

Japanese recognition law and reciprocity

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Article 21 of Law relating to recognition and assistance for foreign insolvency proceedings provides for requirement of recognition of foreign insolvency proceeding. Among those requirements, there is no mention to reciprocity. This means that Japanese recognition law does not adopt reciprocity principle.

Article 118 of the Code of Civil Procedure provides for requirements of foreign judgment, which include reciprocity principle¹. However, Japanese recognition law does not adopt reciprocity principle for the following reasons;

1) Reciprocity principle is not consistent with the concept of international cooperation in the area of insolvency, on which Japanese recognition law is based.

2) If the court is required to survey the legal framework for recognition of foreign insolvency proceedings, this would inevitably cause delay with the result that the insolvency case cannot be dealt with effectively and efficiently.

3) If the foreign insolvency proceeding is poorly designed and possibly damages the interest of local creditors, the proceeding will not be recognized because the proceeding is against public order and good public morals in Japan (Article 21 item iii). This safeguard is sufficient for protection of local creditors, and there is no need for more reciprocity protection.

4) There are some other protections of local creditors in Japanese recognition law².

¹ Article 118 of the Code of Civil Procedure

A final and binding judgment of a foreign court shall be valid only upon the fulfillment of all of the following conditions:

(i – iii omit)

iv. there is reciprocity.

² Articles 31 (1), (2), 35 (1), (2), 57 (1) iii.