

## Japan

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### 1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

To enforce a judgment which was rendered by a court of a foreign country (Foreign Judgment) as regards the property of a defendant against whom such Foreign Judgment has been entered (the defendant) that is located in Japan, a plaintiff or plaintiffs (the plaintiff) seeking enforcement must: (1) file a lawsuit with a Japanese court to seek an execution judgment (Stage 1); and (2) undertake enforcement procedures based upon such execution judgment (Stage 2).

Stage 1 is an ordinary civil litigation procedure which is conducted in accordance with the Code of Civil Procedure (the Code) (Art 24 of the Civil Execution Act). To obtain an execution judgment, the plaintiff needs to prove that the Foreign Judgment, which must be final and binding, satisfies the following requirements (Art 118 of the Code):

- (i) the jurisdiction of the foreign court of the original proceedings is recognised pursuant to relevant laws and regulations, conventions, or treaties (Item 1);
- (ii) During the original proceedings that led to the Foreign Judgment, the defendant has been served (excluding service by publication or any other service similar thereto) with the requisite summons or order for the commencement of litigation, or has appeared without being so served (Item 2);
- (iii) the content of the Foreign Judgment and the original proceedings that led thereto are not contrary to public policy in Japan (Item 3); and
- (iv) a guarantee of reciprocity is in place (Item 4).

In the Stage 1 procedures, the Japanese court is supposed to examine whether these four requirements are satisfied, and is not supposed to look into the substantive merits which were already argued and determined during the original proceedings that resulted in the Foreign Judgment.

Stage 2 is an ordinary civil execution procedure and is conducted in accordance with the Civil Execution Act against the defendant's property located in Japan which should be specified by the plaintiff.

There is no treaty as regards either Stage 1 or Stage 2.

### 2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?

	<p>Stage 1 is an ordinary civil litigation procedure and service of the complaint is required under the Code. Stage 2 is an ordinary civil execution procedure and the service process must be carried out in accordance with the Civil Execution Act. In consideration of the sovereignty of foreign states, the Act on the Civil Jurisdiction of Japan with respect to Foreign States (the Act) provides special rules regarding sovereign immunity with regard to the litigation procedures, which are applicable to Stage 1, and those regarding the enforcement procedures, which are applicable to Stage 2, as well as special methods of the service processes for each. Please see our response to Question 3 for further details.</p>
<p><b>3.</b></p>	<p><b>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</b></p>
	<p><i>General principles for Stage 1 and Stage 2</i></p> <p>The Act provides special rules regarding the limited scope of Japanese civil jurisdiction over foreign states due to sovereign immunity. Under the Act, foreign states are, in principle, immune from the litigation procedures and enforcement procedures (Art 4).</p> <p><i>Exceptions regarding litigation procedures (applicable to Stage 1)</i></p> <p>The Act provides the following exemptions to the general principle of sovereign immunity regarding the litigation procedures, which are applicable to Stage 1:</p> <ul style="list-style-type: none"> <li>• Consent of Foreign States (Arts 5 to 7)</li> <li>• Commercial Transactions (Art 8)</li> <li>• Labour Contracts (Art 9)</li> <li>• Death or Injury of Persons or Loss of Tangible Objects (Art 10)</li> <li>• Rights and Interests Pertaining to Real Estate (Art 11)</li> <li>• Rights and Interests Pertaining to the Administration or Disposition of Property in which the Court Participates (Art 12)</li> <li>• Intellectual Property Rights (Art 13)</li> <li>• Qualification as a Constituent Member of an Entity (Art 14)</li> <li>• Operation of Vessels (Art 15)</li> <li>• Arbitration Agreements (Art 16)</li> </ul> <p>Among these items, Articles 5, 10, and 13 of the Act could be relevant to the current inquiry. The details are as follows:</p> <ol style="list-style-type: none"> <li>(a) If a foreign state gives its specific consent to submission to jurisdiction concerning a specific matter or case by any of certain specified methods, such foreign state will not have immunity from jurisdiction concerning the proceedings related to such specific matter or case among the litigation proceedings or any other proceedings in court (other than those about enforcement procedures) (Art 5, para 1).</li> <li>(b) If the death of or injury to a person or the loss of or damage to a tangible object resulted from an act for which it is claimed that a foreign state should take responsibility, when all or part of the act took place in Japan and the person who performed the act was in Japan at the time it was performed, the foreign state</li> </ol>

	<p>will not have immunity from jurisdiction with respect to judicial proceedings in which monetary compensation for the damages or loss resulting from the act is sought (Art 10).</p> <p>(c) A foreign state will not have immunity from jurisdiction with respect to judicial proceedings regarding the following matters (Art 13): (1) the existence or non-existence, effect, attribution, or content of intellectual property rights that the foreign state claims to hold; or (2) infringement of intellectual property rights allegedly caused by the foreign state in Japan.</p> <p><i>Exceptions regarding enforcement procedures (applicable to Stage 2)</i></p> <p>The Act provides the following exemptions to the general principle of sovereign immunity regarding the enforcement procedures, which are applicable to Stage 2:</p> <ul style="list-style-type: none"> <li>• Consent of Foreign States (Art 17, para 1)</li> </ul> <p>If a foreign state gives its express consent to an execution of a provisional order or a civil execution against the property held by such foreign state, it will not have immunity from the jurisdiction with regard to the proceedings of the provisional order or the civil execution thereof. This consent under Article 17 is separate from that under Article 5, and the latter should not be considered as the former (Art 17, para 3).</p> <ul style="list-style-type: none"> <li>• Property Used for a Specific Purpose (Art 18, para 1)</li> </ul> <p>A foreign state will not have immunity from jurisdiction with respect to proceedings of a civil execution against the property held by such foreign state that is in use or intended for use by such foreign state exclusively for purposes other than non-commercial purposes by the government of such foreign state.</p> <p><i>Special rules regarding the service process (applicable to Stage 1 and Stage 2)</i></p> <p>The service of a complaint or any other similar document and a writ of summons for the first date of litigation proceedings or any other proceedings in court upon a foreign state is to be carried out according to the following methods (Art 20, para 1):</p> <ul style="list-style-type: none"> <li>(a) methods prescribed by treaties or any other international agreements; or</li> <li>(b) if the methods listed in the preceding item do not exist, the methods listed in following sub-item (i) or (ii): (i) methods carried out through diplomatic channels; or (ii) any other method that the foreign state accepts as a method of service.</li> </ul>
4.	<p><b>What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?</b></p>
	<p>Please see our response to Question 3, above regarding the exceptions.</p>

<b>5.</b>	<b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b>
	<p>During Stage 1, to ensure the Japanese court’s jurisdiction against the foreign state, the case must fall under one of the exceptions set out in Articles 5-16 of the Act (see our response to Question 3, above). After such jurisdiction is affirmed, the court will examine whether the Foreign Judgment satisfies Items 1-4 of Article 118 of the Code (see our response to Question 1, above).</p> <p>There have been a number of Japanese court precedents regarding Items 1-4, however, in none of these was a defendant a foreign state. Therefore, it is not clear whether the Japanese court applies any exceptional treatment in assessing Items 1-4 in cases where a defendant is a foreign state.</p>
<b>5a.</b>	<b>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</b>
	<p>As explained above, Stage 1 can only proceed when the case falls under one of the exceptions in Articles 5-16 of the Act. During Stage 1, the court will examine Items 1-4, among which Item 2 requires the defendant to have been properly served in the original proceedings that led to the Foreign Judgment. As stated in Article 118 of the Code, service by publication or any other similar service method is not acceptable. In general, the precedents emphasise whether the service process was made in a manner to ensure the defendant’s rights of defence. However, again, none of the defendants among the court precedents were foreign states, so it is not clear whether the Japanese court applies any exceptional treatment. Moreover, there is no exhaustive list of appropriate methods of service in relation to Item 2.</p>
<b>5b.</b>	<b>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</b>
	<p>We assume that this question is about service during Stage 1, in which case there is no exception concerning Item 2 thereunder. For Stage 2, there is no exception to our response to Question 3 (Special rules regarding the service process). If, on the other hand, this question is about service during the original procedures, please see our response to Question 5a.</p>
<b>5c.</b>	<b>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</b>

	<p>During Stage 1, the court will consider whether the original proceedings met the requirements of Item 2. Separately, the defendant may bring additional argument regarding Item 3.</p>
<b>5d.</b>	<p><b>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</b></p>
	<p>We assume this question is about the original proceedings. The same as our response to Question 5c. Since we have been unable to find any relevant court precedent, the exception is unclear.</p>
<b>6.</b>	<p><b>What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?</b></p>
	<p>We assume this question relates to Stage 2.</p> <p>For the exceptions under the Act, please see our response to Question 3 (Exceptions regarding Stage 2).</p> <p>Further, the Civil Execution Act prohibits enforcement against certain receivables and movable properties (eg, a certain amount of living cost), but these rules are unlikely to become an issue in a case of enforcement against a foreign state.</p>