Practical issues concerning recognition and enforcement of foreign judgments (summary)

Hiroyuki TEZUKA
Partner, Nishimura & Asahi

In view of recent legislative developments in the international dispute resolution sector occurring both domestically and internationally, this article aims to provide an overview of the current practical issues in regard to the recognition and enforcement of foreign judgments in Japan.

Part 1 of this article focuses on the issues in relation to the grounds for recognition and enforcement of foreign judgments in Japan. In regard to "indirect jurisdiction", the article first discusses the current status of the remaining issues since the enactment of international judicial jurisdiction laws in 2011 ("2011 Rules"), and explains that (a) the Supreme Court of Japan made it clear in its judgment dated 24 April 2014 that while determination of indirect jurisdiction shall, in principle, be based on direct jurisdiction rules (i.e., the 2011 Rules), courts also shall apply rule of reasons (*jouri*) in rendering a conclusion; (b) further legislative reform is required for rules on exclusive choice of court agreements, as it is still not very clear whether and how a violation of public policy could serve to render an exclusive choice of court agreement null and void, which decreases the predictability of such an agreement; and (c) in cases of certain types of establishment or business activities of a foreign company in Japan, the scope of the cases within the judicial jurisdiction of Japan under the 2011 Rules remains unclear, and further discussion is required. The article then turns to explore the complex issues that arise when an arbitral tribunal and a national court make conflicting decisions regarding the subjective scope of an arbitration agreement, using a model case where the tribunal affirmed its jurisdiction over a non-signatory party, while the national court concluded that the non-signatory party was not subject to the arbitration agreement. In terms of the second ground for recognition and enforcement of foreign judgments, which is that the defendant has been served with a requisite summons or order for the commencement of litigation, or has appeared without being so served, the article concludes that while some of the issues have been resolved after Japan declared its opposition to the use of methods pursuant to Article 10(a) of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, questions remain regarding when a de-

fendant will be considered to have made appearance. In regard to reciprocity, the article summarizes general discussions and then refers to a recent case in China where a UK judgment was recognized for the first time.

Part 2 of this article provides insights from a practitioner's point of view on the issue of whether Japan should become a party to the Hague Convention of Convention of 30 June 2005 on Choice of Court Agreements, and the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

Part 3 of this article discusses other possible legislative reforms that can be made in order to facilitate the process of recognition and enforcement of foreign judgments, by comparing the current system for the recognition and enforcement of arbitral awards, which has recently been revised to make it even more user-friendly.