



# Enforcement of Foreign Judgments

in 29 jurisdictions worldwide

# 2014

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### Enforcement of Foreign Judgments 2014

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
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First published 2011

Third edition

ISSN 2048-464X

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# Japan

## Masahiro Nakatsukasa

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### 1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

No, Japan is not a party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments.

### 2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

There is nothing resembling a federal legal system in Japan; as a result, the courts apply the same laws in a uniform manner across the country. A foreign judgment will be recognised if it satisfies the requirements listed in article 118 of the Code of Civil Procedure (CCP) and will be enforceable if an execution judgment with respect to the foreign judgment is obtained pursuant to article 24 of the Civil Execution Act (CEA).

### 3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

In Japan, a civil law country, legislation constitutes the primary source of law. With respect to the enforcement of foreign judgments, the CCP and the CEA are the relevant laws. However, because these statutory laws only stipulate general rules, judicial precedents are looked to as secondary sources of law to help construe the general rules.

A foreign judgment will be recognised if it satisfies the requirements stipulated in article 118 of the CCP, and no additional registration procedure is required. Satisfaction of those requirements will be adjudicated by the court in a procedure seeking an execution judgment under article 24 of the CEA. Article 118 of the CCP states that:

*A final and binding judgment rendered by a foreign court shall be effective only where it meets all of the following requirements:*

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

In order to enforce a foreign judgment, the claimant must file an action against the obligor or defendant in the foreign judgment and obtain an execution judgment with respect to the foreign judgment under article 24 of the CEA. Article 24 of the CEA states that:

- (1) *An action seeking an execution judgment on a judgment of a foreign court shall be under the jurisdiction of the district court having jurisdiction over the location of the general venue of the obligor, and when there is no such general venue, it shall be under the jurisdiction of the district court having jurisdiction over the location of the subject matter of the claim or the seizable property of the obligor.*
- (2) *An execution judgment shall be made without investigating whether or not the judicial decision is appropriate.*
- (3) *The action set forth in paragraph (1) shall be dismissed without prejudice when it is not proved that the judgment of a foreign court has become final and binding or when such judgment fails to satisfy the requirements listed in the items of article 118 of the Code of Civil Procedure.*
- (4) *An execution judgment shall declare that compulsory execution based on the judgment by a foreign court shall be permitted.*

After an execution judgment is obtained, the underlying foreign judgment will be enforceable.

### 4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Not applicable. Japan is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

### 5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

There is no explicit statutory limitation for the enforcement of a foreign judgment. However, the rights established by a judgment of a Japanese court are subject to a limitation of 10 years (Civil Code, article 174-2) commencing from the time the judgment becomes final and binding (Civil Code, article 157(2)).

Thus, if a claimant sought, with respect to a foreign judgment, an execution judgment more than 10 years after the time the foreign judgment had become final and binding, and if the Japanese

court granted an execution judgment, the foreign judgment would enjoy stronger enforceability than a judgment originally issued by a Japanese court. As such a result would likely be considered contrary to the public policy requirement, it is unlikely that a court would actually grant such an execution judgment. This would be true even in a case where the statutory limitation for the enforcement of the foreign judgment in its original foreign jurisdiction was longer than 10 years.

In the reverse situation, where an action for an execution judgment was sought in respect of a foreign judgment that was outside the statutory limitation period in its original foreign jurisdiction but which was not outside the Japanese limitation period of 10 years, the public policy requirement would probably not prevent the execution judgment being granted. That said, the defendant in such action might argue that the foreign judgment had already become unenforceable in the foreign jurisdiction and, as a consequence, fails to meet the other requirements under article 118 of the CCP.

## 6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

A foreign judgment or order will only be enforceable if a corresponding execution judgment has issued under the CEA. Thus, in regard to the kind of remedies that are enforceable, the restrictions on judgments under the CEA will govern the remedies available.

The CEA allows a compulsory execution of a claim for payment of money (CEA, section 2) and for a claim of delivery, surrender or eviction of real property or moveables (CEA, section 3).

A claim for specific performance (an order of court requiring a party to perform a specific act) is treated as follows:

- the claimant may request the court to order specific performance provided that the nature of the obligation is one that permits such enforcement (CEA, articles 168 to 170);
- if the nature of the obligation can be performed by a third party, the claimant may request the court to cause a third party to perform the obligation at the expense of the obligor (CEA, article 171); and
- regardless of whether the obligation can be performed by a third party, the claimant may request that the court demand that the obligor pay a reasonable amount of money to secure performance (CEA, articles 172 to 173).

As discussed in question 11, in order to be recognised, a foreign judgment must be final. Thus, if an injunction order can be appealed, such an order does not meet the requirements for issuance of an execution judgment.

## 7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

A claimant seeking to obtain an execution judgment in order to enforce a foreign judgment must file a suit against the obligor in the district court having jurisdiction over the location of the obligor (as in ordinary civil cases). If it is not possible to determine such a location, the proper jurisdiction will be with the district court having jurisdiction over the location of the subject matter of the claim or the obligor's property to be seized (CEA, article 24(1)).

After an execution judgment has been issued, and depending on the subject matter, the claimant can file a motion for compulsory execution with the district court that has jurisdiction.

## 8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

A foreign judgment will be recognised if it satisfies the requirements stipulated in article 118 of the CCP. No additional registration procedure is required. However, in order for a foreign judgment to be enforceable an execution judgment must be obtained, as discussed in more detail in question 3. In practice, satisfaction of the article 118 requirements will be adjudicated by the court in the action seeking an execution judgment.

In other words, the recognition of a foreign judgment will be adjudicated in the process of seeking its enforcement.

## 9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

No. A defendant cannot raise merit-based defences to liability or to the scope of the award in the foreign jurisdiction (although see response to question 24). The CEA states that 'an execution judgment shall be made without investigating whether or not the judicial decision is appropriate' (CEA, article 24(2)).

However, if the claim has lapsed, become extinct, was discharged or otherwise revised after the foreign judgment was issued, the defendant can raise these defences in the proceedings seeking an execution judgment.

## 10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

No. Japanese law does not vest courts with a general power to award injunctive relief and there is no relevant injunction that could be sought by a party to a foreign judgment to prevent that judgment's enforcement.

However, parties to foreign proceedings can use other mechanisms to achieve a similar result. As discussed in the response to question 20, Japanese courts will not enforce final foreign judgments that conflict with final Japanese judgments. A party can seek to take advantage of this by commencing litigation in Japan (eg, seeking declaratory judgment) in respect of a matter that is before a foreign court. Courts will refuse to enforce the foreign judgment even if the foreign proceedings were commenced prior to the Japanese proceedings (Osaka District Court, 22 December 1977, Showa 50 (Wa) No. 4257).

Note also that a stay order can be obtained while an appeal is being made in respect of an execution judgment (see question 26).

## 11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

As noted in question 3, article 118 of the CCP stipulates the requirements for recognition of a foreign judgment. The following five requirements are mandatory:

- the final and binding requirement;
- the jurisdiction requirement;
- the service requirement
- the public policy requirement; and
- the reciprocity requirement.

The final and binding requirement requires that the judgment be a final and binding judgment of a foreign court. Final and binding

means that the judgment cannot be appealed based on normal procedures in the respective foreign country. 'Foreign court' is not defined in the CCP but is understood to mean a judicial body in the foreign country that exercises judgment over civil disputes (it is not necessary that the Japanese government recognise the country as a 'country'). 'Judgment' means a judgment by a court in proceedings over a civil dispute between or among the parties that guarantees each party the right to attend and be heard. A summary judgment may be considered a 'judgment' if its proceedings took place within an adversarial system.

The jurisdiction requirement specifies that the jurisdiction of the foreign court be recognised under laws, regulations, conventions or treaties (CCP, article 118(i)). Until recently, Japan lacked any express provisions of its domestic laws granting Japanese courts international jurisdiction and, as a result, courts had taken the view that this requirement was to be judged by the rule of reason (Supreme Court, 28 April 1998, Heisei 6 (O) No. 1838). However, under a recent amendment to the CCP, which took effect in 2012, international jurisdiction of Japanese courts is now expressly stipulated in particular situations (CCP, articles 3-2 to 3-12). Due to these amendments, Japanese courts may be more reluctant to recognise foreign courts as having jurisdiction over a matter than was previously the case in situations where the new provisions of the CCP vest jurisdiction in Japanese courts.

The service requirement specifies that service of process has been completed on the defendant (or that the defendant submitted to the proceedings by appearing). For Japanese courts to recognise such service as being completed, it is necessary for a summons or order to, in an understandable way, inform the defendant that legal proceedings will commence against him or her and provide sufficient information to defend the action (Supreme Court, 28 April 1998, Heisei 6 (O) No. 1838). Moreover, service must comply with any applicable conventions or treaties (see question 16).

The public policy requirement specifies that the content of the judgment and the foreign proceedings not be contrary to public policy in Japan. See questions 13, 18, 19, 20 and 24.

The reciprocity requirement specifies that the foreign country that has rendered the foreign judgment at issue guarantees that judgments by Japanese courts will be recognised and enforceable in that country under requirements materially similar to those under article 118 of the CCP.

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#### 12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

No.

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#### 13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

It is not required that the judicial proceedings in the foreign jurisdiction be the same as those in Japan. However, the public policy requirement of article 118(iii) of the CCP requires that due process be followed in the proceedings. Therefore, if the defendant's rights of defence are not substantially guaranteed in foreign proceedings, a judgment arising from those proceedings will not satisfy the public policy requirement. For example, foreign judgments coming from judicial systems not based on principles of an adversarial system, foreign judgments obtained by fraud or wrongful conduct or foreign judgments rendered through plainly evident misconduct or corruption of the foreign judge would likely be ineffective and an execution judgment would not be granted.

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#### 14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

Article 118(i) of the CCP requires that the foreign court have jurisdiction under laws, regulations, conventions or treaties (the jurisdiction requirement). As noted above in question 11, amendments to the CCP which took effect in 2012 expressly stipulate particular situations in which Japanese courts have international jurisdiction. Pursuant to those amendments, Japanese courts have personal jurisdiction over a defendant not only based on the defendant's domicile, residence or (in the case of a legal entity) place of business in Japan but also based on the facts of the case. For example, Japanese courts will have personal jurisdiction over the defendant if:

- in an action based on contract seeking damages or specific performance, the place of performance of contractual obligations is located in Japan (CCP, article 3-3(i));
- in an action in regard to property or assets, the location of the subject matter of the claim or the obligor's property to be seized is in Japan (CCP, article 3-3 (iii)); and
- in an action sounding in tort, the place of the tortious act is in Japan (CCP, article 3-3 (xiii)).

It is not yet clear what effect, if any, the changes to the CCP will have on the manner in which Japanese courts will view the jurisdiction of foreign courts.

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#### 15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

Article 118(i) of the CCP requires that the foreign court have jurisdiction under the laws, regulations, conventions or treaties (the jurisdiction requirement). However, this jurisdiction requirement does not require examining the subject-matter jurisdiction within the foreign country or jurisdiction.

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#### 16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Article 118(ii) of the CCP states that the defendant must have received service of the summons or order necessary for the commencement of the suit (or has appeared in the proceedings). Service by way of general publication is insufficient.

The Supreme Court has held that in order to recognise that the defendant has received service under article 118(ii) of the CCP, a summons or order must, in an understandable way, inform the defendant that legal proceedings will commence, and provide him or her with enough information to defend the action (Supreme Court, 28 April 1998, Heisei 6 (O) No. 1838). The Supreme Court also held that if the foreign country and Japan have entered into a treaty in regard to the methods of service, such methods of service must be followed pursuant to the treaty (or the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters if Japan and the foreign country are both parties to it). In this particular case, the direct service that was carried out by the consignee privately hired by the plaintiff was not effective, and thus did not meet the requirements of article 118(ii) of the CCP.

As for the original notice served on a foreign party in such jurisdiction, a translation of the notice may be required. The Tokyo District Court has held that a notice of summons to which a Japanese

translation was not attached that was served on a Japanese defendant residing in Hawaii did not satisfy the service requirement under the CCP. As a result, the court declined a request for an execution judgment with respect to the judgment rendered by the Hawaiian court (Tokyo District Court, 26 March 1991, Heisei 62 (Wa) No. 12503).

### 17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

Yes. The court will consider fairness and the relative inconvenience of the foreign jurisdiction to the defendants in the Japanese proceedings for execution judgment.

Article 118(i) of the CCP requires that '[t]he jurisdiction of the foreign court [be] recognised under laws or regulations or conventions or treaties' (the jurisdiction requirement). The Supreme Court has held that the jurisdiction requirement under the CCP requires that 'the foreign country to which the underlying foreign court belongs (the judgment country) must be recognised persuasively to have international jurisdiction over the case from the Japanese law standpoint' (Supreme Court, 28 April 1998, Heisei 6 (O) No. 1838). The Supreme Court explained that 'in the absence of statutory laws directly on the issue of international jurisdiction in Japan, as well as treaties or concrete general rules on the subject', the existence of international jurisdiction in the country of original judgment should be decided by the rule of reason based on the principles of fairness to the parties, due process and facilitation of judicial procedures, in reliance on the domestic rules of personal jurisdiction under the CCP, and from the standpoint of whether it is appropriate for Japan to recognise the underlying foreign judgment. Now that provisions relating to international jurisdiction do exist in the CCP, courts will likely consider fairness and the relative inconvenience of the foreign jurisdiction to the defendants based on these rules.

### 18 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Yes. The court will examine the foreign judgment for allegations of fraud in the course of reviewing the public policy requirement of article 118(iii) of the CCP in the proceedings for entry of an execution judgment.

Article 118(iii) of the CCP requires that both '[t]he content of the judgment and the court proceedings [be] not contrary to public policy in Japan' (the public policy requirement). In regard to the court proceedings, fairness of the judicial body, an adversarial system and due process are required. Accordingly, if fraud upon the defendant or the court is found, the request for an execution judgment will be denied.

### 19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Yes. Article 118(iii) of the CCP requires that both '[t]he content of the judgment and the court proceedings [be] not contrary to public policy in Japan' (the public policy requirement).

In this context, not only the contents of the foreign judgment, but also the underlying facts leading to such judgment may be examined to see whether they too are in accordance with the public policy of Japan (Tokyo District Court, 6 September 1969, Showa 43 (Wa) No. 15158). For example, a judgment ordering a payment of gambling debts would be against the public policy in Japan, and an execution judgment thereon would be denied.

### 20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

If the foreign judgment is in conflict with a final judgment issued in Japan, the request for an execution judgment in respect of the underlying foreign judgment will be denied regardless of whether the foreign judgment was issued before or after the judgment in Japan (Osaka District Court, 22 December 1977, Showa 50 (Wa) No. 4257). In the aforementioned case, the court considered that it would upset the very basis of the order of laws to recognise a foreign judgment that conflicted with a Japanese judgment and so be against public policy.

If the foreign judgment is in conflict with another foreign judgment, there are two different views: (1) that the prior judgment will be recognised over the subsequent judgment based on the principle of double jeopardy; and (2) that the subsequent judgment will be recognised over the prior judgment as if they both were domestic judgments. There is no case law on this issue, and neither view is dominant over the other.

### 21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

No. Under the CCP, the judgment will only be enforceable against the named debtor. That said, it may be possible to take steps to use the principles of agency or alter ego to sue a party other than the alleged wrongdoer in the foreign jurisdiction and then attempt to enforce this foreign judgment in Japan. However, it should be noted that it may be difficult to enforce such a judgment in Japan. The grounds under which the corporate veil may be pierced in Japan are limited and, accordingly, if the principles of agency or alter ego relied upon in the foreign jurisdiction expand the scope of the principle of piercing the corporate veil beyond that which has been recognised in Japan, a Japanese court may be reluctant to provide an execution judgment on the grounds that the foreign judgment conflicts with Japanese public policy (see question 24 relating to foreign judgments that award punitive damages for a similar issue).

### 22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

Article 24(2) of the CEA states that 'an execution judgment shall be made without investigating whether or not the judicial decision is appropriate.' Because examining the propriety of a judgment issued despite allegations that the parties had an agreement to use alternative dispute resolution is tantamount to investigating whether the judgment is appropriate or not, the court will not examine such an issue, except in cases where the underlying foreign judgment was issued by fraud on the defendant or the foreign court (rendering it unenforceable for being at odds with the public policy requirement of article 118(iii) of the CCP). See question 18.

### 23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

There is no prior, superior or more favourable foreign jurisdiction over any other foreign jurisdictions.

**24 Alteration of awards**

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

Yes. Under the public policy requirement of article 118(iii) of the CCP, the amount of damages rendered by the foreign judgment may be revised to conform to Japanese public policy.

Punitive damage awards offer an appropriate example. The Supreme Court has held that the mere fact that a part of the foreign judgment is based on a legal theory that Japan does not adopt does not necessarily lead to the conclusion that a foreign judgment violates the public policy requirement. However, if it is against the basic rules or basic theory of law in Japan, such a foreign judgment could be against the public policy pursuant to article 118(iii) of the CCP (Supreme Court, 11 July 1997, Heisei 5 (O) No. 1762). The Supreme Court in that case held that a punitive damages award under Californian law could be categorised as penal charges under the criminal law of Japan, and, being essentially different from compensation for damages under tort law, was against the basic rules or basic theory of law in Japan. Therefore, the foreign judgment was considered partially ineffective to the extent it permitted the punitive damages award.

**25 Currency, interest, costs**

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

No. The court does not convert the damage award to local currency. Interest and court costs will be recognised and assessed in the foreign judgment as long as the interest rate is not so high as to be against Japanese public policy.

**26 Security**

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

An execution judgment or a judgment denying entry of an execution judgment can be appealed like any other judgment (CEA, article 20; CCP, article 281).

If the court, by the claimant's request, admits and issues a declaration of provisional execution, the claimant can enforce the execution judgment before it becomes final (CCP, article 259). The defendant on the other hand can bring a motion to stay compulsory execution of the judgment by providing security (CCP, article 403; CEA, article 39).

If a declaration of provisional execution is not issued, the claimant needs to await enforcement until the execution judgment becomes final.

**27 Enforcement process**

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

A foreign judgment will be recognised if it satisfies the requirements stipulated in article 118 of the CCP, and the satisfaction of these requirements will be adjudicated by the court in an action for 'execution judgment' under article 24 of the CEA. Accordingly, both recognition and enforceability of a foreign judgment are adjudicated at the same time.

After obtaining an execution judgment, the claimant can file a motion for compulsory execution with the district court that has jurisdiction depending on the subject matter. For example, the district court that has jurisdiction over the location of the property to be seized. See question 7.

**28 Pitfalls**

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

In Japan, the service requirement can be a pitfall. As stated above, service of process must be formal and a summons or order must be understandable to the defendant. As explained in question 16, the Tokyo District Court has held that a Japanese translation must have accompanied the summons served on a Japanese defendant (Tokyo District Court, 26 March 1991, Heisei 62 (Wa) No. 12503). Although this holding has been criticised in the context where the defendant completely understands the language of the foreign jurisdiction, a failure to provide a translation of the summons or orders can lead to the unenforceability of the foreign judgment even though the other requirements have been met.



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| Acquisition Finance                  | Life Sciences                |
| Air Transport                        | Mediation                    |
| Anti-Corruption Regulation           | Merger Control               |
| Anti-Money Laundering                | Mergers & Acquisitions       |
| Arbitration                          | Mining                       |
| Asset Recovery                       | Oil Regulation               |
| Banking Regulation                   | Outsourcing                  |
| Cartel Regulation                    | Patents                      |
| Climate Regulation                   | Pensions & Retirement Plans  |
| Construction                         | Pharmaceutical Antitrust     |
| Copyright                            | Private Antitrust Litigation |
| Corporate Governance                 | Private Client               |
| Corporate Immigration                | Private Equity               |
| Data Protection and Privacy          | Product Liability            |
| Dispute Resolution                   | Product Recall               |
| Dominance                            | Project Finance              |
| e-Commerce                           | Public Procurement           |
| Electricity Regulation               | Real Estate                  |
| Enforcement of Foreign<br>Judgments  | Restructuring & Insolvency   |
| Environment                          | Right of Publicity           |
| Foreign Investment Review            | Securities Finance           |
| Franchise                            | Shipbuilding                 |
| Gas Regulation                       | Shipping                     |
| Insurance & Reinsurance              | Tax Controversy              |
| Intellectual Property &<br>Antitrust | Tax on Inbound Investment    |
| Labour & Employment                  | Telecoms and Media           |
| Licensing                            | Trade & Customs              |
|                                      | Trademarks                   |
|                                      | Vertical Agreements          |



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