



# ICLG

## The International Comparative Legal Guide to: **Enforcement of Foreign Judgments 2016**

### **1st Edition**

A practical cross-border insight into the enforcement of foreign judgments

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Alan Falach

**Group Publisher**  
Richard Firth

**Published by**  
Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**  
F&F Studio Design

**GLG Cover Image Source**  
iStockphoto

**Printed by**  
Stephens & George  
Print Group  
March 2016

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ISBN 978-1-910083-85-7  
ISSN 2397-1924

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# Japan

Hironobu Tsukamoto



Eriko Ogata



Nagashima Ohno & Tsunematsu

## 1 Country Finder

- 1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Code of Civil Procedure of Japan and Civil Execution Act of Japan	All countries	Section 2

## 2 General Regime

- 2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

Article 118 of the Code of Civil Procedure of Japan (Law No. 109 of 1996) and Article 24 of the Civil Execution Act of Japan (Law No. 4 of 1979) provide the requirements and procedures for recognition and enforcement of a foreign court's judgment.

- 2.2 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?**

Article 118 of the Code of Civil Procedure provides that a foreign judgment must satisfy all five of the following requirements in order to be recognised in Japan.

- (i) The judgment of a foreign court is valid and effective under the law of the foreign country and is final and conclusive (Article 118, main paragraph).

The "judgment of a foreign court" denotes a final judgment rendered by a foreign court on private law relations by providing procedural guarantees to both parties regardless of the name, procedure or form of judgment. Even if the judgment is called a decision or order, insofar as it possesses the characteristics above, it is regarded as the judgment of a foreign court (Supreme Court Judgment of April 28, 1998, 52-3 Minshu 853).

Accordingly, the "judgment of a foreign court" is not considered to include a foreign administrative determination or a bankruptcy judgment. Also, an appealable judgment or a

provisional order rendered by a foreign court is not recognised and enforceable in Japan.

An admission or a waiver of claim, a judicial settlement, a demand for payment or a notarial deed is not generally considered to be a "judgment" (Koji Shindo, *et al.*, Jitsumu Minji-Sosho Koza Vol 6., at 446 (Seirin Shoin, 2013)).

- (ii) The jurisdiction of a foreign court is recognised under Japanese law or by treaties that have been ratified by Japan (Article 118, Item 1).

Whether or not a foreign country has indirect jurisdiction, in the meaning provided for in Article 118, Item 1 of the Code of Civil Procedure, over an action other than an action concerning personal status, should be determined in light of the rule of reason, while basically complying with the provisions on international jurisdiction under the Code of Civil Procedure of Japan and considering whether or not it is appropriate for Japan to recognise a judgment rendered by the foreign court in the context of the specific circumstances of the case (Supreme Court Judgment of April 24, 2014, 68-4 Minshu 329).

- (iii) The losing defendant has been served with a summons or an official order that is necessary to commence the litigation, other than a public notice, or has responded to the proceedings even though the losing defendant has not been served with either a summons or an official order (Article 118, Item 2).

The Supreme Court held that, from the viewpoint of ensuring the clarity and stability of litigation procedures, if there is a treaty of judicial cooperation between the country of judgment and Japan and if this treaty provides that the service of the document required for the commencement of litigation must be effected in a manner set out in this treaty, service of documents not in accordance with the manner set out in the treaty should not be regarded as service that fulfils the requirement of the above provision of the Code of Civil Procedure. The Supreme Court concluded that service of documents by direct delivery by a person who has personally been asked by a party is not regarded as valid service (Supreme Court Judgment of April 28, 1998, 52-3 Minshu 853).

There is no established view or case law on whether or not service by means of certified mail is valid. Although Japan ratified the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 ("Hague Service Convention") without reservation as to ratification of Article 10 (a) (which allows the freedom to send judicial documents, by postal channels, directly to persons abroad, provided the State of destination does not object), the representative of the Japanese government expressed its position that Japan did not declare that it objects to Article 10 (a), which did not mean that Japan recognises direct delivery of judicial documents by postal channels as valid service but that such direct delivery does not infringe Japan's sovereignty.



Some lower courts also held that delivery of complaints by means of postal channels without attaching a Japanese translation is not regarded as valid service under Article 118, Item 2 of the Code of Civil Procedure (Tokyo District Court Judgment of November 11, 1988, 1315 Hanrei Jiho 96; Tokyo District Court Judgment of March 26, 1990, 857 Kinyu Shoji Hanrei 39; and Tokyo District Court Hachioji-shibu Judgment of December 8, 1997, 976 Hanrei Taimuzu 235).

- (iv) Neither the substance of the judgment nor the litigation process is contrary to the public order or good morals of Japan (Article 118, Item 3).

In respect of the “substance of the judgment”, the Supreme Court of Japan has ruled that a foreign judgment is contrary to the public order or good morals of Japan in the following cases:

- Part of the foreign judgment that ordered the appellee company to pay punitive damages for the purpose of deterrence and sanction in addition to compensatory damages and costs is against the public order of Japan, and therefore not effective in Japan (Supreme Court Judgment of July 11, 1997, 51-6 Minshu 2573).
- A judicial decision rendered by a foreign court acknowledging the establishment of a natural parent-child relationship between persons who are not eligible for such relationship under the Civil Code of Japan is contrary to the public order of Japan as prescribed in Article 118, Item 3 of the Code of Civil Procedure, and therefore not effective in Japan (Supreme Court Decision of March 23, 2007, 61-2 Minshu 619).

In respect of the “litigation process”, the Tokyo High Court had held that a foreign judgment that was obtained by fraudulent means, such as forgery of a certificate, did not satisfy the condition set forth in Article 200, Item 3 of the prior Code of Civil Procedure (Tokyo High Court Judgment of February 27, 1990, 1344 Hanrei Jiho 139).

- (v) Judgments of Japanese courts are treated in a reciprocal fashion by the foreign country (Article 118, Item 4).

Reciprocity exists if the conditions that must be satisfied to enforce a similar type of Japanese court judgment at a court of the foreign country are not substantially different from the conditions prescribed in Article 118 (Supreme Court Judgment of June 7, 1983, 37-5 Minshu 611).

In connection with this, a Japanese court has denied reciprocity in respect of the People’s Republic of China since there is a Chinese court case that does not recognise a Japanese final judgment. Also, it has denied reciprocity in respect of Belgium, since in Belgium, with respect to the judgment of a foreign country with which a treaty regarding reciprocity has not been executed, the substance of the foreign judgment is reviewed by the court in enforcement procedures. However, please note that a Japanese court determines whether or not reciprocity exists in the context of the specific circumstances of an individual case, and thus it may decide differently with respect to other cases.

### 2.3 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Theoretically, there is a difference between recognition and enforcement. A foreign judgment that satisfies the requirements set forth in Article 118 of the Code of Civil Procedure is automatically recognised as valid in Japan and has the same effect in Japan as it has in the country in which it was rendered. However, in order for a prevailing party of the foreign judgment to enforce it in Japan, that party must bring a lawsuit seeking an enforcement judgment (*shikko hanketsu*), which can serve as a title of debt (*saimu meigi*) for an enforcement procedure. The requirements for obtaining an enforcement judgment are substantially the same as those for recognition.

### 2.4 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

- (i) A party who wishes to enforce a foreign judgment in Japan must file a lawsuit with a competent district court seeking an enforcement judgment (*shikko hanketsu*) that allows it to enforce the foreign judgment in Japan; in principle, a court having jurisdiction over the location of the general venue of the defendant is a competent court (Article 24 of the Civil Execution Act). If the requirements set forth in Article 118 of the Code of Civil Procedure are satisfied, the court renders an enforcement judgment (*shikko hanketsu*) that allows the party to enforce the foreign judgment in Japan. If the court cannot enforce the whole judgment, it is possible that it might enforce parts of the judgment if it considers it appropriate to do so.

This procedure is considered to be “normal litigation”. Oral arguments are held although a judgment is usually made mainly based on documents submitted by the parties (i.e., briefs and written evidence). An appeal to a high court is allowed, and further, a final appeal to the Supreme Court is possible if requirements are satisfied. There is no published statistical data regarding how long the procedure normally takes but it usually takes around one to two years until an enforcement judgment is rendered by the first instance court.

The following documents must be produced together with a complaint seeking an enforcement judgment:

- a certified copy of the foreign judgment;
- a document showing that the foreign court’s judgment is final and conclusive;
- if either of the parties is a corporation, a document verifying the registration of the corporation and authorisation of a named representative of the corporation; and
- if the plaintiff wants to act, through a lawyer, a power of attorney.

In addition, as a matter of practice, evidence showing the existence of reciprocity (e.g., a court case or an attorney’s declaration), as provided in Article 118, Item 4 of the Code of Civil Procedure, is required to be submitted.

Please note that all of the documents submitted to the Japanese court must be written in Japanese and thus a translation of a foreign judgment, evidence and supporting documents, etc., must be produced.

- (ii) The party obtaining an enforcement judgment must file a petition for an enforcement procedure, pursuant to the Civil Execution Act of Japan, by using the enforcement judgment as a title of debt (*saimu meigi*) (Article 22, Item 6 of the Civil Execution Act).

### 2.5 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

In a lawsuit seeking an enforcement judgment, the court must not review whether or not the decision of the foreign judgment is appropriate (Article 24, Paragraph 2 of the Civil Execution Act). Rather, the court merely reviews whether or not the foreign judgment satisfies the requirements set forth in Article 118 of the Code of Civil Procedure. Accordingly, the losing party of the foreign judgment is entitled to challenge the enforcement of it on the grounds that the foreign judgment fails to meet those requirements. In addition, the following defences are generally considered to be allowed in a lawsuit seeking an enforcement judgment:

- (i) **Defences that have arisen after the conclusion of proceedings as to the foreign judgment**

There is no statutory provision that clearly allows this defence, but the Japanese courts tend to allow the losing party of the foreign judgment to raise a defence that arose

after the conclusion of proceedings of the foreign judgment. For example, if the claim approved by a foreign court is extinguished by the losing party's repayment or any other grounds that arose after the conclusion of proceedings as to the foreign judgment, the losing party can assert this as a defence in a lawsuit seeking an enforcement judgment.

(ii) **Non-Enforcement Agreement**

There is no established view or case law but if a non-enforcement agreement exists, the losing party of the foreign judgment is likely to be allowed to raise it as a defence in a lawsuit seeking an enforcement judgment.

Moreover, with respect to the facts that arise after the conclusion of oral arguments concerning the enforcement judgment, an action to oppose execution may be filed in order to seek non-permission of compulsory execution based upon the execution judgment (*shikko hanketsu*) (Article 35 of the Civil Execution Act).

**2.6 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?**

- With respect to insolvency, the Law Concerning Recognition of and Aid in Foreign Insolvency Proceedings (Law No. 129 of 2000) applies.
- With respect to oil pollution damage, Article 10 of the International Convention on Civil Liability for Oil Pollution Damage and Article 12 of the Act on Liability for Oil Pollution Damage (Law No. 95 of 1975) (if the country of the foreign judgment is a contracting state of the convention).
- With respect to nuclear damage, Article 13, Paragraph 5 of the Convention on Supplementary Compensation for Nuclear Damage applies (if the country of the foreign judgment is a contracting state of the convention).
- With respect to orders for costs and expenses of court proceedings, Articles 18 and 19 of the Convention on Civil Procedure apply.

**2.7 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?**

There is no published Supreme Court judgment directly addressing these issues.

In respect of (a), it is not completely settled, but one district court case (Osaka District Court Judgment of December 22, 1977, 361 Hanrei Taimuzu 127) ruled that a foreign judgment conflicting with a "final" judgment of a Japanese court between the same parties relating to the same issue is contrary to "public order" (as prescribed in Article 118, Item 3 of the Code of Civil Procedure), and thus that foreign judgment cannot be recognised and enforceable in Japan.

In respect of (b), there are no published court decisions addressing such situation, but the mere existence of pending local proceedings is generally not considered to prevent the recognition and enforcement of a final foreign judgment.

**2.8 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?**

There are no published court decisions addressing this issue, but according to Article 24, Paragraph 2 of the Civil Execution Act,

which provides that an enforcement judgment must be rendered without reviewing the appropriateness of the foreign judgment, in principle, the foreign judgment is recognised and enforceable regardless of a conflicting local law or prior judgment on the same or similar issue. However, please note that as an exceptional case, there is a possibility that such foreign judgment might be regarded as contrary to public order (as prescribed in Article 118, Item 3 of the Code of Civil Procedure), and thus cannot be enforced in Japan.

**2.9 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?**

Article 24, Paragraph 2 of the Civil Execution Act provides that an execution judgment shall be made without investigating whether or not the judicial decision of the foreign judgment is appropriate. In principle, this approach still applies to a case where recognition and enforcement of a foreign judgment that purports to apply Japanese law and the court does not proactively review whether or not the foreign court's interpretation of Japanese law is correct; provided, however, that as an exceptional case, a Japanese court might deny recognition/enforcement of the foreign judgment on the grounds that it is contrary to public order and thus fails to meet the condition set forth in Article 118, Item 3 of the Code of Civil Procedure.

**2.10 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.**

No. The same rules are applicable all over Japan.

**2.11 What is the relevant limitation period to recognise and enforce a foreign judgment?**

Although there are no explicit statutory requirements or published court decisions, if it is required that a judgment be enforced within a certain time period under the rules of that foreign country, a party who wishes to enforce the foreign judgment should bring an action seeking an enforcement judgment to a competent Japanese district court within the specified period.

**3 Special Enforcement Regimes Applicable to Judgments from Certain Countries**

**3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?**

This is not applicable in Japan.

**3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?**

This is not applicable in Japan.

**3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.**

This is not applicable in Japan.

**3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?**

This is not applicable in Japan.

## 4 Enforcement

**4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?**

The methods of enforcement available to a judgment creditor under Japanese law are as follows:

**a. Direct Compulsion**

- (i) If the obligation to be enforced is the payment of money, the following methods are available:
- seizure of property/ships/movables (Articles 45–92 and 112–142 of the Civil Execution Act) – the enforcement authority seizes and sells the debtor’s property, etc., and distributes the sales proceeds;
  - compulsory administration (*kyosei kanri*) (Articles 93–111 of the Civil Execution Act) – an administrator appointed by the enforcement authority collects rent or other income from the debtor’s property and distributes them to the creditor(s); or
  - compulsory execution against a claim and any other rights (Articles 143–167 of the Civil Execution Act) – the enforcement authority seizes the debtor’s rights against a third party, whereby the creditor will be granted the right to collect amounts due to the debtor from the third party, in accordance with the procedures prescribed by the Civil Execution Act.
- (ii) If the obligation is for surrender, the execution authority may seize the debtor’s property and turn it over to the creditor (Articles 168–170 of the Civil Execution Act).

**b. Execution by Substitution**

If the debtor’s enforceable obligation can be performed by a person other than the debtor, such obligation may be performed via a substitute person and the expenses thereof will be borne by the debtor (Article 171 of the Civil Execution Act).

**c. Indirect Compulsion**

If the nature of the debtor’s obligation is specific to the debtor, such that performance by any other person is impossible, the enforcement authority may order the debtor to pay money of a certain amount that is found to be reasonable for securing the performance of the obligation according to the period of the delay, or immediately if the obligor fails to perform the obligation within a certain period that is found to be reasonable (Article 172 of the Civil Execution Act). In Japan, compulsion by imprisonment is not allowed.

## 5 Other Matters

**5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments or awards? Please provide a brief description.**

There have been no particular legal developments relevant to the recognition and enforcement of foreign judgments or awards in the last 12 months.

**5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment or award in your jurisdiction?**

As mentioned under question 2.2 above, in Japan, service by means of personal delivery is not allowed and the validity of service by means of certified/registered mail is questionable. As such, it would be prudent for a person who desires to enforce a foreign court’s judgment in Japan to serve a complaint and/or summons in accordance with the Hague Service Convention or the Hague Convention on Civil Procedure of 1954, whichever is applicable to that foreign country.

In addition, as mentioned in question 2.2 above, the Japanese courts have not recognised the judgments of certain foreign countries due to lack of reciprocity. For a contract to which a company of those countries is a party, as a matter of practice, it is advisable to check the latest court cases regarding enforcement judgments and to consider designating arbitration as a dispute resolution method in that contract.

**Hironobu Tsukamoto**

Nagashima Ohno & Tsunematsu NY LLP  
Carnegie Hall Tower  
152 West 57<sup>th</sup> Street, 37<sup>th</sup> Floor  
New York, NY 10019-3310  
USA

Tel: +1 212 258 3333  
Email: [hironobu\\_tsukamoto@noandt.com](mailto:hironobu_tsukamoto@noandt.com)  
URL: [www.noandt.com/en](http://www.noandt.com/en)

Hironobu Tsukamoto is a partner at Nagashima Ohno & Tsunematsu and is currently working at its NY office. He specialises in litigation and arbitration of a broad range of commercial disputes, employment disputes and intellectual property disputes. Mr. Tsukamoto counsels and represents both domestic and foreign clients. He is also experienced in advising clients on non-contentious general corporate matters including employment law issues and intellectual property matters. Mr. Tsukamoto also counsels clients regarding employment law issues arising in relation to M&A transactions.

He graduated with an LL.B. from Kyoto University in 1998 and with an LL.M. from the University of Chicago in 2005. He was admitted to practise law in Japan in 2000 and in New York in 2006, and worked at Weil, Gotshal & Manges (Silicon Valley) from 2005 to 2007.

**Eriko Ogata**

Nagashima Ohno & Tsunematsu (Tokyo Office)  
JP Tower, 2-7-2 Marunouchi  
Chiyoda-ku, Tokyo 100-7036  
Japan

Tel: +81 3 6889 7000  
Email: [eriko\\_ogata@noandt.com](mailto:eriko_ogata@noandt.com)  
URL: [www.noandt.com/en](http://www.noandt.com/en)

Eriko Ogata is a partner at Nagashima Ohno & Tsunematsu from 2016. Her practice focuses on dispute resolution, including domestic and cross-border litigation and arbitration. She is experienced in a wide range of commercial dispute matters and has represented both domestic and foreign clients.

She earned an LL.B. degree from the University of Tokyo in 2003 and an LL.M. degree from Duke University School of Law in 2010.

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)