

Translation of New Rules on International Jurisdiction of Japanese Courts in Family Matters

Translated by Yasuhiro OKUDA*

- I. Act on Litigation in Personal Matters
- II. Act on Procedure in Family Matters
- III. Code of Civil Execution

I. ACT ON LITIGATION IN PERSONAL MATTERS

[Jinji soshō-hō]

Law No. 109 of 2003

(as last amended by Law No. 20 of 2018)

CHAPTER 1 GENERAL RULES

SECTION 2 COURTS

SUB-SECTION 1 JURISDICTION OF JAPANESE COURTS

Article 3-2 [Jurisdiction over Suits Concerning Personal Matters]

The suit concerning personal matters may be filed with the Japanese courts:

- (i) where the case concerns a suit against one of the parties to the personal matter and he or she is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.
- (ii) where the case concerns a suit against both parties to the personal matter and one or both is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.
- (iii) where the case concerns a suit filed by one of the parties to the personal matter and the other was domiciled in Japan at the time of his or her death.

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- (iv) where both parties to the personal matter died and one or both was domiciled in Japan at the time of his or her death.
- (v) where both parties to the personal matter have Japanese nationality, including the case where one or both had Japanese nationality at the time of his or her death.
- (vi) where the case concerns a suit filed by one of the parties to the personal matter domiciled in Japan and the parties had their last common domicile in Japan.
- (vii) where the party to the personal matter filing a suit is domiciled in Japan and special circumstances require trial and judgment by a Japanese court for fairness between the parties or due and prompt administration of justice, for example where the other party is missing, or where the final judgment for a suit involving the same personal matter rendered in a country in which the other party is domiciled has no force in Japan.

Article 3-3 [Jurisdiction by Consolidation of Related Claims]

Where the case concerns a suit involving a claim by litigation in a personal matter, the facts of which also give rise to a claim for damages, the suit involving both claims (but limited to claims for damages of one party to the litigation in the personal matter against the other party) may be filed with any of the Japanese courts with jurisdiction over the initial litigation claim.

Article 3-4 [Jurisdiction over Cases of Decision Regarding Custody of Children and Similar Cases]¹

- (1) Where the Japanese courts have jurisdiction over a suit for annulment of marriage or for judicial divorce, they also have jurisdiction over measures regarding the custody of children such as the designation of a custodial parent... as well as over the designation of the person with parental authority...
- (2) Where the Japanese courts have jurisdiction over a suit for annulment of marriage or for judicial divorce, they also have jurisdiction over the property division..., where any of the Numbers of Article 3-12 of the Act on Procedure in Family Matters (Law No. 52 of 2011) apply.

1 Under Japanese law, the court must designate one parent having parental authority and may decide upon request of one party the measures regarding the custody of children and the property division in the judgment for divorce or for annulment of marriage (Art. 819 para. 2, Art. 766 para. 2, Art. 768 para. 2 including application *mutatis mutandis* of Art. 749 Civil Code (Law No. 89/1896). See also Art. 32 Act on Litigation in Personal Matters).

Article 3-5 [Dismissal of Suit under Exceptional Circumstances]

Even where the Japanese courts have jurisdiction over a suit, the court may dismiss the suit in whole or in part if the court finds a special circumstance whereby fairness between the parties or due and prompt administration of justice would be compromised by trial and judgment by a Japanese court, considering the nature of the case, the burden of appearing on the defendant, the location of the evidence, the interests of any minor children born to the parties to the personal matter, and any other circumstances.

Article 18 [Change of Suit and Counter-Claim]²

(Paragraph (1) omitted)

- (2) Even where the Japanese courts do not have jurisdiction over a suit regarding the litigation of a personal matter affected by the change of claim, the plaintiff may change the claim according to the preceding paragraph, in so far as the claim still concerns the creation or confirmation of the same family status as the claim before the change.
- (3) Even where the Japanese courts do not have jurisdiction over a suit that concerns a subsequent counter-claim, the defendant may file a suit regarding the counter-claim:
 - (i) where the claim by litigation in a personal matter concerns the creation or confirmation of the same family status as the main claim.
 - (ii) where the claim concerns the damages arising from the fact(s) that gave rise to the claim by litigation in the personal matter and the litigation is pending before a Japanese court.

² Article 18 paras. 2 and 3 implies that Japanese courts have jurisdiction over the suit before change or over the suit concerning the main claim.

II. ACT ON PROCEDURE IN FAMILY MATTERS

[Kaji jiken tetsuzuki-hō]

Law No. 52 of 2011

(as last amended by Law No. 34 of 2019)

TITLE 1 GENERAL RULES

CHAPTER 1-2 JURISDICTION OF JAPANESE COURTS

Article 3-2 [Jurisdiction over Application for Administration of Absent Person's Property]³

Courts have jurisdiction over an application for the administration of an absent person's property...⁴ where the property is situated in Japan.

Article 3-3 [Jurisdiction over Application for Revocation of Declaration of Disappearance]⁵

Courts have jurisdiction over an application for the revocation of a declaration of disappearance...:

- (i) where the disappearance was declared in Japan.
- (ii) where the disappeared person is domiciled in Japan or has Japanese nationality.⁶
- (iii) where the disappeared person was domiciled in Japan or had Japanese nationality at the time when he or she was last recognized as alive.⁷

3 The administration of an absent person's property is necessary before the coming into effect of a declaration of disappearance that may be made in principle after an absence of 7 years (Arts. 30 and 31 Civil Code).

4 Articles 3-2 to 3-12 cite numbers that refer to a list in the Appendix which enumerates case scenarios and provides provisions of the Civil Code applicable in such situations. These provisions of the Civil Code may be the grounds for applications detailed in Articles 3-2 to 3-12 of the Act on Procedure on Family Matters. However, the Japanese courts may also apply foreign laws, so that the numbers referring to the Appendix are omitted in this translation.

5 The jurisdiction over an application for the declaration of disappearance is prescribed in Article 6 of the Act on the General Rules of Application of Laws (Law No. 78/2006). According to this provision, courts 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; even where this is not the case, courts 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.

6 The provision concerns the case where the person reappeared after the coming into effect of the declaration of disappearance (Art. 32 para. 1 Civil Code).

Article 3-4 [Jurisdiction over Application for Appointment of Representative Ad Litem for Contestation of Legitimacy]

Courts have jurisdiction over an application for the appointment of a representative *ad litem* for contestation of legitimacy...⁸ where the Japanese courts have jurisdiction over the suit regarding the contestation of legitimacy.⁹

Article 3-5 [Jurisdiction over Application for Approval of Child Adoption and Similar Cases]

Courts have jurisdiction over an application for the approval of child adoption...¹⁰ and an application for the establishment of a special child adoption¹¹ (...including an application for the confirmation of eligibility of special child adoption...)¹² where either the adoptive parent or the child is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.

Article 3-6 [Jurisdiction over Application for Approval of Dissolution of Child Adoption after Death of One Party]¹³

Courts have jurisdiction over an application for the approval of the dissolution of child adoption after the death of one party...:

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- 7 The provision concerns the case where it is proven that the person died prior to or after the coming into effect of the declaration of disappearance (Art. 32 para. 1 Civil Code).
 - 8 Under Japanese law, the husband may file a suit regarding the contestation of legitimacy of the child born to his wife, and where the mother died or lacks parental authority, the family court appoints a representative *ad litem* for the child (Art. 775 Civil Code). The former is a contentious case, and the latter a non-contentious case.
 - 9 The jurisdiction of Japanese courts over a suit regarding the denial of legitimacy is governed by the Act on Litigation in Personal Matters.
 - 10 Under Japanese law, a child adoption is in principle based on the agreement between the adoptive parent(s) and the child, but has to be approved by the family court if the child is a minor, unless the child is a descendant of the adoptive parent or of the parent's spouse (Art. 798 Civil Code).
 - 11 A special child adoption is based on the adoption decree of the family court similar to adoption under European laws (Art. 817-2 Civil Code).
 - 12 An application for the establishment of a special child adoption may be filed where at least 6 months before the application a decision of the family court regarding the consent of the biological parents (Art. 817-6 Civil Code) and the necessity of special child adoption (Art. 817-7 Civil Code) has become final and binding (Art. 164 para. 2, Art. 164-2 Act on Procedure in Family Matters). This is called "decision for the confirmation of eligibility of special child adoption" (*tokubetsu yōshi engumi teki-kaku no kakunin no shinpan*).
 - 13 Under Japanese law, kinship remains after death of the adoptive parent or the child, party to the adoption agreement, but may be terminated by approval of the family court (Art. 811 para. 6 Civil Code).

- (i) where either the adoptive parent or the child is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.
- (ii) where either the adoptive parent or the child was domiciled in Japan at the time of his or her death.
- (iii) where either the adoptive parent or the child has Japanese nationality, and the other had Japanese nationality at time of his or her death.

Article 3-7 [Jurisdiction over Application for Dissolution of Special Child Adoption]¹⁴

Courts have jurisdiction over an application for the dissolution of special child adoption...:

- (i) where the adoptive parents are domiciled in Japan, or reside in Japan if the domicile is not found or unknown.
- (ii) where the application is filed by the biological parent(s) of the child or the solicitor general and the child is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.
- (iii) where both the adoptive parents and the child have Japanese nationality.
- (iv) where the application is filed by the child domiciled in Japan and the adoptive parents and the child had their last common domicile in Japan.
- (v) where the application is filed by the child domiciled in Japan and special circumstances require the hearing and decision by a Japanese court for fairness between the adoptive parents and the child or due and prompt administration of justice, for example where the adoptive parents are missing, or where a final decision regarding the dissolution of adoption rendered in a country in which the adoptive parents are domiciled has no force in Japan.

Article 3-8 [Jurisdiction over Application Regarding Parental Authority and Similar Cases]

Courts have jurisdiction over an application regarding parental authority..., an application regarding child custody... (except for an application regarding cost sharing for child custody),¹⁵ as well as an application regarding the loss

14 Under Japanese law, a child adoption by agreement may be dissolved by agreement between the adoptive parent(s) and the child or by judgment of a family court whose jurisdiction is governed by the Act on Litigation of Personal Matters.

15 Under Japanese law, only one parent has custody of the children after divorce, and the other parent shares the cost for child custody and has visitation rights. In case of divorce by agreement, these matters are decided by agreement (Art. 766 para. 1 Civil Code), and if the parents do not reach to agreement, an application regarding child custody and cost sharing for child custody may be filed with the family court (Paragraph 2 of the same Article). This provision applies *mutatis mutandis* to divorce by

of authority to property administration in case of bankruptcy of the person having parental authority... where the child is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.

Article 3-9 [Jurisdiction over Application for Appointment of Person to be Guardian of Minor after Dissolution of Child Adoption and Similar Cases]

Courts have jurisdiction over an application for the appointment of a person to be guardian of a minor after dissolution of child adoption...¹⁶ or an application for the appointment of a guardian for a minor in other cases...¹⁷ where the minor to be under guardianship or the minor ward... is domiciled or resides in Japan, or has Japanese nationality.

Article 3-10 [Jurisdiction over Application Regarding Maintenance Obligation Arising from Relations of Kinship such as Spouses, Parent and Child]

Courts have jurisdiction over an application regarding the maintenance obligation arising from relations of kinship such as spouses, parent and child... (including an application regarding cost sharing for child custody...) where either the debtor (or the person to be a debtor...) who is not an applicant, or the creditor (for the purpose of an application regarding cost sharing for child custody, the person with custody or the child) is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.

Article 3-11 [Jurisdiction over Application Regarding Succession]

- (1) Courts have jurisdiction over an application regarding succession... where the decedent was domiciled in Japan at the time of succession, or resided in Japan at the time of succession if the domicile was not found or unknown, or if the residence is not found or unknown, he or she was domiciled in Japan before succession and has not been domiciled abroad since last being domiciled in Japan.

decision or judgment (Art. 771 Civil Code) and to annulment of marriage (Art. 749 Civil Code).

16 Under Japanese law, a child adoption by agreement may be dissolved by agreement between the adoptive parent(s) and the child (Art. 811 para. 1 Civil Code), and if the child is less than 15 years old, a person to be legal representative after dissolution of child adoption has to agree (Paragraph 2 of the same Article). However, if no person to be legal representative is found (such as in case both biological parents died), an application for the appointment of a person to be guardian of a minor may be filed with the family court (Paragraph 5 of the same Article).

17 In addition to the case mentioned in note 16, an application for the appointment of a guardian for a minor may be filed if a person having parental authority is neither found nor designated by will of the last person having parental authority (Art. 840 para. 1 Civil Code).

- (2) For the purpose of the preceding paragraph, ‘decedent at the time of succession’ shall be read as ‘person to be decedent’¹⁸ and ‘before succession’ as ‘before filing the application’, for an application to exclude the person from being an heir..., an application for the revocation of the declaration of exclusion of the person to be an heir..., an application for the confirmation of a will...,¹⁹ or an application for the approval of a renunciation of compulsory portion...²⁰ that is filed before succession.
- (3) Courts have jurisdiction over an application for the administration of a decedent’s property before the coming into effect of a declaration of exclusion of the person to be an heir or of a declaration of its revocation...,²¹ an application for the preservation or administration of decedent’s property...,²² an application for the appointment of an administrator for a decedent’s property in case of a limited acceptance of succession...,²³ an application for the administration of a decedent’s property after an application for its separation...,²⁴ as well as an application for the administration of a decedent’s property where an heir is lacking...,²⁵ where the decedent’s property is situated in Japan, in addition to the case prescribed in Paragraph 1.

18 To be read, precisely, as “person to be decedent at the time of filing”.

19 Under Japanese law, a will of a person made at the point of death comes into effect only after confirmation from the family court (Art. 976 para. 4, Art. 979 para. 3 Civil Code).

20 Under Japanese law, a renunciation of compulsory portion before commencement of succession comes into effect after approval from the family court (Art. 1049 para. 1 Civil Code).

21 Under Japanese law, an application for the administration of a decedent’s property may be filed in case of commencement of succession after filing of an application to exclude the person from being an heir or of an application for the revocation of the declaration of exclusion of the person to be an heir, but before the coming into effect of the decision for the declaration or for the revocation (Art. 895 para. 1 Civil Code).

22 Under Japanese law, an application for the preservation or administration of decedent’s property may be filed before acceptance or waiver of succession by the heirs (Art. 918 para. 2 Civil Code).

23 Under Japanese law, an application for a limited acceptance of succession may be filed for all heirs with the family court (Arts. 923 and 924 Civil Code) which must appoint one of the heirs as administrator for a decedent’s property (Art. 936 para. 1 Civil Code).

24 Under Japanese law, a creditor of the decedent or a testamentary legatee may file an application for separation of a decedent’s property with the family court (Art. 941 para. 1 Civil Code) which may order its administration (Art. 943 para. 1 Civil Code).

25 Under Japanese law, the solicitor general may file an application for the administration of a decedent’s property where an heir is lacking (Art. 952 para. 1 Civil Code).

- (4) The parties may agree on the country in which they may file an application for the division of a decedent's property...²⁶ and an application for the measure in the case of a special contribution...²⁷
- (5) Article 3-7 paras. 2 to 4 of Code of Civil Procedure (Law No. 109 of 1996) shall apply *mutatis mutandis* to the agreement prescribed in the preceding paragraph.²⁸

Article 3-12 [Jurisdiction over Application for Property Division]

Courts have jurisdiction over an application for the division of property...²⁹

- (i) where the application is filed by a former spouse and the other is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.
- (ii) where both former spouses have Japanese nationality.
- (iii) where the application is filed by a former spouse domiciled in Japan and the former spouses had their last common domicile in Japan.
- (iv) where the application is filed by a former spouse domiciled in Japan and special circumstances require hearing and decision by a Japanese court for fairness between the parties or due and prompt administration of justice, for example where the other former spouse is missing, or where a final decision regarding the property division rendered in a country in which the other former spouse is domiciled has no force in Japan.

26 Under Japanese law, an application for the division of a decedent's property may be filed by one of the heirs where they did not reach an agreement (Art. 907 para. 2 Civil Code).

27 Under Japanese law, a relative of the decedent (such as the wife of the child of the decedent) who made a contribution to the maintenance or the increase of a decedent's property by voluntary work such as nursing support for the decedent may file an application for the measure such as compensation by heirs (such as the children of the decedent) with the family court (Art. 1050 Civil Code).

28 According to Article 3-7 paras. 2 to 4 of Code of Civil Procedure, an agreement on jurisdiction has effect if it is in writing and is concerned with an action over disputes arising from a particular legal relationship; the agreement on jurisdiction is considered to be in writing where it was made by way of electromagnetic record (i.e. a record produced by electronic means, a magnetic or any other means not recognized by human perception and used for data processing by a computer); an agreement providing for exclusive jurisdiction of the courts of a foreign country may not be asserted in cases in which those courts are legally or factually unable to exercise jurisdiction.

29 Under Japanese law, in case of divorce or annulment of marriage, one spouse may file an application for the division of property of the other spouse with the family court (Art. 768 para. 2 including application *mutatis mutandis* of Art. 749 and Art. 771 Civil Code).

Article 3-13 [Jurisdiction over Mediation]

(1) Courts have jurisdiction over an application for mediation:

- (i) where the Japanese courts have jurisdiction over a suit or an application regarding the same family matter as the one for which the mediation is filed.³⁰
 - (ii) where the counterparty is domiciled in Japan, or resides in Japan if the domicile is not found or unknown.
 - (iii) where the parties agreed that they may file a mediation with a Japanese court.
- (2) Article 3-7 paras. 2 and 3 of Code of Civil Procedure shall apply *mutatis mutandis* to the agreement prescribed in no. 3 of the preceding paragraph.
- (3) Paragraph 1 nos. 2 and 3 of this Article shall not apply to a mediation concerning the matters for which litigation in a personal matter prescribed in Article 2 of Act on Litigation in Personal Matters (Law No. 109 of 2003) other than divorce or dissolution of child adoption may be filed.

Article 3-14 [Dismissal of Application under Exceptional Circumstances]

Even where the Japanese courts have jurisdiction over an application according to any of Articles 3-2 to 3-13, except where the application was filed according to an agreement that an application for the division of decedent's property or for the measure in case of special contribution may be filed only with a Japanese court, the court may dismiss the application in whole or in part if the court finds a special circumstance by which the hearing and decision by a Japanese court would compromise due and prompt administration of justice or fairness between the applicant and the counterparty, if any, considering the nature of the case, the burden on the interested persons other than the applicant, the location of the evidence, the interests of any minor children, and any other circumstances.

Article 3-15 [Decisive Date for Jurisdiction]

The date of filing an application for family court proceedings or for mediation in family matters or of initiating *ex officio* the procedure for the case in family matters shall be decisive in determining the jurisdiction of the Japanese courts.

30 The family courts mediate the contentious cases defined by Article 2 of the Act on Litigation in Personal Matters and the non-contentious cases listed in Appendix 2 of the Act on Procedure in Family Matters (Art. 244 of the latter Act).

Article 79-2 [Effect of Final and Binding Decision of Foreign Court in Family Matter]

Article 118 of Code of Civil Procedure shall apply *mutatis mutandis* to the final and binding decision of a foreign court in family matters (including the equivalent decision of other public authorities), in so far as not contradictory to its nature.³¹

31 According to Article 118 of Code of Civil Procedure, a final and binding judgment of a foreign court is effective in so far as all of the following conditions are fulfilled: (i) that the jurisdiction of the foreign court is recognized by laws or treaties; (ii) that the defeated defendant was served with a summons or an order necessary for start of the suit (except a service by publication or any other similar service), or where that is not the case, he or she appeared before the court; (iii) that the contents of the judgment and the proceedings are not contrary to the Japanese public policy; and (iv) that the reciprocity is found.

III. CODE OF CIVIL EXECUTION

(Minji shikkō-hō)

Law No. 4 of 1979

(as last amended by Law No. 2 of 2019)

Article 22 [Title of Obligation]

Compulsory execution shall be effectuated by any of the following (hereinafter referred to as ‘title of obligation’):

(Numbers 1 to 5, 6-2 and 7 omitted)

- (vi) A judgment of a foreign court for which an execution judgment is final and binding (including a decision in family matters, also for Article 24).

Article 24 [Execution Judgment for Judgment of Foreign Court]

(Paragraphs (4) and (6) omitted)

- (1) A suit seeking an execution judgment for a judgment of a foreign court falls under the competence of the district court (the family court in case of a decision in family matter...) with jurisdiction over the general venue of the debtor, or with jurisdiction over the place where the object of the claim or the seizable property of the debtor is located if a general venue is not found.
- (2) The district court set forth in the preceding paragraph may conduct a trial and issue a judgment regarding the suit in whole or in part by application of the parties or *ex officio* if the court finds it appropriate, even where the suit falls under the competence of the family court according to the preceding paragraph.
- (3) The family court set forth in Paragraph 1 may conduct a hearing and issue a decision regarding the suit in whole or in part by application of the parties or *ex officio* if the court finds it appropriate, even where the suit falls under the competence of the district court according to Paragraph 1.
- (5) The suit set forth in Paragraph 1 shall be dismissed where it is not proven that the judgment of the foreign court is final and binding, or where one of the conditions enumerated in the Numbers of Article 118 of Code of Civil Procedure including the application *mutatis mutandis* by Article 79-2 of Act of Procedure in Family Matters (Law No. 52 of 2011) is not fulfilled.