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Recognition and Enforcement of Foreign Judgments in Japan

I. Overview

A. GENERAL

This article is intended to explain the law and practices of recognition and enforcement of foreign judgments in Japan. The cases in which the recognition and enforcement of foreign judgments was the issue are few—in all about thirty. This only means, however, that the Japanese courts have enjoyed rare opportunities to decide the issue of recognition. Japan makes use of a family registration system. This family registrar accepts foreign judicial decrees or other documents issued by foreign administrative authorities as evidence of valid establishment of status through a divorce decree, an adoption decree, etc. In this sense, the reception window of the registrar has played a role in deciding on recognition in the field of family law. Many such decrees of foreign countries have been recognized by this family registrar's office.

Japan has not concluded any bilateral treaty, nor ratified a multilateral convention dealing with the recognition and enforcement of foreign judgments except the International Convention on Civil Liability for Oil Pollution Damage. Therefore, the question of recognition and enforcement of foreign judgments is governed, with one exception, by domestic law. Japan's first Code of Civil Procedures (CCP) was enacted in 1890, following the model of the German *Zivilprozessordnung* of 1877. Since then, it has undergone several amendments, and the Law of Execution on Civil Matters Act was enacted in 1980. However, the basic system relating to recognition of foreign judgments has not been changed. As the result of the influence of German law, Japan does not employ and is not familiar

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with the registration system of foreign judgments nor the French system of *revision au fond*. The basic system of Japan is that a foreign judgment will not be recognized if it is not certified to be final and conclusive, or if it does not fulfill the conditions provided under each subparagraph of article 200 of the CCP. I shall discuss these conditions later. If foreign judgments meet the conditions of article 200, for example divorce decrees and declaratory judgments, they are recognized without any further procedure. Also, any judgment recognizable under article 200 may be admitted utilizing the *res judicata* effect in future court proceedings, and foreign divorce decrees recognizable under article 200 may be admitted in the family registrar's office as valid documents. Only judgments that have need of enforcement require further application for a judgment of execution, and such judgment must be rendered without inquiring as to the correctness of the decision. Thus, Japan has no separate standards pertaining to the various types of foreign judgments. Therefore, the compulsory execution of foreign money judgments and that of foreign alimony or maintenance orders are subject to the same standards provided under article 200 of the CCP. As to foreign judgments deciding on the title to land situated in Japan, recognition will be refused because such litigation is considered to be subject to the exclusive jurisdiction of the Japanese courts, and a foreign court's jurisdiction would not be recognized, but this is not on the ground of type of judgment. There is no specific requirement for the recognition of default judgments.

B. CIVIL MATTERS AND TERRITORIALITY

I would like to comment on two points as to types of judgment that require special consideration. First, although it is not clear from the wording of the provisions of the Code, it is generally accepted that foreign judgments adjudicating civil matters are recognized and enforced. In other words, Japanese law is not familiar with such classification of judgments as revenue judgments or penal judgments. In Japan, judgments are classified into three categories, namely, civil affairs judgments, criminal affairs judgments, and administrative affairs judgments. Among them, only the civil affairs judgments are recognized and enforced. Therefore, if a judgment ordering a payment of treble damages should be adjudged to be of a criminal nature, it would not be recognized. A revenue judgment will not be recognized because it is of an administrative nature.

Secondly, it has been generally admitted that the effect of certain kinds of judgments are limited to within the territory of the rendering country. An adjudication of bankruptcy is a typical example of such territoriality. Thus, even among the civil affairs judgments, these judgments are not recognized. However, such nonrecognition of foreign judgments might be

harmful to international relations. An interesting development, supported by influential opinion among scholars, is that a recent judgment by the Tokyo District Court (DC)¹ admitted the capacity of the bankruptcy administrator appointed by a Swiss court to sue here in Japan. How far this precedent will develop in future case law is an open question.

II. Conditions for the Recognition of Foreign Judgments

Article 200 of the CCP provides that a foreign judgment that has become final and conclusive shall be valid only upon fulfillment of the following conditions: (1) that the jurisdiction of the foreign court is not denied in laws and ordinances or by treaty; (2) that the defendant defeated, being a Japanese, has received service of summons or any other necessary orders to commence procedure otherwise by a public notice or has appeared without receiving thereof; (3) that the judgment of a foreign court is not contrary to public order or good morals in Japan; (4) that there is a mutual guarantee. In short, finality, jurisdiction, service of process, public policy, and reciprocity are the five conditions provided under this article. These are as follows:

A. FINALITY

The plaintiff seeking a judgment of execution must certify that the foreign judgment is final and conclusive. This means that an interlocutory judgment or a judgment of a provisional nature is not recognized. The Supreme Court decision² of May 20, 1917, refused to recognize a custody decree by the probate court of the State of Massachusetts, because the decree is, by its nature, as order of provisional measures. This condition of finality could easily be ascertained by a certificate issued by the relevant authority, and so there should be no difficult problems relating to this condition.

B. JURISDICTION

In Japan, we have no statutory international provision on the rules of international allocations of adjudicatory jurisdiction. As to the concept of jurisdiction, it is generally accepted among scholars that the standards for the determination of direct jurisdiction, meaning a condition for the exercise of judicial power over litigation, and indirect jurisdiction, meaning a condition for the recognition of foreign judgments, should be the same. This opinion was supported by a May 2, 1972, judgment of the

1. 994 Hanrei Jihō [HANREI] 53.

2. 23 Daishin'in Minji Hanketsuroku [Daihan Minroku] 793.

Tokyo DC,³ stating that it is necessary for a foreign court to have a relation to the action that could be a cause for the jurisdiction as viewed from the principle of international jurisdiction established under Japanese law. This judgment is the only one that has refused recognition of a foreign judgment on the ground of lack of jurisdiction. In this case the judgment was a French one, in which the ground for international jurisdiction was based on *loci solutionis* in international contracts for the sale of goods. Up to now, a judgment based on a long-arm statute has never been examined in terms of jurisdictional conditions, and the question of admissibility is open. As to the United States-Japan relation, we have two precedents in which U.S. judgments are recognized in terms of jurisdiction. One is that of the State of Hawaii in which the jurisdiction was based on the residence of a defendant in Hawaii (Tokyo DC, October 24, 1970),⁴ and the other is that of the District of Columbia in which the jurisdiction was based on the defendant's voluntary submission (Tokyo DC, September 17, 1979).⁵

In the field of family law, several cases refused recognition of U.S. judgments. Among them are cases in which a husband deserted his wife in Japan and acquired a divorce decree in the United States. These cases could be reasoned on the lack of condition of jurisdiction, but were adjudged upon other conditions except one case involving a N.Y. divorce decree (Tokyo DC, September 19, 1980).⁶

C. SERVICE OF PROCESS

Subparagraph 2 of article 200 of the CCP is a provision to protect the defeated Japanese defendant. The prevailing opinion among scholars opposes this provision. Scholars feel that this condition of adequate service of process to the defendant is based on the requisite of justice, fairness, or due process and so it should not be limited to Japanese, but applied to every person. However, this defect is somewhat offset by the interpretation of the next condition of public policy. Therefore, although there remains a theoretical problem, the actual importance of this condition is not material. At the end of this article, I shall refer to two cases. In one case,⁷ a Nevada divorce decree was not recognized because of the lack of this condition, and in another,⁸ a French judgment was refused recognition upon the ground of the lack of this condition, where the service

3. 23 Kakyū Saibansho Minji Saibanreishū [Kaminshū] 224, 18 JAIL 209.

4. 625 HANJI 66.

5. 949 HANJI 92, 25 JAIL 196.

6. 430 Hanrei Taimuzu [HANTA] 137.

7. 665 HANJI 75.

8. 27 Kaminshū 801.

of summons and complaint was mailed directly to the defendant living in Japan, without annexing its translation into Japanese.

D. PUBLIC POLICY

Several problems arise in relation to the interpretation and application of this subparagraph. The first is whether this compatibility test extends to the facts or reasoning of a foreign judgment or is limited to the text of the judgment. I shall not discuss this problem.

The second problem is whether this compatibility test covers only the substantial context of the foreign judgment or also extends to the procedure by which the foreign judgment is obtained. The latter might include such a case as when a court denies an oral pleading or the parties have the judgment become a conclusive and final one through some measure against public policy. It is generally accepted that when a foreign judgment is obtained by a fraudulent act of the parties, surely we need not recognize it, therefore, the compatibility test should be construed to extend to such procedural matters. According to this view, service of process by mail without annexing a translation in cases where the defendant cannot understand the foreign language, or the exercise of long-arm jurisdiction in cases where the defendant is not in a financially superior situation, might be judged as against public policy, in that these are considered to deprive the defendant of an opportunity to defend. Accordingly, Japan's concept of public policy is broader than that of the United States, and covers defense grounds such as unfair procedures, biased tribunals, violations of due process, lack of timely notice, and judgments obtained by fraud. This interpretation is supported by the Supreme Court,⁹ in a decision of June 7, 1983, stating that in examining whether or not there exists a mutual guarantee between Japan and the country rendering the judgment, it is reasonable to consider that subparagraph 3 of article 200 requires that not only the contents of a foreign judgment but also the judicial procedure by which a foreign judgment was established should not be contrary to public order and good morals in Japan.

Finally, the third problem is whether a conflict between a domestic and a foreign judgment is to be deemed as against public policy in the meaning of article 200 of the CCP. I shall refer to this problem later. As to substantive law, there is a case¹⁰ that recognized the money judgment of a state court of California, stating that it is not against public policy that the content of the contract and the execution of the foreign judgment violate the Japanese Foreign Exchange Control Act.

9. 37 Saikō Saibansho Keiji Hanreishū [Minshū] 611, 27 JAIL 119.

10. 586 Hanji 73, 15 JAIL 181.

E. RECIPROCITY

As to the reciprocity condition, our mention will be limited to some references to Japanese judgments. Reciprocity under article 200 had been construed to be satisfied by the recognition of a Japanese judgment by a foreign country under equivalent or less strict conditions, and this construction was followed by the Supreme Court Judgment of December 5, 1933.¹¹ On June 7, 1983, however, the Supreme Court delivered a judgment¹² holding that it is reasonable to consider that there is a mutual guarantee where, in the country in which the foreign court rendering the judgment is situated, the same type of judgment as rendered by a Japanese court would have effect under conditions not different in import from those prescribed in article 200. The underlying policy in this alteration of case law is explained by the judgment as follows. In respect of the recognition of the judgment of a foreign court, it is hard to expect that the country rendering the judgment would provide precisely the same conditions as Japan does. Moreover in the international society of today in which a share of individual life relating to foreign countries is developing and expanding remarkably, the need to prevent rendering inconsistent judgments between the same parties and to secure the judicial economy and realization of the right becomes more in demand. In view of this, it is a way of satisfying these demands to consider that the requisite in article 200 subparagraph 4 is fulfilled, if the requisites for the recognition of a foreign judgment in the country rendering the judgment have the same weight in substance as those in Japan. This alteration has no important meaning regarding the United States-Japan relationship, however, because no judgment of the United States has ever been refused recognition on the grounds of the reciprocity condition. Among these are judgments in Hawaii,¹³ California,¹⁴ and the District of Columbia.¹⁵

III. Double Action Practice

The preceding represents the present law and practice of recognition and enforcement of foreign judgments in Japan. Finally, we would like to introduce a well-known case in Japan, the so-called *Kansai-Tekko* case.

The circumstances were as follows, simplifying the details: A Japanese company sold its product, a power press machine, to a U.S. company. While operating this machine, an employee of the U.S. company suffered

11. 3670 Hōritsu Shinbun [SHINBUN] 16.

12. 37 Minshū 611.

13. 625 HANJI 66.

14. 8 Kaminshū 525; 586 HANJI 73.

15. 949 HANJI 92.

an accident and was injured in 1968. He brought a lawsuit against the Japanese company before a Washington state superior court to claim damages caused by the accident. Opposing this lawsuit, the Japanese company brought a lawsuit against the alleged victim before a Japanese court, seeking a judgment declaring the nonexistence of the right of indemnification that had been claimed against it. On September 17, 1974, the Washington state court¹⁶ delivered a judgment ordering the payment of damages. On October 17, 1974, Japan's court¹⁷ delivered a judgment to the effect that the Japanese company was under no liability. In 1976, the Washington state court judgment was asked to be recognized and enforced in Japan. However, the issue of judgment of execution was rejected¹⁸ on the grounds of public policy. Putting aside some important points worthy of argument, it is important that this kind of double action practice works as a tool to prevent the possible enforcement of foreign judgments by reason of the *res judicata* effect in terms of public policy.

There have been published many case comments and articles for or against this judgment, from the viewpoint of the recognition of foreign judgments, especially the meaning of public policy, the effect of *lis pendens* in international relations, etc. We should say that such preventive bringing of double action is not desirable, because it might create a conflict of judgments as a result of double litigation. Without a mutual understanding of and sufficient confidence in the judicial system of other countries, however, this kind of blocking measure will no doubt be repeated.

16. *Deutch v. West Coast Machinery Co., Marubeni-Iida, Inc. (Respondent), Kansai Iron Works, Ltd. (Petitioner)*, 497 P.2d 1311 (Wash. Sup. Ct. 1972).

17. This judgment is not reported.

18. 361 HANTA 127.

