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# ENFORCEMENT OF FOREIGN JUDGMENTS IN JAPAN

This article explains the legal framework for enforcement of foreign judgments in Japan and discusses the impact of a recent Supreme Court decision. As more Japanese companies expand their activities to a broader range of overseas jurisdictions, this topic is likely to increase in importance with more judgments given against Japanese companies in foreign courts.

## THE STATUTORY POSITION

The Statutory position is set out in the Civil Execution Act (Act No. 4 of 1979, as amended) and the Code of Civil Procedure Act (Act No. 109 of June 26, 1996, as amended).

An enforcement judgment will be rendered if the plaintiff can show that:

1. the judgment of a foreign court has become final and binding;
2. the jurisdiction of that foreign court is recognized by Japanese law, regulation, convention or treaty;
3. the defendant has received service of a summons or order necessary for the commencement of the case (public notice is not sufficient to constitute service) or the defendant has appeared in court without receiving such service;
4. the content of the judgment and the court proceedings are not contrary to public policy in Japan; and
5. reciprocity exists between Japan and the country of the foreign court in relation to the enforcement of foreign judgments.

It is important to note that the law clearly stipulates that the court will not investigate whether the judicial decision in the judgment such as findings of fact or the interpretation or application of law by the foreign court is proper or not (the principle of prohibiting re-trial). As a general principle, the Japanese courts respect foreign judgments. However, much depends on the circumstances of the particular case as illustrated by the precedents described below.

## RELEVANT CASE LAW

A decision on whether or not to enforce a foreign judgment requires the court to strike an appropriate balance between respecting the judgment rendered by the foreign court and upholding the fundamental laws of Japan and the interests of defendant.

## SUPREME COURT DECISION, APRIL 28, 1998 ("1998 CASE")

The requirement described in 2 above is called "indirect jurisdiction." It is "indirect" in the sense that it is a matter to be determined when the enforcement of foreign judgment is sought, as distinct from "direct jurisdiction" where the court determines whether it has jurisdiction to hear an action. There has been a debate about the circumstances in which the court should accept indirect jurisdiction and, in particular, whether the standards used for determining indirect jurisdiction and direct jurisdiction should be the same or different. The Supreme Court in the 1998 Case stated that in determining the existence of indirect jurisdiction, it is appropriate to decide by reference 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, the court must determine the existence of indirect jurisdiction from the standpoint of whether it is appropriate to recognize such foreign judgment in Japan, considering the specific circumstances of the case and applying the provisions regarding territorial jurisdiction under Japanese civil procedure code. Scholars differ about the interpretation of 1998 Case. It is clear, however, that in making its determination a Japanese court would consider the provisions regarding territorial jurisdiction under Japanese civil procedure code (the standard used to determine direct jurisdiction) as well as other perspectives.

## SUPREME COURT DECISION, JUNE 8, 2001 ("2001 CASE")

In the 2001 Case the Supreme Court dealt with the requirements, and the level of proof, when determining *direct* jurisdiction in a tort action. The Japanese civil procedure code provides that the court in the jurisdiction where the tort took place has territorial jurisdiction over the case. However, since judgment on the merits in a tort action overlaps with a determination of whether Japan is the place where the tort took place, there has been a debate over what the plaintiff must prove and at what level in order to establish jurisdiction in Japan. In the 2001 Case, the Supreme Court decided that for a tort action against a defendant who does not reside in Japan, jurisdiction of the Japanese court is approved in principle if the damage has been caused to the plaintiff due to the actions by the defendant in Japan. This is because in that case usually there are reasonable grounds

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to require the defendant to appear and there is sufficient legal nexus to justify the jurisdiction of the Japanese court. According to the official commentary by the officials at the Supreme Court in this action, this means that the plaintiff must prove (i) plaintiff's interest, (ii) defendant's action, (iii) damage and (iv) that damage was caused by the defendant's action. In addition, the plaintiff must prove that either the defendant's action took place in Japan, or that the damage was suffered in Japan. However, the plaintiff does not, at this stage, have to prove intention or negligence by the defendant or the illegality of the action which are determined on the merits of the action.

#### **SUPREME COURT DECISION, APRIL 24, 2014 ("2014 CASE")**

In the 2014 Case, the main issue was whether the requirement that the jurisdiction of the foreign court is recognized under Japanese law, regulation, convention or treaty was satisfied.

#### **FACTS**

The plaintiff, a California incorporated company, operated salons in the U.S. providing treatment for eyebrows. In February 2003, the plaintiff granted an exclusive license to a Japanese company ("Company A") to use its treatment techniques in Japan and trained the employees of Company A in its techniques. Subsequently, certain employees who had left Company A, established another company ("Company B") in Japan and started providing treatments for eyebrows. In May 2007, the plaintiff brought an action in the U.S. court against Company B and former employees of Company A who had joined Company B. The defendants did not appear in the U.S. court. On October 8, 2007 the U.S. court granted the plaintiff's application for a default judgment and ordered the defendants to pay US\$3,469,633 (including punitive damages of US\$1,532,185) and annual interest of 1.59% and to cease the improper use of the plaintiff's eyebrow treatment techniques (the "US judgment"). The US judgment was finalized on the same date.

The plaintiff brought an action in Japan seeking an enforcement judgment in respect of the US judgment (the plaintiff excluded the punitive damages as they would be considered as contrary to public policy in Japan).

#### **LOWER COURT DECISIONS**

The Tokyo district court followed 1998 and 2001 Cases and stated that the plaintiff must prove that tortious action by the defendant caused damage to the plaintiff and that either the tortious action or the damage had taken place or occurred in the U.S. However, the Tokyo District Court found that the tortious action by the defendant (i.e. improper use of the treatment techniques) had not been proven and

dismissed the claim. Dismissing the appeal, the Tokyo High Court stated that, following the 1998 and 2001 Cases, because the action by the defendant occurred in Japan, the plaintiff needed to show that it had suffered damage in the US but such proof had not been provided.

Although these judgments largely followed the framework provided by the 1998 and 2001 Cases, there was criticism that the courts had made their decision mainly on the merits which offended the principle of prohibiting re-trial and that the courts had not properly considered the difference between indirect and direct jurisdiction.

#### **SUPREME COURT DECISION**

The Supreme Court, although it also adopted the 1998 and 2001 Cases, reached a different conclusion and reversed the Tokyo High Court decision. In 2011, the Japanese Civil Procedure Code was amended to add articles stipulating when Japanese courts have direct jurisdiction over international disputes. It provides that the Japanese courts have jurisdiction for an action relating to tort if the tort took place in Japan. The Supreme Court stated that "action relating to tort" is not limited to an action based on tort under the Civil Code, but includes an action relating to the request for cessation brought by a person whose rights or interests are infringed or may be infringed due to illegal action. Since such action can be brought by a person whose rights or interests may be infringed, "the place where the tort took place" includes the place where the illegal action may take place or the place where the rights or interests *may* be infringed. These principles are also applicable when determining indirect jurisdiction. Therefore, even if the tortious action or the infringement had not occurred in the U.S., the country where the judgment was rendered, it is sufficient to establish indirect jurisdiction if the facts show that the tortious action or infringement might occur in the country where the judgment was rendered.

#### **IMPACT OF 2014 CASE**

It is too early to tell to what extent 2014 Case will have an impact on future Japanese court cases. However, compared to the lower court decisions, the Supreme Court certainly took a broader approach to indirect jurisdiction. In practice, it means that it is possible that a foreign judgment ordering cessation or damages in respect of a tort claim can be enforced in the Japanese courts. Japanese companies with activities outside Japan or companies dealing with those Japanese companies should no doubt take note of this.