



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2018

3rd Edition

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

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General Chapters:

1	Beyond Brexit: Recognition and Enforcement of Judgments between the UK and the EU – Louise Freeman & Chiz Nwokonkor, Covington & Burling LLP	1
2	European Union – Sébastien Champagne & Vanessa Foncke, Jones Day	6

Country Question and Answer Chapters:

3	Albania	Boga & Associates: Gerhard Velaj & Eno Muja	12
4	Angola	N-Advogados & CM Advogados: Nuno Albuquerque & Conceição Manita Ferreira	16
5	Australia	MinterEllison: Beverley Newbold & Tamlyn Mills	21
6	Austria	Konrad & Partners: Dr. Christian W. Konrad & Philipp A. Peters	27
7	Belgium	Linklaters LLP: Joost Verlinden & Nino De Lathauwer	34
8	Brazil	Pinheiro Neto Advogados: Renato Stephan Grion & Guilherme Piccardi de Andrade Silva	40
9	Canada	Blake, Cassels & Graydon LLP: Erin Hoult & Daniel Styler	47
10	China	Linklaters LLP: Justin Tang	53
11	Cyprus	Montanios & Montanios LLC: Yiannis Papapetrou	58
12	Czech Republic	Gürlich & Co.: Richard Gürlich & Kamila Janoušková	64
13	England & Wales	Covington & Burling LLP: Louise Freeman & Chiz Nwokonkor	69
14	France	Archipel: Jacques-Alexandre Genet & Michaël Schlesinger	75
15	Germany	Herbert Smith Freehills Germany LLP: Catrice Gayer & Sören Flecks	81
16	Hong Kong	Gall: Nick Gall & Lydia Mak	88
17	India	Jafa & Javali, Advocates: Kirit S. Javali	93
18	Ireland	Matheson: Julie Murphy-O'Connor & Gearóid Carey	98
19	Italy	Legance – Avvocati Associati: Daniele Geronzi & Stefano Parlatore	105
20	Japan	Chuo Sogo Law Office, P. C.: Masahiro Nakatsukasa	111
21	Kenya	TripleOKlaw Advocates LLP: John M. Ohaga & Gloria Mwika	116
22	Kosovo	Boga & Associates: Sokol Elmazaj & Delvina Nallbani	121
23	Liechtenstein	GASSER PARTNER Attorneys at Law: Thomas Nigg & Domenik Vogt	126
24	Luxembourg	Bonn Steichen & Partners: Fabio Trevisan & Laure-Hélène Gaicio-Fievez	132
25	Macedonia	Polenak Law Firm: Tatjana Popovski Buloski & Aleksandar Dimic	137
26	Malaysia	Rahmat Lim & Partners: Jack Yow & Daphne Koo	141
27	Myanmar	Allen & Gledhill (Myanmar) Co., Ltd.: Minn Naing Oo	147
28	Netherlands	Stek: Gerben Smit & Max Hettterscheidt	151
29	Norway	Simonsen Vogt Wiig: Tage Brigit A. Skoghøy & Ørjan Salvesen Haukaas	156
30	Portugal	N-Advogados & CM Advogados: Nuno Albuquerque & Filipa Braga Ferreira	161
31	Russia	Lex Navicus Concordia: Konstantin Krasnokutskiy & Alexey Drobyshv	167
32	Singapore	Allen & Gledhill LLP: Tan Xeauewei & Melissa Mak	174
33	South Africa	Herbert Smith Freehills South Africa LLP: Jonathan Ripley-Evans & Fiorella Noriega Del Valle	180

Continued Overleaf →

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34	Switzerland	Bär & Karrer Ltd.: Saverio Lembo & Aurélie Conrad Hari	187
35	Taiwan	Brain Trust International Law Firm: Hung Ou Yang & Jia-Jun Fang	194
36	Turkey	Esenyel Partners Lawyers & Consultants: Selcuk S. Esenyel	198
37	United Arab Emirates	Fichte & Co: Alessandro Tricoli & Jasamin Fichte	203
38	USA	Williams & Connolly LLP: John J. Buckley, Jr. & Ana C. Reyes	208

EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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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.	None.	None.

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?**

As a civil law country, Japan's main source of law is legislation. The Code of Civil Procedure ("CCP") and Civil Execution Act ("CEA") are the two most relevant laws for the enforcement of foreign judgments. Judicial precedents are a secondary source of laws used to construe the statutes.

Japan is not a party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments, including the Hague Convention on 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?**

To be capable of recognition and enforcement, a foreign judgment must satisfy the requirements of Article 118 of the CCP. Whether these requirements are satisfied will be determined by the court in an action for "execution judgment" under Article 24 of the CEA. Further, the CEA must issue an execution judgment for a foreign judgment to be enforced. In essence, a foreign judgment's recognition and enforcement are determined simultaneously.

The final major requirement for recognition is that a foreign judgment (or order, such as an injunction) must be final, i.e. non-appealable.

- 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 governs the requirements for the recognition of foreign judgments. Whether the specified requirements are satisfied is determined by the court in a procedure to seeking enforcement of such foreign judgment under Article 24 of the CEA. The specific requirements under Article 118 are as follows:

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, regulations, 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.*

More particular details for certain requirements and definitions are discussed below.

Final and Binding. The final and binding requirement requires that the judgment be a final and binding judgment of a foreign court. In other words, the judgment cannot be appealed based on existing procedures in the foreign country of judgment. Although not defined in the CCP, a "foreign court" is generally understood as being a juridical body in a foreign country authorised to exercise authority in disputes. A "judgment" refers to a determination in court proceedings involving a civil dispute between parties who are each guaranteed the right to participate in and have their grievance heard. A summary judgment issued in adversarial proceedings may be considered a "judgment" under CCP Article 118.

Jurisdiction. Article 118(i) of the CCP requires that the foreign court's jurisdiction be recognised under laws, regulations, conventions or treaties. However, it was only recently in 2012 that Japanese courts became able to exercise international jurisdiction. Prior to this, there was no express provision in Japanese laws granting Japanese courts international jurisdiction. Consequently, this jurisdiction requirement was judged based on the rule of reason (Supreme Court, 28 April 1998, Heisei 6 (O) No. 1838). However, the CCP was amended in 2012 to expressly provide for the exercise of international jurisdiction by Japanese courts (CCP, Articles 3–2 to 3–12).

Service Requirement. The service of process must be completed on the defendant (or *in lieu*, in case the defendant otherwise submits to the jurisdiction of the court by appearing at the proceeding). To be deemed complete, the service must commence with a summons or order informing the defendant in an understandable manner 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). Further, the service must comply with any applicable conventions or treaties.

No Contravention of Public Policy. Neither the contents of a foreign judgment nor the foreign proceedings may contravene Japanese public policy requirements. In this context, the contents of the foreign judgment as well as the underlying facts upon which the judgment is based may be examined to determine whether they are consistent 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 contrary to the public policy in Japan, and for that reason could not be enforced.

Reciprocity. This requires that the foreign country where the foreign judgment was rendered will extend mutuality to Japanese judgments, so that judgments by Japanese courts will be recognised and enforceable in that country under requirements substantially similar to those under Article 118 of the CCP.

Procedural Equivalence. As a public policy matter, Article 118(iii) of the CCP requires that due process be observed in the foreign proceedings. Accordingly, if a defendant's rights of defence are not substantially guaranteed in foreign proceedings, a judgment rendered in those proceedings would not satisfy the public policy requirement and therefore could not be enforced. For example, foreign judgments from judicial systems lacking the principles of an adversarial system, foreign judgments obtained by fraud or wrongful conduct, and foreign judgments rendered through obvious misconduct or corruption of the foreign judge are not likely to be consistent with Japan's public policy and therefore an execution judgment would not be granted.

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 3–2 to 3–12 of the CCP provide for the exercise of international jurisdiction by Japanese courts. In essence, the Japanese courts have jurisdiction over the following actions (please see the aforesaid Articles for details):

- an action against a person domiciled or resident in Japan, or if they are unknown, was domiciled in Japan before the action was filed (unless the person has been domiciled in a foreign country after last being domiciled in Japan);
- an action against a corporation or any other association or foundation whose principal office or business office is located in Japan, or if they are unknown, whose representative or other person principally in charge of its business is domiciled in Japan;
- an action on a claim for the performance of a contractual obligation; on a claim involving a benevolent intervention in another's affairs that has been done, or unjust enrichment that has arisen, in connection with a contractual obligation; on a claim for damages due to non-performance of a contractual obligation; or on any other claim involving a contractual obligation: if the contractually specified place for performance of the obligation is within Japan, or if the law of the place adopted under the contract gives a place within Japan as the place for performance of the obligation;

- an action on a property right: if the subject matter of the claim is located within Japan, or if the action is a claim for the payment of monies, and seizable property of the defendant is located within Japan (except when the value of such property is extremely low);
- an action against a person with an office or a business office, which is filed in connection with the business conducted at that person's office or business office: if said office or business office is located within Japan;
- an action against a person that conducts business in Japan (that continually carries out transactions in Japan): if said action involves the business that the person conducts in Japan;
- an action for a tort: if the place where the tort occurred is within Japan (except where the consequences of a wrongful act committed in a foreign country have arisen within Japan but it would not ordinarily have been possible to foresee those consequences arising within Japan); and
- an action related to real property: if the real property is located within Japan.

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

A foreign judgment will be recognised if it meets the requirements set forth in Article 118 of the CCP discussed in question 2.3 above. No additional registration procedure is required. However, an execution judgment must be obtained for the enforcement of a foreign judgment to be enforceable. In practice, the determination as to whether the Article 118 requirements have been met will be determined simultaneously by the court adjudicating the action seeking an execution judgment. In short, the recognition of a foreign judgment will be adjudicated in the same process of seeking its enforcement.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment 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. A claimant desiring to obtain an execution judgment 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 the location cannot be determined, the district court having subject matter jurisdiction of the claim or the obligor's property will be the competent court. 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.

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

A defendant is not entitled to raise substantive objections or challenges to liability or to the scope of an award or jurisdictions made in a foreign jurisdiction. To this point, the CEA states that "an execution judgment shall be made without investigating whether or not the judicial decision is appropriate" (CEA, article 24(2)).

Nonetheless, where a 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.

With respect to the amount and the type of damages, the amount of damages awarded by a foreign court may be revised under the public policy requirement of Article 118(iii) of the CCP for the sake of consistency with Japanese public policy.

Punitive damage awards offer an apt example. The Japanese Supreme Court has held that foreign judgments based on a legal theory that not been adopted in Japan does not automatically mean that such foreign judgment violates Japan's public policy requirement. However, if the foreign judgment is contrary to Japan's basic rules or basic theory of law in Japan, such foreign judgment could be in violation of Japan's public policy pursuant to Article 118(iii) of the CCP. (Supreme Court, 11 July 1997, Heisei 5 (O) No. 1762). In that case, the Supreme Court held that punitive damages awarded under California law could be deemed the equivalent of a penal charge under Japanese criminal laws which was against the basic rules or basic theory of law in Japan, and therefore could only be partially enforced (i.e., without giving effect to the punitive damages award).

Finally, even though a court may not make an investigation concerning the appropriateness of a foreign judgment, the court may 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. Accordingly, if fraud upon the defendant is found, the request for an execution judgment will be denied.

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

Please see question 2.1 above.

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?

If the foreign judgment conflicts with a final judgment from a Japanese court, the request for an execution judgment of the foreign judgment will not be granted. This is without regard to whether the foreign judgment was issued before or after the Japanese judgment (Osaka District Court, 22 December 1977, Showa 50 (Wa) No. 4257). In this case, the court took into consideration that recognising a foreign judgment that conflicts with a Japanese judgment would upset the very basis of the rule of laws, and as such would be contrary to Japanese public policy.

Please note that if the foreign judgment conflicts with another foreign judgment, there are two prevalent but different views. The first view is that the earlier judgment will be recognised over the subsequent judgment based on the principle of double jeopardy. The second view is that the subsequent judgment will be recognised over the prior judgment and given effect as though they were both domestic judgments. There is no case law clarifying or reconciling these two views and neither view is given more weight than the other.

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?

If a foreign judgment conflicts with a Japanese law, it would certainly be contrary to Japanese public policy. Accordingly, it will not be recognised under Article 118 of the CCP. This would be the same if a foreign judgment conflicts with prior Japanese judgments on the same or a similar issue. Provided, however, the claimant could challenge that such prior judgments have not yet been recognised as public policy or there would be different prior judgments.

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 the Japanese laws, the same rule applies under Article 118 of the CCP.

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.

Japan does not have a federal legal system. This means that the courts apply the same laws in a uniform manner throughout Japan. A foreign judgment will be recognised by any court in Japan if it satisfies the requirements listed in Article 118 of the CCP, and will be enforceable if an execution judgment with respect to the foreign judgment is obtained pursuant to Article 24 of the CEA.

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

Although there is no fixed statutory limitation for the enforcement of a foreign judgment, any rights established by a judgment of a Japanese court are subject to a limitation of 10 years (Civil Code, Article 174-2) starting from the date the judgment becomes final and binding (Civil Code, Article 157(2)).

If the claimant seeks to enforce a foreign judgment more than 10 years after the foreign judgment became final and binding, and the execution judgment is granted by the Japanese court, the foreign judgment would essentially enjoy stronger enforceability than a judgment originally issued by a Japanese court. It is likely that such a result would be contrary to the public policy requirement, and therefore unlikely to be considered enforceable. 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 opposite situation, where an action for an execution judgment was sought in respect of a foreign judgment that was beyond the expiration of 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.

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?

After the claimant has obtained an execution judgment, the claimant can file a motion for compulsory execution with the district court that has jurisdiction over the matter. The CEA permits a compulsory execution for claims of unpaid money (CEA, section 2) and for a claim of delivery, surrender or eviction of real property or movables (CEA, section 3).

A claim for specific performance (an order of a 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, article 172 to 173).

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 29 January 2016, the Tokyo District Court admitted the execution judgment recognising the foreign judgment ordering child support rendered by the State of Illinois (Tokyo District Court, 29 January 2017, Heisei .26 (Wa) No. 24637). The court held that the foreign judgment could not be deemed punitive damages against the party who defaulted in the payment of the child support, but was simply an order to pay the child support, and accordingly was not contrary to the Japanese public policy.

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?

In Japan, the service requirement can create unexpected problems. As discussed above, the service of process must be formal and the contents of the summons or order must be understandable for the defendant. In addition, the Tokyo District Court has held that a Japanese translation must accompany a summons served on a Japanese defendant (Tokyo District Court, 26 March 1990, Showa 62 (Wa) No. 12503). Although this holding has been criticised as being unnecessary where the defendant completely understands the language of the foreign jurisdiction, nonetheless, the failure to provide a translation of the summons or orders can cause a foreign judgment to be deemed unenforceable, even if all other requirements have been met.

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