

# International Comparative Legal Guides



Practical cross-border insights into the enforcement of foreign judgments

## Enforcement of Foreign Judgments 2022

Seventh Edition

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# Japan

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## 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
None.	Not applicable.	Not applicable.

## 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?

The Code of Civil Procedure (Act No. 109 of 1998, the “CCP”) and the Civil Execution Act (Act No. 4 of 1979, the “CEA”) are the primary legal sources which provide for the requirements and the procedures for recognising and enforcing a foreign judgment in Japan. Judicial precedents function as a secondary legal source which construes and complements the legislative sources.

Japan is neither a party nor a signatory to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments, including the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

Pursuant to Article 118 of the CCP and Article 24, section 5 of the CEA, a foreign judgment must be “final and binding” for it to be recognised and enforced in Japan. Therefore, forms of interim relief such as provisional attachments or provisional dispositions which are rendered by a foreign court are not enforceable *per se*. Specific performance and permanent injunctions are enforceable as long as they are final and binding and the other applicable requirements are satisfied.

A foreign “judgment” under Article 24 of the CEA refers to any final judgment rendered by a foreign court regarding the private relationships of the parties under a guarantee of procedural due process, regardless of the name, procedure or format adopted by the foreign court. *See* Supreme Court, 28 April 1998, Heisei 6 (O) No. 1838 (“Sup. Ct. 1998”).

2.3 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 CCP sets out the following requirements for a final and binding foreign judgment to be effective (i.e., to be recognised) in Japan:

- “(i) the jurisdiction of the foreign court is recognised under laws, regulations, conventions or treaties;
- (ii) the defeated defendant has received a service (excluding a service by publication or any other service similar thereto) of summons or order necessary for the commencement of the suit, or has appeared without receiving such service;
- (iii) the contents of the judgment and the court proceedings are not contrary to public policy in Japan; and
- (iv) a mutual guarantee exists.”

The requirement under Article 118(i) is called “indirect jurisdiction”. This is “indirect” in the sense that the Japanese court will examine the foreign court’s jurisdiction over the case for which the foreign judgment at issue was rendered, and is distinct from “direct jurisdiction”, where the Japanese court will determine whether the Japanese court itself has jurisdiction over the case. In Article 118(i) of the CCP, it is not clear whether the phrase “laws [and] regulations” means laws and regulations of Japan or those of the country where the foreign judgment was rendered. Prior to the amendment of the CCP in 2012, which added the provisions regarding the Japanese court’s international jurisdiction (i.e., Articles 3-2 to 3-12 of the CCP), Sup. Ct. 1998 ruled that in determining the existence of indirect jurisdiction, it is appropriate to refer to the rule of reason, taking into account the principles of fairness among the parties and the pursuit of appropriate and swift judgment. More specifically, Sup. Ct. 1998 ruled that indirect jurisdiction should be determined from the standpoint of whether it is appropriate to recognise the foreign judgment in Japan, considering the specific circumstances of the case and referring to the relevant provisions of the CCP. Although there is still no established conclusion on this issue after the amendment of the CCP in 2012, it is clear that, considering the ruling of Sup. Ct. 1998, a Japanese court will at least refer to and consider Articles 3-2 to 3-12 of the CCP when determining the indirect jurisdiction of a foreign court.

The “service” required under Article 118(ii) of the CCP need not be the service under the Japanese civil procedure, but the service must be done such that: (a) the defendant can actually be aware of the commencement of the legal proceedings against him/her; (b) he/she is not prevented from the appropriate exercise of the right to defence; and (c) the service complies with applicable conventions or treaties. *See* Sup. Ct. 1998. In addition, the requirement of service under Article 118(ii) of the CCP can also be satisfied if the unsuccessful defendant has “appeared”

in court. The term “appearance” means that the defendant was given the opportunity to defend and actually took measures to defend himself/herself in court, including the submission of a jurisdictional challenge. *See* Sup. Ct. 1998.

As for the “public policy” requirement under Article 118(iii) of the CCP, the foreign judgment must not be against public policy in Japan. It is generally considered that both the contents of the foreign judgment itself and the underlying facts upon which the judgment is based are to be examined to determine whether they are contrary to public policy in Japan. Typical examples are judgments ordering the payment of gambling debts and those ordering the payment of punitive damages, although the conclusions are dependent on the individual facts of each case.

The “mutual guarantee” requirement under Article 118(iv) means reciprocity, which requires that, in the foreign country where the foreign judgment was rendered, the same type of judgment rendered by a Japanese court would be effective under conditions which are not substantially different from those in Japan, i.e., Article 118 of the CCP. *See* Supreme Court, 7 June 1983, Showa 57 (O) No. 826.

### Requirements for enforcement

To enforce a foreign judgment, it is necessary to first obtain an execution judgment from a Japanese court under Article 24 of the CEA and then to file a petition for compulsory execution based on the execution judgment. However, despite the necessity to comply with those specific procedures, the requirements for enforcement actually overlap with those for recognition. Article 24, section 4 of the CEA clarifies that an execution judgment shall be made without investigating whether or not the content of the foreign judgment is appropriate, and then Article 24, section 5 of the CEA provides that an action seeking an execution judgment for a foreign judgment shall be dismissed when: (a) it is not proved that the foreign judgment has become final and binding; or (b) the foreign judgment does not satisfy the requirements of Article 118 of the CCP (i.e., the requirements for recognition).

#### 2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

Article 24, section 1 of the CEA provides that an action seeking an execution judgment for a foreign judgment shall be under the jurisdiction of the Japanese district court which has jurisdiction over the location of the “general venue” of the foreign judgment obligor; if there is no such general venue of the foreign judgment obligor in Japan, then it shall be under the jurisdiction of the Japanese district court which has jurisdiction over the location of the subject matter of the claim or the seizable property of the judgment obligor.

If the foreign judgment obligor is a natural person, the “general venue” of the judgment obligor is determined by: (a) the person’s domicile; (b) the person’s residence (i.e., non-permanent place of living) if the person is not domiciled in Japan or his/her domicile is unknown; or (c) the person’s last domicile in Japan if the person does not have a residence in Japan or his/her residence is unknown. *See* Article 4, section 2 of the CCP.

If the foreign judgment obligor is a corporation or any other association or foundation, the “general venue” of the judgment obligor is determined by: (a) the location of its principal office or business office; or (b) the domicile of its representative or any other principal person in charge of its business if it has no business office or other offices in Japan. *See* Article 4, section 4 of the CCP.

As noted above, even when there is no general venue of the foreign judgment obligor in Japan, if the subject matter of the

claim or the seizable property of the judgment obligor is located in Japan, the Japanese district court with jurisdiction over the location of the property has jurisdiction over the action seeking the enforcement of the foreign judgment. For example, when the claim of a foreign judgment regards real property in Japan, the district court with jurisdiction over the place of that real property shall have jurisdiction over the action seeking the enforcement of the foreign judgment. Also, if a foreign judgment obligor has seizable real property or a bank account in Japan, the district court which has jurisdiction over the location of the real property or the bank office has jurisdiction over the action seeking enforcement of the foreign judgment.

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

The legal effects of the recognition of a foreign judgment are considered to be the expansion of the legal effects of the judgment made by the foreign court (e.g., *res judicata*) to Japan. In Japan, a foreign judgment is recognised without any specific procedure as long as it satisfies the requirements of Article 118 of the CCP.

On the other hand, the legal effect of the enforcement of a foreign judgment is considered the authorisation to execute the foreign judgment in Japan. To enforce a foreign judgment in Japan, it is necessary to obtain an execution judgment from a Japanese court and then file a petition for compulsory execution based on such judgment, although the requirements for enforcement and for recognition actually overlap.

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

As explained in question 2.5 above, a foreign judgment is recognised without any specific procedure in Japan, as long as it satisfies the requirements of Article 118 of the CCP.

For enforcement, the judgment creditor who wants the execution of a foreign judgment in Japan must first file a lawsuit, before a competent district court of Japan, against the judgment obligor to seek an execution judgment. *See supra*, question 2.4 regarding jurisdiction and question 2.3 for the requirements for an execution judgment. If an execution judgment for a foreign judgment is issued and becomes final and binding, the judgment creditor may file a motion for compulsory execution with the competent execution court, where the compulsory execution shall be carried out based on the foreign judgment and the execution judgment therefor. *See* Article 22(vi) of the CEA.

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

The recognition/enforcement of a foreign judgment can be challenged if it does not satisfy any of the requirements explained in question 2.3.

As set out in Article 24, section 4 of the CEA, an execution judgment for a foreign judgment will be made without investigating whether the content of the foreign judgment is appropriate. Therefore, the judgment obligor is, as a general rule, not entitled to raise a substantive issue to challenge recognition or enforcement. However, an action seeking an execution judgment for a foreign judgment will be dismissed if it does not satisfy the requirements of Article 118 of the CCP. *See supra*.

This means that a judgment obligor can raise a substantive issue by alleging that the content of that foreign judgment is contrary to public policy in Japan. *See* Article 118(iii) of the CCP.

Article 118(iii) is a very general and vague requirement, which may change with the times. So far, judgments ordering the payment of gambling debts or punitive damages are considered to be contrary to public policy in Japan, but this view may change in the future.

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

Japan does not have a framework relating to specific subject matters.

**2.9 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?**

For scenario (a), where there is a conflicting Japanese judgment between the exact same parties relating to the same issue, the foreign judgment will not be recognised on the ground that it is contrary to public policy in Japan. *See* Article 118(iii) of the CCP. Although there is no Supreme Court judgment, there is a 1977 Osaka District Court judgment on the matter. *See* Osaka District Court, 22 December 1977, Showa 50 (WA) No. 4257 and Showa 51 (WA) No. 5135 (“Osaka Ct. 1977”). In this case, the Osaka District Court did not grant the petition for the enforcement of a foreign judgment, stating that:

*“[I]t is to disrupt the order of legal system as a whole if the existence of two judgments which conflict with each other in the same legal system is allowed. Therefore, regardless of which is the first to be brought, to be rendered, or to become final and binding, it is against the order of the Japanese court procedural laws and is ‘contrary to public policy in Japan’ under Article 200(iii) of the Civil Procedural Act [note: now, Article 118(iii) of the CCP] to recognise a foreign judgment which conflicts with a Japanese judgment relating to the same issue between the same parties when that Japanese final and binding judgment has already been rendered.”*

It is worth noting that, although the Osaka Ct. 1977 determined that a foreign judgment which conflicts with a Japanese judgment will not be recognised and enforced “regardless of which is first to be brought, to be rendered, or to become final and binding”, there is continuing discussion as to whether this ruling applies to cases where the conflicting Japanese judgment is rendered after the foreign judgment has become final and binding.

In scenario (b), where there are local proceedings pending between the parties, the foreign judgment can be recognised and enforced. In that case, there is no judgment yet in the Japanese proceedings and, therefore, there is no basis to conclude that the foreign judgment conflicts with the results of the Japanese proceedings, which is a situation totally different from Osaka Ct. 1977.

**2.10 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?**

A foreign judgment which conflicts with Japanese law will likely not be recognised on the ground that it is contrary to public policy in Japan. *See* Article 118(iii) of the CCP.

On the other hand, a foreign judgment may be recognised and enforced even if there is a prior Japanese judgment on the same or a similar issue but between different parties. In Japan, court judgments do not have a binding effect, while they can have a persuasive authority. Thus, a local judgment which conflicts with a foreign judgment, involving different parties, even on the same or a similar issue, does not have a definitive effect in the consideration of the recognition of the foreign judgment. Having said that, it is also possible for a court to dismiss an action for the enforcement of a foreign judgment on the ground that it is contrary to public policy in Japan (Article 118(iii) of the CCP), if the court concludes that the recognition of that foreign judgment would bring disorder to the Japanese legal system.

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

Even if a foreign judgment purports to apply Japanese law, it will not make any difference to the Japanese court's approach to recognition and enforcement, and the rules under Article 24 of the CEA and Article 118 of the CCP, as explained above, will apply. However, an action seeking the enforcement of a foreign judgment will not be granted if the application of Japanese law is definitely incorrect such that it may be seen as contrary to public policy in Japan.

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

There are none.

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

An action for the enforcement of a foreign judgment will be time-barred after 10 years from the date when the foreign judgment is rendered. *See* Article 169-1 of the Japanese Civil Code (Act No. 89 of 1887, as amended).

### 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?

*See* question 2.6. When a judgment creditor has obtained an execution judgment that has become final and binding, he/she is entitled to file a motion for compulsory execution with the competent execution court, where the compulsory execution shall be carried out based on the foreign judgment and the execution judgment.

## 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? Please provide a brief description.

On 24 March 2021, an enforcement judgment was issued regarding a case of debt made through gambling. The plaintiff in this case was a casino operator running cruise trips with

casino games, and the defendant was a Japanese individual who boarded the cruise ship and owed money for such games operated by the plaintiff. *See* Tokyo District Court, 24 March 2021, Heisei 28 (WA) No. 41684 (“Tokyo Ct. 2021”). In this case, the Tokyo District Court granted the petition for enforcement of a foreign judgment, highlighting that: (i) the plaintiff had made efforts not to loan an excessive amount to the defendant by checking his identity and assets; (ii) the contents of the agreement were not contrary to public policy in Japan, other than that the loan was for gambling; and (iii) whether or not casinos and loans for that purpose are legalised will depend on a government decision.

While this judgment was rendered by a district court, it can be considered proof that the interpretation of “public policy” changes over time.

**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 in your jurisdiction?

It is worth noting that a 1990 Tokyo District Court judgment ruled that a translation of the service of process must be attached, and that the lack of translation is a failure to meet the “service” requirement under Article 118(ii) of the CCP. *See* Tokyo District Court, 26 March 1990, Showa 62 (WA) No. 12503. Although this is not a Supreme Court decision and is relatively old, it is advisable to follow the decision and attach a translation into a language known to the defendant if there is the possibility that there may be a need to enforce the judgment in Japan.



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