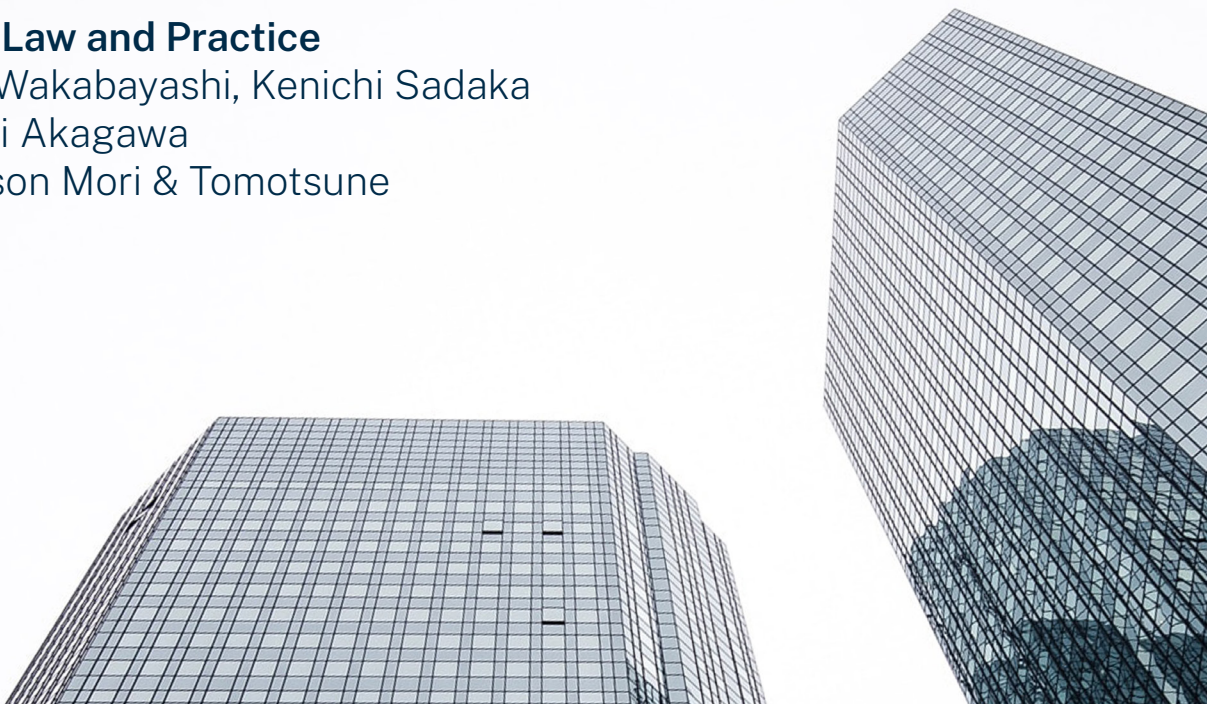

CHAMBERS GLOBAL PRACTICE GUIDES

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Japan: Law and Practice

Hiroki Wakabayashi, Kenichi Sadaka
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Anderson Mori & Tomotsune



JAPAN

Law and Practice

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Contents

1. General p.7

- 1.1 General Characteristics of the Legal System p.7
- 1.2 Court System p.7
- 1.3 Court Filings and Proceedings p.7
- 1.4 Legal Representation in Court p.8

2. Litigation Funding p.8

- 2.1 Third-Party Litigation Funding p.8
- 2.2 Third-Party Funding: Lawsuits p.8
- 2.3 Third-Party Funding for Plaintiff and Defendant p.8
- 2.4 Minimum and Maximum Amounts of Third-Party Funding p.8
- 2.5 Types of Costs Considered Under Third-Party Funding p.8
- 2.6 Contingency Fees p.8
- 2.7 Time Limit for Obtaining Third-Party Funding p.8

3. Initiating a Lawsuit p.8

- 3.1 Rules on Pre-action Conduct p.8
- 3.2 Statutes of Limitations p.9
- 3.3 Jurisdictional Requirements for a Defendant p.9
- 3.4 Initial Complaint p.9
- 3.5 Rules of Service p.9
- 3.6 Failure to Respond p.9
- 3.7 Representative or Collective Actions p.9
- 3.8 Requirements for Cost Estimate p.10

4. Pre-trial Proceedings p.10

- 4.1 Interim Applications/Motions p.10
- 4.2 Early Judgment Applications p.10
- 4.3 Dispositive Motions p.10
- 4.4 Requirements for Interested Parties to Join a Lawsuit p.10
- 4.5 Applications for Security for Defendant's Costs p.11
- 4.6 Costs of Interim Applications/Motions p.11
- 4.7 Application/Motion Timeframe p.11

5. Discovery p.11

- 5.1 Discovery and Civil Cases p.11
- 5.2 Discovery and Third Parties p.11
- 5.3 Discovery in This Jurisdiction p.11
- 5.4 Alternatives to Discovery Mechanisms p.12
- 5.5 Legal Privilege p.12
- 5.6 Rules Disallowing Disclosure of a Document p.12

6. Injunctive Relief p.12

- 6.1 Circumstances of Injunctive Relief p.12
- 6.2 Arrangements for Obtaining Urgent Injunctive Relief p.12
- 6.3 Availability of Injunctive Relief on an Ex Parte Basis p.13
- 6.4 Liability for Damages for the Applicant p.13
- 6.5 Respondent's Worldwide Assets and Injunctive Relief p.13
- 6.6 Third Parties and Injunctive Relief p.13
- 6.7 Consequences of a Respondent's Non-compliance p.13

7. Trials and Hearings p.13

- 7.1 Trial Proceedings p.13
- 7.2 Case Management Hearings p.14
- 7.3 Jury Trials in Civil Cases p.14
- 7.4 Rules That Govern Admission of Evidence p.14
- 7.5 Expert Testimony p.14
- 7.6 Extent to Which Hearings Are Open to the Public p.14
- 7.7 Level of Intervention by a Judge p.14
- 7.8 General Timeframes for Proceedings p.14

8. Settlement p.15

- 8.1 Court Approval p.15
- 8.2 Settlement of Lawsuits and Confidentiality p.15
- 8.3 Enforcement of Settlement Agreements p.15
- 8.4 Setting Aside Settlement Agreements p.15

9. Damages and Judgment p.15

- 9.1 Awards Available to the Successful Litigant p.15
- 9.2 Rules Regarding Damages p.16
- 9.3 Pre-judgment and Post-judgment Interest p.16
- 9.4 Enforcement Mechanisms of a Domestic Judgment p.16
- 9.5 Enforcement of a Judgment From a Foreign Country p.16

10. Appeal p.17

- 10.1 Levels of Appeal or Review to a Litigation p.17
- 10.2 Rules Concerning Appeals of Judgments p.17
- 10.3 Procedure for Taking an Appeal p.17
- 10.4 Issues Considered by the Appeal Court at an Appeal p.17
- 10.5 Court-Imposed Conditions on Granting an Appeal p.18
- 10.6 Powers of the Appellate Court After an Appeal Hearing p.18

11. Costs p.18

- 11.1 Responsibility for Paying the Costs of Litigation p.18
- 11.2 Factors Considered When Awarding Costs p.18
- 11.3 Interest Awarded on Costs p.18

12. Alternative Dispute Resolution (ADR) p.19

- 12.1 Views of ADR Within the Country p.19
- 12.2 ADR Within the Legal System p.19
- 12.3 ADR Institutions p.19

13. Arbitration p.19

- 13.1 Laws Regarding the Conduct of Arbitration p.19
- 13.2 Subject Matters Not Referred to Arbitration p.19
- 13.3 Circumstances to Challenge an Arbitral Award p.20
- 13.4 Procedure for Enforcing Domestic and Foreign Arbitration p.20

14. Outlook p.20

- 14.1 Proposals for Dispute Resolution Reform p.20
- 14.2 Growth Areas p.21

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Tomotsune has a long tradition of serving the international business and legal communities and is one of the largest law firms in Japan. The firm's expertise enables the delivery of comprehensive advice on virtually all legal issues that may arise from a corporate transaction. The majority of the firm's lawyers are bilingual and experienced in communicating, drafting and negotiating around the globe.

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1. General

1.1 General Characteristics of the Legal System

The modern Japanese legal system is primarily based on the civil law system, with partial modifications engrafted under the influence of the US legal system after World War 2. Japanese civil proceedings, which are now regulated by the Code of Civil Procedure (1996 Law No 109, or CCP), follow a combination of the inquisitorial model and the adversarial model.

The CCP provides for oral arguments in which parties may submit their allegations and evidence to the court. Written briefs are submitted in preparation for oral arguments. In most cases, however, oral arguments are regarded as a mere formality and the parties are deemed to have presented their arguments in written briefs and documentary evidence submitted in advance.

1.2 Court System

All courts in Japan are national courts. There is a unified hierarchy in the Japanese civil court system, which consists of four tiers. Litigants are given opportunities to go through up to three of these four tiers.

At the top is the Supreme Court of Japan which, as the final appellate court, hears appeals from high courts functioning as intermediate appellate courts. High courts not only hear, as intermediate appellate courts, appeals from district courts or family courts functioning as courts of first instance, but also hear, as the final appellate courts, appeals from district courts in cases where a summary court was the court of first instance. District courts function as the courts of first instance, as well as intermediate appellate courts, hearing appeals from summary courts.

Among the courts of first instance, district courts handle all civil cases, including ordinary civil cases, commercial cases and administrative cases, except for those cases in which family courts or summary courts have jurisdiction. Summary courts have jurisdiction over civil cases involving an amount in controversy not exceeding JPY1.4 million.

There are no official statistics on the average time from the commencement of proceedings to trial. However, for reference, the Supreme Court's data for the past five years indicates that proceedings in district courts, acting as the first instance, typically take around nine to ten months on average to conclude. This timeframe includes the entire process, ending with a judgment, settlement, or other resolution.

Excluding cases resolved by default judgments (see **3.6 Failure to Respond**), first instance cases generally take about 13 to 14 months on average from the initiation of proceedings to the delivery of a final judgment. In many of these cases, the trial itself occurs a few to several months before the final judgment is rendered.

1.3 Court Filings and Proceedings

Court filings and proceedings in formal litigations are generally open to the public. As an exception, a trade secret or confidential and detrimental information about the private life of a party may be protected from public disclosure by a court ruling issued in response to the party's motion (Article 92 of the CCP).

Following an amendment to the CCP in May 2022, a new mechanism has been introduced to protect a party's or their statutory agent's name and domicile, residence or usual place of abode from public access. This protection applies in cases where public disclosure would cause

substantial harm to social life, such as when the party is a victim of domestic violence or other crime (Articles 133 to 133-4 of the CCP).

In addition, examination of a party or their legal representative or a witness about matters concerning a serious family-related secret in personal status litigations may be protected from public audience by a court order (Article 22 of the Personal Status Litigation Act). In such a case, the court record of the examination will be automatically protected from public disclosure and may be inspected only by a party to, or a third party who has shown a legal interest in, the litigation (Article 91 of the CCP).

1.4 Legal Representation in Court

In any courts other than summary courts, a legal representative needs to be either an attorney-at-law licensed in Japan or a person who is authorised to act in court for the principal pursuant to law or regulation, such as a registered manager of a corporation or a captain of a ship. In summary courts, a certified judicial scrivener or a person who has obtained the court's permission may also appear as a legal representative (Article 54 of the CCP).

2. Litigation Funding

2.1 Third-Party Litigation Funding

There is no statutory rule which specifically prohibits third-party funding. As such, it is generally considered to be permitted unless it is made in a manner that violates the relevant laws or regulations, such as the Attorney Act or the Trust Act.

2.2 Third-Party Funding: Lawsuits

There is no statutory rule or established practice regarding third-party funding.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is generally considered to be available for both parties.

2.4 Minimum and Maximum Amounts of Third-Party Funding

There is no statutory rule or established practice regarding maximum or minimum amounts of third-party funding.

2.5 Types of Costs Considered Under Third-Party Funding

There is no statutory rule or established practice regarding what costs a third party may fund, but they usually cover legal fees and also out-of-pocket expenses required for lawsuits.

2.6 Contingency Fees

Contingency fees are generally permitted, and there is no specific restriction universally applicable to all types of cases. However, the Japan Federation of Bar Associations has set some rules about the maximum percentage in cases where lawyers work for consumers on their multiple debts.

2.7 Time Limit for Obtaining Third-Party Funding

There is no statutory rule or established practice regarding time limits for obtaining third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Generally, no pre-action conduct is required. There are some exceptions in certain categories of matters, such as family cases where filing for conciliation procedures is required prior to the initiation of a lawsuit. Generally, a potential

plaintiff may or may not send an enquiry letter to a potential defendant prior to the initiation of a lawsuit. If the potential defendant receives the enquiry letter and if such letter is in a form prescribed in the CCP, such potential defendant is obliged to respond to that enquiry. However, no specific sanction of the potential defendant is provided for in the statute.

3.2 Statutes of Limitations

Under the current rule of the Civil Code (1886 Law No 89), the recent amendments to which came into force on 1 April 2020, in principle, the statute of limitations period (or prescriptive period) is five years from the time a potential plaintiff became aware that a certain right was exercisable, or ten years from the time when the right became exercisable, whichever comes earlier. There are exceptions depending on the nature of the claims. For example, as regards damages compensation claims arising from tortious acts, the period is three years (five years in the case of a claim for bodily injury) from the time a potential plaintiff became aware that the tort claim was exercisable, or 20 years from the time the tortious act took place, whichever comes earlier.

3.3 Jurisdictional Requirements for a Defendant

The CCP lists certain requirements for determining whether Japanese courts have jurisdiction over a particular case, such as:

- that the defendant is located in Japan;
- that, in the case of a contract dispute, the obligation is supposed to be performed in Japan; and
- that, in the case of a tort, the tort took place in Japan.

This rule is generally applicable to first instance cases to be filed with district courts and summa-

ry courts. However, cases to be filed with family courts are subject to a modified rule.

3.4 Initial Complaint

A plaintiff has to submit a complaint to initiate a lawsuit. It is possible for the plaintiff to amend the complaint later as long as it does not fundamentally change the claim, and so doing will not substantially delay the litigation proceedings. However, the plaintiff cannot add defendants later in the same proceeding. So, if the plaintiff wants to extend his/her/its claims to other parties who are not named defendants in the complaint, the plaintiff has to file another lawsuit against those parties, and ask the court to consolidate those proceedings at its discretion.

3.5 Rules of Service

Once a plaintiff has filed a complaint with a court, the court clerk is responsible for serving the summons and the complaint upon the defendant. In most cases, the court clerk will engage the Japanese postal service to serve the defendant. It is possible for a plaintiff to sue a defendant located outside of Japan, in which case the service will be made through diplomatic channels, including those provided for in the Hague Service Convention.

3.6 Failure to Respond

If the defendant fails to appear at the court hearing and submit its answer to the court despite having been duly served, the court may deem that the defendant has admitted to all the allegations in the complaint, and therefore enter a default judgment in the plaintiff's favour, unless the court thinks it lacks jurisdiction over the case.

3.7 Representative or Collective Actions

Japan has its own class action system, which has an opt-in format. However, the claims that

may be made in a class action are limited to those arising from consumer contracts and the damages to be recovered through the system are limited. Furthermore, the parties who can be plaintiffs in a class action are limited to organisations licensed by the government. In fact, this class action system has rarely been used. There is also a system by which persons with a common interest may appoint one or more persons from among themselves to act as the plaintiff or defendant, but this system has also rarely been used.

3.8 Requirements for Cost Estimate

The Japan Federation of Bar Association's rule requires a lawyer to give an estimate when so requested by a client.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Parties may make an interim application regarding case management issues under the CCP and/or provisional remedies under the Civil Provisional Remedies Act (1989 Law No 91, or CPRA). An application regarding case management issues is normally handled by the same judge overseeing the substantive claim; however, for provisional remedies the application may be handled by a different court as a request for such provisional remedies is heard in a separate case from the case for the substantive claim and can be filed at another court with jurisdiction due to the presence of the subject assets (Article 12 of the CPRA).

4.2 Early Judgment Applications

Generally, all issues on the procedures and merits are assessed in the same process. However, if it is obvious that a certain procedural requirement is not met, as challenged by the counter-

party, the judge may give an interim decision on the specific procedural issue and may also conclude the process without admitting evidence on the merits – such as witness examinations – and dismiss the case. Refer also to **7.2 Case Management Hearings**.

4.3 Dispositive Motions

Motions to dismiss a case due to lack of international jurisdiction or due to the existence of an arbitration agreement are dispositive motions. A defendant is required to file such a motion before presenting any arguments on the merits of the case. Judges have the discretion to either suspend consideration of the merits until they reach a decision on the dispositive motion or to examine the merits alongside the dispositive motion.

In practice, when judges determine that the dispositive motion warrants dismissal, they often issue their decision to dismiss the motion at the same time as their decision on the merits of the case.

4.4 Requirements for Interested Parties to Join a Lawsuit

Interested parties may join a lawsuit through one of the following procedures.

- By filing a written petition with the court, a third party with an interest in the outcome of the litigation may intervene in the litigation in order to assist either party (Article 42 of the CCP).
- By filing a written petition with the court, a third party asserting that a right will be prejudiced by the outcome of the litigation or a third party asserting entitlement to the whole or part of the subject matter of the litigation, may intervene in the litigation as a party, designating either or both of the parties to the

litigation as an adverse party (Article 47 of the CCP).

- By filing a written petition with the court, a third party may intervene in the litigation as a co-plaintiff/defendant if the subject matter of the litigation is to be determined for one of the original parties and a third party only as a unified matter (Article 52 of the CCP).

4.5 Applications for Security for Defendant's Costs

If the plaintiff is not a resident of Japan or other countries that are signatories to the Hague Convention on Civil Procedure, the defendants may apply for an order to provide security for the court costs, which include court filing fees, fees for court-appointed professionals, and very limited costs of the defendants, excluding attorney's fee (Article 75 of the CCP).

Separate from the above, in a case where interim relief is granted, the court normally requires the applicant to make a security deposit for potential damage due to that interim relief (Article 14 of the CPRA).

4.6 Costs of Interim Applications/Motions

Interim applications or motions are typically addressed within the same proceedings as the substantive issues. In most cases, court fees are either not required or are fixed at a modest amount specifically stipulated for each application, making such fees relatively inexpensive. If fees are applicable, they, along with other court costs (excluding costs for provisional remedies, which are separately assigned, and attorney's fees, which are wholly borne by the party that retained them), are generally assigned to the losing party or, in a case where the plaintiff's claim is partially approved, allocated proportionally

to the respective parties when the judgment is issued.

4.7 Application/Motion Timeframe

If a party requests urgent interim relief, the court may deal with the application/motion within a timeframe corresponding to the urgency of such relief. In any case, the court will deal with such an application/motion on a case-by-case basis. If the issue is not urgent, the court may choose to resolve it as part of its decision on the merits.

5. Discovery

5.1 Discovery and Civil Cases

The CPP provides limited scope for document production. A litigant must file a petition with the court, clarifying the indication, the purport, the holder of and the facts to be proven by the documents sought, as well as the grounds for the obligation to submit the documents (Article 221 of the CCP). Deposition (taking of witness testimony in advance of the evidentiary hearing) is not available in ordinary circumstances. Having said that, if the court finds that there are extraordinary circumstances under which it would be difficult to examine the witness at the evidentiary hearing, it may examine the witness in advance (Article 234 of the CCP).

5.2 Discovery and Third Parties

A litigant can file a petition for document production against a third party. Where the court intends to order a third party to submit a document, it will hear the third party prior to the ruling (Article 223(2) of the CCP).

5.3 Discovery in This Jurisdiction

The scope of discovery is very limited, in that the CCP does not provide for deposition per se and

it allows various exceptions to the obligation to produce documents.

5.4 Alternatives to Discovery Mechanisms

As in other civil law jurisdictions, litigants are expected to rely primarily on the evidence that they already have in their hands prior to the litigation.

5.5 Legal Privilege

In civil litigation, no legal privilege is recognised *per se*, but lawyers may refuse to testify or produce documents relating to any fact which they have learnt in the course of providing legal services and which should be kept confidential (Article 197 and Article 220 of the CCP).

5.6 Rules Disallowing Disclosure of a Document

Article 220 of the CCP provides that a person may refuse to disclose any of the following:

- a document relating to matters for which they or their close relative are likely to be subject to criminal prosecution or conviction;
- a document concerning a secret in relation to a public officer's duties, which is, if submitted, likely to harm the public interest or substantially hinder the performance of their public duties;
- a document stating:
 - (a) any fact that a doctor, dentist, pharmacist, pharmaceuticals distributor, birth assistant, attorney at law (including a registered foreign lawyer), patent attorney, defence counsel, notary or person engaged in a religious occupation, or a person who was any of these professionals has learnt in the course of their duties and which should be kept confidential;
 - (b) matters concerning technical or profes-

sional secrets.

- a document prepared exclusively for use by the holder thereof (excluding a document held by the state or a local public entity, which is used by a public officer for an organisational purpose); or
- a document concerning a suit pertaining to a criminal case or the record of a juvenile case, or a document seized in these cases.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Injunctive relief can be sought through normal litigation as well as a provisional remedy process in urgent cases. Injunctions freezing assets are commonly requested through this provisional remedy process for the purpose of the future enforcement of monetary claims. However, unlike a freezing injunction (formerly known as a Mareva injunction) in common law jurisdictions, the petitioner typically has to identify the assets to be seized.

Injunctions to prevent certain actions damaging the interest of another party (eg, publication on the internet/other media or corporate action such as security issuances) are relatively common. However, as far as is known, an injunction to prevent parallel proceedings in another jurisdiction (ie, an anti-suit injunction) has not been granted in Japan.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

As mentioned in 6.1 **Circumstances of Injunctive Relief**, the court may respond to an urgent request. The major courts normally have an out-of-hours window; however, there are no out-of-hours judges for civil cases in Japan. In practice, some courts in big cities which are used to

handling urgent commercial cases are likely to respond more quickly but that also depends on the nature of the case.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctions obtained through a provisional remedy process to maintain the status quo (eg, freezing assets) will usually be granted by the courts on an ex parte basis (Article 3 of the CPRA). However, injunctions that determine a provisional status due to that status being necessary in order to avoid any substantial detriment or imminent danger that would occur to the applicant with regard to the rights in dispute cannot, in principle, be granted on an ex parte basis (Article 23 of the CPRA).

6.4 Liability for Damages for the Applicant

If the respondent suffers any damages from a provisional injunction which is later discharged, the applicant is liable for the damages. However, the applicant may argue against its negligence and liability if it can demonstrate its reasonable ground to apply and obtain the order. For such potential liability, the applicant is ordinarily required to provide a security deposit, except in cases where such potential liability cannot be assumed (Article 14 of the CPRA).

6.5 Respondent's Worldwide Assets and Injunctive Relief

As long as a Japanese court has the jurisdiction to adjudicate the merits of a case, that Japanese court can grant injunctive relief against the worldwide assets of the respondent (Article 11 of the CPRA), although the enforceability of such relief outside Japan depends on its recognition in the country where the assets are located.

6.6 Third Parties and Injunctive Relief

It is a typical situation that an applicant has a monetary claim against a defendant and the defendant in turn has a monetary claim against a third party, where injunctive relief can be obtained against the third party. In the application for the injunctive relief, the applicant is deemed to concurrently seek a provisional court order to garnish the defendant's monetary claim and to prevent the third party from paying the defendant.

6.7 Consequences of a Respondent's Non-compliance

If a respondent fails to comply with the terms of an injunction, the applicant may, depending on the type of the injunction, be entitled to disregard such act of the respondent or to see for an additional court order that the respondent must pay a daily penalty during the period of non-compliance. In addition, such non-compliance can itself be a tort against the applicant.

7. Trials and Hearings

7.1 Trial Proceedings

In general, several weeks after the complaint is filed, the court will hold the first oral hearing, during which the plaintiff will plead the complaint and the defendant, the answer. After that, in the case of relatively complicated business disputes, the court will hold several oral hearings, or preparatory hearings if the court deems appropriate, every four to eight weeks. During such pleading period, both parties will submit their legal briefs and supporting written evidence to advance their arguments, and the court will try to narrow down the issues to be determined. At the end of this pleading period, if the court finds it necessary to examine witnesses/experts

in person to determine the issues, the court will proceed to hold the trial (ie, evidentiary hearing).

At the evidentiary hearing, counsel for the parties are primarily responsible for conducting the examination-in-chief and cross-examination, while the judge may ask supplementary questions at any time. It is very rare for the parties to present opening/closing oral arguments at the evidentiary hearing. In some cases, however, the court holds another hearing after the evidentiary hearing, at which the parties present their respective closing arguments in writing.

7.2 Case Management Hearings

Interim petitions, such as a petition to transfer a case, a petition to challenge/disqualify the judge, and a petition for document production, are usually heard at, and ruled upon at or after, an oral hearing or a preparatory hearing at the pleading stage.

Where the court finds it necessary to examine witnesses/experts in person, the court usually consults with the parties as to the logistics relating to the trial (ie, evidentiary hearing).

7.3 Jury Trials in Civil Cases

No jury trials are available in civil cases.

7.4 Rules That Govern Admission of Evidence

There is no particular rule governing the admissibility of evidence in civil cases. Unless the evidence has been obtained in an extremely unethical way (eg, stolen by the litigant), any evidence (including hearsay evidence) is admissible as a general rule.

7.5 Expert Testimony

Expert testimony is permitted at trial. An expert witness is appointed by the court, either upon

introduction by a party or upon the court's own selection.

7.6 Extent to Which Hearings Are Open to the Public

Oral hearings (including the evidentiary hearing) are open to the public, while preparatory hearings are not. In patent/know-how litigation and divorce/filiation litigation, the court may decide not to open the evidentiary hearing to the public to safeguard the party's proprietary know-how or shield sensitive personal matters.

7.7 Level of Intervention by a Judge

During a trial (ie, an evidentiary hearing), a judge may put questions to the witnesses at any time. The judge may also intervene in counsel's examination of witnesses, if the court finds it inappropriate or confusing.

At the evidentiary hearing, the judge will rule on the objections on examination (such as leading, repetitive or insulting questions). Such rulings are not subject to appeal. If a witness refuses to testify, the court will rule on whether such refusal is based on a good reason. Such rulings are subject to appeal in a higher court.

7.8 General Timeframes for Proceedings

Typically, a commercial dispute between reasonably sophisticated companies will, on average, take 12–18 months from the filing of the complaint to the trial (evidentiary hearing). The trial (evidentiary hearing) will usually last half a day or one full day. However, if there are multiple witnesses, the hearing could extend over two or more days, with sessions scheduled weeks apart.

8. Settlement

8.1 Court Approval

Parties may settle a lawsuit either in court or outside the court.

An out-of-court settlement requires no court approval. An in-court (judicial) settlement is established when its details are recorded in the record of settlement prepared by the court. In this sense, an in-court settlement is regulated to a certain extent, although it need not be approved by the court.

8.2 Settlement of Lawsuits and Confidentiality

For a judicial settlement, the record of settlement, which is a part of the court record, is generally open to the public, with exceptional protection from public disclosure as set forth in **1.3 Court Filings and Proceedings**. However, even under exceptional protection, it is virtually impossible to protect the fact of the settlement itself from public disclosure as it is not classed as a protected secret under Article 92 of the CCP.

Out-of-Court Settlement

As for an out-of-court settlement, which is usually followed by a withdrawal of the lawsuit, only the fact of the withdrawal is open to the public. The reason for the withdrawal (ie, an out-of-court settlement) remains unknown. Accordingly, the out-of-court settlement can remain confidential, as long as the parties comply with the confidentiality clause, if any, in the settlement agreement.

8.3 Enforcement of Settlement Agreements

The record of a judicial settlement has the same effect as a final and binding judgment (Article 269 of the CCP), so the party may commence

enforcement procedures by submitting the record to the enforcement court.

An out-of-court settlement agreement may be similarly enforceable only if it takes the form of a notarial deed prepared by a notary public and if the following two conditions are met:

- the claim to be enforced is a claim for payment of a certain amount of money or any other fungible thing or a certain amount of securities; and
- the agreement contains a statement to the effect that the obligor will immediately accept compulsory execution.

8.4 Setting Aside Settlement Agreements

A judicial settlement may be set aside upon certain action by a party which demonstrates that the settlement is null and void for certain reasons, such as fraud or a material mistake. Such action includes the party's motion for the re-opening of oral proceedings for the lawsuit which was settled, the party's objection to the enforcement of the judicial settlement, and the party's filing of a new lawsuit seeking a declaratory judgment to confirm that the judicial settlement is null and void.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

Depending on the type of claim pursued by the successful litigant, the court's judgment takes one of the following three forms:

- a judgment ordering specific performance (such as paying money, evacuating premises, surrendering movables, or otherwise doing or refraining from doing a certain act);

- a formative judgment creating, altering or nullifying a certain legal relationship; or
- a declaratory judgment.

In all types of judgments, the defeated party is ordered to bear all or part of the court fees (such as filing fees or witnesses' expenses) disbursed by the successful party. A judgment ordering specific performance is accompanied by an order to pay delinquency charges until full performance by the defeated party.

9.2 Rules Regarding Damages

The court determines the amount of damages based on the actual damage incurred by the party which has convinced the court that the other party is liable. No punitive damages are available. There is no rule limiting the maximum damages, except that the amount awarded in the court judgment may not exceed the amount claimed by the successful party.

9.3 Pre-judgment and Post-judgment Interest

The successful party may collect interest from the day on which the defeated party becomes delinquent in its monetary obligation until the date on which the defeated party has fully performed the monetary obligation. In calculating both pre- and post-judgment interest, the court generally uses a statutory rate, which is currently 3% per annum until 31 March 2026 and will be reviewed as of 1 April 2026, and every three years thereafter. In cases where the claim is based on a contract that provides a different interest rate, the court uses the contractual rate.

9.4 Enforcement Mechanisms of a Domestic Judgment

The Civil Execution Act (Act No 4 of 1979, or CEA) provides the mechanism for enforcement of judgments. Under the CEA, a domestic judgment

ordering payment of money is enforced by attachment of the defeated party's assets (such as bank accounts, accounts receivable, lease deposit, real estate and movables). A judgment ordering the evacuation of premises or surrendering of movables is enforced by physical coercion by a court execution officer. Other types of non-monetary judgments are likewise enforced in accordance with the CEA.

9.5 Enforcement of a Judgment From a Foreign Country

To enforce a foreign judgment in Japan, the enforcing party needs to file a lawsuit with a Japanese court seeking an execution judgment (Article 24 of the CEA). The court cannot review the merits of the foreign judgment, and must grant the execution judgment if all of the following conditions provided for in Article 118 of the CCP are satisfied:

- The foreign judgment is final and conclusive.
- The jurisdiction of the foreign court is recognised pursuant to laws and regulations, conventions, or treaties.
- The defeated party has been properly served or has appeared without being so served.
- The content of the judgment and the litigation proceedings are not contrary to public policy in Japan.
- A guarantee of reciprocity is in place.

Once the execution judgment is rendered and becomes final and conclusive, the enforcing party is able to proceed with enforcement of the foreign judgment in Japan in the same manner as set forth in **9.4 Enforcement Mechanisms of a Domestic Judgment**.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

As a general rule, an aggrieved party before a court of first instance can appeal to a court of second instance and in the second instance may appeal to the final appellate court. In the case where a district court or a family court is the court of first instance, a high court is the second instance and the Supreme Court is the final appellate court. In the case where a summary court is the court of first instance, a district court is the second instance and a high court is the final appellate court.

As an exception, an aggrieved party in the first instance can appeal directly to the final appellate court if, after the judgment in the first instance is rendered, the parties agree to circumvent the proceedings in the second instance (Articles 311 and 281 of the CCP).

10.2 Rules Concerning Appeals of Judgments

An aggrieved party at the court of first instance may appeal to the court of second instance as a right (Article 281 of the CCP). There is no need to secure a grant or leave to proceed to the second instance, nor are there any limitations on the grounds for such appeal.

In contrast, the grounds for a final appeal are narrowly stipulated in the CCP. A litigant may appeal to the court of third instance as a right only where the court of second instance misinterpreted the constitution of Japan or committed a fatal procedural error (eg, the judge not being qualified to hear the case) (Article 312 of the CCP). In addition, where a high court is the court of second instance, the Supreme Court may, at its discretion, accept the case if it involves signif-

icant issues regarding the interpretation of laws and regulations (Article 318 of the CCP). Upon acceptance of the case, a final appeal is deemed to have been filed.

10.3 Procedure for Taking an Appeal

An aggrieved party in the first instance may make an appeal to the court of second instance, by submitting a written appeal to the court of first instance within two weeks from the date of service of the written judgment on the party. If the grounds for appeal are not stated in the written appeal, the appellant is required to submit a brief stating the grounds for appeal to the court of second instance within 50 days from the date of submission of the petition. Failure to comply with the deadline for submission of the written statement is not, however, sanctioned by an automatic dismissal of the appeal.

The procedures for making an appeal (including a petition to accept the case) from the judgment of the second instance to the final appellate court are essentially the same as set out above, except that failure to submit a brief stating the grounds for the final appeal or for the petition to accept the case within 50 days is sanctioned by automatic dismissal (Articles 315, 316 and 318 of the CCP).

10.4 Issues Considered by the Appeal Court at an Appeal

Proceedings in the second instance are considered a continuation of those in the first instance. The appeal court re-hears the case and considers whether there is an error in the first instance judgment in terms of fact-finding or application of the law. In addition, new issues which were not explored at first instance may be examined at the appeal. However, presentation of those issues which could have been raised in the first instance and raising which will delay conclusion

of the proceedings in the second instance may be rejected by the court (Article 157 of the CCP).

10.5 Court-Imposed Conditions on Granting an Appeal

When the Supreme Court grants a petition to accept a case (see **10.2 Rules Concerning Appeals of Judgments**), it may determine which grounds for the petition are to be reviewed. Other grounds are excluded from the court's review (Article 318 of the CCP).

10.6 Powers of the Appellate Court After an Appeal Hearing

Once the court of second instance closes the oral proceedings, it may render a judgment either reversing the judgment in the first instance or dismissing the appeal. When reversing the judgment, the court may adjudicate the case by itself or may remand the case to the lower court. It may also encourage the parties to settle the case at any time before rendering a judgment (Article 89 of the CCP).

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

“Court costs” paid to the court and “legal fees” paid to lawyers are clearly distinguished from each other. Court costs are subject to the CCP rules and are composed of out-of-pocket expenses, such as revenue stamps put on a complaint, document translation costs (if a document written in a language other than Japanese is submitted as evidence), etc. Court costs shall be borne, in principle, by the defeated party. In other words, the winning party is entitled to recuperate these costs from the defeated party. However, legal fees are not treated as part of court costs. Thus, legal fees are not subject to

the CCP rules, and shall be borne, in principle, by each party respectively, regardless of the result of the lawsuit.

If a plaintiff wants to recover a certain portion of its legal fees, the plaintiff should explicitly include them in the complaint as additional damages to be compensated. However, this is not generally granted by the court even if the plaintiff wins the other portions of the claim, except in certain types of tort cases where the plaintiff seeks damages compensation arising from patent infringement, medical malpractice, car accidents, etc. Furthermore, even if “legal fees” are granted as additional damages to be compensated, the amount is usually 10% or less of the amount of the damages sought other than “legal fees”.

11.2 Factors Considered When Awarding Costs

In principle, the defeated party bears the court costs. For example, if 70% of a plaintiff's claim is granted, the plaintiff and the defendant will be ordered to bear the court costs on a 30:70 basis, respectively.

11.3 Interest Awarded on Costs

Regarding court costs, in principle, no interest is awarded. As to legal fees, if they are granted in the judgment, 3% per annum will be awarded in principle. However, if they are considered to have started to accrue before 1 April 2020 (ie, before the amendments to the Civil Code took effect; see **3.2 Statutes of Limitations**), then 5% per annum will be awarded. On the other hand, the current rate of 3% per annum will be reviewed as of 1 April 2026 and every three years thereafter.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

In the context of international dispute resolution, the popularity of arbitration is rising. For domestic disputes, mediation presided over by the court and mediation offered by industrial associations (eg, the Security Company Association) are popular. In general, the government encourages and promotes the use of ADR, particularly in specific industries such as financial trading. In addition, the government published an action plan for online dispute resolution presided over by private organisations (ie, NPOs) in March 2022, which is expected to function as a more easily accessible and less expensive form of ADR, especially for disputes involving smaller amounts.

12.2 ADR Within the Legal System

ADR is promoted by a law called the ADR Promotion Act. In general, ADR is not compulsory. ADR in Japan includes court-administered mediation which is a part of court procedures. While refusal to participate in ADR may not result in sanctions generally, under certain rules of mediation offered by industrial associations, a member of the association (ie, the industry side) is obligated to respond and there is a penalty for unreasonable refusal.

A recent amendment to the ADR Promotion Act introduced a significant development: settlement agreements (excluding those involving domestic, consumer, or individual labour disputes) reached through mediation administered by a certified ADR business operator, in which the obligor consents to compulsory execution, can now be enforced through a court's enforceability order.

For international mediations, the Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation) establishes a comparable enforcement mechanism for qualifying international settlement agreements reached through such mediations.

12.3 ADR Institutions

As mentioned in **12.1 Views of ADR Within the Country**, certain forms of ADR are offered and promoted by industrial associations and those associations are well organised. For international arbitrations, the Japan Commercial Arbitration Association provides standard international arbitration institution services.

In November 2018, the Japan International Mediation Center in Kyoto (JIMC-Kyoto) was established to provide world-class mediation services for various kinds of cross-border disputes between foreign and Japanese parties.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The Arbitration Act (Act No 138 of 2003), which was enacted based on the UNICITRAL Model Law (1985), governs how arbitrations are conducted, and the recognition or enforcement of arbitral awards.

13.2 Subject Matters Not Referred to Arbitration

An arbitration agreement is enforceable only when the subject thereof is a civil dispute (excluding those related to divorce or dissolution of adoptive relationships) that can be settled between the parties (Article 13(1) of the Arbitra-

tion Act). In addition, until otherwise enacted, an arbitration agreement concluded on or after 1 March 2004, the subject of which constitutes individual labour-related disputes that may arise in the future, will be null and void (Article 4 of the supplemental provisions to the Arbitration Act). Further, an arbitration agreement concluded on or after 1 March 2004, the subject of which constitutes consumer disputes that may arise in the future, is effective, but can be cancelled by the consumer and is subject to other regulations (Article 3 of the supplemental provisions to the Arbitration Act).

13.3 Circumstances to Challenge an Arbitral Award

If the arbitration was seated in Japan, the parties may file a petition with a Japanese court to set aside the arbitral award. The petition must be filed within three months from the date on which notice was given through the sending of a copy of the written arbitral award.

The grounds for setting aside an arbitral award (Article 44 of the Arbitration Act) are identical in substance to those set forth in Article 34 of the UNCITRAL Model Law.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Article 46 of the Arbitration Act provides the same mechanism to enforce domestic and foreign arbitral awards. To enforce an arbitral award, the enforcing party must file a petition with a court for an execution order (meaning an order allowing civil execution based on an arbitral award). The court is required to make an execution order unless it finds grounds to refuse enforcement as set forth in Article 45(2) of the Arbitration Act, which are identical in substance to those set forth in Article 36 of the UNCITRAL Model Law. In addition, under the amendments

to the Arbitration Act which took effect on 1 April 2024, it has become possible for the court to issue, upon a petition from a party granted an order for interim measures in an arbitration, an enforcement approval order, such as one permitting civil enforcement based on the order for interim measures (new Article 47(1)(6)), unless the court finds grounds to refuse enforcement as set forth in the new Article 47(7)(8).

14. Outlook

14.1 Proposals for Dispute Resolution Reform

Since June 2020, the Legislative Council has been deliberating over a reform of civil procedure utilising information technology. It aims to amend various laws concerning civil procedures to enable e-filing (ie, online court filing), e-case management (ie, online access to the court record) and e-courts (ie, web hearings). For this purpose, following the amendment of the CCP in May 2022, several civil procedure-related laws (eg, the Bankruptcy Law, the Civil Execution Act, etc) were amended in June 2023 and are set to become operational gradually over the next five years. The new amendment enables:

- online submission of new cases and service of court documents;
- attending court sessions via the internet or other telecommunication methods, like video or phone conferencing; and
- online access to court records.

However, it is not clarified whether or not (and to what extent) the new legislation allows individuals located outside Japan to take part in proceedings online. In practice, the feasibility of such participation is likely to necessitate considerable further discussion.

In addition, the Arbitration Act was amended in April 2023 in line with the amendment to the UNCITRAL Model Law in 2006, as mentioned in **13.4 Procedure for Enforcing Domestic and Foreign Arbitration**. Simultaneously, the Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation), as well as the amendment to the ADR Promotion Act, took effect on 1 April 2024 – the same time as the said Convention entered into force in Japan. Together, these legislative changes support the enforcement in Japan of awards and agreements under international and domestic ADR legal norms.

14.2 Growth Areas

The information technology and renewable energy sectors are experiencing notable growth in the context of disputes.

Internet Service Providers (ISPs) and platform operators are increasingly facing claims from consumers and businesses whose human rights or economic interests are allegedly harmed by their activities. While legislative efforts are underway to address these issues, they primarily aim to protect the rights of the affected individuals. As a result, these measures often lead to an increase in related claims rather than a reduction.

The renewable energy sector presents a range of legal challenges, including disputes over site ownership, nuisance claims, and construction defects. The rapid growth of renewable energy projects, spurred by government policies over the past decade, has given rise to these issues during the implementation of such projects.

In addition, M&A remains a highly active area, while finance continues to be stable. Within the financial sector, disputes related to fintech are on the rise and hold significant potential for further growth.

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