Recognition and Enforcement of Foreign Judgments in Asia

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Country Report
JAPAN

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A LEGAL SOURCES FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN JAPAN

1 Japan is a civil law country where statutes are the main source of law. Japan is not a signatory to any multilateral or bilateral treaty dealing with the recognition and enforcement of foreign judgments; thus the effect of foreign judgments in Japan is determined in accordance with the rules entrenched in the Code of Civil Procedure1 (“CCP”) and Civil Execution Act2 (“CEA”). Article 118 of the CCP and Article 24 of the CEA set out the general principles for the recognition and enforcement of foreign judgments in Japan. However, since those two statutes contain general rules on recognition and enforcement of foreign judgments, Japanese courts have developed extensive jurisprudence and procedures over time and, although court decisions are not granted official status as law in Japan, they do have strong precedential value.

2 This report focuses on the practice of Japanese courts in recognising and enforcing judgments rendered by the courts of countries in Asia in civil and commercial matters. It should be noted at the outset that there is no clear distinction between in personam and in rem judgments in Japanese law. Therefore, this report will begin by outlining the general principles of recognition of in personam judgments in Japan,3 highlight the main enforcement procedures of in personam judgments,4 and touch

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1 Law No 109 of 26 June 1996, as amended.
2 Law No 4 of 1979, as amended.
3 See paras 3–16 below.
4 See paras 17–22 below.
upon the peculiarities related to the recognition and enforcement of *in rem* judgments.\(^5\)

**B RECOGNITION OF IN PERSONAM JUDGMENTS**

3 In Japan, a foreign judgment will be recognised if it is final and satisfies all of the following four requirements set out in Article 118 of the CCP: (a) the foreign court should have jurisdiction over the case based on Japanese law or a treaty to which Japan is a party; (b) the process was duly served on the unsuccessful party, or the unsuccessful party voluntarily answered the complaint; (c) the foreign judgment and the foreign court proceedings are not incompatible with public policy in Japan; and (d) the foreign country would recognise a similar judgment rendered in Japan (reciprocity requirement). These requirements are considered to strike the appropriate balance between the respect of foreign judgments, the interests of the Japanese party against whom the judgment is to be enforced, and the public policy interests of Japan.

i **Notion of final judgment of foreign court**

4 The “judgment of a foreign court” means any judgment, decision, order or decree rendered by a foreign court in a dispute on private law matters.\(^6\) Judgments may be monetary\(^7\) or non-monetary\(^8\) and include summary judgments which have been issued in adversarial proceedings.\(^9\) Japanese courts also recognise court costs orders.\(^10\) Judgments issued in proceedings where the defendant failed to appear before the court, \(ie\), default judgments, could also be recognised provided the Japanese

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\(^5\) See para 23 below.

\(^6\) (Supreme Court of Japan) (28 April 1998) *Minshū* No 52-3, at p 853.

\(^7\) This includes the element of interest on the award.

\(^8\) Eg, declaratory orders and orders for specific performance.


\(^10\) (Nagoya District Court) (6 February 1987) *Hanrei Taimuzu* No 627, at p 244; (Tokyo District Court) (13 November 1967) *Hanrei Taimuzu* No 215, at p 173.

courts consider that procedural fairness was satisfied by the rendering court. The Supreme Court of Japan has confirmed in its recent judgment that a permanent injunction order could be recognised. There is no reported case dealing with the recognition of an interlocutory judgment, however, this reporter considers it unlikely that an interlocutory judgment would be a judgment for these purposes. On the other hand, the notion of judgment does not encompass judgments in administrative or insolvency cases. Similarly, admissions or waivers of claims, judicial settlements, demands for payment or notarial deeds are not considered to fall under the notion of “judgment” and therefore cannot be recognised and enforced in Japan.

5 Only final and binding foreign judgments can be recognised and enforced in Japan. Finality means that a judgment can no longer be appealed in accordance with the normal procedures of the relevant foreign country. Although the CCP does not contain a definition of a “foreign court”, a foreign court is understood to be a judicial body of a foreign state which has jurisdiction to hear civil disputes, irrespective of how it is named in the respective foreign country.

6 According to the prevailing academic view and case law, provisional measures and preliminary judgments do not fall within the notion of a “judgment”. Therefore, Japanese courts will refuse to give effect to such measures. It is also questionable whether the Japanese courts would recognise a freezing order as an order in personam, since, in order to apply

12 (Tokyo High Court) (15 November 1993) Hanrei Taimuzu No 835, at p 132.
13 (Supreme Court of Japan) (24 April 2014) Minshū No 68-4, at p 329.
14 An interlocutory judgment under Japanese law has a self-binding effect on the court, but it does not give rise to res judicata (ie, a Japanese interlocutory judgment is considered to bind the court in the sense that they cannot render a decision on the same issue again). Therefore, if a foreign interlocutory judgment is similar to the Japanese equivalent, its recognition would not be possible.
15 See Art 118 of the Code of Civil Procedure (Law No 109 of 26 June 1996, as amended) and Art 24(3) of the Civil Execution Act (Law No 4 of 1979, as amended).
16 (Supreme Court of Japan) (26 February 1985) Katei Saihan Geppō vol 37, No 6, at p 25.
for *kari-sashiosae* order with freezing effects under Japanese law, the assets to be frozen must be specifically identified except movable goods.\(^{17}\)

### ii Jurisdiction of rendering court

First, the question as to whether a foreign court has jurisdiction to render a judgment is determined under Japanese law or treaties that have been ratified by Japan. Until now, Japan has not entered into bilateral or multilateral treaties with any foreign nations in respect of the recognition and enforcement of foreign judgments. Therefore, the Japanese courts adhere to “*jōri*, ie, the general principles of reason, fairness between the parties and the need to facilitate swift adjudication of disputes. In the light of such considerations, Japanese courts have usually checked whether the rendering court had jurisdiction under the international jurisdiction rules from the Japanese viewpoint (the so-called “mirror-image” approach).\(^{18}\) Since there were no provisions in respect of international jurisdiction in the CCP, the Japanese courts referred to the provisions on domestic jurisdiction. The Japanese courts have concretely upheld international jurisdiction in situations where the foreign court’s jurisdiction was based on the domicile of the defendant\(^{19}\) or the principal place of business of the defendant in the forum state,\(^{20}\) where the performance of a contractual obligation is in the forum state,\(^{21}\) where a tort occurred in the state of the rendering court,\(^{22}\) or where the parties have made a choice of court agreement in favour of that rendering court,\(^{23}\) as well as in cases where the defendant submitted to the jurisdiction by appearing in the proceedings in the rendering court.\(^{24}\)

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17 Civil Provisional Remedies Act (*Minji Hozen Ho*) (Law No 91 of 22 December 1989) Art 21.
18 (Tokyo District Court) (14 January 1994) *Hanrei Jihō* No 1509, at p 96.
19 (Supreme Court of Japan) (28 April 1998) *Minshū* No 52-3, at p 853.
20 (Supreme Court of Japan) (26 September 2002) *Minshū* No 56-7, at p 1551.
21 (Tokyo District Court) (14 January 1994) *Hanrei Jihō* No 1509, at p 96.
24 (Nagoya District Court) (6 February 1987) *Hanrei Jihō* No 1236, at p 113.
It should be noted that the above practice of the Japanese courts must be considered in the light of the recent amendment to the Code of Civil Procedure. In 2012, the Code of Civil Procedure was amended by adding a set of international jurisdiction rules which set out a list of grounds on which Japanese courts can assert jurisdiction in cases with a foreign element. The Supreme Court of Japan has recently clarified that these newly introduced provisions on international jurisdictions should, in principle, be thresholds to judge if the requirement of jurisdiction of foreign courts in Article 118(i) of the CCP could be satisfied. As a consequence, foreign judgments on matters which would fall under the scope of the exclusive jurisdiction of the Japanese courts, such as actions involving “the existence or absence or the validity of an intellectual


27 (Supreme Court of Japan) (24 April 2014) Minshū No 68-4, at p 329. Issues in this case were whether a US judgment on compensatory damage recovery and an injunction based on the infringement of trade secret could be recognised in Japan. The Tokyo High Court denied recognition, since, according to the court, there was no evidence that damage had occurred in the US. The Supreme Court of Japan, on the other hand, stated that, so long as it is proven that there is a certain “possibility” that infringing acts or damage occurred in the US, the injunction might be recognisable, by reference to Art 3-3(viii) [international jurisdiction on tort] of the Code of Civil Procedure (Law No 109 of 26 June 1996, as amended). If so, according to the Supreme Court of Japan, the judgment on damage recovery might be recognisable as well, based on Art 3-6 [joinder of claims]. For this reason, the Supreme Court of Japan annulled the judgment of the Tokyo High Court and remanded the case to it.

A peculiar rule in the new provisions is Art 3-9, which allows the Japanese courts to take special circumstances into consideration and to dismiss claims, even if the jurisdiction of the Japanese courts could be established according to one of the new provisions. This provision reflects the established case law in Japan. The Supreme Court of Japan has recently clarified that a litigation pending in a foreign court could be special circumstances to dismiss claims in Japan, when both claims are related and evidences are concentrated in the foreign country ((Supreme Court of Japan) (10 March 2016) Minshū vol 70, No 3, at p 846). It is, however, still unclear how this provision would affect the recognition of foreign judgments.

property right … that arises through a registration establishing … if that registration was made in Japan”, could not be recognised in Japan.

iii Service

9 Second, the Japanese courts have to verify whether the unsuccessful party has been served with the summons that is necessary to initiate court proceedings or whether the unsuccessful party has availed itself even without being served with the summons of an official order. In one of its landmark judgments, the Supreme Court of Japan held that service must be such that the defendant understood that legal proceedings were commenced against him and that the defendant’s defence was not prevented. On several occasions, the lower instance courts have held that the service of complaints by post without attaching a Japanese translation is not valid under Article 118(ii) of the CCP. Service by public notice is not sufficient.

10 Japan is a member of the Hague Service Convention which mandates service through diplomatic channels. The Supreme Court of Japan has held that if there is a treaty on judicial co-operation between Japan and the country of the rendering court, the service must fulfil the

30 (Supreme Court of Japan) (28 April 1998) Minshū No 52-3, at p 853.
31 (Tokyo District Court) (21 December 1976) Hanrei Taimuzu No 352, at p 246; (Tokyo District Court) (11 November 1988) Hanrei Jihō No 1315, at p 96; (Tokyo District Court) (26 March 1990) Kin'yū Shōji Hanrei No 857, at p 39 (enforcement of a Hawaiian default judgment denied on the ground that the service had been mailed directly from Hawaii to the defendant resident in Japan without a Japanese translation attached); (Tokyo District Court) (8 December 1997) Hanrei Taimuzu No 976, at p 235; (Tokyo District Court) (10 December 2014) Hanrei Jihō No 2306, at p 73 (examined if the defendant had sufficient capacity to understand the content).
34 Australia, China, India, Japan, South Korea and Vietnam are also members of the Hague Service Convention.
requirements of that treaty. In this regard, the Supreme Court of Japan held that direct delivery of service documents by a consignee privately hired by the plaintiff did not comply with the Hague Service Convention nor the Consular Convention between the UK and Japan, so that such service was not valid under Article 118(ii) of the CCP.

Japan has not declared that it objects to service by post (which is permissible under Article 10(a) of the Hague Service Convention); however, Japan will only accept such service if it occurred as a matter of fact, but not as a new lawful service. Whether service by post would satisfy Article 118 of the CCP would need to be independently examined.

iv Public policy

Article 118(iii) of the CCP requires that a foreign judgment whose recognition is sought must not be contrary to the public policy or good morals of Japan. The notion of public policy encompasses both the substance of the judgment as well as the litigation proceedings at the end of which that judgment is made. It is well-settled law that foreign in personam judgments that require the unsuccessful party to pay punitive damages in addition to compensatory damages and costs are against the public policy of Japan and cannot be recognised in Japan in respect of the punitive portion. The recognition and execution of a foreign judgment

35 (Supreme Court of Japan) (28 April 1998) Minshū No 52-3, at p 853.
36 Consular Convention between the United Kingdom of Great Britain and Northern Ireland and Japan (Tokyo, 4 May 1964). Japan signed a consular convention with the US as well: Consular Convention between the United States of America and Japan (Tokyo, 22 March 1963).
37 (Supreme Court of Japan) (28 April 1998) Minshū No 52-3, at p 853.
38 A matter of “fact” here means that Japan does not consider service by post as violating its sovereignty.
39 (Tokyo District Court, Hachioji Branch) (8 December 1997) Hanrei Taimuzu No 976, at p 235.
40 (Tokyo District Court) (6 September 1969) Hanrei Taimuzu No 242, at p 263.
41 (Supreme Court of Japan) (11 July 1997) Minshū No 51-6, at p 2573.
ordering a payment of gambling debts might be problematic as it could be seen as being contrary to Japanese substantive public policy.  

13 Procedural public policy would be deemed as being undermined and would thereby prevent the recognition and enforcement of a foreign judgment which was obtained by fraudulent means (e.g., falsification of deeds or certificates) or if there had been other procedural defects, where the tribunal was acting in an unfair manner, where principles of due process have been violated, or where the defendant was not given timely notice about important procedural matters.

14 In one case, the Osaka District Court refused to recognise a US judgment because there was a conflicting final Japanese judgment between the same parties on the same cause of action.

15 There is no precedent as to which judgment would be recognised if there were two conflicting foreign judgments between the same parties and on the same subject matter before the Japanese court.

42 On this point, one can consider a case related to gambling, where the issue was not about the recognition of foreign judgments, but was about the applicable law. In this case, a US company sued the Japanese government, arguing that the Japanese government was unjustly enriched through confiscation. The confiscated money was originally collected by the plaintiff’s agent in Japan from some Japanese individuals who owed debts to the plaintiff from their gambling in Las Vegas. The Tokyo District Court stated that applying Nevada law would not violate the public policy in Japan, but this opinion was criticised: (Tokyo District Court) (29 January 1993) Hanrei Taimuzu No 818, at p 56.


44 Eg, where the rendering court gave sufficient time to one party only.

45 (Osaka District Court) (22 December 1977) Hanrei Taimuzu No 362, at p 127. There is no precedent as to whether a foreign judgment could be recognised and enforced in cases where the proceedings between the same parties and the same cause of action are still pending in a Japanese court.

46 In one purely domestic case, a suit for a negative declaration in respect of a payment obligation was pending, when a counterclaim for payment between the same parties and based on the same contract was filed. In that case, the Supreme Court of Japan held that, after the filing of the second suit, there was no interest in maintaining the first suit for negative declaration: (25 March 2004) Minshū vol 58, No 3, at p 753. As an analogy from this case, it could be possible that between two

(continued on the next page)
Reciprocity

16 Fourth, a judgment may only be recognised and enforced in Japan if the reciprocity requirement is satisfied. Japanese courts have generally been generous in finding reciprocity between Japan and foreign nations whose court judgments are to be recognised. The Supreme Court of Japan held that reciprocity exists if the conditions for the recognition of a similar type of Japanese judgment in that foreign country are not substantially different from the conditions set out in Article 118 of the CCP. Japanese courts have recognised judgments rendered by courts of Australia, Hong Kong, and Singapore. However, Japanese courts do not recognise judgments rendered by courts of the People’s Republic of China.

conflicting foreign judgments, one of which is a negative declaratory judgment, the claim for the recognition of the negative declaratory judgment might be dismissed.

47 (Supreme Court of Japan) (7 June 1983) Minshū No 37–5, at p 611.
49 (Kobe District Court) (22 September 1993); (Supreme Court of Japan) (28 April 1998) Minshū No 52–3, at p 853.
The list covers only judgments in Asia. Judgments from countries such as Indonesia and Thailand would not be recognised by Japanese courts, since the courts in these countries do not recognise foreign judgments.

51 (Osaka High Court) (9 April 2003) Hanrei Jihō No 1841, at p 111; (Tokyo District Court) (20 March 2015) Hanrei Taimuzu No 1422, at p 348; as its appeal judgment also denied reciprocity with China: (Tokyo High Court) (25 November 2015) Heisei 27 (ne) No 2461 (unpublished). This judgment of the Tokyo High Court was further appealed to the Supreme Court of Japan, but the Supreme Court of Japan rejected the appeal: (20 April 2016) Heisei 28 (o) No 350 (unpublished). According to these judgments, this is on the basis of the interpretation of the Supreme People’s Court of the People’s Republic of China in 1994 (Notice No 17) that the Supreme People’s Court would not permit recognition nor enforcement of Japanese judgments.
C ENFORCEMENT OF IN PERSONAM JUDGMENTS

i General principles of enforcing a foreign judgment in Japan

17 In order to enforce a foreign judgment in Japan, the successful party must file a suit in the court in Japan to obtain an enforcement judgment.\(^{52}\) In principle, such proceedings must be instituted in the court which has jurisdiction over the unsuccessful party. In cases where it is not possible to determine the residence of the judgment-debtor, an action for recognition and enforcement must be instituted in the district of the location of the subject matter of the claim or the property to be seised.\(^{53}\)

18 The court which is petitioned for the recognition and enforcement of the foreign judgment will consider whether the conditions for recognition provided in Article 118 of the CCP are met and whether the judgment can be enforced in Japan.\(^ {54}\) If those conditions for recognition and enforcement are satisfied, the recognising court will issue an enforcement judgment (shikkō hanketsu). The enforcement judgment serves as a title of debt which is necessary to institute enforcement proceedings in Japan.

19 Japanese law does not include any statutory limitations for the enforcement of foreign judgments. However, pursuant to Articles 157(2) and 174-2 of the Civil Code,\(^ {55}\) the rights established by a judgment of a Japanese court are subject to a ten-year limitation period which commences from the time the judgment becomes final and binding. Accordingly, the recognition and enforcement of a foreign judgment which became final more than ten years prior to the commencement of the enforcement proceedings might be refused on the grounds of public policy.\(^ {56}\)

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\(^{52}\) Civil Execution Act (Law No 4 of 1979, as amended) Art 22(6).
\(^ {53}\) Civil Execution Act (Law No 4 of 1979, as amended) Art 24.
\(^{54}\) Civil Execution Act (Law No 4 of 1979, as amended) Art 24(3).
\(^ {55}\) Law No 89 of 27 April 1896.
\(^ {56}\) A longer duration of statutory limitation under a foreign law would not necessarily violate the public policy of Japan: (Tokushima District Court) (16 December 1969) Hanrei Taimuzu No 254, at p 209. Therefore, by analogy, it could be possible that a foreign judgment rendered more than ten years ago may be (continued on the next page)
20  As a matter of principle, in deciding the questions of recognition and enforcement, Japanese courts will not review the merits of the case,\(^{57}\) nor would Japanese courts check whether the foreign law was correctly applied. The Tokyo District Court once recognised a judgment rendered by a foreign court, stating that to examine whether the rendering court applied the law which would have had to be applied in accordance with conflict of laws of Japan would violate this principle.\(^{58}\)

### ii  Possible defences by defendant

21  The defendant may raise challenges related to the conditions set out in Article 118 of the CCP, either in the enforcement proceedings if enforcement is necessary, or directly concerning judgments which do not need enforcement.\(^{59}\)

22  The defendant may not raise merit-based defences concerning his liability or the scope of the award of the foreign court’s judgment. On the other hand, the defendant may raise defences and challenge the recognition and enforcement of a foreign judgment if the claim has lapsed, become extinct, was discharged or was otherwise revised. Theoretically, a party against whom a judgment has been issued in a foreign court could institute proceedings before the Japanese courts seeking negative declaratory judgment in order to prevent the enforcement of such foreign judgment, as long as *lis alibi pendens*\(^{60}\) is not institutionalised in Japanese law.\(^{61}\)
D RECOGNITION AND ENFORCEMENT OF IN REM JUDGMENTS

23 As mentioned at the outset of this report, Japanese law does not contain a distinction between in personam and in rem judgments. However, as a matter of principle, Japanese courts are able to recognise only in personam judgments. In rem judgments cannot be recognised and enforced in Japan because in rem judgments usually concern the ownership of an object or asset and are supposed to have effects vis-à-vis the rest of the world. Public policy and sovereignty considerations usually mean that such matters are subject to the exclusive jurisdiction of the courts where such objects are located. This is also the case in Japanese law. If the foreign judgment deals with a matter which falls within the exclusive jurisdiction of the Japanese courts, it will be refused enforcement.

62 Typical examples of such in rem judgments are matters which have to be registered in public registries (e.g., registration of legal entities, immovable assets or ships, or certain intellectual property rights such as patents or trademarks).

63 Code of Civil Procedure (Law No 109 of 26 June 1996, as amended) Art 3-5. Japanese courts have exclusive jurisdictions over claims concerning registration, as long as the place of registration is in Japan, and existence as well as validity of the intellectual property which needs registration to be effective: Code of Civil Procedure (Law No 109 of 26 June 1996, as amended) Arts 3-5(2) and 3-5(3).

64 A typical case involving in rem measures would occur when a California court orders attachment and sales in an auction of a vessel which is registered in Japan and anchored in San Francisco. Assume that a court in California orders the assignment of ownership of that vessel to a third-party creditor. Such a third-party creditor may seek to enforce that Californian judgment in Japan; however, Japanese authorities will refuse to give effect to such a court order based on the grounds mentioned above.