

Method of compulsory execution against real estate held by an association

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Atsumi & Sakai

Speedread

On 29 June 2010, the Supreme Court of Japan clarified that courts may grant an order for compulsory execution against real estate held by an association lacking legal capacity (*kenri noryoku naki shadan*) even though the real estate was not registered in the name of the association due to its lack of legal capacity. The decision provides welcome clarification with regards to an issue that has been met with divided opinion in Japan.

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As a general rule under Japanese law, in order to obtain compulsory execution against real estate, the petitioner would need to show that the name on the document evidencing the right to enforce against the obligor (for example, a final and binding court decision against such obligor) is the same as the name on the property register. The problem was that the Supreme Court would not allow an association without legal capacity to register real estate in the name of the association due to the members of the association being treated as co-owners of assets held by it. As such, any real estate held by an association without legal capacity would be registered in the name of the individual who is its representative or in the name of all individual members.

In its decision, the Supreme Court held that it will grant an order for compulsory execution against real estate held by an association if the petitioner can show that the real estate belongs substantially to the association (irrespective of the name in which the real estate is registered). In relation to the evidence required, the majority simply referred to a final and binding judgment or alternative equivalent document proving that the real estate substantially belongs to the association. Further, one of the judges issued a supplemental opinion that the evidential burden may also be met by providing other forms of evidence such as a record of settlement, notarial deed or similarly formal document stating that:

The relevant real estate is substantially owned by the association.

That the registered holder of the real estate is a member of the association.

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