Harmonization of Private International Law Rules in Northeast Asia

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I. Introduction

The new Private International Law Act of Korea ("KA") has taken effect as of 1st July 2001.[1] The"Act on General Rules for Application of Laws" of Japan ("JA") has become effective as of January 1, 2007. Finally the new "Law on Application of Laws to Civil Matters involving Foreign Elements" ("CA") of the People's Republic of China ("China") has taken effect on April 1, 2011. The first decade of the third millennium will be remembered as the most important period for the codification of private international law acts ("PILAs") of Northeast Asia comprising the Republic of Korea ("Korea"), China and Japan ("Region"). Since the recent modernization or codification efforts have been completed, now it is time for the private international law ("PIL") experts of China, Japan and Korea to embark upon deeper comparative analyses of the PIL rules of the Region to better understand the current PIL rules. Based upon such comparative analyses China, Korea and Japan could try to prepare harmonized or uniform PIL rules for the Region in the form of one or more conventions, model laws or principles. I believe that the PIL experts in the Region should try to find PIL rules that could promote values shared in the Region, if any.[2] I would like to stress that that these efforts should be exerted by the three countries in parallel with their respective efforts to accede to the various conventions adopted at the Hague Conference on Private International Law. As the first step of such efforts,

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[1] Unlike the Prior KA, which was strongly influenced mainly by the former Japanese PILA and the former German PIL, the drafters of KA took account of the Rome Convention, the Swiss PIL Act, the new German PIL, which entered into force in 1986, and various Hague Conventions, thus gaining a relatively greater universal validity for Korean private international law. For more details of KA see SUK, Kwang-Hyun, The New Conflict of Laws Act of the Republic of Korea, Yearbook of Private International Law, Volume 5 (2003), p. 99 *et seq*.

[2] In my article whichwas based upon my presentation made on November 20, 2010 at the international conference organized by the Chinese Academy of Social Sciences (CASS), Institute of International Law, I made a similar suggestion. See SUK, Kwang Hyun, Some Observations on the Chinese Private International Law Act : Korean Law Perspective, Zeitschrift für Chinesisches Recht, Volume 18(2011), S. 106.

in this paper I will try to provide comparative analyses of some rules under the PILAs of the Region hoping that such inventory checking could serve as the bases for the future harmonization or unification efforts.

II. Overview of the Three PILAs

1. Structure

KA consists of the following nine chapters: General Provisions, Person, Juridical Act, Rights in *Rem*, Obligations[3], Family, Succession, Bills of Exchange/Promissory Notes/Checks and Maritime Matters.

CA consists of the following seven chapters: General Provisions, Civil Subject, Marriage/Family, Succession, Rights in *Rem*, Obligations Intellectual Property.

Chapter 3 of JA setting forth the general rules on applicable lawconsists of the following seven sections:[4] Person, Juridical Act, Rights in *Rem*, etc., Obligations, Family, Succession and Supplementary Provisions. The above could be summarized as follows:

Korea	**China**	**Japan (Ch. 3 of JA)**
Ch. 1 (General Provisions)	Ch. 1 (General Provisions)	Sec. 7 (Supplementary Provisions)
Ch. 2 (Person)	Ch. 2 (Civil Subject)	Sec. 1 (Person)
Ch. 3 (Juridical Act)		Sec. 2 (Juridical Act)
Ch. 4 (Rights in *Rem*)	Ch. 5 (Rights in *Rem*)	Sec. 3 (Rights in *Rem*, etc.)
Ch. 4, Article 24 (Infringement of Intellectual Property)	Ch. 7 (Intellectual Property)	
Ch. 5 (Obligations)	Ch. 6 (Obligations)	Sec. 4 (Obligations)
Ch. 6 (Family)	Ch. 3 (Marriage, Family)	Sec. 5 (Family)
Ch. 7 (Succession)	Ch. 4 (Succession)	Sec. 6 (Succession)
Ch. 8 (Bills of Exchange, Promissory Notes and Checks)		
Ch. 9 (Maritime Matters)	Ch. 14 of Maritime Act	

The above table demonstrates the structural similarities of KA, CA and JA. There are many similarities in the individual provisions of KA, CA and JA, as described

[3] To be more precise, Chapter 6 refers to '債權', rather than obligations.
[4] Chapters 1 and 2 have nothing to do with private international law.

below. In my view, those similarities are attributable to the fact they have been strongly influenced by the recent domestic and regional PIL codifications of the Western European countries. Unfortunately, to the best of my knowledge, no meaningful efforts have been made by the three countries to achieve a unification or harmonization of the PILAs in the Region. To be honest, the legislators of the three countries were probably not cognizant of the necessity or desirability of the unification or harmonization.

On the other hand, KA differs from CA and JA in that KA includes a separate chapter on bills of exchange, promissory notes and checks, which have been modeled on the Geneva Conventions,[5] and a separate chapter on maritime matters. Corresponding provisions on the law applicable to bills of exchange, promissory notes and checks are included in the "Negotiable Instrument Act (票据法)" of China, and the "Bill of Exchange and Promissory Note Act (手形法)" and the "Check Act (小切手法)" of Japan, respectively.

I would like to note the following two points:

First, in China CA is supplemented by various judicial interpretations (司法解釋) in the form of provisions of statute published by the Supreme People's Court. Such interpretations are binding upon Chinese courts. The judicial interpretation which has become effective in January 2013 consisting of 21 articles, being the first judicial interpretation issued under the CAis especially noteworthy ("First Judicial Interpretation").[6] However, from the viewpoint of having a comprehensive private international law act, it is more preferable for CA to provide a complete set of choice of law rules. Once well organized and detailed PIL rules in the form of a statute such as CA are in place, I believe that the role of the judicial interpretation should be relatively limited.Secondly, in conducting the comparative analyses of PIL rules in the Region, we should pay attention not only to the black letter rules of the PILAs but also to the court decisions which have applied the black letter rules in concrete cases.

From the viewpoint of a complete PIL regime JA is least satisfactory in that it does not include PIL rules for legal person or company, agency and intellectual property, whereas KA and CA do include PIL rules for those matters. In addition, unlike KA and JA, CA includes the PIL rules for trust.[7]

2. Approach

CA, KA and JA follow the tradition of the PIL of the European continent in that in principle they purport to set forth in the form of statutory provisions concrete rules, rather than a mere approach. This method has the advantage of ensuring legal certainty and predictability in the context of PIL. On the other hand, it has drawbacks, *i.e.*, loss of certain amount of flexibility.

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[5] This refers to the Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes of 1930 and the Convention for the Settlement of Certain Conflicts of Laws in connection with Cheques of 1931.

[6] For more details, see Peter Leibküchler, Interpretation des OVG zum Gesetz über das Internationale Privatrecht, ZChinR 2013.

[7] CA, Article 17.

III. MajorSimilarities and Differences: Some Examples

Here, I would like to point out some of the major similarities and differences among the three PILAs in the Region. However, given the constraint of time and space, I am not allowed to deal with details of the three PILAs, which will be reserved for the future work.

1. International Jurisdiction

It is generally said that there are three main topics of the PIL, namely, the international jurisdiction, the applicable law and the recognition and enforcement of foreign judgments.Out of these three topics KA deals with the first and the second topics, whereas CA and JA deal with only the second topic.

Having said that, it should be noted that KA includesas an interim measures only three articles on international jurisdiction. The first of these provisions is Article 2 in the General Provisions that lays down general rules on international jurisdiction. Article 2 is based on principles originating in decisions of the Supreme Court of Japan, as accepted by the Supreme Court of Korea. However, in an effort to streamline the principles, Article 2 made some modifications, underlining the difference between venue provisions of various domestic laws and international jurisdiction. The other provisions introduce special jurisdictional rules to protect consumers and employees.[8] The fact that KA expressly declares that questions of international jurisdiction are a matter of PIL is a clear sign that it has departed from the German tradition of confining PIL rules to choice of law rules. This is a move towards a more practical approach widely accepted in the recent PILAs.

On the other hand, CA sets forth only choice of law rules for various legal relationships involving foreign elements and excludes rules on international jurisdiction and rules on recognition and enforcement of foreign judgments. In this regard, CA is the same as JA and the Private International Law of the Federal Republic of Germany contained in the *Einführungsgesetz zum Bürgerlichen Gesetzbuch* (*EGBGB*)(“German PIL”) and is different from KA and the “*Bundesgesetz über das Internationale Privatrecht*” of Switzerland (“SIPRG”), which includes detailedprovisions on the three topics.

In my view, it would be more appropriate for the PILA to deal with both issues together, given the close relationship between the international jurisdiction and the applicable law.[9] Recently Japan has amended its Code of Civil Procedure and Code

[8] Articles 27 and 28.

[9] I personally prefer to see the rules on the recognition and enforcement of foreign judgments in the PILA as well. I understand that the position of CA is against the general expectation of the most Chinese private international law experts. Huo Zhengxin, “China’s Codification of Conflicts Law: Latest Efforts”, in Seoul Law Journal Volume LI, No. 3 (September 2010), p. 285.

of Civil Preservation by including provisions on international jurisdiction, respectively and the amendment has taken effect on April 1, 2012.[10]

2. Habitual Residence as a Connecting Factor for Personal Status, Family Law and Succession Law Matters

While diversifying the connecting factors, KA still retains the principle of national law (*lex patriae*) in matters of personal status, family law and succession law. While introducing habitual residence as a new connecting factor for several legal issues, KAgives 'nationality' priority over 'habitual residence'.[11] Although KA does not define the term habitual residence, it is generally understood as referring to the place where a person has his 'center of life' and thus similar to the concept of domicile, which the Civil Code of Korea defines as the 'center of a person's life', without requiring the existence of the subjective element, *i.e*., *animus manendi*.[12]

In contrast to KA, CA adopts the principle of habitual residence inmatters of personal status, family law and succession law. In this regard, the two questions below arise.

First,the question relates to the definition of habitual residence under CA. Article 15 of the First Judicial Interpretation is noteworthy. It provides that the place where a natural person lives for over one year consecutively and which constitutes the center of living could be recognized as his habitual residence, excluding the case when he lives in the hospital for medical treatment or he lives for labor dispatch or official duty.[13] Given the elevated importance of habitual residence under CA, I am not sure whether the above definition which relies solely on the specific length of residence without considering the relevant person's intention could be generally justified.

Secondly, in many cases 'habitual residence' has priority over 'nationality' as a connecting factor under CA which is quite the opposite of KA.[14] However, in some cases the habitual residence has the same priority as nationality[15]so that CA appears to be a little inconsistent.

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[10] See Articles 3bis and the followingof the Code of Civil Procedure and Article of the Code of Civil Preservation.For more details, see Masato Dogauchi, "Forthcoming Rules on International Jurisdiction", Japanese Yearbook of Private International Law Vol. 12 (2010), p. 212*et seq*.

[11] KA introduces the common habitual residence of spouses as a subsidiary connecting factor for the general effects of marriage (Article 37). The same principles are applicable to the matrimonial property regime (Article 38) and divorce (Article 39).

[12] Article 18(1).

[13] In the past, Article 9(1) of the "Opinions of the Supreme People's Court on Several Issues concerning the Implementation of the General Principles of the Civil Law of the PRC" (For Trial Implementation), which has taken effect as of April 2, 1988, defined the habitual residence as follows:

The place where a citizen lives for over <u>one year</u> consecutively after leaving the domicile is the habitual residence, excluding the case when the citizen lives in the hospital for medical treatment. Before a citizen moves to another place after moving out of the place where his residence is registered and has no habitual residence, the place where his residence is registered shall still be the domicile.

[14] For example, refer to Article 21 on marriage, Article 23 on personal relationship between spouses.

[15] Under Article 30 of CA guardianship shall be governed by the law of the habitual residence or the national law of any of the parties, whichever is more favorable to protect the rights and interests of the ward.

KA has introduced habitual residence as a new connecting factor. Accordingly, Article 4 of KA provides that, in cases where the law of the habitual residence of the party concerned is applicable but it is impossible to ascertain his habitual residence, the law of his residence shall apply.[16]

As far as matters of personal status, family law and succession law are concerned, JA is very similar to KA in that JA still retains the principle of national law. Both KA and JA were influenced by the German PIL. However, with the ongoing transformation of the Korean society into a multicultural society in which more immigrants tend to settle down, Korea may need consider in the future adopting the habitual residence as the principal connecting factor for matters of personal status, family law and succession law when foreigners with their habitual residence in Korea amounts to a certain portion of the population residing in Korea.

3. Ascertainment or Proof of Foreign Law

KA expressly provides that the court shall examine and apply *ex officio* the contents of the foreign law designated as the governing law under KA and may request the parties' cooperation for that purpose.[17] 'Cooperation' includes providing the relevant source of law or court precedent, which is not easily accessible to the Korean court, or providing information on the relevant authority or expert on the issue under examination. While KA does not sanction a party who fails to provide the necessary cooperation, the negative consequence suffered by the party in such case is the application of a substitute law in lieu of the governing law.

On the other hand, CA provides that in case the parties have chosen to apply a foreign law, the parties shall ascertain the foreign law; where parties have not made such a choice, the people's court, arbitration institutions or administrative agencies shall ascertain the law.[18] Article 10 distinguishes the cases depending upon whether the parties have chosen the governing law or not, according to which, in case the parties have chosen a foreign applicable law, the courts is not required to, and in fact cannot, ascertain the foreign law on its own motion and the burden to ascertain the foreign law is on the parties.[19]

In my view, it would be more sensible to apply the same principles irrespective of whether the parties have chosen the applicable law or not.

Unlike KA and CA, JA does not include any provision on the ascertainment or

[16] Article 4.
[17] Article 5.
[18] Article 10.
[19] Article 10. 2nd sentence of Article 17 of the First Judicial Interpretation provides that where a party shall provide any foreign law under CA but fails to provide it within the reasonable time limit as designated by the people's court without justifiable cause, the people's court may determine that the foreign law cannot be ascertained. Under Article 18 of the First Judicial Interpretation if the parties have no objection to the content of foreign law and application thereof, the people's court may confirm the same; however, if the parties have any objection, the people's court shall examine such objection and determine the applicable law.

proof of foreign law. However, I understand that the majority of the legal commentators in Japan treat the foreign law as law, therefore, the court shall examine and apply *ex officio* the contents of the applicable foreign law.

4. Introduction of the Concept of Internationally Mandatory Rules

Article 7 of KA expressly provides that provisions of 'a mandatory law of Korea', which in view of its legislative purpose is applicable irrespective of the governing law, shall apply even if a foreign law is designated as applicable under KA. While this principle was taken for granted under the Prior KA, Article 7 makes it clear that PIL considerations come into play. Article 7 was modeled on Article 18 of the SIPRG and Article 7(2) of the Rome Convention. In this context, 'a mandatory law of Korea' refers not to 'domestically mandatory rules' from which the parties may not depart by agreement, but to 'internationally mandatory rules' (or 'overriding mandatory provisions' in the parlance of the Rome I and Rome II[20]) that cannot be excluded by the parties' agreement and apply even when a foreign law is designated as the *lex causae*. Internationally mandatory rules are generally classified into three categories: internationally mandatory rules belonging to the *lex cause*, internationally mandatory rules of the forum, and internationally mandatory rules of third countries. KA contains provisions only on the rules in the first two categories.

Article 4 of CA expressly provides that in case there are provisions of Chinese law which are mandatorily applicable to civil relationships involving a foreign element, those mandatory provisions shall be applied directly. I believe that the phrase, "the PRC law which are mandatorily applicable to civil relationships involving a foreign element" refers to the 'internationally mandatory rules', rather than the domestically mandatory rules of Chinese law. Then Article 4 appears to be similar to Article 7 of KA. Article 10 of the First Judicial Interpretation confirms that such understanding is correct.[21] In my view, the text of Article 7 of KA is clearer than Article 4 of CA.

Unlike KA and CA, JA does not include any express provisions on internationally mandatory rules. However, I understand that most of the legal commentators of Japan support such concept, which is generally known as 'absolutely mandatory rules' in Japan.

5. Escape Clause

All the connecting factors adopted by KA purport to designate the law that is most closely connected with the case in question. However, there may be situations where

[20] Rome II refers tothe "Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations."
[21] It enumerates six examples of internationally mandatory rules.

the application of KA fails to achieve this desired result in a concrete case. To implement the 'appropriate connecting principle' by applying the most closely connected law in such situations, KA has adopted a so-called 'general exception clause' (also known as an escape clause) modeled on Article 15 of the SIPRG. Article 8(1) of KA provides that, if the governing law designated by KA is only slightly connected with the legal relationship concerned, and it is evident that the law of another country is more closely connected with the legal relationship, the law of the other country shall apply. In this context 'appropriate' means that the most closely connected law should apply and not the substantive law providing the best solution for the case at hand. Whereas the exception clause shall not apply where the principle of party autonomy is applicable, it may be applied in various cases of special types of torts and where a flag of convenience is involved. Application of the exception clause should be permitted only in very limited cases. Although it was recognized that the introduction of the exception clause would cause greater legal uncertainty than previously, the Korean legislators regarded it as an inevitable means of achieving the paramount goal of applying the law most closely connected with the case at hand.

Article 2 of CAprovides as follows:

The law applicable to civil relationships involving a foreign element shall be determined in accordance with this law. In case other laws provide specific regulations on application of law to civil relationships with a foreign element, those regulations shall apply.

In case there is no regulation on law applicable to civil relationships involving a foreign element in this law or other laws, the law that has the closest connection with the civil relationship shall be applicable.

Article 2(2) does not appear to be a 'general escape clause' comparable to Article 8(1) of KA described above. If this is correct, there is no general escape clause in CA.

Nor does JA include a general escape clause. It should be noted, however that there is a specific escape clause in JA which requires the Japanese courts to deviate from the choice of law rules expressly set forth under JA and to apply another law if the latter has a clearly closer connection than the former.[22]

6. *Renvoi* (Remission)

KA has substantially expanded the scope of *renvoi* to Korean law. The rationale behind this expansion is the desire to achieve an international decisional harmony (*internationaler Entscheidungseinklang*), to apply a more appropriate law instead of insisting on strict adherence to the connecting factors of KA and to avoid difficulties

[22] For example, see Article 20 with the title "Exception for Cases with a Clearly Closer Connection with Another Place."

in applying foreign laws.[23] Under the Prior KA,[24] *renvoi* was permitted only when the national law was designated as the governing law. On the contrary, KA expands the scope of *renvoi* to Korean law by permitting direct *renvoi* to Korean law in principle and expressly listing cases where *renvoi* is not permitted.[25] Under KA, *renvoi* is not permitted in cases where the parties have chosen the governing law or where the law governing a contract is designated by KA.[26] In addition, *renvoi* is not permitted in cases where *renvoi* would be contrary to the purpose of designating the governing law by KA,[27] which is modelled on Article 4(1) of the German PIL with slight modifications. Accordingly, it is important to decide whether permitting *renvoi* would be contrary to the purpose of KA. Since *renvoi* is now permitted in more cases than under the Prior KA, the Korean courts will need to examine the choice of law rules of foreign countries.

Unlike KA which has substantially expanded the scope of *renvoi* to Korean law, CA excludes *renvoi* in its entirety.[28] However, given the practical value of *renvoi*, the Chinese legislators may consider permitting the direct *renvoi* to Chinese law, which will definitively alleviate the burden of the Chinese courts to be caused by the application of foreign law. The Chinese courts who will be required to apply foreign law under CA would be pleased to be able to apply Chinese law based upon the doctrine of *renvoi* in certain limited cases.

The position of JA on *renvoi* is very much similar to that under the Prior KA, save for the proviso expressly excluding *renvoi* under certain cases for which JA includes refined choice of law rules. Article 41 provides as follows:

> *Where a case should be governed by a person's national law and pursuant to the rules of that law the case should be governed by Japanese law, the case shall be governed by Japanese law. However, this shall not apply where the person's national law should govern pursuant to Article 25[29](including its application mutatis mutandis in Article 26, paragraph 1[30] and Article 27[31]) or Article 32.[32]*

Therefore, so long as the scope of *renvoi* is concerned, one could say that JA lies

[23] Article 9.
[24] Article 4.
[25] Article 9. However, KA does not permit transmission, except in respect of the capacity of a person who assumes obligations under a bill of exchange, promissory note or check, which is expressly permitted under Article 51(1).
[26] Article 9(2).
[27] Article 9(2).
[28] Article 9. I understand that this position is consistent with the judicial interpretation of the Supreme People's Court, *i.e.*, Article 178(2) of the "Opinions on Application of the General Principle of Civil Law." Paragraph 2 provides that "upon handling the cases involving foreign elements, the People's Court shall determine the applicable substantive law according to the regulations of Chapter VIII of the GPCL." Huo Zhengxin, supra note 8, p. 291.
[29] This article provides for the law applicable to effect of marriage.
[30] This article provides for the law applicable to matrimonial property regime.
[31] This article provides for the law applicable to divorce.
[32] This article provides for the law applicable to the legal relationship between parents and child.

between CA and KA.

7. Personal Law of Legal Person

Article 16 of KA provides as follows:

> *Legal persons or associations shall be governed by the law of the country under the laws of which the legal persons or associations were incorporated or formed. However, the law of Korea shall apply if the head office of the legal person or association is located in Korea or the principal activities of the legal person or association are conducted in Korea.*

The first sentence adopts the 'incorporation theory'. The rationale for this is twofold; firstly, it respects the interests of the parties (*i.e.*, founders) more appropriately and promotes legal certainty by being easily ascertainable, secondly, the governing law remains unchanged even when the real seat of a company is moved to another country. However, as an exception to the foregoing principle, the second sentence adopts the 'real seat theory'. The purpose of this is to protect third parties who engage in business transactions with such legal persons and associations in Korea.

Article 14(1) of CA adopts the incorporation/registration theory. On the other hand, Article 14(2) adopts as an alternative connecting factor the real seat theory by providing that in case the principal place of business of a legal person is different from its place of registration, the law of its principal place of business may apply. Article 14(1) appears to be applicable to cases where the principal place of business of a legal person is same as its place of registration. However, where the principal place of business is identical with place of registration, the distinction between the 'place of registration' and the 'principal place of business' is of no use. Therefore, it is difficult to understand the relationship between Articles14(1) and 14(2). Taken together, Article 14requires the Chinese courts to apply the law of the place of either the 'incorporation/registration' or the 'real seat'. If my understanding is correct, it would be more sensible to combine Articles 14(1) and 14(2). More importantly, the relationship between the two connecting factors should be clarified. In other words, we do not know the principles which will guide the Chinese courts in selecting the law applicable to a legal person out of the two candidates.

Unlike KA and CA, JA does not include any provision on the law applicable to legal persons or associations. I understand that the majority of the legal commentators in Japan support the incorporation/registration theory.

8. Ordinary Contract

A. Subjective Governing Law

Consistent with the widely recognized choice of law rules for contracts,party

autonomy is accepted by the three PILAs of the Region. However, there are differences. CA simply declares the principle of party autonomy.[33] JA also declares the principle of party autonomy and adds another article dealing with the change of applicable law by the parties.[34] KA goes several steps further by including more detailed rules dealing with *dépeçage*, mandatory application of domestic law for purely domestic cases, etc., which are modelled on Article 3 of the "Convention on the Law Applicable to Contractual Obligations" of the European Community of 1980 ("Rome Convention").[35] KA, CA and JA does not require a substantial connection between the law chosen by the parties and the contract in question.[36]

B. **Objective Governing Law**

KA closely follows the approach of the Rome Convention. Namely, under Article 26(1) of KA, absent a choice of law by the parties, the contract shall be governed by the law of the country with which the contract is most closely connected. Article 26(2) introduces a rebuttable presumption based upon the characteristic performance as under the Rome Convention[37] and the SIPRG.[38] Thus, a contract is presumed to be most closely connected with the country where the party who is to effect the characteristic performance has his habitual residence (or central administration) at the time of the conclusion of the contract. Although Article 26(2) effectively contains an illustrative list of characteristic performances, the term 'characteristic performance'as such is not used because the drafters held the term unknown in Korean law.

Under Article 41 of CA, in the absence of parties' choice of applicable law, (i) the law of the habitual residence of the party who is to effect the performance characteristic of the contract, or (ii) the law which is most closely connected with the contract shall apply. Article 41 bears resemblance to Article 26 of KA in that both rely on the concept of characteristic performance in determining the objective governing law of a contract. But there are several differences as described below.

First, Article 41 of CA introduces a fixed rule, while Article 26 of KA closely follows the approach of theRome Convention. In other words, compared with KA and JA, CA is closer to Article 4 of the Rome I Regulation in that it does not employ the rebuttable presumption.[39] Secondly, unlike KAand JA which rely on characteristic performance only, Article 41 of CA introduces the closest connection principle as an alternative connecting factor. This means that all the various contractual issues such

[33] Article 41, 1st sentence.
[34] Articles 7 and 9.
[35] KA, Article 25.
[36] Article 7 of the First Judicial Interpretation makes this point clear.
[37] Article 4.
[38] Article 117.
[39] Rome I refers to the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

as formation, formal validity, interpretation and effect (*i.e.*, rights and obligations of the parties) of a contract as a package are governed by either of the two laws. It is not possible for the court to split a contract and subject formation and formal validity of a contract to the laws of country X, while subjecting interpretation and effect to the laws of country Y. In other words, blending of governing laws is not permitted.

Here the relationship between the two connecting factors is not clear. Assuming that the law of the habitual residence of the party who is to effect the performance characteristic of the contract points to the law of country X, while the law of country Y has the closest connection with the contract, should the Chinese courts apply the law of country Y or could they still apply the law of country X? We do not know the principles which will guide the Chinese courts in selecting the law applicable to a contract out of the two candidates.[40]

As regards the objective governing law of a contract, JA is similar to KA. Namely, under JA, absent a choice of law by the parties, the contract shall be governed by the law of the country with which the contract is most closely connected.[41] JA also introduces a rebuttable presumption based upon the characteristic performance.[42] Unlike KA which includes an illustrative list of characteristic performance, JA does neither define nor include an illustrative list of the characteristic performance.

9. Consumer Contract and Employment Contract

The traditional choice of law rules of the 19th century of the European continent designated laws as applicable solely on the basis of their geographical and spatial connection with the case or legal issue at hand, without taking into account of the contents of the substantive law to be applied. However, in order to protect the interests of consumers and employees who are generally regarded as socio-economically weaker parties, the three PILAs in the Region introduce special connecting factors to protect consumers and employees. By doing so, the three PILAs elevate the protection of the interests of the weaker parties to the level of the PIL, which is to be welcomed. However, there are some differences among the three PILAs.

A. Subjective Governing Law

KA and JA permit party autonomy for consumer contracts and employment contracts

[40] In the past the Rules of the Supreme People's Court on the Relevant Issues concerning the Application of Law in Hearing Foreign-Related Contractual Dispute Cases in Civil and Commercial Matters("Contract Dispute Rules") which have become effective as of August 8, 2007enumerated 17 types of contract and providedfor a governing law for each of them, respectively. However,the Contract Dispute Rules which proved to be inconsistent with the CA were abolished by the "Decision of the Supreme People's Court on Abolishing Some Judicial Interpretations and Documents of a Judicial Interpretation Nature Which Were Issued from July 1, 1997 to December 31, 2011 (Tenth Group)" issued on April 8, 2013.

[41] Article 8(1).

[42] Article 8(2) and 8(3).

under certain restrictions, whereas CA does not permit party autonomy at all for those contracts.

KA permits the party autonomy; however, a choice of law made by the parties cannot deprive the consumer or the employee of the protection afforded to him by the mandatory rules of the law of the country of the consumer's habitual residence or where the employee habitually performs his work.[43] A consumer contract is eligible for protection under Article 27 only if certain conditions are met. Consumers in this context are referred to as 'passive consumers' as opposed to 'active or mobile consumers'. Under this approach which is modelled on the Rome Convention,[44] the Korean courts will have to compare the two laws, *i.e.*, the law chosen by the parties and the law of the consumer's habitual residence, which would be very burdensome. Moreover, comparative analyses alwaysinvolve difficult task of evaluation.

Under CA, the party autonomy is totally excluded for the employment contracts,[45] which is very much stricter than KA, whereas in the case of consumer contracts, the consumer is permitted to choose the law of the place where the goods or services are supplied.[46]

JA is in substance similar to KA although the formulation is slight different. However, in order to alleviate the burden of the Japanese courts, JA requires the Japanese courts to apply the mandatory rules of the law of the consumer's habitual residence, only when the consumer indicates to the professional (*i.e.*, the counterparty of the consumer) his intention that a particular mandatory rule of the law of the consumer's habitual residence should apply.[47] JA adopts similar approaches to the employment contracts.[48] In my view, however, such a shift of burden to the consumers or employees might undermine the purpose of those provisions designed to protect the interests of the consumers or employees.

B. Objective Governing Law

Under KA, in the absence of a choice of law by the parties, a consumer contract shall be governed by the law of the country of the consumer's habitual residence.[49] An employment contract shall, in the absence of a choice of law by the parties, be governed by the law of the country in which the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, by the law of the country where the place of business that engaged him is situated.[50]

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[43] Articles 27 and 28.KA has also introduced special rules on international jurisdiction to protect the interests of consumers and employees.
[44] Article 5.
[45] Article 43.
[46] Article 42.
[47] Article 11.
[48] Article 12.
[49] Article 27(2).
[50] Article 28.

Under CA, in the absence of a choice of law by the parties,a consumer contract shall be governed by the law of the country of the consumer's habitual residence; however, if the professional (*i.e.*, the counterparty of the consumer) does not have relevant business operations in the country of the consumer's habitual residence, the law of the place where goodsare supplied shall apply.[51] Under CA, an employment contract shall be governed by the law of the place where the employee carries out his work, and in case the place of work is difficult to ascertain, the law of the principal place of business of the employer shall apply.[52]

JA is in substance similar to KA although the formulation is slightly different. Under JA, in the absence of a choice of law by the parties,a consumer contract shall be governed by the law of the country of the consumer's habitual residence.[53] Under JA, in the absence of a choice of law by the parties, an employment contract shall be presumed to be most closely connected with the law of the place where the work should be carried out under the contract (*i.e.*, the law of the place of business through which the employee was engaged, where the work is not to be carried out in a particular place).[54]

10. Tort

A. Basic Principle

In the past, the so-called 'double actionability' developed under English law[55] prevailed in the Region. Accordingly, torts were governed by the law of the place where the tort occurred (*lex loci delicti*) and by the *lex fori* cumulatively. This means that a tortious act committed in a foreign country shall not constitute a tort if the act does not constitute a tortious act under the laws of the forum. The cumulative application has been replaced by the *lex loci delicti* principle in KA[56] and CA,[57] whereas JA[58] continues to stick to double actionability. I understand that this was because the Japanese industry expressed serious concerns against the abandonment of the double actionability. Under KA the scope and amount of damages to be awarded

[51] Article 42.
[52] Article 43.
[53] Article 11(2).
[54] Article 12(2).
[55] For reference see *Phillips v. Eyre* (1870) LR 6 QB 1; *Boys v. Chaplin* [1971] A.C. 356 and *Red Sea Insurance Co Ltd v Bouygues S.A.* [1995] 1 A.C. 190 .
[56] Article 32(1). The rationale behind this decision is that the interests of the forum are sufficiently protected by the *ordre public* clause in Article 10. In addition, it should be noted that Article 32(4), which is modelled on Article 40(3) of the German PIL, provides that, in cases where a tort under Articles 32(1) to 32(3) is governed by a foreign law, damages arising from the tort shall not be awarded if the nature of the damages is clearly not appropriate so as to merit compensation to the injured party or if the damages so awarded would substantially exceed the amount of compensation deemed appropriate in the particular case. A typical example of the former is punitive damages awarded under the laws of various states of the United States; an example of the latter is the 'grossly excessive damages' awarded by foreign courts.
[57] The first sentence of Article 44 of CA provides that tort liability shall be governed by the law of the place of tort. I understand that Article 44 has adopted the *lex loci delicti* principle.
[58] Article 22.

are determined by the law governing the tort, as these are the effects or consequences of the tort. Article 32(4), which is modeled on Article 40(3) of the German PIL, provides that, in cases where a tort is governed by a foreign law, damages arising from the tort shall not be awarded if the nature of the damages is clearly not appropriate so as to merit compensation to the injured party or if the damages so awarded would substantially exceed the amount of compensation deemed appropriate in the particular case. A typical example of the former is punitive damages awarded under the laws of various states of the United States while an example of the latter is the 'grossly excessive damages' awarded by foreign courts.In addition, the position of the *lex loci delicti* principle has been weakened. For example, KA has introduced three connecting principles which have priority over the *lex loci delicti* principle

First, parties are allowed to choose the law applicable to tort after the occurrence of tort.[59] Secondly, in the absence of such a choice, if the tort violates the existing legal relationship between the tortfeasor and the injured party, the tort shall be governed by the law applicable to the legal relationship.[60]This is the so-called 'accessory connecting principle'.Accordingly, if a contractual relationship between the parties is prejudiced by a tortious act, the tort is subject to the governing law of the contract, *i.e*., the tort law of the country whose contract law is applicable to the contract. Thirdly, if the tortfeasor and the injured party had their habitual residences in the same country at the time of the tort, it shall be governed by the law of that country.[61]

CA's position appears to be similar to KA in that (i) it permits parties' choice of law after the occurrence of tort, and (ii) it gives priority over the *lex loci delicti* to the law of the common habitual residence of the tortfeasor and the injured party.[62] However, CA does not include an express provision on an accessory connecting principle.

JA's position is very similar to KA in that (i) it permits parties' choice of law after the occurrence of tort, and (ii) it gives priority over the *lex loci delicti* to the law of the place with which the tort is clearly more closely connected in light of the circumstances such as where at the time of the tort both of the parties had their habitual residence in a place under the same law, or where the tort occurred by breaching obligations in a contract between the parties.[63] Unlike KA and the SIPRG[64], which are more straightforward, JA employs an indirect method requiring the courts to apply more closely connected law in general.[65]

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[59] Article 33.
[60] Article 32(3).
[61] Article 32(2).
[62] Article 44.
[63] Article 20.
[64] Article 133(3).
[65] Article 4(3). In this regard JA is similar to the "Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations."

As to the parties' choice of law applicable to tort, it is noteworthy that the three PILAs take a more cautious approach than the corresponding provision of the Rome II, which expressly permits parties' pre-tort choice of law so long as such a choice is made by an agreement freely negotiated between parties pursuing a commercial activity.[66]

B. Cross-border Tort *(Distanzdelikt)*

KA has not introduced a special rule dealing with the cross-border tort (so-called *Distanzdelikt* in German) in which the place where the injury (or damage) occurs is different from the place where the tortious act is committed. In that regard, the position of KA is against the recent trend which tends to focus on the place of injury (or damage) which is clearly demonstrated by Article 4(1) of the Rome II.[67]

The Korean Supreme Court has held that in such case the court can apply the law of either of the two places. Under Korean law it is unclear whether the injured party may select the law more favorable to him, or whether it is up to the court to select *ex officio* the law more favorable to the injured party. Recent lower court decisions have held that the injured party may select the law more favorable to himself.

As mentioned above, Article 44 of CA adopts the *lex loci delicti* principle. The first sentence of Article 44 provides that tort liability shall be governed by the law of the place of tort. The determination of the law applicable to tort in the case of cross-border tort is left to the judiciary and academia.

Two questions arise in this respect. The first question is whether the place of tort should be interpreted to mean both the place of injury and the place of tortious act. If the answer to this question is in the affirmative, the second question is whether the injured party has the right to select the law more favorable to him, or whether selection of the applicable law is up to the court,so that the court could select *ex officio* the law more favorable to the injured party. Depending upon the answers to these questions, Article 44 could be considered as similar to KA.

On the other hand, JA includes an express rule for cross-border tort. Under JA tort shall be governed by the law of the place of injury; however, where the occurrence of the injury in such place would usually be unforeseeable, the law of the place where the tortious acts occurred shall apply.[68]

C. Separate Rules for Special Types of Tort

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[66] Article 14.

[67] Article 4(1) of the Rome II reads as follows:
"Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur"

[68] Article 17.

KA does not include any separate rules for special types of tort. Unlike KA, both CA and JA include separate rules for special types of tort.

CA includes separate rules for product liability[69]and for the tort resulting from the infringement of the right of personality (such as the right of name, the right of publicity, the right of reputation, the right of privacy, etc.).[70] In addition, CA includes in a separate chapter dealing with intellectual property, the rules for infringement of intellectual property,[71] while there are no corresponding provisions in JA.[72] It should be noted, however, that KA has choice of law rules for infringement of intellectual property in Chapter 4,[73] which provides for the principle of *lex protectionis.*[74] KA also has choice of law rules for liability arising from collision of ships in Chapter 9 dealing with maritime matters.[75]

Moreover, there are unilateral choice of law rules in special statutes, *i.e.*, Article 2bis[76] of the Regulation of Monopoly and Fair Trade Act ("Fair Trade Act"), which took effect as of April 1, 2005 and Article 2[77] of the "Act concerning Capital Market and Financial Investment Business Act" ("CMA"), which took effect as of 4 February 2009. These provisions embody the so-called "effect doctrine" by providing for extraterritorial application of those acts if acts conducted in a foreign country have an effect in Korea. Although there has not been much discussion on this new provision, I have suggested that Article 2bis could be viewed as a special choice-of-law rule as far as the civil law aspect of the Fair Trade Act is concerned. If that is the case, Article 2bis could be viewed as something like Article 6(3)(a) of the Rome II,[78] the major difference being that Article 2bis takes the form of a unilateral choice-of-law rule that only deal with cases where Korean law is applicable, whereas Article 6(3)(a) of the Rome II takes the form of a bilateral choice-of-law rule.

Similar comments could be made on Article 2 of the CMA. Article 2 was influenced by a series of decisions[79] of the United States, which based the application

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[69] Article 45.
[70] Article 46.
[71] Article 50. It adopts the principle of *lex protectionis.* This is also the position of Article 8(1) of the Rome II.
[72] It is noteworthy that in the case of claims based upon an infringement of a patent, the Supreme Court of Japan has distinguished a claim for injunction form a claim for compensation of damage, and characterized the former as a matter of the effect of patent (governed by the law of registration of the patent) and the latter as a matter of tort (governed by the law of the *lex loci delicti*) under Article 11(1) of the Prior JA. Supreme Court of Japan, September 26, 2002, *Minshu*, Number 7, Volume 56, p. 1551.
[73] Article 24.
[74] It is also referred to as '*lex loci protecionis'.*
[75] Article 61.
[76] Article 2bis provides that "This act shall apply to any act conducted in a foreign country so long as such act has an effect on the domestic market."
[77] Article 2 provides that "This act shall also apply to any acts which are conducted in a foreign country and have an effect in Korea."
[78] Article 63(a) reads as follows: "The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected."
[79] These include *David H. Schoenbaum v. Bradshaw D. Firstbrook*, 405 F.2d 200 (2d Cir. 1968). However, the SupremeCourt of the U.S did not support the views of the Courts of Appeal and introduced the so called 'transactional test' in *Morrison v National Australia Bank Ltd*., 130 S.Ct. 2869 (2010)

of the Securities Act of 1933 and the Securities Exchange Act of 1934 on the foreseeability and substantial harm to U.S. investors. However, the relationship between Article 2 of the CMA and the traditional choice-of-rules under KA applicable to cross-border tort has yet to be clarified.Moreover, given the diversity of the civil liabilities envisaged by the CMA, the implications of Article 2 of the CMA as the choice-of-law rule are not entirely clear.

JA also includes separate rules for product liability[80] and for the tort of defamation.[81] In this respect, one could say that CA and JA are more advanced than KA. Having said that, it is interesting to see differences and similarities between the rules of CA and JA.

First, as for the product liability, the principal connecting factor under CA is the injured person's habitual residence; however, if the injured party selects either the law of the principal place of business of the injuring person or the law of the place where the damage occurs, or in case the injuring person does not conduct business operations in the habitual residence of the injured party, the law of the injuring person's principal place of business or the law of the place where the damage occurs shall apply.[82] On the other hand, JA refers the product liability to the law of the place where the product has been delivered to the injured person; however, when the delivery of the product to that place was usually unforeseeable, the law of the principal place of business of the producer or similar person (or the law of his habitual residence where he has no place of business) shall apply.[83] It is also noteworthy that the position of the Rome II is different from both CA and JA.[84]

Secondly, as for the infringement of reputation, both CA and JA refer this matter to the law of the injured person's habitual residence. This connecting factor apparently has the advantage of subjecting all the damages resulting from the infringement of reputation to a single law and could be regarded as more favorable to the injured person. However, given the necessity of balancing the right of personality of the injured person and the freedom of expression in the media, which are protected by the constitutional law, and the diverse views and proposals put forward in the context of the Rome II,[85] I am not sure whether the position of CA and JA is the most desirable solution.

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[80] Article 18.
[81] Article 19.
[82] Article 45.
[83] Article 18.
[84] Under Article 5 of the Rome II, if the product was marketed in that relevant country, the product liability shall be governed by the law of, (a) the injured person's habitual residence, or, failing that,(b) the country in which the product was acquired, or, failing that,(c) the country in which the damage occurred. However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).
[85] Refer to the 'Rome II and Defamation: Online Symposium' at http://conflictoflaws.net/2010/rome-ii-and-defamation-online-symposium/.

11. Marriage and Other Family Relationship

A. General Effect of Marriage and Matrimonial Property Regime

Under CA, general effects of a marriage are governed first by the law of the common habitual residence of the spouses, and secondly, in the absence of such habitual residence, by their common national law.[86] The same connecting principle is also applicable to matrimonial property regime, unless the spouses choose to apply the law of the habitual residence or the national law of one of the spouses, or the law of the place where the property is situated.[87]

Adopting the so-called 'cascade connecting principle', Article 37 of KA provides that the general effects of a marriage are to be governed first by the common national law of the spouses, secondly by the law of the common habitual residence of the spouses, and thirdly by the law of the place with which the spouses are most closely connected. This is so-called a simplified *Kegel*'s ladder (*Kegelsche Leiter*in German), as suggested by the Max-Planck Institute[88] and adopted by Article 14 of the JA. The same connecting principle is also applicable to the matrimonial property regime under KA, unless the spouses choose to apply the law of national law or the law of the habitual residence of one of the spouses, orin the case of immovables, the law where the immovable is located.[89]In light of the increasing number of foreign migration workers who come to Korea, marry Korean women and settle in Korea, this amendment brought about by KA has a very important practical impact.

B. Divorce

CA distinguishes the law applicable to divorce depending upon whether divorce is by agreement or by litigation. In the case of divorce by agreement, spouses may choose by agreement the law of habitual residence or the national law of one of the spouses to apply to their divorce. If spouses have not made such a choice, the law of their common habitual residence shall apply, in the absence of such common habitual residence, their common national law shall apply. If there is no such common national law, the law of the place where the administrative agency in charge of the divorce procedure is situated shall apply.[90] On the other hand, divorce by litigation shall be governed by the law of the forum.[91]

On the other hand, Articles 39 and 37 of KA follow the simplified *Kegel*'s ladder mentioned above for divorce, irrespective of whether the divorce is by agreement of

[86] Article 25 of CA.
[87] Article 26 of CA.
[88] *RabelsZ* 1983, p. 69 *et seq*.
[89] Articles 38 and 39 of KA.
[90] Article 28 of CA.
[91] Article 29 of CA.

by litigation.This is also the case with JA.

In this regard, it is noteworthy that Article 27of CA would cause the Korean courts to resort to the doctrine of hidden *renvoi*. In fact, the judgment of May 26, 2006[92] of the Supreme Courtof Korea has expressly acknowledged the doctrine of 'hidden *renvoi*' under KA.

In the case in question, under KA the law applicable to the issue of divorce of the citizens of the United Sates would have been the laws of the State of Missouri being the common national law of the spouses if the Supreme Court of Korea had not considered the doctrine of hidden *renvoi*. However, the Supreme Court held that the law applicable to the case was Korean law by way of the doctrine of hidden *renvoi*. Article 9(1) of KA provides that if a foreign law is designated as the governing law under KA and the lawof such country provides that Korean law shall apply, Korean law (other than the rules of law determining the governing law) shall be applicable. The Supreme Court held that the courts of the State of Missouri would have applied the law of the forum based upon its choice of law rules if this issue was presented before this court. Accordingly, even if there was no express choice of law rules of the State of Missouri which remitted the issue of divorce in question to Korean law, choice of law rules hidden in the rules of international jurisdiction of the State of Missouri could be viewed as remitting the issue of divorce to Korean law if Korea had international jurisdiction pursuant to the jurisdictional rules of the State of Missouri.

Accordingly, when a divorce case between a Chinese husband and a Chinese wife arises before a Korean court, the Korean court will ultimately apply Korean law to the divorce if Korea had international jurisdiction pursuant to the jurisdictional rules of China, even though Articles 39 and 37 of the KA refer the divorce to the common national law of the couple.

11. Succession

As regards the succession, there is a sharp contrast between KA and JA on one hand, both of which stick to the principle of unity, and CA on the other, which sticks to the principle of scission.

KA follows the 'principle of unity' by subjecting the succession to the national law of the deceasedin effect at the time of his death, according to which the entire estate of the deceased is subject to a single law regardless of whether it comprises immovable or movable property.[93] This is the principle adopted by German PIL.[94] The rationale behind this rule is that the national law is considered to be best suited to

[92] Docket No. 2005 Meu 884.
[93] Article 49.
[94] EGBGB, Article 25(1).

ensure legal stability and certainty and to protect the interests of the parties concerned. In addition, KA introduces party autonomy to a limited extent, based upon the rationale that succession concerns not only the status of the deceased but also the passage of his estate to his family or other persons entitled to succession.

On the other hand, CA follows the 'principle of scission'distinguishing succession[95] of movable property from succession of immovable property and subjecting them to different laws.[96] Succession of movable property is governed by the law of the habitual residence of the deceased in effect at the time of his death, while succession of immovable property is governed by the law of the place where the immovable property is situated. This position is similar to that under English law.[97]

JA is almost the same as KA except that JA does not allow party autonomy at all.[98]

It should be noted that even though KA adopts the principle of unity, there are cases where Korean courts have to apply the principle of scission. This is because KA expressly permits *renvoi* to Korean substantive law.[99] By way of illustration, suppose a Chinese person with his habitual residence in Korea passes away leaving his immovable property located in China and movable properties in Korea and the case is entertained by a Korean court. According to KA, the law applicable to succession is Chinese law. However, since CA refers the succession of the movable properties back to Korean law, the Korean court should apply Korean law for the succession of the movable properties and Chinese law for the succession of the immovable property, respectively.

The same would apply to the Japanese courts.

IV. Course of Action towards the Future Harmonization

We can think of various ways by which the three countries could achieve harmonization of PIL rules in the Region. The first way is to conclude one or more conventions on PIL rules. The second way is to prepare one or more model laws so that the legislators of the three countries can adopt it or them with whatever modifications they deem necessary. In fact, in an English article published in Korea immediately after the promulgation of CA, professor Weidong ZHU at Xiangtan University in China has stressed the necessity of unification of PIL rules in East Asia and suggested that experts in the Region prepare a model law in particular areas of

[95] Article 33 referring to 'statutory succession' appears to mean intestate succession.
[96] Article 31.
[97] However, CA which refers to the law of the habitual residence of the deceased is different form English law which refers to the law of domicile of the deceased.
[98] Article 36.
[99] Article 9.

private international law. As an example, he has suggested a model law of the choice of law of contract.[100]

In my view, however, adoption of one or more conventions or preparation of model laws on PIL rules should be the long term goal for the unification or harmonization of the PIL rules in the Region. In other words, at present it appears to be rather premature for the three countries to try to make the conventions unifying or harmonizing PIL rules on specific issues. That is also the case with the model law approach. More practical approach at the moment would be for the PIL experts in the Region to engage in more in depth comparative analyses of the PILAs and their actual application by the courts in the Region and exchange views and information. This Once the experts in the Region have gathered necessary information and knowledge, then they will be able to determine the next course of action for the future work.

V. Concluding Remarks

Thus far I have conducted comparative analyses of the three PILAs of the Region. The results clearly show that there are many similarities among the three PILAs, which is mainly attributable to the fact that in the codification process, the PIL experts and the legislators of the Region have resorted to the recent national and regional codification efforts in the Western European countries for reference. Given the ever-growing disputes among the business entities as well as natural persons in the Region, I firmly believe that now it is time for the PIL experts of the Region to make concerted efforts in a more systematic way to prepare uniform or harmonized PIL rules which could be applied in the Region. I hope that my presentation could serve as the bases for the future unification or harmonization efforts.

[100] For more details, see Weidong ZHU, Unifying Private International Law in East Asia: Necessity, Possibility and Approach, Asian Women Law, Volume 13 (2010), p. 211 *et seq*. The article does not mention CA.