

DOKUMENTATION / DOCUMENTATION

The Reform of International Civil Procedure Law in Japan

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MOJ Proposal on International Jurisdiction (February 2010),
Translated by *Toshiyuki Kono*, *Ruben Pauwels*, and *Paulius Jurčys*

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Table: Comparison of The Working Group Draft (WGD) (June 2008),
The Interim Draft (ID) (July 2009),
and The MOJ Draft (MOJ) (February 2010)

I. INTRODUCTION

On 5 February 2010, a draft for new legislation on international jurisdiction (hereinafter referred to “the MOJ Draft”) was submitted to the Minister of Justice of Japan. After its style was adjusted, it was submitted as the Draft to amend the Code of Civil Procedure and the Civil Provisional Remedies Act (hereinafter referred to as “the Final Draft”) to the Diet of Japan on 2 March 2010. It would become the first legislation in this field in Japan. Although this Draft might be more or less changed in the legislative process, the author of the current paper is of the opinion that it is worth reporting on it at this stage. Since there is no substantial difference between the MOJ Draft and the Final Draft, this paper uses the MOJ Draft as the basis of the discussion. Readers can find its translation as an Appendix of this paper.

II. THE BACKGROUND OF THE MOJ DRAFT

1. Before 1981

In its judgment of 16 October 1981¹ in the *Malaysian Airline* case, the Supreme Court stated for the first time its opinion on international jurisdiction. As explained below, this judgment influenced the following judgments of lower instances. Thus, this paper distinguishes the pre-*Malaysian Airline* period from the post-*Malaysian Airline* period.

Before 1981, there were some cases at lower instance courts on the issue of international jurisdiction. Due to the lack of clear guidelines for them to follow, these judgments took diversified stances. This will be illustrated below with four judgments.

[1] The judgment of the Tokyo District Court on 26 April 1965, stated that “Article 4, paragraph 3 of the [old] Code of Civil Procedure should be construed to presuppose this conclusion. Accordingly, the assertion of the Respondent Company that the Japanese courts have no jurisdiction over it, cannot be supported...”²

[2] More straightforward is the judgment of the Tokyo District Court on 27 May 1965, which stated that “Article 15, item 1 of the [old] Code of Civil Procedure applies also to this case.”³

[3] The judgment of the Tokyo District Court of 9 October 1973 took the position that “taking Article 15 Paragraph 1 of the [old] Code of Civil Procedure into account in relation to the existence of international jurisdiction in product liability suits, and as mentioned in the same paragraph, it is appropriate to determine whether or not there is international jurisdiction in this product liability suit according to the location of the tortuous act.”⁴

[4] The judgment of the Tokyo District Court on 24 July 1974⁵ applies the “principle of justice” to determine jurisdiction of Japanese courts. According to the Court, as the result of the principle of justice, “the question of which country’s courts should be allowed to assume adjudicatory jurisdiction over the present case should be determined by both considering carefully which court would be the most appropriate for deciding the lawsuit correctly, impartially and efficiently, as well as by reference to the provisions for territorial jurisdiction found in the Japanese Code of Civil Procedure.”⁶

1 Minshū, Vol. 35, No. 7 (1981) 1224. An English translation available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S56.10.16.pdf> (last visited, 24 April 2010).

2 Hanrei Jihō 408 (1965) 14. An English translation available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S40.04.26.pdf> (last visited 24 April 2010).

3 Hanrei Taimuzu No. 179, 147. An English translation available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S40.05.27.pdf> (last visited, 24 April 2010).

4 Hanrei Jihō 728 (1974) 76. An English translation available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S48.10.09.pdf> (last visited, 24 April 2010).

5 Hanrei Jihō 754 (1974) 58. An English translation available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S49.07.24.pdf> (last visited, 24 April 2010).

6 See *supra* note (2).

These judgments show various ways to use provisions of the Code of Civil Procedure to determine international jurisdiction:

- (i) the provisions are taken just as a factor to weigh in the framework of the principle of justice, as in judgment [4];
- (ii) the provisions are an indication of jurisdiction, as in judgments [1] and [3];
- (iii) the provisions are directly applicable to determine international jurisdiction, as in judgment [2].

2. *The Judgment of the Malaysian Airline Case in 1981*

In this case, where a Japanese passenger was killed in an accident on a domestic flight in Malaysia, the Supreme Court took a quite interesting approach. The Court first declared that there are no black-letter rules on international jurisdiction in Japan, neither in international conventions nor domestic laws. Second, the Court clarified that the principle of justice shall be the criterion to determine the international jurisdiction of Japanese courts. Third, however, the Court took the opinion that if a jurisdictional ground in one of the provisions on personal jurisdiction over domestic cases in the Code of Civil Procedure is present, the principle of justice is satisfied. Hence the Supreme Court seems to have taken the opinion combining (i) and (iii) above.

In this case, the victim bought his ticket in Malaysia. The establishment of the Malaysian Airline in Tokyo had nothing to do with the transportation contract with him. However, simply based on the presence of the defendant's establishment in Tokyo, the Supreme Court affirmed the jurisdiction.

This approach can be criticized, since it would allow Japanese courts to exercise exorbitant jurisdiction despite the lack of substantial relationship between the case and Japan.

3. *After 1981*

The judgment of the Tokyo District Court, 15 February 1984,⁷ denied jurisdiction of Japanese courts, although it took the same approach as the Supreme Court. In this judgment, the Tokyo District Court examined the substantial connection between the case and Japan as a forum, and concluded that "the present case relating to the arrest of the ship by the defendant has nothing to do with the business of the defendant's Tokyo office." If the Court would have mechanically applied the Supreme Court's approach to the case, international jurisdiction could have been affirmed, because substantial consideration was lacking in the Supreme Court's judgment.

⁷ Tokyo District Court, 15 February 1984, in: Hanrei Jihô 1135 (1985) 70. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S59.02.15.pdf> (last visited, 24 April 2010).

As this judgment of Tokyo District Court shows, after the Supreme Court's judgment in the *Malaysian Airlines* case was rendered, lower courts added a test to deny jurisdiction on an exceptional basis, when case-specific special circumstances exist, even if jurisdictional grounds based on one of the provisions of the Code of Civil Procedure were present. This kind of substantial consideration was taken in the form of a "special circumstances" test.⁸ For example, in the *Far Eastern Airline* case,⁹ Japanese passengers were killed in an accident of a Taiwanese domestic flight; their heirs sued a US company that manufactured the aircraft and another US company that sold it to the Taiwanese airline. The seller company had an establishment in Tokyo, so according to the Supreme Court's approach, Japanese courts could exercise jurisdiction over this case. However, the Court took several factors into consideration in the framework of the special circumstances test, including the lack of diplomatic relationship between Japan and Taiwan and, as its result, the unavailability of international judicial assistance.

This special circumstances test has been widely accepted by lower instance courts. There were more than 30 reported cases where this test was applied.¹⁰ Careful examination of these judgments shows that many diverse factors were taken into consideration in this framework, and it is not easy to identify the link between the conclusion and the factors taken into consideration.¹¹

In 1997, the Supreme Court also adopted this test in its judgment.¹² This judgment went beyond the border that previous judgments have kept: although Japanese courts have expanded the "special circumstances" test, these judgments confirmed the applicability of certain provisions of the Code of Civil Procedure as the preceding step. Then they applied the "special circumstances" test. However, the Supreme Court just mentioned several provisions of the Code of Civil Procedure, and, without deciding if and what provision would be applicable, the Court moved to the next step, i.e., the "special circumstances" test. As a result, international jurisdiction of Japanese courts was declined. This

8 For example, Tokyo District Court, 27 September 1982, in: Hanrei Jihô 1075 (1983) 137, 140; 27 Japanese Annual of International Law 174, 183 (1984). An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S57.09.27.pdf> (last visited, 5 May 2010); Tokyo District Court, 27 March 1984, in: Hanrei Jihô 1113 (1984) 26, 32; 28 Japanese Annual of International Law 248, 251. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S59.03.27.pdf> (last visited, 5 May 2010).

9 Tokyo District Court, 20 June 1986, in: Hanrei Jihô 1196 (1986) 87; 31 Japanese Annual of International Law 216 (1988). An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-S61.06.20.pdf> (last visited, 5 May 2010).

10 T. KONO / Y. HAYAKAWA / H. TAKAHATA, *Kokusai saiban kankatsu ni kan-suru hanrei no kinôteki bunseki – 'tokudan no jijô' wo chûshin toshite* [Functional Analysis of Judgments on International Jurisdiction – Focusing on "Special Circumstances"], in: NBL 890 (2008) 75.

11 *Supra* note 10, 78-81.

12 Supreme Court, 11 November 1997, Minshû, Vol. 51, No. 10 (1998) 4055. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-H09.11.11.pdf> (last visited, 5 May 2010).

revealed that the Supreme Court put more emphasis on the “special circumstances” test than provisions of the Code of Civil Procedure. The framework for exceptional consideration became the main framework for decisions on jurisdictional issues. Shortly after the Supreme Court’s judgment, the judgment of the Tokyo High Court¹³ showed the practical impact of this shift, i.e., the lack of predictability. The Tokyo High Court, applying the “special circumstances” test to a case similar to that of the Supreme Court judgment, reached the completely opposite conclusion and affirmed the jurisdiction of the Japanese courts.¹⁴

In this way, Japanese courts have developed case law on international jurisdiction.

III. THE MOJ DRAFT

1. *Preparation*

Against such a background,¹⁵ the MOJ Draft was prepared. Actually, this is not the first time that new legislation on international jurisdiction has been on the agenda of Japanese lawmakers. When the Code of Civil Procedure was largely amended in 1996, the drafters had discussed the appropriateness of new legislation on international jurisdiction. However, they decided to observe negotiations for the Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters at the Hague Conference for Private International Law. The failure of the negotiations in the Hague and the completion of the new Private International Law¹⁶ in 2006 made the Secretariat of the Ministry of Justice ready to move forward with new legislation on international jurisdiction.

In 2005, a working group was set up to sort out possible options as preparatory work. This working group, after conducting surveys and comparative analysis, published the outcomes of their discussions with some comments in the form of a draft (hereinafter referred to as the “Working Group Draft”) in 2008. Then the Legislative Council of the Ministry of Justice was consulted to prepare a draft on international jurisdiction. The official Drafting Committee was established in the Council and the Committee started its drafting work in October 2008.

13 Tokyo High Court, 24 March 1999, in: *Hanrei Jihô* 1700 (2000) 41. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LA1-H11.03.24.pdf> (last visited, 5 May 2010).

14 T. KONO, Some Consideration on International Jurisdiction and the Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters from a Japanese Perspective, in: Carmody/Iwasawa/Rhodes (eds.), *Trilateral Perspectives on International Legal Issues: Conflict and Coherence* (Washington D. C. 2002) 159-160.

15 Japanese case law for each jurisdictional ground is explained at http://www.tomeika.jur.kyushu-u.ac.jp/procedure/Overview01_jurisdiction.html (last visited, 5 May 2010).

16 Act on General Rules on Application of Laws. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/intl/private/tsusokuho.pdf> (last visited, 5 May 2010).

The Drafting Committee adopted the following methodology: First, the Committee took the provisions on personal jurisdiction in the Code of Civil Procedure and discussed whether these provisions could be applicable to transnational cases or whether they needed modification, as well as whether new provisions should be created. Second, existing leading cases should be incorporated into the new legislation. In July 2009, an interim draft was published and comments on the interim draft were publicly called for. The Committee's drafting work was completed in January 2010, and it submitted the draft to the Council in February. And, as stated at the top of this paper, this draft was submitted to the Diet in March 2010.

2. *Some Features of the MOJ Draft*

The MOJ Draft is the result of a selection from several choices for each provision, which also included the choice not to create any black-letter rules on certain issues. Therefore it is important and useful to trace the development of each provision in the preparation process by knowing what options the Working Group Draft had proposed and what was taken in the MOJ Draft. The chart in Appendix 2 of this paper (hereinafter referred to as "the Chart") offers a comparative overview of three Drafts: as the first stage, the Working Group Draft published in June 2008; as the second, the interim draft of the Drafting Committee published in July 2009; and as the third, the MOJ Draft adopted in February 2010.

Although each provision is worthy of careful analysis, this paper focuses only on a few very characteristic aspects of the MOJ Draft.

a) *Doing Business Jurisdiction?*

As mentioned above, the Drafting Committee applied a methodology that consisted of using the provisions of the Code of the Civil Procedure as the basis of the drafting work and of incorporating case law into the legislation. However, there are some innovative provisions. A good example is the second paragraph of the provision on jurisdiction based on "office or business office." The language of this provision is as follows:

Jurisdiction over Actions against Persons Having an Office or Business Office

- 1) If persons have their office or business office in Japan, Japanese courts shall have jurisdiction over actions against such persons' business related to their office or business office in Japan,
- 2) Japanese courts shall have jurisdiction over actions against persons' business activities within Japan, if they continuously undertake such business activities in Japan.

The first paragraph is not new. As the above-cited judgment of Tokyo District Court on 15 February 1984¹⁷ shows, the location of an office in Japan does not suffice as a jurisdictional ground. The location of an office can be a jurisdictional basis only in terms of the business related to that office. This business can be conducted overseas, though. The novelty of this provision is in the second paragraph. Even without an office, persons may be sued in Japan if they undertake business “activities” in Japan. In the drafting process, as the Chart shows, it was discussed whether the new legislation should introduce a rule on general jurisdiction to be applied to foreign legal entities based on the presence of their representatives. It was not adopted, since it may lead to exorbitant jurisdiction and jurisdiction based on an office or business office could appropriately cover possible cases. However, if the requirement “activities” in this provision is broadly interpreted by courts, not only the appearance of this provision but also the results of its application could be very similar to “doing business” jurisdiction in US law. The author of the current paper once pointed out that Japanese case law has similar flexibility and unpredictability to the doing business jurisdiction in US law through the expansion of the “special circumstances” test.¹⁸ This would be institutionalized if this provision is finally accepted by the Diet.

b) Scope of Each Provision

This new legislation is designed as a national statute. In contrast to the Brussels scheme, the recognition of foreign judgments is separated from the rules on jurisdiction and dealt with by another provision in the Code of Civil Procedure (Art. 118¹⁹). The “mirror image” theory of German origin has traditionally prevailed in Japan.²⁰ If this theory were still prevailing, new jurisdictional rules would practically be linked to the recogni-

17 *Supra* note 7

18 *Supra* note 14.

19 Art. 118 of the Code of Civil Procedure:

“A final and conclusive judgment of a foreign court shall have its effect only upon the fulfillment of the following conditions:

- (i) that the foreign court would have jurisdiction pursuant to the law or treaties;
- (ii) that the unsuccessful defendant received service of a summons or order as required for the commencement of proceedings (except by publication in a bulletin board at the court or by similar methods), or appeared in the action without receiving such service;
- (iii) that the contents of the judgment of a foreign court and its proceeding are not contrary to the public order or good morals in Japan;
- (iv) that reciprocity is assured.”

An overview of the recognition system in Japan in English is available at http://www.tomeika.jur.kyushu-u.ac.jp/procedure/Overview02_judgments.html (last visited, 5 May 2010).

20 For example, Tokyo District Court, 14 January 1994, in: Hanrei Jihô 1509 (1995) 96. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LABEL2-025.pdf> (last visited, 5 May 2010); Ôsaka District Court, March 25, 1991, Hanrei Jihô 1408 (1992) 100. An English translation is available at <http://www.tomeika.jur.kyushu-u.ac.jp/procedure/E-label/LABEL2-020.pdf> (last visited, 5 May 2010).

tion system. However, the Supreme Court seems to have adopted a slightly different opinion. In its judgment on 28 April 1998,²¹ the Supreme Court applied the test, which reads as follows (emphasis added):

whether the judgment country has international jurisdiction to adjudicate should be determined in accordance with the principles of justice and good reasons, basically applying the provisions of territorial jurisdiction stated in our Code of Civil Procedure, and *taking into account the concrete circumstances of each case, from the viewpoint of whether or not it is proper for our country to recognize the foreign judgment.*

This language is different from the “special circumstances” test. Thus the circumstances to be taken into consideration in this framework could be different from those in the special circumstances test. Also the threshold may be stricter or less strict than that for the special circumstances test. Such a separation means that even if the jurisdiction of Japanese courts can be broadly provided for, for example to protect domestic creditors, the recognition of judgments based on similarly generous jurisdiction of a foreign court can be controlled by a different threshold of indirect jurisdiction.

For example, the MOJ Draft provides the following concerning jurisdiction over contractual obligations:

Jurisdiction over Actions Related to Contractual Obligations

- 1) Japanese courts shall have jurisdiction over actions related to the performance of contractual obligations in the following cases:
 - a) if the place of performance of contractual obligations is in Japan according to the contract;
 - b) if the place of the performance of an obligation is in Japan according to the law of the place which is chosen in the contract.
- 2) Japanese courts shall have jurisdiction regarding actions which concern claims related to *negotiorum gestio*, unjust enrichment, and claims for the compensation of damage for the non-performance of contractual obligations as well as other contractual obligations if Japanese courts have jurisdiction over the claims related to the performance of contractual obligations pursuant to provision 1 above.

In applying 1) b), the law of the place which is chosen on the contract is determined by Article 7 of the Act on General Rules on Application of Laws, i.e., party autonomy. If a choice was not clearly made, a court would take various factors of the case into consideration to identify the law applicable to the contract. This is a more general and flexible approach than Article 5 of the Brussels Regulation. This is because Article 5 of the Brussels Regulation contains much more detailed rules with specific jurisdictional grounds, which include jurisdictional rules on maintenance, damages or restitution

21 Minshû, Vol. 52, No. 3 (1998), p. 853. An English translation is available at http://www.tomeika.jur.kyushu-u.ac.jp/procedure/procedure-cases-judgments%20JAIL-PDF/2-034_SUPREME_COURT_APRIL_28.1998.pdf (last visited, 5 May 2010).

which is based on an act giving rise to criminal proceedings, trust, and remuneration claimed in respect of the salvage.

c) *General Escape Clause*

The MOJ Draft adopted the special circumstances test as a black-letter rule.

General Rules Related to International Jurisdiction

Courts can reject all or some actions which they are competent to hear if from the nature of the case or the extent of the burden of the defendant caused by his/her appearance, the location of evidence or by reason of other circumstances the exercise of jurisdiction would be inequitable to the parties or hinder the conduct of a proper and speedy trial (except when parties have made an agreement conferring exclusive jurisdiction on a Japanese court).

If this draft is adopted without substantial change, in the author's view, Japan will have institutionalized forum-non-convenience in its new legislation. This will facilitate judges to decide in accordance to the concrete circumstances of each case. On the other hand, it may discourage potential parties from using Japanese courts due to the lack of predictability. The role of jurisdictional rules may lose its relative importance.

This provision could be described as an institutionalized forum-non-convenience, if this provision were to be interpreted in a very flexible manner.

The adoption of this test as a black-letter rule explains why the MOJ Draft did not adopt *lis pendens* doctrine. At the early stage of the drafting work, some options to introduce a mechanism to control concurrent litigations were proposed. A critical view against any mechanism to control *lis pendens* is difficult for the court, i.e., when a litigation is still pending in a foreign court. And if Japanese judges are to predict whether the judgment of the litigation could eventually be recognized in order to control litigation in Japan, Japanese judges may face difficulties in making decisions since the situation would differ case by case. However, if it was sufficient for judges to take the fact that litigation is pending in a foreign court into consideration only when it is necessary to do so, it would be very convenient for them. The institutionalized "special circumstances" test would allow them to do so.

IV. CONCLUDING REMARKS

The Ministry of Justice submitted a draft for a new legislation on international jurisdiction to the Diet in March 2010. This paper illustrates the background of the draft and highlights a few characteristic provisions in the draft prepared by the Ministry of Justice. Flexibility seems to have been the main priority of the drafters. A more detailed analysis should be made after the new law is promulgated following the drafting work in the Diet.

Appendix 1

MOJ Proposal on International Jurisdiction (February 2010) ²²

Translated by *Toshiyuki Kono, Ruben Pauwels, and Paulius Jurčys*

I. JURISDICTION BASED ON THE DEFENDANT'S DOMICILE

- (1) Japanese courts shall have jurisdiction:
 - (a) if the person against whom the action is brought has his/her domicile in Japan; or
 - (b) if the person against whom the action is brought has his/her residence in Japan in the event that he/she has no domicile or his/her domicile is unknown;
 - (c) when the defendant had domicile in Japan before the action was filed in the event that he/she has no residence or his/her residence is unknown (except where he/she had domicile in a foreign country after he/she had domicile in Japan).
- (2) Notwithstanding (1) above, Japanese courts shall also have jurisdiction in cases against Japanese ambassadors and other state representatives who enjoy immunity from the jurisdiction of that country.
- (3) Japanese courts shall have jurisdiction with regard to actions against a legal entity or any other association or foundation when the legal entity or any other association or foundation has its principal office or place of business in Japan. Japanese courts shall also have jurisdiction if the place of business is not known or does not exist, but the representative or other persons in charge of the business have their domicile in Japan.

II. JURISDICTION OVER ACTIONS RELATED TO CONTRACTUAL OBLIGATIONS

1. *Jurisdiction over Actions Related to Contractual Obligations*

- (1) Japanese courts shall have jurisdiction over actions related to the performance of contractual obligations in the following cases:
 - (a) if the place of performance of contractual obligations is in Japan according to the contract;
 - (b) if the place of the performance of an obligation is in Japan according to the law of the place which is chosen in the contract.
- (2) Japanese courts shall have jurisdiction regarding actions which concern claims related to *negotiorum gestio*, unjust enrichment, and claims for the compensation of damage for the non-performance of contractual obligations as well as other contractual obligations if Japanese courts have jurisdiction over the claims related to the performance of contractual obligations pursuant to provision 1 above.

²² The text is available in Japanese at <http://www.moj.go.jp/SHINGI2/100205-2-1.html> (last visited, 5 May 2010).

2. *Jurisdiction over Actions Related to Bills or Checks*

Japanese courts shall have jurisdiction over actions related to payment of money by bill or check if the place of payment is in Japan.

3. *Jurisdiction over Actions Related to Property Rights*

Japanese courts shall have jurisdiction over actions related to property rights when the object of the claim is located in Japan, or when the property of the defendant which can be seized is located in Japan in cases where the claim seeks the payment of money, unless the value of the property of the defendant which can be seized is insignificant.

4. *Jurisdiction over Actions against Persons Having an Office or Business Office*

(1) If persons have their office or business office in Japan. Japanese courts shall have jurisdiction over actions against such persons' business related to their office or business office in Japan,

(2) Japanese courts shall have jurisdiction over actions against persons' business activities within Japan, if they continuously undertake such business activities in Japan.

5. *Jurisdiction over Actions against Associations or Foundations*

Japanese courts shall have jurisdiction with regard to actions provided in Article 5(8) of the Code of Civil Procedure if the association or foundation is a legal entity and is established under Japanese law; or, if the association or foundation is not a legal entity, if its main place of business is in Japan.

6. *Jurisdiction over Tort Actions*

Japanese courts shall have jurisdiction over actions related to tortuous acts if such acts occurred in Japan. However, this rule shall not apply with regard to infringing acts undertaken abroad the effects of which occurred in Japan if it could not have been generally foreseen that the effects of such acts would occur in Japan.

7. *Jurisdiction over Maritime Actions*

(1) Japanese courts shall have jurisdiction over actions for damages due to ship collision or any other accident at sea if the damaged ship first docked in Japan.

(2) Japanese courts shall have jurisdiction over actions related to salvage if the salvage occurred in Japan or the salvaged vessel first docked in Japan.

(3) Japanese courts shall have jurisdiction over actions related to claims over a vessel or claims collateralized with a vessel if the vessel is located in Japan.

8. *Jurisdiction over Actions Related to Immovable Property*

Japanese courts shall have jurisdiction over actions related to immovable property if the immovable property is located in Japan.

9. *Jurisdiction over Actions Related to Inheritance*

(1) Japanese courts shall have jurisdiction over actions relating to a right of inheritance or statutory share or an action relating to a testamentary gift or any other act that shall become effective upon death if:

- (a) the domicile of the decedent at the time of the commencement of inheritance is in Japan; or
- (b) in cases when there is no domicile or the domicile is unknown, if the decedent has residence in Japan at the time of the commencement of inheritance; or
- (c) in cases when there is no residence or the residence is unknown, if the decedent had domicile in Japan before the commencement of inheritance.

(2) If actions relating to a claim on the decedent or other burden on inherited property are not identical to actions provided in (1) above, such actions shall be dealt with as actions provided in 1 above.

10. *Jurisdiction over Actions Related to Consumer Contracts*

(1) Japanese courts shall have jurisdiction in disputes related to contracts (except employment contracts, “consumer contracts” below) concluded between a consumer (i.e., individuals [excluding persons who become parties of contracts as their business or for their business], the same below) and a businessman (i.e., legal persons and other associations or foundations as well as individuals who become parties of contracts as their business or for their business, the same below) over actions raised by the consumer against the businessman if at the time of conclusion of a contract or at the time when the action is brought the domicile of the consumer is in Japan.

(2) Besides rules provided in I. (1) (a) and (b) above, Japanese courts shall have jurisdiction over actions related to consumer contracts which are brought by a businessman against a consumer on the ground of a choice-of-court agreement which is valid pursuant to V. (1) below.

11. *Jurisdiction over Actions Related to Labor Relations*

(1) Japanese courts shall have jurisdiction over actions brought by an employee against an employer in civil disputes related to the existence of labor contracts and other matters related to labor relations between employer and employee (“civil disputes related to individual labor relationships”), if duties provided pursuant to the labor contract which constitute the substance of the dispute are to be performed in Japan (or the office which employed the employee is in Japan, if the place of employee’s performance is not determined).

(2) Besides rules provided in I. (1) (a) and (b) above, Japanese courts shall have jurisdiction in civil disputes related to individual labor relationship where actions are brought by the employer against the employee on the ground of a choice-of-court agreement which is valid pursuant to V. (1) below.

III. EXCLUSIVE JURISDICTION

(1) Japanese courts shall have exclusive jurisdiction over actions based on Part 7 Chapter 2 of the Company Act (except actions based on Section 4 and Section 6 of the same Chapter), actions based on Chapter 6 Section 2 of the Act on General Incorporated Associations and Foundations, and other equivalent actions related to other associations and foundations that have been established under Japanese law.

(2) Actions related to registration or entries in public registries shall be subject to the exclusive jurisdiction of Japanese courts, if the place of registration or entries is in Japan.

(3) Actions related to the existence and effects of intellectual property rights (as they are defined in Article 2(2) of the Intellectual Property Basic Act) which are subject to registration shall be subject to the exclusive jurisdiction of Japanese courts if such rights are to be registered in Japan.

IV. JURISDICTION OVER JOINT CLAIMS

(1) If one action contains several claims and Japanese courts have jurisdiction with regard to only one such claim, but no jurisdiction over the rest of them, Japanese courts shall have jurisdiction with regard to such action only if there is a close relationship between the claim which is subject to the jurisdiction of Japanese courts and the other claims. However, actions brought by several parties or actions brought against several persons shall be limited to cases pursuant to Article 38 of the Code of Civil Procedure.²³

(2) Where the court of Japan has jurisdiction over the claim that is the subject matter of the principal action but not over the claim that is the subject matter of the counterclaim, the defendant, only for the purpose of making a claim closely connected to the claim that is the subject matter of the principal action or to the allegations and evidence for defense, may file the counterclaim with a Japanese court where the principal action is pending.

(3) Paragraphs (1) and (2) shall not apply when the claims or counterclaims of the kind referred to in paragraphs (1) and (2) above fall under the exclusive jurisdiction of Japanese courts, and the facts which form the grounds for jurisdiction occur abroad.

23 Art. 38 of the CCP provides: "If rights or obligations that are the subject matter of the suits are common to two or more persons or are based on the same factual or statutory cause, these persons may sue or be sued as co-parties. The same shall apply where rights or obligations that are the subject matter of the suits are of the same kind and based on the same kind of causes in fact or by law."

V. AGREEMENTS ON JURISDICTION, ETC.

1. *Agreements on Jurisdiction*

- (1) Parties can agree on the jurisdiction of Japanese or foreign courts where the actions can be brought.
- (2) An agreement to bring an action only in a foreign court shall be invalid if that foreign court cannot exercise jurisdiction over such action.
- (3) Agreements referred to in paragraph 1 above shall not be effective unless such agreements are made with regard to disputes arising from a particular legal relationship and are made in written form.
- (4) If an agreement referred to in paragraph 1 above is made by means of an electromagnetic record (meaning a record made in an electronic form, a magnetic form or any other form not recognizable to human reception, which is used in information processing by computers), the agreement shall be deemed to have been made in writing.
- (5) Agreements referred to in paragraph 1 above related to disputes over consumer contracts that might arise in the future shall be effective only in the following cases:
 - (a) if there is an agreement that actions can be brought to the courts of the country of the consumer's domicile at the time of the conclusion of the consumer contract (as regards agreements that claims can be brought only to the courts of the country of the defendant's domicile are considered to be agreements where there are no obstacles to bring an action to courts of other countries but the country of the defendant's domicile);
 - (b) if the consumer brings an action to the court of a designated country pursuant to an agreement on jurisdiction or the businessman brings an action to a Japanese or foreign court and the consumer refers to the agreement.
- (6) Agreements referred to in paragraph 1 above related to future civil disputes arising from individual labor relations shall be valid only in the following cases:
 - (a) if there is a jurisdiction agreement made at the moment of the termination of the labor contract and an action pursuant to that jurisdiction agreement can be brought to the court of the country where the employment duties were performed at the time of the termination of the contract (as regards agreements that actions can be brought only to the courts of the country in which employment duties are performed are considered to be agreements where there are no obstacles to bring an action to courts of other countries but the country where employment duties are performed);
 - (b) if the employee brings an action to the court of a designated country pursuant to the agreement on jurisdiction or the employer brings an action to a Japanese or foreign court and the employee refers to the agreement.

2. *Jurisdiction by Appearance*

Japanese courts shall have jurisdiction, if a defendant, without raising an objection that the Japanese court does not have jurisdiction, has presented oral arguments on the merits or made statements in preparatory proceedings.

VI. GENERAL RULES RELATED TO INTERNATIONAL JURISDICTION

Courts can reject all or some actions which they are competent to hear if from the nature of the case or the extent of the burden of the defendant caused by his/her appearance, the location of evidence or by reason of other circumstances the exercise of jurisdiction would be inequitable to the parties or hinder the conduct of a proper and speedy trial (except when parties have made an agreement conferring exclusive jurisdiction on a Japanese court).

VII. EXCEPTIONS RELATED TO EXCLUSIVE JURISDICTION

I, II, V and VI above shall not apply with regard to actions which according to Japanese law fall under the exclusive jurisdiction of Japanese courts.

VIII. RULES RELATED TO PROVISIONAL AND PROTECTIVE MEASURES

Japanese courts can deal with applications for temporary restraining orders if the main action is brought to a Japanese court or the location of the property to be provisionally seized or the subject matter of the dispute is located in Japan.

IX. OTHER PROVISIONS

1. *Maintenance of Domestic Territorial Jurisdiction Rules*

(1) If actions fall under the jurisdiction of Japanese courts, but it is not certain which court exactly should exercise jurisdiction, the action shall be brought to the court that is competent in the place according to the territorial division of the Supreme Court Rules.

(2) Regarding actions provided in II. 9. (2), actions against the decedent can be brought to the courts which are competent by way of their general jurisdiction over the decedent at the time of the commencement of inheritance; it is not required that the inheritance property be located in the district of the competent court.

2. *Remaining Issues*

Necessary adjustments will be made for other relevant provisions.

Appendix 2

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
General jurisdiction (natural person)		
(1) Defendant's domicile	(1)(2)(3) No change from WGD	(1)(2)(3) No change from ID
(2) Defendant's residence		
(3) Defendant's domicile before filing the lawsuit		
General jurisdiction (legal entity, association and foundation)		
(1) Legal entity: its principal office or place of business	(1)(2) No change from WGD (3) Not adopted due to exorbitant jurisdiction	(1)(2) No change from ID
(2) In the absence of (1), the domicile of the representative or other persons in charge of the business		
(3) Foreign legal entity: Option A: no provision Option B: the domicile of its representative in Japan		
Contractual obligations		
(1) The place of performance of an obligation, accord- ing to the contract, OR, according to the law clearly chosen by parties as applicable to the contract	(1) The place of performance of an obligation according to the contract, OR, <i>according to the law of the place which is chosen in the contract</i> (No change from WGD except the deletion of "clearly")	(1)(2) No change from ID
(2) (1) Applies to an obliga- tion for the compensation of damage that arises from the breach of the contrac- tual obligation	(2) (1) Applies to an obliga- tion for the compensation of damage that arises from the breach of the con- tractual obligation and to <i>an obligation that arises from negotiorum gestio or unjust enrichment conducted in terms of the contractual obligation</i> (emphasis added)	

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Property rights		
(1) The location of the object of the claim	(1) No change from WGD	(1) No change from ID
(2) Option A: no provision Option B: the location of the collateral	(2) The location of a collateral: to be further considered	(2) The location of a collateral: not adopted
(3) The location of seizable property	(3) Option A: the location of defendant's seizable property Option B: the same rule as option A, in addition a sub-rule on non-recognition of foreign judgments rendered solely based on its jurisdiction as the location of the defendant's seizable property Option C: the location of defendant's property under provisional attachment	(3) <i>The location of defendant's seizable property excluding that which is of insignificant value.</i>
The location of an office / business office		
Option A: the location of an office or business office in Japan, for claims over business of the office or business office, OR, continuous business activities in Japan with a representative on its business in Japan, for claims over its business activities in Japan	(1) The location of an office or business office in Japan, for claims over business of the office or business office (2) Continuous business activities in Japan, for claims over its business activities in Japan except those in (1)	(1)(2) No change from ID
Option B: continuous business activities in Japan, for claims over its business activities in Japan		
Option C: no provision		

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Tortuous claims		
<p>(1) Option A: the place of an infringing act or the place of the effect of an infringing act, including economic loss</p> <p>Option B: the place of an infringing act or the place of the effect of an infringing act, excluding economic loss</p> <p>(2) Option X: (1) does not apply if the occurrence of the effect was not foreseeable in the place of the effect of an infringing act</p> <p>Option Y: no provision</p>	<p>The place of unlawful act, except when only the effect of an infringing act occurred in Japan and the occurrence could not usually be foreseeable</p> <p>* Unlawful act covers both the place of infringing act and the place of the effect of an infringing act</p>	No change from ID
Action against associations or foundations		
<p>(1) Claims in Part 7 Chapter 2 of Company Law: exclusive jurisdiction when the legal entity is established in accordance with Japanese law</p> <p>(2) Claims by an association or a foundation against its (ex-) executive:</p> <p>Option A: no provision</p> <p>Option B: its substantial principal office or business office</p> <p>Option C: its substantial principal office or business office, OR, law applicable to its foundation</p> <p>Option D: law applicable to its foundation (in absence of judicial personality, its substantially principal office or business office)</p>	<p>(1) Claims in Part 7 Chapter 2 of the Company Law, claims in Chapter 6, the Section 2 of the Act on General Incorporated Association and General Incorporated Foundation, and other equivalent claims on associations or foundations founded in accordance with Japanese law exclusively fall in the jurisdiction of Japanese law</p> <p>(2) Claims listed in Art. 5, no. 8 of the Code of Civil Procedure (except claims in (1) above): applicable law to its foundation is Japanese law, in case of legal entity: principal office or business office in Japan, in case of non-legal entity</p>	(1)(2) No change from ID

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Immovable property		
The location of immovable property Option A: as non-exclusive jurisdiction Option B : as exclusive jurisdiction	The location of immovable property	No change from ID
Registration or entries in public registries		
The place of registration or entries in Japan: exclusive	No change from WGD * Claims on registration of IP are covered by the claims in this provision	No change from ID
Inheritance		
(1) The domicile of the decedent at the time of the commencement of inheritance (2) When no domicile is known, the residence of the decedent at the time of the commencement of inheritance (3) When neither domicile nor residence is known, the domicile of the decedent before the commencement of inheritance, except cases where the decedent had a domicile in a foreign country after he had one in Japan	(1)(2)(3) No change from WGD	(1)(2)(3) No change from ID
Actions for negative declaratory judgment		
No provision to be planned	No change from WGD	No change from ID

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Choice-of-court agreement		
<p>(1) An agreement on the jurisdiction of a Japanese court can be made for a claim arising from a particular legal relationship, except when according to Japanese law a jurisdictional ground as the basis of the exclusive jurisdiction of Japanese courts exists in another country</p> <p>(2) Option A: an agreement on the jurisdiction of a foreign court should, in principle, be considered as the derogation of the jurisdiction of Japanese court Option B: no provision</p> <p>(3) Invalidity of other parts of the contract which contains the choice-of-court agreement does not lead to the invalidity of the agreement</p> <p>(4) The agreement can be made only for the first instance and be valid only in written form</p>	<p>(1) A choice-of-court agreement can be made only for the first instance, except where a foreign court is agreed upon as an exclusive forum, but the foreign court cannot exercise its jurisdiction</p> <p>(2) The agreement should concern a particular legal relationship and be made in written form</p>	<p>(1) No change from ID, with the deletion of “only for the first instance”</p> <p>(2) No change from ID</p> <p>(3) <i>A choice-of-court agreement for disputes in the future between a businessman and a consumer is valid only when</i> <i>[1] the court of the place of the consumer's domicile at the time of conclusion of a consumer contract is (non-exclusively) agreed, or</i> <i>[2] when the consumer filed a lawsuit in Japan or a foreign country based on the agreement, OR, when the consumer submitted an objection of the non-existence of jurisdiction due to the agreement, in cases where the businessman had filed a lawsuit in Japan or in a foreign country</i></p> <p>(4) <i>A choice-of-court agreement for individual labor disputes in the future is valid only when:</i> <i>[1] the agreement is made, after the dispute occurred, on the (non-exclusive) jurisdiction of the court of the place of the employee's performance, or</i> <i>[2] when the employee filed a lawsuit in Japan or a foreign country based on the agreement, OR, when the employee submitted an objection of the non-existence of jurisdiction due to the agreement, in cases where the employer had filed a lawsuit in Japan or in a foreign country</i></p> <p>* (3) and (4) stem from the provisions on consumer contracts and labor contracts in the Interim Draft. See below.</p>

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Appearance		
(1) At the first instance, making oral arguments on the merits or statements in preparatory proceedings without raising an objection of the lack of jurisdiction (2) (1) does not apply when a jurisdictional ground as the basis of the exclusive jurisdiction of Japanese court, in accordance to Japanese law, exists in another country	(1) No change from WGD (2) Deleted	(1) No change from ID
Maritime claims		
(1) Claims on property rights against a mariner: no provision (2) Claims on a vessel or sailing against the owner of the vessel: no provision (3) Claims over a vessel or claims over a collateralized vessel: no provision (4) Ship collision and other maritime accidents: the place where the damaged ship first docked (5) Salvage claims: no provision (6) Choice-of-court agreement: no provision (7) Proceedings for limiting vessel owner's liability: no provision	(3) Claims over a vessel or claims over a collateralized vessel: to be further considered (4) No change from WGD (5) Option A: the place of salvage or the place where the salvaged ship first docked is in Japan Option B: no provision	(3) <i>Claims over a vessel or claims over a collateralized vessel: the location of the vessel</i> (4) No change from ID (5) <i>The place of salvage or the place where the salvaged ship first docked is in Japan</i>

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Intellectual property		
(1) Actions related to the registration of IP subject to registration: exclusive jurisdiction of the place of registration (2) Validity of IP subject to registration: no jurisdiction of Japanese court, if such IP is subject to the registration in a foreign country (3) Infringement of IP: no provision	No change from WGD, except new wording "existence"	No change from ID
Consumer contracts		
(1) Actions by a consumer against a businessman: the domicile of the consumer (2) Actions by a businessman against a consumer: in the absence of the consumer's domicile [1] such claims deemed to be subject to the exclusive jurisdiction of a Japanese court, or [2] due to the appearance of the consumer, or [3] based on a valid choice-of-court agreement (3) The validity of a choice-of-court agreement for disputes in the future: only when the consumer refers to the effect of the agreement	(1) Option A: the domicile of the consumer at the time of conclusion of a consumer contract or at the time when the action is brought Option B: the domicile of the consumer at the time of conclusion of a consumer contract (2) Actions by a businessman against a consumer, if no general jurisdiction is given, only in the following cases, i.e., [1] appearance, [2] a valid choice-of-court agreement (3) A choice-of-court agreement between a businessman and a consumer is valid only when [1] the agreement was made after the dispute occurred [2] Option A: the court of the place of the consumer's domicile at the time of conclusion of a consumer contract is non-exclusively agreed. <i>[cont.]</i>	(1) The domicile of the consumer at the time of conclusion of a consumer contract or at the time when the action is brought. (2) Actions by a businessman against a consumer are subject to the rules on the general jurisdiction and the choice-of-court agreement. * (3) moved to the provision on choice-of-court agreement.

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
	Option B: the court of a particular country where the jurisdictional grounds for contractual obligations as well as the consumer's domicile are located, is non-exclusively agreed Option C: no provision except [1] and [3]	
	[3] When the consumer filed a lawsuit in Japan or a foreign country based on the agreement, OR, when the consumer submitted an objection of the non-existence of jurisdiction due to the agreement, in cases where the businessman had filed a lawsuit in Japan or in a foreign country.	
Labor contracts		
(1) Actions by an employee against an employer: the place of employee's performance; if such a place cannot be identified, the place of the office which employed the employee	(1) No change from WGD (2) If no general jurisdiction is given, only in the following cases, i.e., [1] appearance at the first instance, or [2] a valid choice-of-court agreement	(1) No change from ID (2) Actions by an employer against an employee are subject to the jurisdictional rules on the general jurisdiction and the choice-of-court agreement.
(2) Actions by an employer against an employee: in the absence of the employee's domicile in Japan, only when:	(3) A choice-of-court agreement is valid, only when: [1] the agreement is made after the dispute occurred,	* (3) moved to the provision on choice-of-court agreement.
[1] such a claim falls under the exclusive jurisdiction of a Japanese court,	[2] when the employee filed a lawsuit in Japan or a foreign country based on the agreement,	
[2] appearance, or	OR, when the employee submitted an objection of the non-existence of jurisdiction due to the agreement, in the case	
[3] a valid choice-of-court agreement	where the employer had filed a lawsuit in Japan	
(3) A choice-of-court agreement for disputes in the future is valid only when the employee referred to the effect of the agreement.	or in a foreign country	

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
Product liability		
No provision	No provision	No provision
Joinder of claims		
<p>(1) Several claims between the same parties have a close relationship, and one of those claims is subject to the jurisdiction of Japanese courts</p> <p>(2) Counterclaim based on the same contract or facts,</p> <p>(3) (1) and (2) do not apply to a claim if a jurisdictional ground for the exclusive jurisdiction of Japanese courts over it, in accordance with Japanese law, exists in a foreign country</p> <p>(4) Claims by several plaintiffs or against several defendants, if one of these claims is subject to the jurisdiction of Japanese courts, can be subject to the jurisdiction of Japanese courts, when rights or obligations as the object of the action are common to these persons or based on the same factual or statutory causes</p> <p>(5) (4) does not apply to a claim if a jurisdictional ground for the exclusive jurisdiction of Japanese courts over it, in accordance with Japanese law, exists in a foreign country</p>	<p>(1) No change from WGD</p> <p>(2) Only such counterclaims that make a claim closely related to the claim as the subject matter of the principal action or to the means of defense of the principal action</p> <p>(3) and (5) Option A: If a jurisdictional ground for the exclusive jurisdiction of Japanese courts over it, in accordance with Japanese law, exists in a foreign country, (1) (2) and (4) do not apply Option B: If a jurisdictional ground for the exclusive jurisdiction of Japanese courts over it, in accordance with Japanese law, exists in a foreign country, OR, if there is a choice-of-court agreement on an exclusive jurisdiction of a foreign court, (1) (2) and (4) do not apply</p> <p>(4) No change from WGD</p>	<p>(1) No change from ID</p> <p>(2) No change from ID</p> <p>(3) and (5) If a jurisdictional ground for the exclusive jurisdiction of Japanese courts over it, in accordance with Japanese law, exists in a foreign country, (1) (2) and (4) do not apply</p> <p>(4) No change from ID</p>

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
General exception		
<p>(1) Jurisdiction of Japanese courts may be denied, even if jurisdictional grounds exist, when:</p> <p>Option A: There are special circumstances against the fairness between parties, proper and speedy trials</p> <p>Option B: There is need to avoid the delay of the proceeding or to secure the equity between the parties</p> <p>(2) Option X: Jurisdiction of a foreign court may be taken into consideration as a factor in the framework of (1). No independent requirement to dismiss the claim</p> <p>Option Y: Jurisdiction of a foreign court as an independent requirement to dismiss the claim</p> <p>(3) Option Q: Staying the proceeding should be allowed. Appeal against the decision to stay should be introduced</p> <p>Option R: no provision</p>	<p>Jurisdiction of Japanese courts may be denied, even if jurisdictional grounds exist, when there are special circumstances which act against equity between the parties and against the conduct of a proper and speedy trial</p>	<p>No change from ID</p>

THE WORKING GROUP DRAFT (WGD) (JUNE 2008)	THE INTERIM DRAFT (ID) (JULY 2009)	THE MOJ DRAFT (MOJ) (FEBRUARY 2010)
<i>Lis pendens</i>		
(1) When a proceeding on the same claim is already pending in a foreign court, under certain conditions a claim in Japan may be dismissed (2) Option A: When a proceeding on the same claim is already pending in a foreign court, under certain conditions the proceeding in Japanese court may be stayed Option B: no provision	Option A-1: When the recognition of a foreign judgment can be expected, by a motion of parties or <i>ex officio</i> a proceeding in Japanese court may be stayed. Appeal against the decision to stay should be allowed Option A-2: When the recognition of a foreign judgment can be expected, a proceeding in Japanese court may be stayed <i>ex officio</i> . No appeal is allowed Option B: no provision	No provision
Emergency jurisdiction		
Under certain conditions, Japanese courts may exercise jurisdiction, even if there is no jurisdictional ground	To be further considered	No provision
Provisional and protective measures		
No provision	When the court to which the main action may be brought is a Japanese court, or when the location of the property to be provisionally seized is in Japan	No change from ID

SUMMARY

The Ministry of Justice (MOJ) submitted a draft for a new legislation on international jurisdiction to the Diet of Japan on 2 March 2010. An English translation of the draft is presented as Appendix 1. The draft is scheduled to amend the Code of Civil Procedure and the Civil Provisional Remedies Act. This article highlights a few of the draft's characteristic provisions. Flexibility seems to have been the main priority of its drafters. To illustrate the background of the reform the article starts with briefly summarizing the case law on international jurisdiction that Japanese courts have developed during the last 40 years.

The MOJ Draft of 2010 was preceded by a Working Group Draft published in June 2008 and an interim draft of the Drafting Committee published in July 2009. The MOJ Draft adopted in February 2010 is the result of a selection from several choices for each provision, which also included the choice not to create any black-letter rules on certain issues. Therefore it is important and useful to trace the development of each provision in the preparation process by knowing what options the Working Group Draft had proposed and what was taken in the MOJ Draft. Appendix 2 offers a comparative overview of three Drafts in form of a chart.

(The Editors)

ZUSAMMENFASSUNG

Das Justizministerium Japans hat dem japanischen Parlament am 2. März 2010 den Entwurf eines Gesetzes zur Regelung der internationalen Zuständigkeit übermittelt. Eine englische Übersetzung des Entwurfes findet sich im Anhang 1 zu diesem Beitrag. Der Entwurf soll das Zivilprozessgesetz und das Zivilsicherungsgesetz ergänzen. Der Beitrag stellt einige der charakteristischen Vorschriften des Entwurfes vor, dessen Verfasser augenscheinlich besonderes Gewicht auf flexible Regelungen gelegt haben. Um den Hintergrund der Reform zu illustrieren, gibt der Verfasser zu Beginn einen kurzen Überblick über die einschlägige Rechtsprechung der japanischen Gerichte in den vergangenen 40 Jahren.

Dem Entwurf des Justizministeriums gingen der Entwurf einer Arbeitsgruppe, veröffentlicht im Juni 2008, und der Zwischenentwurf des Gesetzgebungsausschusses, veröffentlicht im Juli 2009, voraus. Da der vom Justizministerium im Februar 2010 angenommene Entwurf hinsichtlich seiner einzelnen Bestimmungen das Ergebnis einer Auswahl zwischen verschiedenen Regulierungsalternativen ist, die auch die Entscheidung einschließt, bezüglich bestimmter Fragen auf eine explizite Regelung zu verzichten, dürfte es hilfreich sein, die Genese der einzelnen Vorschriften anhand der beiden Vorentwürfe zu verfolgen. Zu diesem Zweck findet sich im Anhang 2 eine tabellarische Gegenüberstellung aller drei Entwürfe.

(die Red.)