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Enforcement of American Default Judgments in Japan

—Will Public Policy Be Violated If the Plaintiff Didn't Serve the Judgment?

By [Toshiyuki Arai](#)

In enforcing an American default judgment where the judgment was not served on the defendant in Japan, will the failure to serve constitute public policy violation for Japan civil procedure purposes that would upset enforcement?

The Japanese Supreme Court clarified the situation as follows: the lack of service of default judgment on the Japanese defendant needs to be evaluated from the perspective of whether the relevant facts gave the defendant an opportunity to learn about the judgment appropriately so that he/she could consider appealing it. The original Osaka High Court ruled that service of judgment was required as a precondition to satisfy public policy; the Supreme Court disagreed and remanded the case to the original court to review whether such substantive opportunity was indeed present. [Supreme Court](#), January 18, 2019, Minshu 73-1-1.

Facts

The plaintiff sued the Japanese defendant in California Superior Court in 2013 for damages. The defendant's attorneys withdrew from the case with the result that the defendant was not represented by lawyers.

The California court entered a default judgment in 2015 for \$275,500 which was registered as a default judgment.

The plaintiff's attorneys attempted to serve the judgment at a wrong address of the defendant in Japan. As a result, the defendant probably didn't have a chance to review the judgment.

The defendant failed to appeal the judgment in 180 days from the date of the default judgement registration and the judgment became final under California Civil Procedure Code.

The plaintiff filed a Japanese action to enforce the foreign judgment in Japan under these facts.

Issue

The defendant argued that the failure to serve the default judgment constituted violation of public policy of Japan; as a result, the foreign judgment must not be enforced.

A final foreign judgment may be enforced in Japan if the following requirements are met (Civil Proc. Code, Article 118):

- The foreign court’s jurisdiction is recognized under laws or treaties;
- The defendant was served with summons for the case;
- The content of the judgment or the legal process of the lawsuit does not contravene Japanese public policy; and
- Mutual guarantee is in place.

The issue is whether not serving a foreign judgment will contravene Japanese public policy. If this were a Japanese lawsuit originally, the default judgment would have to be served on the defendant as a legal requirement. Civil Proc. Code, Article 255. Appeal must be taken in a time certain. Is the deviation from this domestic procedure a violation of Japanese public policy?

Holding

The Supreme Court interprets public policy in this instance to require “a substantive opportunity to put the defendant on notice to learn about the default judgment” and not an actual service of process on the defendant.

The Supreme Court recognizes that foreign civil procedures can be created in different ways than in Japan and that they may not be identical to the domestic requirements. That confirms the view that failure to precisely follow the Japanese requirement is not necessarily a violation of the Japanese public policy. The issue is whether Japan’s public policy is violated when a deviation from the Japanese requirement is present. The Court ruled that public policy will dictate in this instance that a substantive opportunity be given to alert the defendant about the judgment such that his/her awareness could lead to a chance to appeal the judgment. If such substantive opportunity is afforded, there is no public policy violation.

Takeaway

In a similar situation, the plaintiff in a foreign lawsuit should send the judgment to the accurate known address of the defendant through all means available to him, e.g., courier, airmail and email, and make a record of such attempt.

Observation

The Court’s statement that foreign civil procedure requirements can be different from those of Japan seems practical although the resultant review of whether substantive notice was indeed afforded creates uncertainty in the conclusion.



If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Tokyo lawyer:



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