

## Issues of Recognition and Enforcement of Foreign Maintenance Judgments (summary)

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In comparison with the international maintenance law of Japan, the laws of other countries are developing dynamically. Although it is necessary to consider whether the changes in those countries are appropriate, understanding the current state of the world legal situation concerning maintenance is at least meaningful for the development of the Japanese system of recognizing and enforcing foreign maintenance judgments.

In each country's maintenance law, considerable differences can be seen in the agency responsible for calculation of maintenance, treatment of the parties' agreement, processing after calculation, response to price fluctuations, and penalties for delinquent payments. There is no doubt, however, that these countries' systems are intended to protect the rights holder more than the current Japanese system does.

Agreements concerning recovery of maintenance at the world level have advanced, mainly after the World War II, through the United Nations Convention and the Hague Conventions. In addition, the system of EU maintenance law has been established at the regional level, and networks based on domestic law are mainly built around common law countries so that creditors can easily recover the maintenance due.

In this article, I identified items that were problems before and could be again in the future and, using these as a theory of interpretation, examined each one individually while referring to the international trends noted above. Specifically, I took up the question of whether the maintenance order can be the "final judgment", whether the administrative decision can be regarded as a type of judgment, how to determine the "maintenance" concept in an indirect jurisdiction, or how to treat mandatory wage withholding or index judgments in Japan in cases where a foreign judgment subject to recognition *is* such a judgment.

In Japan, we use the foreign judgment recognition system even in cases of maintenance recovery ordered by foreign courts. However, the creditor who has not received maintenance cannot afford to take action, and even if that were possible, it is likely that it is not unlikely that the lawsuit ends up as a waste of money. In other words, the system has limitations from the perspective of that person's protection. Therefore, we expect that Japan

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accedes to the 2007 Hague Maintenance Recovery Convention, which has provisions for judicial and administrative assistance in recovering maintenance. Having said that, there are high hurdles to realizing the acceptance; hence, we cannot expect Japan to join the Convention at an early date, although protection of creditors is an urgent task. From this background, I mention the necessity of special legislation to overcome limits on the theory of interpretation and propose some new individual provisions.