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Optional Choice of Court Agreements in Private International Law



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Japan: Quests for Equilibrium and Certainty



Koji Takahashi

1 The Treatment of Choice of Court Agreements in General

1.1 General Attitude to Choice of Court Agreements

Japanese law is generally in favour of enforcing the parties' agreements about jurisdiction. That policy is enshrined in paragraphs 1 through 4 of Article 3-7 of the Code of Civil Procedure (hereinafter, "CCP"). It reads¹:

- (1) The parties may decide by agreement the country in which they may file an action.
- (2) The agreement provided in the preceding paragraph shall have no effect unless it is in writing and is concerned with an action arising from specific legal relationships.
- (3) For the purpose of the preceding paragraph, an agreement is deemed to be in writing if it is recorded in an electromagnetic record (viz. a record made in an electronic form, a magnetic form, or any other form unrecognizable to human perception, which is used for information processing by computers).
- (4) An agreement to file an action exclusively with the courts of a particular foreign country may not be invoked if those courts are legally or factually unable to exercise jurisdiction.

It should be noted that the lack of connection between the facts of the case and the place of the chosen court would not be a valid ground for denying effect to the choice of court agreement. Thus, a choice of court agreement choosing a neutral forum can be enforced.

The heads of jurisdiction set out in the CCP are those for direct jurisdiction. But indirect jurisdiction, which is one of the prerequisites for the recognition and

¹There is no official English translation of Japanese law. All the translation of Japanese legislation in this article is the work of the present author.

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enforcement of foreign judgments laid down in Article 118 of the CCP, is interpreted in general as a mirror image of direct jurisdiction. It follows that a foreign judgment rendered on the basis of a choice of court agreement which satisfies the requirements of paragraphs 2 and 3 of Article 3-7 of the CCP is recognised and can be enforced in Japan, provided that the other prerequisites are also satisfied.

Almost all heads of jurisdiction of the CCP are subject to Article 3-9 of the CCP, which provides for dismissal of proceedings when there are special circumstances.² It reads:

Even where the Japanese courts have jurisdiction over an action (except where the action has been brought on the basis of an exclusive choice of court agreement in favour of the Japanese courts), the court may dismiss the whole or part of the proceedings if, taking into account the nature of the case, the burden on the defendant to answer the claim, the location of evidence and any other factors, the court finds that there are special circumstances by reason of which hearing and determining the case in Japan would impair fairness between the parties or hinder the proper and efficient conduct of hearings.

It should be noted that an exclusive choice of court agreement constitutes the only exception to the application of this provision. It also demonstrates the strong policy in favour of the enforcement of such a choice of court agreement.

1.2 Limitations to the Parties' Choice

There are two sets of limitations to the enforcement of choice of court agreements. The first set concerns consumer contracts and individual employment relations. Consumers and employees are categorically deemed to be the weaker parties. A choice of court agreement having as its object a dispute which may arise in connection with such a contract or relation has effect only in the limited circumstances set forth in paragraphs 5 and 6 of Article 3-7 of the CCP. Those provisions read:

(5) The agreement provided in Paragraph (1) having as its object disputes which may arise in connection with a consumer contract shall have effect only in the circumstances set forth below:

- (i) where it is an agreement which allows an action to be filed in the country where the consumer was domiciled at the time of the conclusion of the contract (If the agreement purports to allow an action to be filed exclusively in that country, it shall be without prejudice to the right to file in other countries except in the cases provided in the following sub-paragraph.); or
- (ii) where the consumer filed an action in the country specified by the agreement or where the consumer invoked the agreement in response to an action brought by the trader in Japan or in a foreign country.

²For details, see Takahashi (2015a), pp. 104–110.

(6) The agreement provided in Paragraph (1) having as its object civil disputes which may arise over individual employment relations shall have effect only in the circumstances set forth below:

- (i) where it is an agreement which was concluded when the employment contract was terminated and stipulates that an action may be brought in the country in which the labor was being supplied at the time of the conclusion of the agreement (If the agreement purports to allow an action to be filed exclusively in that country, it shall be without prejudice to the right to file in other countries except in the cases provided in the following sub-paragraph.); or
- (ii) where the employee filed an action in the country specified by the agreement or where the employee invoked the agreement in response to an action brought by the employer in Japan or in a foreign country.

Another set of limitations to the enforcement of choice of court agreements exists where the case falls within what Japanese law regards as the realm of exclusive jurisdiction. Though poorly drafted, Article 3-10 provides:

The provisions contained in Article 3-2 to Article 3-4 and those contained in Article 3-6 to the preceding Article shall have no application where, with respect to the action in question, the exclusive jurisdiction of the Japanese courts is prescribed by legislation.

It follows that the Japanese courts have no jurisdiction under Article 3-7(1) in cases where legislation concerning exclusive jurisdiction (which in the Act corresponds to the provisions in Article 3-5) points to the courts of a foreign country. Article 3-5 provides for exclusive jurisdiction with respect to certain actions related to companies, actions with respect to registration, and actions with respect to the existence and effect of the intellectual property rights which come into existence by registration. Thus, for example, a choice of court agreement in favour of Japanese courts is not enforced where the action relates to the registration of immovable property situated in a foreign country.

1.3 Background to the Present Law

The CPP was amended with effect from 1 April 2012 to codify the rules of international jurisdiction for the first time in its history.³ Among the provisions inserted by the amendment, Article 3-7 largely reflects the pre-existing case law. The leading case is *Chisadane*,⁴ the only case in which the Supreme Court has had an opportunity to consider international choice of court agreements. In that case, the Supreme Court set forth the following principles (hereinafter, “the *Chisadane* principles”): (i) regarding the formal validity of an international choice of court agreement, it is not necessary for both offer and acceptance to be delivered by means of a

³For details, see e.g. Takahashi (2011), p. 146.

⁴Supreme Court, Judgment, November 28, 1975, 29 Minshu (10) 1554 [1975]. An English translation of the judgment is available in the Japanese Annual of International Law, No. 20 (1976) p. 106.

signed document but it is sufficient if the chosen courts are expressly specified in a document made by either or both of the parties and the existence and content of the agreement are clear; (ii) under the civil procedure law of Japan, effect will in principle be given to a foreign choice of court agreement excluding the jurisdiction of the Japanese courts, if the case does not belong to the realm of exclusive jurisdiction of the Japanese courts, and if the chosen foreign courts would have jurisdiction in the case; and (iii) effect may, however, be denied to a choice of court agreement if it is “extremely unreasonable and contrary to the law of public policy” (hereinafter, “the public policy test”).

With respect to formal validity, Article 3-7(2) has confirmed the writing requirement. The component of the Chisadane principles which is concerned with formal validity has arguably survived the amendment of the CCP as furnishing the precise meaning of the writing requirement.

The prerequisites for giving effect to exclusive foreign choice of court agreements as enunciated in the Chisadane principles have been enshrined in Article 3-7(4) as well as Article 3-10 of the CCP which provides that Article 3-7, among other provisions, has no application where, with respect to the action in question, the exclusive jurisdiction of the Japanese courts is prescribed by legislation.

The public policy test contained in the Chisadane principles was not given statutory footing but arguably has survived the amendment of the CCP since no statutory basis would need to be found to safeguard the fundamental legal value of Japan. Thus, the public policy test may be necessary to deny effect to an exclusive choice of court agreement, if it specifies a country whose judiciary is corrupt or biased, or if it is concluded to oust the application of Japanese rules of mandatory nature. The need to rely on it, however, has been greatly curtailed by the enactment of paragraphs 5 and 6 of Article 3-7. While the courts have been reluctant to find a violation of public policy until several years ago,⁵ there have been several more recent cases in which the courts found violations.⁶ These were cases involving consumer contracts or individual employment relations.⁷ They fell outside the temporal scope of application of Article 3-7⁸ but they would today be decided

⁵In the corresponding period, there was only one known case (Tokyo District Court, Judgment, September 13, 1999, *Kaijiho Kenkyukaishi* [Maritime Law Research Journal] Vol. 154 (2000) p. 89) in which public policy was found to be violated.

⁶Tokyo High Court, Judgment, June 28, 2012, LEX/DB 25504140; Tokyo District Court, Judgment, November 14, 2012, LEX/DB 25483568; Osaka High Court, Judgment, February 20, 2014, H.J. (2225) 77 [2014]; and the Tokyo High Court, Judgment, November 17, 2014, H.T. (1409) 200 [2015].

⁷Among the cases mentioned in the preceding footnote, the cases of the Tokyo High Court and the Osaka High Court involved consumer contracts. The Tokyo District Court case concerned individual employment relations.

⁸This provision has application to choice-of-court agreements concluded on or after April 1, 2012.

under paragraphs 5 and 6 of that article. It is not hard to believe that the findings of violation in those decisions were influenced by the Act for the amendment of the CCP whose promulgation preceded those decisions.

Article 3-9, the relevance of which to the present discussion has been explained above, also reflects the pre-existing case law. In a clear departure from the case-law based principle, however, it makes an exception for an exclusive choice of court agreement in favour of Japanese courts. The effect of such an agreement has, to that extent, been strengthened.

Another departure from the pre-existing case law concerns the limitations with respect to consumer contracts and individual employment relations. As detailed above, those limitations are contained in paragraphs 5 and 6 of Article 3-7 which were inserted at the time of the amendment to the CCP. Prior to the amendment, no special treatment was given to individual employment relations. Thus, in a case involving an exclusive choice of court agreement between United Airlines and its employee which specified the Illinois courts, the Tokyo District Court observed that such an agreement would allow the airline to efficiently manage disputes with its employees of various nationalities. But the Court did not find that the agreement failed the public policy test and decided to give effect to it.⁹ The courts deciding on the same facts today under Article 3-7(6) would have no choice but to deny effect to the agreement.

1.4 Influence of International Instruments

Japan has neither signed nor acceded to the Hague Convention on Choice of Court Agreements 2005. The General Assembly of the Legislative Council of the Ministry of Justice stated in its decision on 6 September 2005 that it would seem appropriate for Japan to start considering whether to ratify this Convention when major countries had moved towards ratification and it had become certain that this Convention would play the role of a globally uniform agreement concerning choice of court agreements.¹⁰

It may be said generally that the European Union instruments such as the Brussels I Regulation have influenced the recent Japanese legislation on international litigation as much as it has introduced special rules for the protection of consumers and employees as the weaker parties.

⁹Tokyo High Court, Judgment, November 28, 2000 (United Airlines case) H.J. (1743) 137 [2001].

¹⁰http://www.moj.go.jp/shingi1/shingi2_050906-1-1.html (in Japanese).

2 Optional Choice of Court Agreements

2.1 *Effect of Optional Choice of Court Agreements*

The effect of a choice of court agreement is a procedural matter and, in accordance with the maxim *forum regit processum*, is subject to the law of the forum. Where the issue is brought before a Japanese court, the following rules of Japanese law will be applied.

Article 3-7 of the CCP, outlined above, is applicable to optional choice of court agreements except for the following provisions: paragraph (4), the second half of (ii) of paragraph (5) and the second half of (ii) of paragraph (6). Articles 3-9 and 3-10, too, are applicable.

Whereas an exclusive choice of court agreement purports to give jurisdiction to the courts chosen and oust the jurisdiction of the other courts, an optional choice of court agreement only purports to confer jurisdiction on the courts chosen. Thus, the Japanese courts have jurisdiction by virtue of an optional choice of court agreement in their favour. An optional choice of court agreement in favour of foreign courts, on the other hand, does not deprive the Japanese courts of the jurisdiction which they have under the provisions of the CCP. It remains so even if the option of suing in a nominated foreign court is actually exercised. The existence of such an agreement may, however, be given some weight in favour of the foreign proceedings when the Japanese court decides whether to dismiss the parallel proceedings of Japan under Article 3-9 of the CCP or under other theories for international *lis pendens*. It goes without saying that commencing proceedings in a court other than that nominated in an optional choice of court agreement does not constitute a breach of the agreement. So a judgment rendered by a foreign court is not denied recognition or enforcement in Japan solely on the ground that the court is other than that nominated in an optional choice of court agreement.

Article 3-9 does not make an exception for an optional choice of court agreement. Nevertheless, dismissal under that provision will be rare where Japanese courts are chosen by the parties because “fairness between the parties” would usually be promoted by respecting their agreement.¹¹

2.2 *Optional Choice of Court Agreements Involving Presumptively Weaker Parties*

The CCP contains special rules (paragraphs (5) and (6) of Article 3-7) which are meant to protect consumers and employees as the presumptively weaker parties.

¹¹e.g. The Kyoto District Court in its judgment on 29 January 2015 (2015WLJPCA01296002) refused to dismiss proceedings under Article 3-9 where there was a non-exclusive choice-of-court agreement in favour of the Japanese courts.

A choice of court agreement having as its object disputes which may arise in connection with a consumer contract is given effect in limited circumstances and, in most of such circumstances, only as an optional choice of court agreement. Thus, such an agreement may be relied upon by the consumer to file an action (the first half of paragraph (5)(ii)). It may also be relied on by the trader but only where it is an agreement which allows an action to be filed in the country where the consumer was domiciled at the time of the conclusion of the contract (paragraph (5)(i)). The traders cannot, however, rely on such an agreement to contest jurisdiction even if it purports to be an exclusive choice of court agreement (See the bracket of paragraph (5)(i)). Thus, where a Japanese trader and a consumer domiciled in State X have concluded an exclusive choice of court agreement in favour of the courts of X, if the consumer files an action in Japan, the trader cannot rely on it to contest the jurisdiction of the Japanese courts.

Again, a choice of court agreement having as its object civil disputes which may arise over individual employment relations is given effect in limited circumstances and, in most of such circumstances, only as an optional choice of court agreement. Thus, such an agreement may be relied upon by the employee to file an action (the first half of (ii) of paragraph (6)). Such an agreement may also be relied on by the employer but only where it is an agreement which was concluded when the employment contract was terminated and stipulates that an action may be brought in the country in which the labor was being supplied at that time (paragraph (6)(i)). The employers cannot, however, rely on such an agreement to contest jurisdiction even if it purports to be an exclusive choice of court agreement (See the bracket of paragraph (6)(i)). Thus, suppose that a Japanese employer and an employee supplying labour in State Y concluded an exclusive choice of court agreement in favour of the courts of Y at the time of terminating the employment contract. If the employee files an action in Japan to seek the payment of a severance allowance, the employer cannot rely on the agreement to contest the jurisdiction of the Japanese courts.

These special rules are operationally neutral in terms of the nationality and domicile of the parties. Consequently, it can happen that they work against the interest of traders and employers based in Japan. Thus, for example, where a Japanese souvenir shop files an action in Japan against its former customer from a foreign country, seeking payment of the price for the souvenir it has sold to the customer, the Japanese courts have no jurisdiction to hear the claim even if the shop relies on a choice of court agreement choosing the Japanese courts.

2.3 Distinguishing Optional from Exclusive Choice of Court Agreements

Japanese law has no statutory provision laying out a test for distinguishing optional choice of court agreements from exclusive choice of court agreements. In the run up to the amendment of the CCP, the law makers considered the idea of deeming a

foreign choice of court agreement to be an agreement to oust the jurisdiction of the Japanese courts unless there is a contrary agreement but rejected it as being contrary to international business practice. They instead decided to leave the matter to the interpretation of agreements.¹²

The case law has produced no clear principles. The Japanese courts have the tendency of relying on factual appreciation and their own sense of reasonableness, rather than engaging in choice-of-law analysis, in interpreting choice of court agreements to see whether they are exclusive or optional.¹³ Thus, the Chisadane case featured a choice of court agreement contained in a bill of lading which stipulated¹⁴: “All actions under this contract of carriage shall be brought before the court in Amsterdam and no other court shall have jurisdiction with regard to any other action unless the carrier brings such an action before a court of other jurisdiction or voluntarily accepts the jurisdiction of such court.” The Supreme Court found that this agreement was an exclusive choice of court agreement on the reasoning that it clearly purported to leave intact the option of suing in one of the fora having jurisdiction in the case, namely Amsterdam, and exclude other fora. However, the Court did not formulate rules for distinguishing exclusive from optional choice of court agreements in general terms. Nor did the Court enunciate any canon of interpretation which should be applied to interpret choice of court agreements.

The tendency of the Japanese courts is to characterise a choice of court agreement as exclusive unless otherwise indicated. Thus, in a case featuring an agreement giving one of the parties the right to decide where to sue from a list of fora, the Tokyo District Court held it to be an exclusive choice of court agreement in accordance with what it perceived to be the obvious purport of the agreement as gleaned from the right of choice.¹⁵ But the opposite characterization can be taken. Thus, in a case involving an agreement stating “. . . any dispute between the parties shall be submitted to the Commercial Court in Paris, France,” the Tokyo District Court found it to be an optional choice of court agreement, noting that it did not purport to exclude the jurisdiction of other courts. The Court acknowledged that the Commercial Court in Paris would have jurisdiction over the dispute even without the agreement but held that it would not be inconsistent with interpreting the agreement as conferring jurisdiction on that court.¹⁶ The Tokyo District Court adopted the contrary reasoning

¹²Ministry of Justice (2009) p. 30 (in Japanese).

¹³e.g. Supreme Court, Judgment on the Chisadane case, *supra* note 4; Tokyo District Court, Judgment, April 11, 2008, H.T. (1276) 332; Tokyo District Court, Judgment, September 24, 2008, 2008WLJPCA09248005; Tokyo District Court, Judgment, March 26, 2014, 2014WLJPCA03269011.

¹⁴The original text of the choice-of-court agreement was in English. But the judgment, written in Japanese, only contains some English words from the agreement. The translation is a reconstruction by the present author using those English words.

¹⁵Tokyo District Court, Judgment, September 24, 2008, *supra* note 13. Other decisions adopting the same characterisation include the Tokyo District Court, Judgment, February 28, 1994, H.T. (876) 268.

¹⁶Tokyo District Court, Judgment, March 26, 2014, *supra* note 13.

in another case which involved an agreement choosing the Arbitration Court of Primorsk Region of the Russian Federation. The Court noted that the Russian court would have jurisdiction over the dispute even without the agreement and held that it would be reasonable to interpret the agreement as purporting to exclude the jurisdiction of other courts.¹⁷

2.4 *In Intra-national Cases*

Optional choice of court agreements are not treated differently in intra-national cases to the way they are treated in international cases. However, the tendency of the courts in intra-national cases is to deem a choice of court agreement to be optional unless the contrary intent is clear as in the cases where the agreement specifies one of the courts which would have jurisdiction even without the agreement.¹⁸ It is opposite to the tendency in international cases (See Sect. 2.3 above). This is curious because, in the intra-national context, the courts have discretion to transfer the case to another otherwise competent court even if they are seised on the basis of an exclusive choice of court agreement (Article 17 of the CCP). Moreover, because of various procedural differences and the long distance involved, the consequence of ousting jurisdiction is arguably greater in the international context than in the intra-national context. In the latter context, the courts characterised a choice of court agreement as optional rather than exclusive on the reasoning that it was contained in a standard form of contract and/or that weaker parties ought to be protected. There are in fact no such special rules for protecting consumers and employees in the intra-national context as paragraphs (5) and (6) of Article 3-7 which are only applicable in the international context. After the amendment to the CCP which inserted those provisions, if the different treatment of intra-national and international cases persists, the presence and absence of special rules for protecting weaker parties may furnish an explanation.

3 Asymmetrical Choice of Court Agreements

3.1 *Effect of an Asymmetrical Choice of Court Agreement*

An asymmetrical choice of court agreement refers to a choice of court agreement that combines both exclusive and optional aspects. Where an asymmetrical choice of court agreement is validly formed, each aspect of such an agreement is given effect

¹⁷Tokyo District Court, Judgment, March 27, 2015, H.T. (1421) 238.

¹⁸E.g. Osaka High Court, February 21, 1990 H.T. (732) 270; Kobe District Court Amagasaki Branch, Judgment, October 14, 2011, H.J. (2133) 96. The latter even overrode the word “exclusive” used in the choice-of-court agreement.

according to its purport. Thus, an exclusive aspect is given effect as if it were an exclusive choice of court agreement and an optional aspect is given effect as if it were an optional choice of court agreement.

3.2 Formation and Validity of an Asymmetrical Choice of Court Agreement

A question which seems more important is whether such an agreement is validly formed in spite of the lack of equilibrium between the parties. The choice of court agreement featured in the Chisadane case was in fact asymmetrical.¹⁹ But the Supreme Court only looked at the exclusive aspect of this agreement when finding that it did not fall foul of the public policy test.

Where Japanese law governs the validity of a choice of court agreement in a consumer contract, the Consumer Contract Act would be applicable. It reads in Article 10:

Any clause in a consumer contract which purports to restrict the rights or add to the obligations of the consumer as provided, through the application of the provisions unrelated to the public order, in the Civil Code, the Commercial Code or other statutes or statutory instruments shall be null and void if it unilaterally harms the interests of the consumer in contravention of the fundamental principle enshrined in Article 1(2) of the Civil Code.²⁰

In no case has a choice of court agreement been found null and void under this provision. Such a likelihood would be slimmer now with the introduction of Article 3-7(5). Under the latter, the trader cannot rely on an exclusive choice of court agreement to contest the consumer's choice of forum. Besides, the trader can only rely on an optional choice of court agreement under the limited situation prescribed. The lack of equilibrium stemming from the text of an asymmetrical choice of court agreement would thus be drastically redressed. Consequently, it would hardly be possible to say that such an agreement would "unilaterally harm the interests of the consumer."

Where Japanese law governs the formation of a choice of court agreement in a standard form contract (whether or not it is a consumer contract falling within the scope of the Consumer Contract Act), it will become subject to the new Article 548-2 which is to be inserted in the Civil Code with effect from 1 April 2020. It provides:

- (1) Those who have made an agreement to engage in a standard transaction (a transaction engaged in by a specific party with an opposite party drawn from the rank of many and unspecified persons, for both of whom the standardization of the whole or part of its content is reasonable) shall be deemed to have agreed to individual clauses contained in

¹⁹See the text accompanying supra note 14.

²⁰Article 1(2) of the Civil Code provides:

The exercise of rights and the performance of obligations shall be done in good faith.

the standard form (the entirety of the clauses prepared by the specific party as the content of the contract in a standard transaction) if:

- (i) they have agreed to make the standard form the content of their contract; or
 - (ii) the party who has prepared the standard form has indicated beforehand to the opposite party that it shall become the content of the contract.
- (2) Notwithstanding the provision of the preceding paragraph, any clause falling within the description of the preceding paragraph which purports to restrict the rights or add to the obligations of the other party shall be deemed not to have been consented to if it is considered to harm the interests of that other party unilaterally in contravention of the fundamental principle enshrined in Article 1(2), having regard to the manners and actual circumstances of the standard transaction as well as the social norms relevant to the transaction.

This provision is applicable to, for example, a choice of court agreement in a standard form loan contract which purports to confer jurisdiction on the chosen courts and, only where the borrower acts as the plaintiff, oust the jurisdiction of the other courts. Where the contract is B2B, Article 3-7(5) of the CCP would not help redress the lack of equilibrium. Consequently, such an agreement will be considered to harm the interests of the borrower unilaterally. It remains to be seen whether the courts will consider that the fundamental principle enshrined in Article 1(2), *i.e.* the principle of good faith which permeates the Civil Code, is accordingly contravened.

4 Need for Reform

In the area of optional choice of court agreements,²¹ Japanese law should be reformed to provide for a clear test for distinguishing optional from exclusive choice of court agreements. As seen in Sect. 2.3 above, there is no statutory provision laying out a test for distinguishing these two types of agreements. Neither has the case law produced any clear test. The uncertainty as to whether any specific choice of court agreement is optional or exclusive would result in time and expenses being wasted at the jurisdictional stage of the litigation.

It may be thought that the cause of uncertainty lies in the courts' tendency to treat this issue as a factual question. But treating it as a legal question would not promote certainty if a choice-of-law analysis were applied to ascertain the applicable law because there is uncertainty over what should be the choice-of-law rules for interpreting choice of court agreements.²² Moreover, legal systems often fail to

²¹For a suggestion of law reform on choice-of-court agreements in general, see Takahashi (2015b), p. 395.

²²The present author believes that where a choice-of-court agreement is contained in a contract, it should, like other terms in the same contract, be submitted to the choice-of-law analysis for that contract, with the result that it becomes subject to the law governing the contract except in what will be a rare situation where the parties have chosen a different law specifically for the choice-of-court agreement. Other authors prefer severing a choice-of-court agreement from the remainder of the contract and applying a separate choice-of-law analysis to it from the remainder of the contract.

provide an unequivocal answer to the question how to distinguish between optional and exclusive choice of court agreements. Consequently, even if the court has managed to ascertain the applicable law through a choice-of-law analysis, it will often face the difficulty of actually applying that law.

The present author believes that a solution to this problem lies in establishing a clear test which is applicable regardless of the law governing the interpretation of choice of court agreements. It can, for example, be a rebuttable presumption in favor of exclusiveness as stipulated by Article 3(b) of the Hague Choice of Court Convention. Such a rule may be categorised as an overriding mandatory rule because it is a rule applicable irrespective of the law governing the interpretation of choice of court agreements. The promotion of certainty and predictability with respect to the interpretation of choice of court agreements merits being pursued by enacting overriding mandatory rules since such agreements are invariably concluded with the aim of avoiding the uncertainty which would otherwise result from the application and interpretation of jurisdictional rules in general.

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