

The Significance of the Hague Convention on Choice of Court Agreement and the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and the Possibility of Japanese Ratification (summary)

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The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019) was adopted at the Hague Conference on Private International Law (22nd Diplomatic Conference) on July 2, 2019. In addition, the Convention on Choice of Court Agreement (HCCH 2005) was adopted by the Hague Conference on Private International Law (20th Diplomatic Conference) on June 30, 2005, and entered into force on October 1, 2015. Although Japan has not ratified any of the Conventions, but it would be meaningful to consider ratification of the Conventions from the following points: (1) ratification of the Conventions will enhance Japan's position as a forum for the settlement of international civil disputes in Asia, (2) agreement on jurisdiction plays an important role in ensuring predictability of parties in international civil cases (procedures in the forum, court language, determination of applicable law, mode of relief, etc.), and a considerable number of countries have already acceded to the Convention on Choice of Court Agreement. The ratification of the Conventions will help to resolve issues related to reciprocity. In addition, a comparison of the two Conventions and Japanese law is significant in terms of understanding the regulation in Japanese law from the point of comparative law.

From the above basic perspective, this report examines some aspects of the two Conventions in comparison with Japanese law. As general issues, the report first deals with the mutual applicability of the two Conventions, and then deals with the following individual issues: indirect jurisdiction over actions for real estate registration, agreement on jurisdiction and public order, effect of recognition of foreign judgments, relationship between recognition of judgments and finality of judgments, relationship between violation of substantive public order and domestic connection, judgment obtained by fraud, conflicts of judgments, between conflicting judgment and *lis pendens*, recognition and enforcement of punitive damages, and recognition and enforcement of judicial settlements. The report

also discussed the relationship between reciprocity and procedural public order as related issues. The conclusion of the report was that positive consideration should be given to ratification of the Convention, and that the insurmountable differences between the two Conventions and Japanese law could be resolved through declarations limiting recognition and enforcement (Article 20 of HCCH 2005 and Article 17 of HCCH 2019) or declarations with respect to specific matters (Article 21 of HCCH 2005 and Article 18 of HCCH 2019).