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## **A clause regarding international jurisdiction may be judged invalid in Japanese courts**

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### **1. There is a risk that a clause regarding international jurisdiction which does not have limitation to an object will be judged invalid.**

While a clause regarding international jurisdiction (or an arbitration clause) is generally provided in an agreement between a Japanese entity and a foreign entity, we occasionally see a clause which does not have limitation to an object of jurisdiction, such as "All disputes which may arise between the parties shall be settled by the court in the city of X of country Y, irrespective of whether the dispute arises out of or in connection with this agreement."

The recent case of Shimano Manufacturing Co., Ltd. V. Apple, Inc., explained below, showed that such clause without limitation to an object of jurisdiction may be judged invalid in Japanese courts.

Therefore, in-house counsel should pay attention to whether there is such a risk not only in contracts which will be concluded hereafter but also in contracts which have already been concluded.

### **2. Interlocutory judgment in Shimano Manufacturing Co., Ltd. vs. Apple Inc.<sup>1</sup>**

#### **(1) Summary of the Case**

Apple Inc. ("Apple"), whose headquarters is located in California, had commissioned Shimano Manufacturing Co., Ltd. ("Shimano"), whose headquarters is located in Tokyo, to continually produce and supply computer parts.

Shimano brought a lawsuit against Apple at Tokyo District Court in Japan, claiming that Apple shall pay a sum of about 1.5 billion Japanese yen and 78 million US dollars to Shimano as damages, based on the allegation that Apple demanded Shimano to pay a rebate and to discount the price in violation of the antimonopoly law of Japan.

Apple, on the other hand, claimed that the action shall be dismissed because it was brought in violation of the basic agreement between Apple and Shimano which provided that a court in California shall have exclusive jurisdiction.

Tokyo District Court determined, in an interlocutory judgment, that the clause regarding international jurisdiction is invalid, because it is not made with respect to an action based on certain legal relationships and that a Japanese court has jurisdiction over this action.



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<sup>1</sup> Tokyo District Court, Interlocutory Judgment dated February 15, 2016

## **(2) Points in the Judgment**

Tokyo District Court determined that an agreement on international jurisdiction has to be made with respect to an action based on certain legal relationships<sup>2</sup>, because it is necessary to ensure the parties' predictability in connection with agreement on international jurisdiction.

Then, Tokyo District Court found that the clause allowing a party to institute a lawsuit in a court in California provides only that the clause applies when disputes arise between the parties, and provides that the clause applies regardless of whether a dispute has arisen in connection with this agreement.

Thus, Tokyo District Court concluded that the clause is invalid because it was not made with respect to an action based on certain legal relationships.

In the meantime, although Apple had argued that it is obvious that an action in connection with the basic agreement is subject to this clause, and it would not impair the parties' predictability to apply the clause to this action, the court rejected the argument reasoning that the court's determination to invalidate a clause regarding international jurisdiction is not related to whether the parties' predictability was actually impaired in the case at bar.

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<sup>2</sup> While there was no express provision, in the Japanese Code of Civil Procedure at the time, that the agreement on international jurisdiction has to be made with respect to an action based on a certain legal relationships, such provision was added by the revision of Code of Civil Procedure in 2011.