

Act on the Civil Jurisdiction of Japan with respect to Foreign States

(Act No. 24 of April 24, 2009)

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Chapter I General Provisions

(Purpose)

Article 1 This Act establishes the scope of the civil jurisdiction (meaning the jurisdiction other than that pertaining to criminal matters; the same applies in Article 4) of Japan with respect to foreign states and special provisions for civil court proceedings pertaining to foreign states.

(Definitions)

Article 2 The term "foreign states" as used in this Act means the entities listed in the following items (hereinafter referred to as "states"), excluding Japan and any entity which pertains to Japan:

- (i) a state and the governmental institutions thereof;
- (ii) a state within a federal state and any other administrative divisions of a state equivalent thereto having the authority to exercise sovereign power;
- (iii) beyond what is set forth in the preceding two items, entities that are granted the authority to exercise sovereign power (limited to cases in which the sovereign power is to be exercised.);
- (iv) a representative of an entity set forth in the preceding three items that act based on their qualifications.

(Relationships with the Privileges or Immunities Based on Treaties)

Article 3 The provisions of this Act do not affect the privileges or immunities enjoyed by foreign states based on treaties or established international laws.

Chapter II Scope of Jurisdiction with respect to Foreign States

Section 1 Principle of Immunity

Article 4 Foreign states, unless as otherwise provided for by this Act, will have immunity from jurisdiction (meaning the civil jurisdiction of Japan; the same applies hereinafter).

Section 2 Cases of Non-Immunity from Judicial Proceedings

(Consent of Foreign States)

Article 5 (1) If consent to submission to jurisdiction concerning a specific matter or case has been given expressly by any of the following methods, foreign states will not have immunity from jurisdiction concerning the proceedings related to the specific matter or case among the litigation proceedings or any other proceedings in court (excluding provisional orders and civil execution on property held by foreign states; hereinafter referred to as "judicial proceedings" in this Section):

- (i) treaties or any other international agreements;
- (ii) written contracts; or
- (iii) statements made in the judicial proceedings or written notices to the court or the other party.

(2) The consent of foreign states to apply the laws of Japan to specific matter or case may not be construed as the consent referred to in the preceding paragraph.

(Deemed Consent)

Article 6 (1) When foreign states carry out any of the following acts, it is deemed that the consent set forth in paragraph (1) of the preceding Article has been given:

- (i) the filing of an action or any other petition for commencement of other judicial proceedings;
- (ii) intervention in judicial proceedings (excluding one whose object is to claim immunity from jurisdiction); or
- (iii) an oral argument or a statement on the merits of a judicial proceeding without making any objection.

(2) The provisions of items (ii) and (iii) of the preceding paragraph do not apply when there are any unavoidable circumstances that the foreign states could not have known that facts constituting grounds for immunity from jurisdiction existed before they carried out any of those acts, and they have promptly proven the circumstances after learning the facts.

- (3) The nonappearance of foreign states and the appearance of a representative of the foreign states as a witness on the date of oral argument or the date of other judicial proceedings may not be interpreted as the consent set forth in paragraph (1) of the preceding Article.

Article 7 (1) If a foreign state has filed an action or has intervened in an action as a party, when a counterclaim has been filed, this is to be deemed to constitute consent set forth in Article 5, paragraph (1) with respect to the counterclaim.

- (2) The filing of a counterclaim by a foreign state in an action in which the foreign state is the defendant is deemed to constitute consent as set forth in Article 5, paragraph (1) with respect to the principal action.

(Commercial Transactions)

Article 8 (1) A foreign state will not have immunity from jurisdiction with respect to judicial proceedings regarding commercial transactions (meaning contracts or transactions related to civil or commercial purchase or sale of goods, procurement of services, lending of money, or other matters (excluding labor contracts.); the same applies in the following paragraph and Article 16) between the foreign state and a citizen of a state other than the foreign state (for those other than a state, the state to which they belong; hereinafter the same applies in this paragraph) or a corporation or any other entity established based on the laws and regulations of the state other than the foreign state, that belongs to that state.

- (2) The provisions of the preceding paragraph do not apply to the following cases:
- (i) cases of commercial transactions between foreign states and states other than the foreign states; or
 - (ii) cases in which parties to the commercial transactions have expressly agreed otherwise.

(Labor Contracts)

Article 9 (1) Foreign states will not have immunity from jurisdiction with respect to judicial proceedings regarding labor contracts between foreign states and an individual wherein all or part of the labor is, or is to be, provided in Japan.

- (2) The provisions of the preceding paragraph do not apply to the following cases:
- (i) where the individual is one of the following persons:
 - (a) a diplomat as provided in Article 1 (e) of the Vienna Convention on Diplomatic Relations;
 - (b) a consular officer as provided in Article 1 (d) of the Vienna Convention on Consular Relations;

- (c) a diplomatic staff member of a permanent mission or a special mission to an international organization or a person employed to represent the foreign states, (for those other than a state, the state to which they belong; hereinafter the same applies in this paragraph) at international conferences; and
- (d) in addition to those persons referred to in (a) through (c), persons who enjoy diplomatic immunity.
- (ii) beyond what is provided for in the preceding item, cases where the individual has been employed in order to perform duties pertaining to the security, diplomatic secrets, or other material interests of the foreign states;
- (iii) an action or petition regarding the success or failure of the contract for hiring or rehiring the individual (excluding those seeking compensation for damages);
- (iv) an action or petition regarding the effect of a dismissal or other termination of the labor contracts (excluding those seeking compensation for damages) where the head of the foreign state, the head of its government, or its Minister of Foreign Affairs finds that there is a risk that the judicial proceedings pertaining to the action or petition would harm the security interests of the foreign state;
- (v) cases where the individual is a citizen of the foreign state at the time of the filing of the action or any other petition for commencement of judicial proceedings; provided however, that this does not apply where the individual has permanent residence in Japan; or
- (vi) cases where the parties to the labor contract have otherwise agreed in writing; provided however, that this does not apply where the lack of jurisdiction over the action or petition regarding the labor contract by Japanese courts is contrary to public order from the viewpoint of protecting workers.

(Death or Injury of Persons or Loss of Tangible Objects)

Article 10 If the death of or injury to a person or the loss of or damage to a tangible object resulted from an act for which it is claimed that a foreign state should take responsibility, when all or part of the act took place in Japan and the person who performed the act was in Japan at the time it was performed, the foreign state will not have immunity from jurisdiction with respect to the judicial proceedings in which monetary compensation for the damage or loss resulting from the act is being sought.

(Rights and Interests Pertaining to Real Estate)

Article 11 (1) Foreign states will not have immunity from jurisdiction with respect to judicial proceedings regarding the following matters pertaining to

real estate in Japan:

- (i) the rights or interests of the foreign state or possession of or use by the foreign state; and
 - (ii) the obligations of the foreign state arising from rights or interests of the foreign state or the possession of or use by the foreign state.
- (2) A foreign state will not have immunity from jurisdiction with respect to the judicial proceedings regarding rights or interests of the foreign state arising from inheritance or any other general succession, gifts, or acquisition of ownerless properties, concerning movables or real estate.

(Rights and Interests Pertaining to the Administration or Disposition of Property in which the Court Participates)

Article 12 A foreign state will not have immunity from jurisdiction with respect to the judicial proceedings regarding the rights or interests of the foreign state pertaining to the administration or disposition of trust property, property belonging to a bankruptcy estate, property of a company in liquidation, or any other property for which a Japanese court carries out supervision or any other participation.

(Intellectual Property Rights)

Article 13 A foreign state will not have immunity from jurisdiction with respect to the judicial proceedings regarding the following matters:

- (i) the existence or nonexistence, effect, attribution, or content of intellectual property rights (meaning rights established by the laws and regulations of Japan regarding intellectual property as provided for in the Intellectual Property Basic Act (Act No. 122 of 2002), Article 2, paragraph (1) or rights pertaining to interests legally protected under Japanese law; the same applies in the following item) that the foreign state claims to hold; or
- (ii) infringement of intellectual property rights allegedly caused by the foreign state in Japan.

(Qualification as a Constituent Member of an Entity)

Article 14 (1) If the foreign state is a member or any other constituent member of a corporation or any other entity that falls under any of the following items, it will not have immunity from jurisdiction with respect to the judicial proceedings concerning qualification, or the rights or obligations based on the qualification:

- (i) an entity that has members or other constituent members other than that of states or an international organization; or
- (ii) an entity established based on the laws and regulations of Japan or that has its principal business office or other offices in Japan.

- (2) The provisions of the preceding paragraph do not apply when there is a written agreement between the parties to the judicial proceedings to the effect that the foreign state will have immunity from jurisdiction or when the articles of incorporation, rules, or any other similar regulations of the entity provide to that effect.

(Operation of Vessels)

Article 15 (1) Foreign states which own or operate a vessel will not have immunity from jurisdiction with respect to the judicial proceedings which relate to a dispute if, at the time the fact that has caused the dispute on operation of the vessel arose, the vessel was used for purposes other than non-commercial purposes by the government.

- (2) The provisions of the preceding paragraph do not apply if the vessel is a warship or a naval support vessel.
- (3) Foreign states which own or operate a vessel will not have immunity from jurisdiction with respect to the judicial proceedings which relate to a dispute if, at the time the fact that has caused the dispute regarding the transportation of the cargo on board the vessel arose, the vessel was used for purposes other than non-commercial purposes by the government.
- (4) The provisions of the preceding paragraph do not apply if the cargo was being transported on board a warship or a naval support vessel or states own the cargo and the cargo is used or intended for use exclusively for non-commercial purposes by the government.

(Arbitration Agreements)

Article 16 A foreign state with respect to the written arbitration agreements related to commercial transactions between the foreign state and a citizen of a state other than the foreign state (for those other than a state, the state to which they belong; hereinafter the same applies in this Article) or a corporation or any other entity established based on the laws and regulations of the state other than the foreign state, that belongs to that state, will not have immunity from jurisdiction with respect to the judicial proceedings concerning the existence or nonexistence or effect of the arbitration agreements or arbitration procedures based on the arbitration agreements; provided however, this does not apply in cases where the parties have agreed otherwise in writing.

**Section 3 Cases of Non-Immunity from Proceedings of Provisional Orders
and Civil Execution against Property of Foreign States**

(Consent of Foreign States)

Article 17 (1) If consent to an execution of a provisional order or a civil execution against the property held by a foreign state has been given expressly by any of the following methods, the foreign state will not have immunity from jurisdiction with regard to the proceedings of the provisional order or the civil execution:

- (i) treaties or any other international agreements;
 - (ii) agreements concerning arbitration;
 - (iii) written contracts; or
 - (iv) statements made during the course of the proceedings of the provisional order or the civil execution, or written notices to the court or the other party (in the case of notices to the other party, limited to notices made subsequent to the occurrence of the dispute pertaining to the relationship of rights that was the cause of the petition for the provisional order or the civil execution).
- (2) If there is specific property that is designated or provided as security to enable achievement of the purpose of a provisional order or a civil execution, foreign states will not have immunity from jurisdiction with respect to proceedings of the provisional order or the civil execution against the property.
- (3) A consent under Article 5, paragraph (1) may not be construed as being a consent under paragraph (1) of this Article.

(Property Used for a Specific Purpose)

Article 18 (1) A foreign state will not have immunity from jurisdiction with respect to proceedings of a civil execution against the property held by the foreign state that is in use or intended for use by the foreign state exclusively for purposes other than non-commercial purposes by the government.

- (2) The following property held by foreign states is not to be included in the property under the preceding paragraph:
- (i) property which is used or intended for use in the performance of the functions of diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;
 - (ii) property of a military character or used or intended for use in the performance of military missions; and
 - (iii) property listed below that is not sold and is not intended to be sold:
 - (a) cultural heritage pertaining to the foreign state;
 - (b) official documents or any other records administered by the foreign state;
 - (c) exhibits that have scientific, cultural, or historical significance.
- (3) The provisions of the preceding paragraph do not preclude the application of the provisions of paragraph (1) and paragraph (2) of the preceding Article.

(Handling of Foreign Central Banks)

- Article 19 (1) The central bank of a state other than Japan or the financial authorities equivalent thereto (referred to as a "foreign central bank, etc." in the following paragraph) are deemed to be a foreign state for the proceedings of a provisional order or a civil execution against property held by the foreign central bank, etc., even when it does not fall within the requirements of Article 2, items (i) through (iii), and the provisions of Article 4, and Article 17, paragraph (1) and paragraph (2) apply.
- (2) With respect to a foreign central bank, etc., the provisions of paragraph (1) of the preceding Article do not apply.

Chapter III Special Provisions for Civil Court Proceedings

(Service of Complaints)

- Article 20 (1) The service of a complaint or any other similar document and a writ of summons for the first date of litigation proceedings or any other proceedings in court (hereinafter referred to as a "complaint, etc." in this Article and paragraph (1) of the following Article) upon foreign state is to be carried out according to the following methods:
- (i) methods prescribed by treaties or any other international agreements;
 - (ii) if the methods listed in the preceding item do not exist, the methods listed in following sub-item (a) or (b):
 - (a) methods carried out through diplomatic channels;
 - (b) any other method that the foreign state accepts as a method of service (limited to those methods provided for in the Code of Civil Procedure (Act No. 109 of 1996)).
- (2) If service has been carried out according to a method listed in item (ii) (a) of the preceding paragraph, the service is deemed to have been effected when the body of the foreign state (for those other than a state, the state to which they belong) that corresponds to the Ministry of Foreign Affairs has received the complaint, etc.
- (3) Foreign states lose the right to state an objection concerning the method of service of the complaint, etc. when they have made an oral argument or a statement on the merits without making any objection.
- (4) Beyond what is provided for under paragraph (1) and paragraph (2), necessary matters concerning the service of a complaint, etc. upon foreign states are specified by the Rules of the Supreme Court.

(Special Provisions of the Code of Civil Procedure in Cases of Nonappearance of Foreign States)

- Article 21 (1) If a foreign state has failed to appear on the oral argument date and has not submitted a written answer or any other brief, a judgment

upholding a claim against the foreign state may not be rendered until four months have elapsed since the day the complaint, etc. was served or the day on which the complaint, etc. was deemed to have been served pursuant to the provisions of paragraph (2) of the preceding Article.

- (2) The provisions of paragraph (1) and paragraph (2) of the preceding Article apply mutatis mutandis to the service upon the foreign state of the judgment document or the written evidence under Article 254, paragraph (2) of the Code of Civil Procedure (referred to as "judgment document, etc." in the following paragraph and paragraph (4)) concerning the judgment provided for in the preceding paragraph.
- (3) Beyond what is provided for in the preceding paragraph, the necessary matters concerning the service of judgment document, etc. are specified by the Rules of Supreme Court.
- (4) Notwithstanding the provisions of the main clause of Article 285 of the Code of Civil Procedure (including as applied mutatis mutandis pursuant to Article 313 of the same Act (including as applied mutatis mutandis pursuant to Article 318, paragraph (5) of the same Act)) or of the main clause of Article 357 (including as applied mutatis mutandis pursuant to Article 367, paragraph (2) of the same Act) or the main clause of Article 378, paragraph (1), the filing of appeals or objections by foreign states against the judgment provided for in paragraph (1), must be done within an unextendable period of four months from the day the judgment document, etc. was served or the day the service was deemed to have been effected pursuant to the provisions of paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to paragraph (2).

(Exclusion from Application of Provisions Concerning Physical Escort and Civil Fines)

Article 22 The provisions of the Code of Civil Procedure or any other laws and regulations concerning physical escort and civil fines due to failure to comply with an order to submit documents or any other objects issued during civil court proceedings, a summons of a witness, or any other order during the civil court proceedings do not apply to foreign states.