' national law when it is the same,<sup>xiii</sup> or where that is not the case, by the law of the spouses' habitual residence when that is the same, or where neither of these is the case, by the law of the place with which the spouses are most closely connected.

*Article 26 [Matrimonial Property Regime]*

- (1) The preceding Article shall apply *mutatis mutandis* to the parties' matrimonial property regime.<sup>xiv</sup>
- (2) Notwithstanding the preceding paragraph, the parties' matrimonial property regime shall be governed by the law that the spouses select from among the following laws where such selection is made in writing, signed, and dated by the spouses. In this case, the selection only has effect for future actions.
  - (i) The law of the country where either spouse has nationality;
  - (ii) The law of either spouse's habitual residence; or
  - (iii) Regarding a matrimonial property regime for immovables, the law of the place where the immovables are situated.
- (3) A matrimonial property regime that according to the first and second paragraphs of this Article should be governed by a foreign law shall not be asserted against third parties acting in good faith (*bona fides*) insofar as it concerns juristic acts performed in Japan or property situated in Japan. In this case, regarding relations with such third parties the matrimonial property regime shall be governed by Japanese law.
- (4) Notwithstanding the preceding paragraph, an ante- or pre-nuptial agreement concerning matrimonial property made under a foreign applicable law pursuant to the first or second

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xiii It must be noted that Article 38 is first applied to decide whether the national law of the spouses is the same. For example, in the case where one spouse has more than one nationality, his or her national law would be determined by Article 38, paragraph 1, and for article 25's "same" phrase to apply, the national law indicated by that determination would have to be the same as the other spouse's national law. R. YAMADA, *Kokusai Shihô* [Private International Law] (3<sup>rd</sup> ed., Tokyo 2004) 106.

xiv See, e.g., D. MCCLEAN / K. BEEVERS, *Morris: The Conflict of Laws* (6<sup>th</sup> ed., London 2005) ch. 16 (explaining the different matrimonial property regimes).

paragraph of this Article may apply against a third party when the agreement is registered in Japan.

*Article 27 [Divorce]*

Article 25 shall apply *mutatis mutandis* to divorce. However, divorce shall be governed by Japanese law where one of the spouses is a Japanese national with habitual residence in Japan.

*Article 28 [Establishing the Parent-Child Relationship Where the Child is Legitimate]*

(1) A child shall be legitimate where at the time of the child's birth the child was legitimate under the national law of one of the spouses.

(2) Where the husband has died before the child's birth, the husband's national law at the time of his death shall be regarded as the law referred to in the preceding paragraph.

*Article 29 [Establishing the Parent-Child Relationship Where the Child is Illegitimate]*

(1) Where a child is illegitimate, establishment of the parent-child relationship with regards to the father (paternity) shall be governed by the father's national law at the time of the child's birth, and with regards to the mother (maternity) by the mother's national law at that time. In these cases, when establishing the parent-child relationship by acknowledgment,<sup>xv</sup> where the national law of the child at the time of acknowledgment requires the agreement or consent of the child or a third party as a condition of acknowledgment, this requirement must also be satisfied.

(2) Acknowledgment of a child shall be governed by the national law of the child or of the acknowledging person at the time of the acknowledgment, or the law designated in the first sentence of the preceding paragraph. In the case where the national law of the acknowledging person shall be applied, the second sentence of the preceding paragraph shall also apply *mutatis mutandis*.

(3) Where the father has died before the child's birth, the father's national law at the time of his death shall be regarded as the law designated by the first paragraph of this Article. Where the person provided for in the preceding paragraph has died before the acknowledgment, the national law of that person at the time of his or her death shall be regarded as the national law designated by that paragraph.

*Article 30 [Legitimation]*

(1) A child shall receive the status of legitimate where he or she is legitimated by the national law of the father, mother, or child at the time when the conditions required for legitimation are completed.

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xv "Acknowledgement" as used herein refers to the practice in some countries of the establishment of parentage of an illegitimate child by the formal act of a parent filing in the family registry, a court decision, or so forth. CLARKSON / HILL, *supra* note viii, 416.

(2) Where a person mentioned in the preceding paragraph has died before the completion of the conditions required for legitimation, the national law of that person at the time of his or her death shall be regarded as the national law designated by that paragraph.

*Article 31 [Adoption]*

(1) Adoption shall be governed by the national law of the adoptive parents at the time of the adoption. Where the national law of the child to be adopted requires as a condition for establishing the adoption the agreement or consent of the child or a third party, or the approval or any other decision by a public authority, this requirement must also be satisfied.

(2) Repudiation and termination of the familial relationship between an adopted child and his or her actual blood relatives (relatives by consanguinity) shall be governed by the law designated in the first sentence of the preceding paragraph.

*Article 32 [The Legal Relationship Between Parents and Child]*

The legal relationship between parents and their child shall be governed by the child's national law where that is the same as the national law of either the mother or father (or the national law of the other parent in the case where one parent has died or is unknown), or in all other cases by the law of the child's habitual residence.

*Article 33 [Other Family Relationships]*

Family relations or rights and duties arising therefrom that are not covered by Articles 24 to 32 shall be governed by the national law of the party concerned.

*Article 34 [Formalities of Juristic Acts Concerning Family Relations]*

(1) The formalities of juristic acts concerning family relations covered by Articles 24 to 33 shall be governed by the law applicable to the formation of such juristic acts.

(2) Notwithstanding the preceding paragraph, formalities that conform with the law of the place where the act was done (*lex loci actus*) shall be effective.

*Article 35 [Guardianship or Similar Proceedings]*

(1) Guardianship, curatorship, or assistance (hereinafter "guardianship or similar proceedings") shall be governed by the national law of the ward.

(2) Notwithstanding the preceding paragraph, in the following cases where the ward is a foreign national, judicial declarations concerning guardianship or similar proceedings such as judicial appointment of a guardian, curator, or assistance manager shall be governed by Japanese law:

- (i) In the case where according to the foreign national's national law there is cause for initiating guardianship or similar proceedings, but there is no one in Japan to undertake the administration of the guardianship or similar proceedings; or
- (ii) Where there has been a judicial declaration to initiate guardianship or similar proceedings concerning a foreign national in Japan.

## SECTION 6 SUCCESSION

*Article 36 [Succession]*

Succession shall be governed by the national law of the decedent.

*Article 37 [Wills]*

(1) The formation and effect of a will shall be governed by the testator's national law at the time of the will's formation.

(2) The revocation of a will shall be governed by the testator's national law at the time of the revocation.

## SECTION 7 SUPPLEMENTARY RULES

*Article 38 [National Law]*

(1) Where a person has two or more nationalities, his or her national law shall be the law of the country in which the person has habitual residence from among those states of which he or she has nationality. Where there is no such country, the person's national law shall be the law of the state with which he or she is most closely connected. However, where one of those nationalities is Japanese, Japanese law shall be that person's national law.

(2) In the case where a person's national law shall govern but the person has no nationality, the law of that person's habitual residence shall govern. However, this shall not apply to cases where Article 25 (including its application *mutatis mutandis* under Article 26, paragraph 1 and Article 27) or Article 32 is applicable.

(3) Where a person has nationality in a state where the law differs by region, that person's national law shall be the law designated by the rules of that state (or the law of the region with which that person is most closely connected in the case where such rules do not exist).

*Article 39 [Law of Habitual Residence]*

In the case where the law of a person's habitual residence shall govern but where that habitual residence is unknown, the law of that person's residence shall govern. However, this shall not apply to cases where Article 25 is applicable (including its application *mutatis mutandis* in Article 26, paragraph 1 and Article 27).

*Article 40 [The Law of States or Places Where such Law Differs According to One's Personal Status]*

(1) In the case of a person who is a national of a state where the law differs according to a person's status, that person's national law shall be the law indicated according to the rules of that state (or the law with which that party is most closely connected where such rules do not exist).

(2) The preceding paragraph shall apply *mutatis mutandis* to the law of that party's habitual residence where that law differs according to a person's status and where that law is

applicable according to Article 25 (including its application *mutatis mutandis* under Article 26, paragraph 1 and Article 27), Article 26, paragraph 2, item ii, Article 32, or Article 38, paragraph 2, and to the law of the place with which both spouses are most closely connected where that law differs by a person's status.

*Article 41 [Renvoi]*

Where a case should be governed by a person's national law and pursuant to the rules of that law the case should be governed by Japanese law, the case shall be governed by Japanese law. However, this shall not apply where the person's national law should govern pursuant to Article 25 (including its application *mutatis mutandis* in Article 26, paragraph 1 and Article 27) or Article 32.

*Article 42 [Public Policy (Ordre Public)]*

Where a case should be governed by a foreign law but application of those provisions would contravene public policy (*ordre public*), those provisions shall not apply.

*Article 43 [Exceptions to Application]* <sup>xvi</sup>

(1) The provisions of this Chapter shall not apply to maintenance obligations arising from spousal, parentage, or any other family relationships. However, this shall not apply to the application of the main clause of Article 39.

(2) The provisions of this Chapter shall not apply to the formalities of wills. However, this shall not apply to the application of the main clause of Article 38, paragraph 2, the main clause of Article 39, and Article 40.

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xvi Choice of law rules for maintenance obligations and formalities of wills are provided by special statutes that incorporate the Convention on the Law Applicable to Maintenance Obligations of 1973 and the Convention on the Conflict of Laws relating to the Form of Testamentary Dispositions of 1961. See *Fuyô gimu no junkyo-hô ni kansuru hôritsu* [Act Concerning the Law Applicable to Maintenance Obligations], Law No. 84 of 1986; *Igon no hôshiki no junkyo-hô ni kansuru hôritsu* [Act Concerning the Law Applicable to Form of Testamentary Dispositions], Law No. 100 of 1964.