

Practical Legal Issues Relating to the International Recovery of Maintenance of Spouse or Child Support (summary)

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The phrase “international recovery of maintenance” refers to the recovery of both spousal maintenance and child support involving certain international aspects. For instance, the spouse with the obligation to pay spousal maintenance may be living in a foreign country, or the children to be supported may be living in a foreign country while their father lives in Japan or vice versa.

In those situations, a number of issues need to be examined from a practical legal point of view. How can you get maintenance? Which country has jurisdiction? Which laws apply, and how can you enforce them?

A number of international conventions cover these issues, although Japan has ratified only a few of them. Japan is a party to the Convention of 24 October 1956 on the law applicable to maintenance obligations towards children and the Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations. Under these conventions, the applicable law is the law of the country where the person to be supported resides. Japan is also a party to the Child Protection Convention, which provides for a state’s obligations to take measures to recover child support from the obligor outside the state. However, Japan is not a party to other conventions which govern the international recovery of child support or enforcement.

Japan recently enacted a law on international jurisdictions relating to family law issues. The basic rule is that those who demand support can file a lawsuit in their country of residence even if the defendant (the expected obligor) lives in a foreign country. They can also file a lawsuit in the defendant’s country of residence.

Foreign judgments can be enforced in Japan if the foreign jurisdiction is acceptable under Japanese rules; a proper service of process was made; the judgment is not contrary to any public policy in Japan; and there is reciprocity between the country of judgment and Japan with respect to the enforcement of foreign judgments.

The enforcement of a foreign judgment raises a number of issues which need to be examined from a practical viewpoint. In choosing an international forum, the lawyer must

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examine whether enforcement will be easy, in particular, whether the defendant has assets in the country where the lawsuit will be filed. Other important factors to consider include the required time (for example, the length of time for an international service of process in accordance with international convention), lawyer's fees, availability of legal aid and the expected amount of maintenance or child support.

It is unlikely that Japan will be a signatory to the 2007 Hague Child Support Convention in the very near future. Even within Japan, it is not easy to recover child support. More effective measures have been sought in Japan, and efforts toward this end are increasing. In examining our own system, we should assess the possibility of entering into an international convention for a more efficient international recovery of child support.