

Litigation - Japan

New international jurisdiction rules: foreign companies must brace for change

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Summary

On April 28 2011 Parliament passed a new statute that revises the Code of Civil Procedure to govern the international jurisdiction of the Japanese courts. The revised code was promulgated on May 2 2011 and will take effect within one year, at which point the changes will significantly affect foreign businesses in Japan.

The primary changes are as follows:

- A lawsuit filed in Japan against a foreign company that has engaged in continuous transactions in Japan will fall within the jurisdiction of the Japanese courts, even if the foreign company has no physical presence (eg, business office) in Japan.
- In a lawsuit involving a consumer contract, a Japanese consumer will be able to file suit against a foreign company in a Japanese court if the consumer was domiciled in Japan when concluding the contract or when filing the lawsuit (even if the contract was concluded in a foreign country); and
- A forum selection clause in a contract with a Japanese consumer that designates a forum outside Japan will be unenforceable unless the Japanese consumer was domiciled in the designated forum when the contract was concluded.

Background

The code (as now in force) does not contain specific provisions on international jurisdiction. As a result, the Supreme Court has developed a body of law on international jurisdiction through court precedents.

According to case law, a suit against a non-Japanese party may be filed in a Japanese court if the venue would be appropriate in the case of a purely Japanese dispute, unless special circumstances impair the equity between the parties or interfere with the appropriate and expeditious determination of the dispute.

A lawsuit filed in Japan against a foreign company falls within the jurisdiction of the Japanese courts if:

- the foreign company has a business office in Japan and the suit relates to the business conducted at this office; or
- the place of performance of the contractual obligation is in Japan.

Except in such cases, under the existing code the Japanese courts generally have no jurisdiction over lawsuits filed in Japan against foreign companies.

Key provisions

Engaging in continuous transactions in Japan

Foreign companies which engage in continuous transactions in Japan, but have no physical presence there, will be subject to the jurisdiction of the Japanese courts. More specifically, a lawsuit against a party that conducts business in Japan will fall within the jurisdiction of the Japanese courts if the lawsuit relates to such business. The revised text of the code provides that a 'person who operates a business in Japan' includes a foreign company which undertakes continuous transactions in Japan. Accordingly, an action against such a company will fall within the international jurisdiction of the Japanese courts, even if it has no business office in Japan.

For example, this change will affect a foreign company without a business office in Japan if it creates a website that advertises in Japanese and through which it accepts orders from companies in Japan. A lawsuit filed in Japan against the foreign website owner would fall within the courts' international jurisdiction if the lawsuit related to such business.

Consumer protection

In recent years Parliament has enacted various consumer protection statutes. Revisions to the code will provide further protection for Japanese consumers at the expense of foreign companies. The revised code treats lawsuits filed by consumers against foreign companies differently from those filed by foreign companies against consumers.

Where a consumer files suit against a foreign company, the Japanese courts will have jurisdiction if the consumer was domiciled in Japan when the contract was concluded or at the time of filing. For example, a person who is domiciled in Japan travels to London on holiday and purchases clothes at a department store there. As long as the buyer is domiciled in Japan when the sales contract is concluded, he or she can file suit against the London department store in Japan. Even if the buyer is domiciled in England at the material time, he or she can file suit against the department store in Japan if he or she subsequently becomes domiciled there.

The revised code provides an exception that will alleviate the potential difficulties for foreign companies. In cases where an exceptional burden would be imposed on a foreign company, the Japanese courts have discretion to dismiss the action on the grounds that certain circumstances of the case would impair the equity between the parties or interfere with the appropriate and expeditious determination of the dispute.

According to Supreme Court precedent, a final and binding judgment rendered by a foreign court is not effective unless the jurisdiction of the foreign court is recognised under the code. With the aim of protecting Japanese consumers from being sued in foreign courts, the revised code renders unenforceable a forum selection clause in a consumer contract which designates a jurisdiction outside Japan for the resolution of a dispute if, at the time that the contract was concluded, the consumer was not domiciled in the forum designated in the clause. Thus, the revised code will change the treatment of a forum selection clause in a lawsuit filed against a Japanese consumer. For example, a loan agreement is entered into between a foreign company, which has its principal place of business in New York, and a consumer who is domiciled in Japan. The agreement contains a clause designating New York as the forum for dispute resolution. The foreign company files suit in a New York court against the consumer on the basis of the agreement and correctly serves him or her in Japan. The New York court subsequently enters a judgment in favour of the foreign company.

Under the revised code, the forum selection clause would be invalid because the Japanese consumer was not domiciled in New York. If the foreign company were to attempt to enforce the New York judgment in Japan, the courts would refuse to recognise it, as the jurisdiction of the New York court is not recognised under the code. The foreign company would need to file a new lawsuit against the consumer in Japan, notwithstanding the forum selection clause in the loan agreement. The New York court's judgment would be effective against the consumer only if the latter had been domiciled in New York when the contract was concluded.

Comment

The revised code will substantially alter the framework which governs international litigation involving a Japanese party. The revisions will significantly affect many foreign companies that do not have offices in Japan, but engage in continuous transactions there, as well as foreign companies whose consumer

contracts contain forum selection clauses designating a jurisdiction outside Japan.

For further information on this topic please contact [Yoshimasa Furuta](#) or [Hirotaka Ohtake](#) at Anderson Mori & Tomotsune by telephone (+81 3 6888 1000), fax (+81 3 6888 3050) or email (yoshimasa.furuta@amt-law.com or hirotaka.ohtake@amt-law.com).

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