

Recognition of Family Status Effectuated Abroad (summary)

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1. In Japan, family status effectuated abroad (foreign family status) is recognized in some ways: A foreign family status effectuated by a judgment of a foreign court (for example, foreign divorce judgment, foreign judgment concerning a declaration or disclaimer of parent-child relationship) is recognized, in so far as it satisfies the requirements prescribed in Article 118 of the Civil Procedure Law. According to this article, a foreign final judgment is recognized if it satisfies the requirements of (1) jurisdiction, (2) proper service, (3) public order or good morals and (4) reciprocity. On the other hand, a foreign family status effectuated in a non-judicial proceeding (for example, foreign non-judicial divorce, foreign adoption, foreign marriage, foreign acknowledgement) shall be recognized if it satisfies all the requirements prescribed in the law designated by the Horei (Japanese rules of choice of law). Therefore, a foreign non-judicial divorce is recognized in Japan if it satisfies all the requirements prescribed in the law designated by Article 16 of the Horei, a foreign adoption by Article 20, a foreign marriage by Article 13, and a foreign acknowledgement by Article 18.

However, the Japanese approach to recognition includes some difficulties, especially in the way a non-judicial divorce is recognized. First of all, the Horei does not distinguish a family status effectuated in Japan from a foreign family status, and those standards which apply are the same. But as a foreign family status is valid in its corresponding foreign country, the foreign family status must be treated more favorably than a family status effectuated in Japan in order to avoid a limping family status situation. Second, as the rules of choice of law differ in every country, it inevitably leads to a limping family status situation to require satisfaction of all of the requirements prescribed in the law designated by Articles 13, 16 and 20 of the Horei.

2. In contrast, the Swiss Private International Law Statute of December 18, 1987 (hereinafter cited as PIL) recognizes foreign family status in a unique way (English translation of the text: Pierre A. Karrer/Karl Arnold, Switzerland's Private International Law Statute of December 18, 1987, Deventer 1989).

First, the PIL distinguishes a family status effectuated in Switzerland from a foreign family status. For example, Articles 43 and 44 of the PIL regulate marriages in Switzerland, and Article 45 regulates foreign marriages. Articles 59-61 regulate divorces in Switzerland, and Article 65 regulates foreign divorces and so on.

Second, the PIL treats a foreign family status more favorably than a family status effectuated in Switzerland.

Third, a foreign divorce by judgment and a foreign non-judicial divorce must be recognized under the same requirements. In accordance with what some Swiss scholars assert, the Swiss Federal Court ruled in 1996 that a foreign non-judicial divorce (customary divorce in Ghana) should be recognized in Switzerland in so far as it satisfies the requirements prescribed in Articles 65, 25, 26 and 27 of the PIL (BGE 122 III 344; ZZW 1996, 400). Professor Siehr also asserts that a foreign simple adoption must be recognized in so far as it satisfies the requirements prescribed in Articles 78, 25, 26 and 27 of the PIL.

Finally, under Article 45, paragraph 1 of the PIL, a foreign marriage is generally recognized in Switzerland if it has been validly concluded there (but if either the bride or groom is a Swiss citizen or if both are domiciled in Switzerland, the foreign marriage is recognized only if it was not concluded abroad with the clear intent of evading the grounds for nullity under Swiss law, Article 45, paragraph 2).

3. In this article, I provide an overview of the PIL and examine how a foreign family status (for example, foreign marriage, foreign divorce, foreign adoption, foreign acknowledgement) should be recognized in Japan.