

## **OUTLINE OF CIVIL PROCEDURE IN JAPAN**

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## **I. Civil suits**

### **A. Types of civil suits**

Civil suits encompass a wide variety of cases, but primarily, they can be categorized into the following two types.

The first type of suit concerns disputes mainly over proprietary rights between individuals or private entities: for example, cases demanding repayment of loans, seeking evacuation from land or buildings, or seeking compensation of damage caused by traffic accidents. This type of civil suit is called an “ordinary suit”, and its proceedings are held in accordance with the Code of Civil Procedure.

Suits demanding payment of negotiable instruments or checks have a simplified special proceeding. Any plaintiff seeking payment of negotiable instruments or checks can select whether to file a suit through this special proceeding or as an ordinary suit.

The second type is called administrative case litigation, which is equivalent to a “judicial review” under common law jurisdiction. Administrative case litigation resolves disputes concerning rights and obligations between individuals or private entities and public authorities (i.e. the state or local government), such as disputes concerning tax or driving licenses. Such litigation by nature often has a profound impact on the public interest, in contrast to ordinary civil suits (the first type), which resolve disputes between individuals or private entities only. Therefore, such trials are held in accordance with the Administrative Case Litigation Act, which is a special provision of the Code of Civil Procedure. The Code of Civil Procedure is applied only to matters which are not provided for in the Administrative Case Litigation Act. The main types of administrative case litigation are as follows.

- (i) Action seeking the revocation of an administrative disposition, which constitutes an exercise of public authority by an administrative agency
- (ii) Action seeking the declaration of validity or invalidity of an administrative disposition
- (iii) Action seeking the declaration of illegality of a failure by an administrative agency to make an administrative disposition
- (iv) Action seeking an order to the effect that an administrative agency should make an administrative disposition (Action for a mandatory injunction)
- (v) Action seeking an order to the effect that an administrative agency should not make an administrative disposition (Action for a prohibitory injunction)
- (vi) Action relating to a legal relationship under public law, such as an action for a declaratory judgment
- (vii) Action seeking the correction of an illegal act conducted by a public agency, based on the status of a person, which is irrelevant to his/her own legal interest, and which is specially recognized by an individual statute (e.g. Action seeking the nullity of an illegal election filed by a voter)

Actions for damages on the grounds that a government employee has illegally exercised public authority (i.e. Actions for state compensation) are handled as ordinary civil suits

(the first type).

## **B. Procedure for civil suits**

### **1. Jurisdiction and court of first instance**

#### **a. Jurisdiction**

Which court has jurisdiction over each case is determined by the Court Act, the Code of Civil Procedure, and other related laws.

Normally, the court of first instance is a summary court or a district court. There are 438 summary courts and 50 district courts in Japan. Summary courts have jurisdiction as the court of first instance where the amount in controversy is 1.4 million yen or less, while district courts over 1.4 million yen.

Under the Code of Civil Procedure, a plaintiff may file an action with the court that has jurisdiction over the defendant's domicile or residence. The Code of Civil Procedure also stipulates additional jurisdiction. For example, an action for damage due to a tort may also be filed with the court having jurisdiction over the place where the tort took place, and an action relating to real property may be filed with the court having jurisdiction over the place where the real property is located.

#### **b. Court**

At a summary court, a single judge handles all cases. At a district court, a single judge handles a majority of cases, but where there is a special legal provision, a panel of three judges handles the case; for example an appeal against a judgment rendered by a summary court is handled by a panel. Additionally, even where there is no special legal provision, a court may decide at its discretion to hold proceedings under a panel.

## **[Jurisdiction and Procedure of Civil Cases\(PDF: 103KB\)](#)**

### **2. Court proceedings in the first Instance**

#### **[Civil Case Proceedings \(PDF: 99.4KB\)](#)**

#### **a. Inquiry and disposition of collection of evidence prior to filing of action**

In order to enhance pre-filing preparations for court cases, any person who intends to file an action may notify the intended defendant of the action, make inquiries to the intended defendant with regard to matters that would be obviously necessary in preparing allegations or evidence, and request the intended defendant to submit a response in writing. Furthermore, before an action is filed, the court may, upon petition of a party and after hearing the opinions of the opposite party, commission (i) the holder of a document to submit it to the court, (ii) government agencies or other organizations to conduct necessary examinations, and (iii) an expert to state his/her opinion based on their expert

knowledge and experience.

b. Commencement of suit

(1) Filing of action

A civil suit commences with a plaintiff filing a document (complaint) to the court which has jurisdiction over the case.

**Table 1. Changes in the number of ordinary suits handled by the district court in the first instance (PDF: 120KB)**

**Table 2. Changes in the number of ordinary suits handled by a summary court in the first instance (PDF: 115KB)**

(2) Requirements for complaint

A complaint shall specify the parties and contain the object and statement of the claim. The object of the claim is equivalent to the conclusion of a complaint, and means the judgment the plaintiff is seeking, such as claiming for payment of a specific amount of money, or demanding evacuation of a specific real property. The statement of the claim expresses the facts needed to identify the legal basis for the plaintiff's claim. A complaint shall also contain specific facts giving rise to the claim, and important facts and evidence relevant to the anticipated issues. In addition, the plaintiff shall attach to the complaint copies of material documentary evidence and a fiscal stamp of the amount stipulated by law as the filing fee.

Where a defect is found in a complaint in terms of specifications by the parties, the object or statement of the claim, or the sufficiency of the filing fee, the presiding judge shall specify a reasonable period and order the plaintiff to correct it within that period. If the plaintiff fails to do so, the presiding judge shall dismiss the complaint (and thus terminate the suit), or if the correction is insufficient, the presiding judge shall order the plaintiff to correct the defect once again. The presiding judge may direct a court clerk to urge the plaintiff to make necessary corrections.

Because the plaintiff has the right and responsibility to specify the claim and decide on the extent of the relief, the court may not render a judgment that orders a payment in excess of the amount demanded by the plaintiff.

(3) Service of complaint

The complaint shall be served upon each defendant. Affairs concerning service shall be administered by a court clerk. Normally, a summons for the first date for oral argument is served together with the complaint. A court clerk normally uses a special postal service for delivery (special service) so as to confirm that the documents have been properly received. If the place where the service is to be made; for example, the defendant's domicile or

residence; is unknown, a court clerk can make a service by posting a notice at the posting area of the court upon petition filed by the plaintiff (service by publication). If it is not possible to serve a complaint on the defendant, the complaint shall be dismissed.

#### (4) Answer

Any defendant who receives a service of complaint and a writ of summons shall submit a written answer. A written answer shall contain statements of the answer to the object of the claim. Normally, the defendant answers that the action or the claim by the plaintiff should be dismissed.

The defendant shall also clarify whether to admit or deny the facts stated in the complaint. In cases of denying the facts, the defendant shall explain the reason. Additionally, the written answer shall contain specific facts that are required to extinguish the rights claimed by the plaintiff, and material facts and evidence related to said facts. The defendant shall submit copies of material documentary evidence together with the written answer in the same way as the plaintiff when submitting the complaint.

#### c. First date for oral argument

##### (1) Date for oral argument

The date for oral argument refers to the proceedings where both parties argue their case and submit orally their allegations and evidence to the court. Oral argument shall be held in a courtroom open to the public on the date and time designated by the presiding judge.

The court cannot render a judgment based on allegations or evidence that have not been submitted on the date for oral argument. Parties or their statutory agents shall appear on the date for oral argument, make allegations based on the brief that they have submitted to the court in advance, and submit evidence in support of their allegations. With regard to any facts that neither party denies, the court must render a judgment on the assumption that said facts exist, and neither party needs to prove such facts. However, a party must prove the allegations denied by the opponent.

##### (2) First date for oral argument

On the first date for oral argument, the plaintiff makes their allegations in accordance with the complaint and other documents submitted in advance, and submits evidence to support the allegations. Also, the defendant rebuts the allegations in accordance with the written answer submitted in advance, along with any rebuttal evidence.

##### (3) Absence of a party on the first date for oral argument

Even if one party is absent on the first date for oral argument, if said party has submitted a complaint, written answer or any other documents in advance, the court may deem the party to state matters as contained in these documents. However, if the defendant has not submitted a written answer nor any other document, and if the defendant does not appear

on the first date for oral argument without clarifying his/her intention to deny the facts described in the complaint, the defendant is deemed to admit all the facts stated in the complaint, and the court renders a judgment upholding the plaintiff's claim.

(4) Proceedings on the first date for oral argument

On the first date for oral argument, after the plaintiff and defendant submit and rebut the allegations as per their complaint and written answers, the court considers how to proceed with the case properly and promptly. The court may conclude oral argument and render a judgment upholding the claims of the plaintiff if the defendant does not deny the facts alleged by the plaintiff or counter the plaintiff's allegations. In this case, the court may render a judgment by stating the judicial conclusion (the main text of the judgment) and the gist of the reasons orally, without preparing a judgment document which is normally required for an ordinary judgment, and rather these matters are recorded in a document prepared by the court clerk (record).

Conversely, if the facts are disputed between the parties, the court may conduct the following proceedings to arrange issues and evidence in order to narrow down the points of the dispute (issues) which are to be determined by evidence, and to prepare for conducting examination, such as that of witness, efficiently and intensively within a short period regarding those issues.

d. Proceedings to arrange issues and evidence

(1) Overview

There are three types of proceedings to arrange issues and evidence, namely (i) preliminary oral argument, (ii) preparatory proceedings, and (iii) preparatory proceedings by means of documents, and the court selects the most appropriate proceedings in accordance with the nature and details of the case. In the proceedings to arrange issues and evidence, both parties shall clarify their allegations and its supporting evidence, and indicate which part of the opposite party's allegations are denied, and whether to admit that the documentary evidence submitted by the opposite party is authentically created. Through this process, both parties determine whether they need to amend or supplement the allegations and/or submit additional evidence, and the court and both parties share understanding of the extent of the facts to be established by proof, such as examination of a witness and of a party him/herself. Prior to the date for proceedings to arrange issues and evidence, both parties need to send briefs, which include their allegations and documentary evidence to be submitted, to the court and the opposite party. The judge may set a period for submitting a brief and evidence. A party may submit an inquiry to the opponent and request the opponent to make a response with regard to the matters necessary for preparing allegations or evidence. If there are any contradictions or uncertainties in the party's allegations or evidence, the court may question the party and order the party to clarify the contradictions or uncertainties by the next date.

The court, when it finds it appropriate, upon closing the proceedings to arrange issues and evidence, may have the parties submit a document summarizing the proceeding results, or have the court clerk state the proceeding results in the record.

Parties are expected to submit allegations and request examination of evidence before the close of the proceedings to arrange issues and evidence, and if a party submits a new allegation or newly requests examination of evidence after the close of proceedings, upon the request of the opponent, said party shall explain the reasons for the delay in making the new allegation or requesting examination of evidence. If there are no justifiable grounds for such delay, the new allegation and request for examination of evidence may be dismissed.

#### (2) Preliminary oral argument

Preliminary oral argument is a type of oral argument specifically designed to facilitate arranging issues and evidence. Because it is a type of oral argument, it is held in a courtroom open to the public. However, the courtroom for preliminary oral argument is different from that for ordinary oral argument. Namely, there is no bench, exclusively for a judge, nor individual desks for the plaintiff or defendant in the courtroom for preliminary oral argument, but rather, there is a round or oval table, around which the judge and both parties sit. In this type of courtroom, the judge and parties can hold discussions in a less formal atmosphere than an ordinary courtroom, and it is also easier to discuss issues while examining the same evidence. During preliminary oral argument, a wide spectrum of actions can be taken to arrange issues and evidence, including examination of the evidence. All of the allegations and evidence presented for preliminary oral argument constitute the materials on which the court renders a judgment.

#### (3) Preparatory proceedings

Preparatory proceedings are held to prepare for future oral argument. Differently from oral argument, these proceedings do not need to be open to the public, and are normally held in a room other than a courtroom (argument preparation room). When a panel of three judges handles a case, the panel may allow panelists to preside over the preparatory proceedings; in this case, the presiding judge designates one or two members of the panel as authorized judges, who preside over the preparatory proceedings. Certain restrictions apply to preparatory proceedings; for example, no witness can be examined during preparatory proceedings. Telephone or video conference systems can be used for preparatory proceedings if it is difficult for either party to appear before the court because, for example, he/she resides in a remote place.

#### (4) Preparatory proceedings by means of documents

Preparatory proceedings by means of documents are conducted to arrange issues and evidence by submitting briefs without the parties' appearance in court, and are mainly



used when both parties live in a remote place from the court. Telephone or video conference systems may be used for preparatory proceedings by means of documents if courts and parties need to have a discussion with regard to issues and evidence.

Parties exchange briefs and other documents, such as copies of documentary evidence to be examined later, and submit these to the court during preparatory proceedings by means of documents. A court sets the time limit for submitting such briefs and requesting examination of evidence.

e. Date for scheduling conference

The court may designate a date at any time to share understanding of the relationship between evidence and issues, or to consult with the parties as to the progress of court proceedings. Telephone or video conference systems may be used for these proceedings. Parties cannot submit allegations or evidence on the date for the scheduling conference.

f. Technical advisor

Recently, the number of cases that require specialized knowledge in such fields as medicine, architecture, and intellectual property has been steadily increasing, and the appropriate involvement of experts in such cases is demanded to ensure their proper disposition. The technical advisor system was adopted following the revision of the Code of Civil Procedure in 2003 in order to meet such demands. The court may order certain experts to participate in the proceedings to arrange issues and evidence. Technical advisors are required to explain technical matters and the meanings of special terms included in the evidence and allegations submitted by the parties based on their expertise. The involvement of experts is expected to facilitate the prompt arrangement of issues and evidence in cases where specialized knowledge is required. The court may also order technical advisors to participate in the examination of evidence and the settlement proceedings to explain technical matters. Explanations provided by technical advisors are only used on a supplementary basis so that the judge and parties can fully understand the allegations and evidence, and are not handled as evidence in their own right; therefore, they are not used as materials on which the court determines the existence of the facts disputed between the parties.

g. Examination of evidence

(1) Overview

After issues are identified through oral argument and proceedings to arrange issues and evidence, in order to make a decision on these issues, the court conducts examination of witnesses, including parties. Japan does not employ the jury system with regard to civil cases, and so judges are tasked with both fact finding and application of laws and regulations.

Generally, examination of witnesses should be concentrated into as short a timeframe as

possible, and it is preferable to complete such examinations within a day, or on consecutive days in principle. Each party may make a request to the court for examination of witnesses in order to prove facts advantageous to him/herself. When making a request for examination of a witness the party shall submit a document explaining what the witness would be questioned about. In addition, when examination of witnesses is requested, written statements of those who would be examined are often submitted as documentary evidence. The court then decides whether to conduct examination of witnesses or not based on the results of the arrangement of issues and evidence.

When the court decides to conduct examination of witnesses, they are summoned. Witnesses are basically obliged to testify on all questions after swearing an oath. In principle, the party who requested the examination of the witness questions him/her first, after which the other party questions the witness. The judge(s) normally pose their questions after the parties have completed their questioning. Rightfully, the presiding judge may pose questions whenever he/she considers it necessary.

#### (2) Examination via videoconference system

The court can conduct examination via a videoconference system in the event that the witness lives in a remote place from the court, or that the witness may be mentally stressed or significantly harmed in giving his/her testimony in the same location as the judge and/or the parties present. In this case, the witness appears in a different room or courthouse from the courtroom attended by the judge, and is questioned and answers via the cameras and monitors of the videoconference system.

#### (3) Expert testimony and other examination of evidence

The court, upon petition of a party, may appoint neutral experts to submit their opinions based on their expert knowledge and experience in such areas as medicine and architecture. This is called expert testimony. The experts' opinions are not binding on the judgment of the court, but are considered as evidence taken to supplement the judge's knowledge and experience. Apart from expert testimony, each party may submit written opinions from experts selected by him/herself as documentary evidence, and request examination of the experts as witnesses, but expert testimony is different from this type of evidence, which is submitted or select by parties, in that the court appoints a neutral and fair expert as an expert witness. There is a special committee within the Supreme Court to help the lower courts find an appropriate expert as a court-appointed expert witness in medicine and architecture.

Other proceedings for the examination of evidence are as follows.

- (i) Observation: The judge perceives the shape, phenomenon, and status of the target object by using the five physical senses
- (ii) Commission to submit documents: The court commissions the holder of a document to

submit it to the court.

(iii) Commission of examination: The court commissions government agencies, and other organizations to conduct necessary examinations.

#### (4) Rules of evidence

The Code of Civil Procedure and the rules of Civil Procedure stipulate several rules for examination, such as the order of questioning witness and restrictions on leading questions. However, unlike under common law, there are generally no strict rules of evidence that cover a broad area of civil suits in Japan. How the evidence is evaluated in the fact-finding process, namely determination of the existence or nonexistence of the disputed facts based on the result of the examination of evidence, is entirely at the judge's discretion.

However, in principle, the court may not conduct examination of evidence without petition by a party. An exception is examination of the party, which the court may conduct without petition by a party.

#### h. Conclusion of arguments

When the court, after closing examination of evidence, considering all allegations and evidence, is convinced of whether or not the claim sought by the plaintiff should be granted, the court concludes oral argument and designates the date for rendering judgment.

#### i. Judgment

The judgment is the official final decision on the case made by the court. The judgment basically becomes effective when it is rendered by the presiding judge based on the document prepared in advance (judgment document). The judgment document shall state, among other things, the main text, i.e. conclusion, the allegations of the parties, and the reason for the determination, and be served upon the parties.

The defeated party can appeal to the court of second instance. If an appeal is not filed within the period specified by the law, generally, the decision cannot be changed. A judgment that has such status is called a "final and binding judgment". A final and binding judgment is binding on both parties and certain other people, and allegations that contradict the final and binding judgment may not be submitted in a later civil suit between the same parties. This effect of the final and binding judgment is known as "*res judicata*". The winning parties of final and binding judgments are entitled to compulsory execution. Upon issuing a judgment, the court may declare that said judgment is executable even before it becomes final and binding (declaration of provisional execution). The parties may carry out compulsory execution based on the judgment with the declaration of provisional execution, but the compulsory execution may be revoked later; for example when the appellate court orders revocation.

#### j. Conclusion of suits not by judicial decision

##### (1) Settlement

Many cases are concluded by settlements between the parties in court (judicial settlement). The court may encourage the parties to settle at any time while the case is pending before it. When a judicial settlement is established, its details are recorded in the record of settlement. A record of settlement has the same effect as a final and binding judgment.

In order to establish a judicial settlement, basically, both parties must appear in court on the designated date. However, if the court sends a document containing the terms of settlement to one of the parties, and the party submits a document stating that he/she accepts the terms to the court before the designated date, then a settlement can be established without the appearance of the party. In this case, if the opposing party appears in court on the designated date, and accepts the same terms of settlement that the other party has accepted, it is considered that a settlement has been established. This procedure is mainly used in cases where appearing in court is difficult due to residing in a remote place.

##### (2) Withdrawal of action

After filing of an action, the plaintiff may withdraw it at any time prior to a judgment being final and binding without explaining the reason, and if the plaintiff withdraws the action, the civil suit is automatically concluded. However, after the defendant has submitted allegations about the plaintiff's claim, withdrawal is not effective without the consent of the defendant. Nonetheless, in certain cases – such as if the defendant does not make any objection within two weeks of receiving a service of a document indicating the plaintiff's intention to withdraw the action – the defendant shall be deemed to have consented to the withdrawal of the action.

If neither party appears on the date for oral argument or preparatory proceedings on two consecutive occasions, it shall be deemed that the action has been withdrawn.

##### (3) Waiver or acknowledgment of claim

If the plaintiff states that he/she waives the claim or if the defendant affirms and acknowledges the plaintiff's claim, the suit is concluded. Waiver of claim and acknowledgement of claim are stated on the record, and have the same effect as a final and binding judgment.

### **3. Appeal**

#### a. Appeal to the court of second instance

The party defeated in the first instance may appeal to the court of second instance. In principle, a high court handles appeals against judgments rendered by district courts, whereas a district court handles appeals against judgments rendered by summary courts.

Appellate cases are generally handled by a panel of three judges.

An appeal to the court of second instance may be filed by submitting the document (petition for appeal) to the court of first instance (court of prior instance) within two weeks from the day on which the appellant received a service of the judgment document. If the requirements stipulated under the law are not complied with for an appeal, and it is obvious that such defect cannot be corrected, the court of prior instance shall dismiss the appeal without prejudice. The appellant is not required to describe the grounds for the appeal in their petition, but if the petition does not contain grounds for the appeal, the appellant shall submit a written statement of the grounds for the appeal to the court which handles the appeal (court of second instance) within fifty days of submitting the petition for appeal. The appellant can allege an error in the judgment in either the application of the law or fact finding as grounds for the appeal. The presiding judge of second instance may, by specifying a reasonable period, direct the other party to the appeal (the appellee) to submit a written counterargument against the grounds for the appeal.

Proceedings in the second instance are deemed as continuation of those in the first instance, and the court of second instance may conduct proceedings to arrange issues and evidence, examine evidence, and find facts. However, adjudication of the second instance is restricted to the extent of the judgment in the first instance (judgment in prior instance) that appellant demands to change.

The court of second instance renders a judgment revoking the judgment in prior instance or dismissing the appeal after examining the fact finding and the application of the law by the judgment in prior instance.

**Table 3. Changes in the number of cases appealed to the high court (ordinary suits) (PDF: 127KB)**

**Table 4. Changes in the number of cases appealed to the district court (ordinary suits) (PDF: 112KB)**

#### b. Final appeal

The party defeated in the court of second instance may then appeal to the final appellate court. In principle, the Supreme Court handles appeals against a judgment rendered by a high court, whereas a high court handles appeals against a judgment rendered by a district court. Upon the agreement of both parties, one of them may directly appeal against a judgment rendered by a summary court in the first instance to the high court, or against a judgment rendered by a district court in the first instance to the Supreme Court (direct appeal), bypassing proceedings and decisions in the court of second instance. At the Supreme Court, normally, a Petty Bench comprised of five justices handles final appeals, but the Grand Bench comprised of all fifteen justices of the Supreme Court handles cases where the Supreme Court overturns its own precedent or where it declares any law or

order is unconstitutional. In the high court, a panel comprised of three judges handles final appeals.

The court that handles a final appeal (final appellate court) only examines questions of law bound by the facts as determined by the judgment against which the appeal is made (judgment in prior instance). A final appeal may only be filed for specific grounds as stipulated under the Code of Civil Procedure (grounds for final appeal), such as misinterpretation of the Constitution in the judgment in the prior instance.

The final appeal must be filed by submitting document (petition for final appeal) to the court that rendered the judgment in prior instance (court of prior instance) within two weeks from the day on which the appellant received a service of the judgment document. The appellant is not required to detail the grounds for their final appeal in the petition for final appeal, but if the petition for final appeal does not state any grounds for final appeal, the appellant shall submit a written statement of grounds for final appeal to the court of prior instance within 50 days from the day on which the appellant received a service of the document that notifies the filing of final appeal issued by the final appellate court (a written notice of the filing of a final appeal). The court of prior instance or final appellate court, by an order, shall dismiss the final appeal without prejudice in the following cases: (i) Where the requirements stipulated under the law for submitting a final appeal are not complied with, and such defect cannot be corrected; (ii) Where a statement of grounds for final appeal is not submitted within the stipulated period; and (iii) Where the grounds for final appeal are not stated in accordance with the form stipulated by the Rules of the Supreme Court. In all other cases, the final appellate court considers whether there are valid grounds for a final appeal or not, and if the court adjudges that grounds for said final appeal exist, the court shall quash the judgment in prior instance. In this instance, the final appellate court generally remands the cases to the court of prior instance. If the final appellate court finds no valid grounds for a final appeal, in principle, the court shall dismiss the final appeal. The grounds for a final appeal slightly vary depending on which court handles the case; violation of laws or regulations that apparently affects the judgment constitutes a ground for a final appeal where a high court is the final appellate court, but not when the Supreme Court is the final appellate court. However, the Supreme Court may quash the judgment in prior instance if it finds a violation of laws or regulations that apparently affects a judgment.

Against a final judgment made by a high court as the final appellate court, an appeal may further be filed with the Supreme Court only on the grounds that the judgment contains a misconstruction of the Constitution or any other violation of the Constitution.

When the Supreme Court would be the final appellate court, the party may file a petition to the Supreme Court to accept a case as the final appellate court regardless of whether there are grounds for final appeal or not. This system was introduced as of when the current Code of Civil Procedure came into effect in 1998. When this petition for acceptance of final appeal is filed, the Supreme Court, by an order, may accept the appeal

as the final appellate court where it finds that the judgment in prior instance involves material matters concerning the construction of laws and regulations; for example, where the judgment in prior instance contains a determination that is inconsistent with precedents rendered by the Supreme Court. However, the Supreme Court has discretion, and so it may decide not to accept the appeal as the final appellate court, even though the case involves material matters concerning the construction of laws and regulations. When the Supreme Court accepts the petition for the final appeal, it is deemed that the party has filed a final appeal, and thereafter, generally the same procedure as that for the case when a final appeal is filed proceeds. If the party's grounds for the appeal fall within both grounds for a final appeal and for petition for acceptance of a final appeal, the party may file both.

**Table 5. Changes in the number of cases appealed to the Supreme Court (ordinary suits) (PDF: 113KB)**

**c. Appeal against Ruling**

In addition to the judgment, which is the judicial decision on the claims made by plaintiffs, the court of first instance makes judicial decisions on a variety of incidental matters concerning proceedings in the form of directions and orders. Appeals against directions and orders may be filed only for certain important cases as stipulated under the Code of Civil Procedure. An appeal against a direction or order is called an "appeal against ruling". The provisions concerning appeals to the court of second instance shall apply *mutatis mutandis* to the proceedings of the appeal against a ruling. A further appeal against the decision on the appeal against a ruling, which is called a "re-appeal from appeal against ruling," may be filed only if the decision violates the constitution, or the decision violates laws or regulations and the violation apparently affects the decision.

A special appeal to the Supreme Court against the following orders and directions, which is called a "special appeal against a ruling," is permitted if the respective judicial decision violates the Constitution.

- (i) An order and a direction made in a district court or summary court against which no appeal may be filed
- (ii) An order and a direction made in a high court

The provisions concerning the final appeal shall apply *mutatis mutandis* to the proceedings of the special appeal against a ruling. In addition, the Supreme Court, at its discretion, may permit an appeal against an order and direction made in a high court to the Supreme Court in the event that the case involves material matters concerning the construction of laws and regulations; for example, if the direction or order is inconsistent with precedents rendered by the Supreme Court.

**4. Special provisions concerning court proceedings in summary court**

The following are explanations of the proceedings in summary courts.

### **Comparison of Proceedings at Summary Courts (PDF: 97.5KB)**

#### **a. Ordinary action**

Civil suits in summary courts may be filed for cases where the value of the subject matter of litigation (amount sued) does not exceed 1,400,000 yen. Since summary courts handle cases where the amount of money being sued for is small, the proceedings are simplified and a speedy solution is desired. The following are characteristics of summary court proceedings.

- (i) A complaint can be filed orally.
- (ii) The plaintiff may file an action by clarifying the points of the dispute, in lieu of the statement of the claim.
- (iii) The party is not required to prepare documents prior to oral arguments.
- (iv) Matters to be stated in the judgment document are simplified.

There is a system whereby selected members of the public participate in the proceedings as “judicial commissioners” for summary courts. They assist the judges in their attempts to arrange a settlement, and attend civil proceedings and express their opinions for the judges’ reference. The judicial commissioners’ abundant experience, expert knowledge, and common sense are utilized to resolve disputes at summary courts.

#### **b. Action on small claim**

Action on small claim is a special proceeding at a summary court where the trial is generally completed within a day and a judgment is rendered on the same day. This proceeding can only be used for claims for payment of money up to 600,000 yen.

Any plaintiff requesting to use this proceeding must state to the court that a trial and judicial decision are sought by the proceeding of an action on small claim when filing the action. On the other hand, the defendant may request ordinary proceedings to the court if the proceeding of a small claim trial is not desired.

In order to resolve a dispute immediately, a small claim trial allows only documentary evidence and witnesses that can be examined on the date of the hearing. The court often conducts the proceedings by dividing allegations and evidence, while listening to the actual circumstances of the dispute from the parties, without clearly asking whether opinions expressed by the parties are allegations or statements made during the examination of the party.

The court, except where it finds it inappropriate, shall render a judgment immediately after the conclusion of oral argument. In this case, the court does not need to prepare a judgment document.

A party cannot file an appeal against a judgment of an action on small claim to the court of second instance, but instead may file an objection to the court that has rendered the



judgment. If a party files an objection, the summary court handles the case as an ordinary civil suit, conducts ordinary proceedings, and renders a new judgment. Generally, no appeal may be filed against this judgment.

**c. Demand for payment**

Under this proceeding, a court clerk of a summary court orders payment of money or any other alternatives, or delivery of securities upon the petition of one of the parties (creditor). Demand for payment is issued based only on examination of documents.

The party who receives the demand for payment (debtor) may make an objection (objection to demand). If the debtor makes an objection, the petition of the demand for payment is deemed as filing an action, and ordinary proceedings for civil suits commence in the district or summary court depending on the value of the claim.

If the debtor does not make any objection within two weeks from the day on which he/she received a service of the demand for payment, a court clerk, upon the petition of the creditor, shall declare that provisional execution of the demand for payment, which may be revoked later, is possible. The debtor may make an objection to the demand for payment within two weeks from the day on which the debtor has received a service of a demand for payment with a declaration of provisional execution. If the above period passes without any objection being made, the demand for payment has the same effect as a final and binding judgment, and the debtor is no longer able to dispute the details of the demand for payment, and the creditor is permitted to carry out compulsory execution, which is not revoked, based on the demand for payment.

Tokyo Summary Court accepts petitions for demand for payment from all over Japan via the Internet, and the creditor can carry out proceedings such as paying the expense and checking status of progress of the case without visiting the court.

**C. Court cost, burden and grace of payment**

The filing of action and other kinds of petitions require the payment of fees. Other expenses, such as postal charges, and travel expense and daily allowances to be paid to witnesses are also necessary to use court proceedings. The party who requests delivery of documents and examination of witnesses must provisionally pay these expenses to the court in advance. These fees and expenses are called “court costs”. The court costs do not include all of the costs involved in a suit. For example, where a party retains an attorney, the attorney’s fees are not included in the court costs. The court decides which party shall bear the court costs in its judgment. The defeated party is generally ordered to bear the court costs, and the winning party is entitled to reimbursement of the court costs he/she has already paid from the defeated party. In this case, the winning party must submit a petition to the court clerk to calculate the amount of money to be reimbursed from the defeated party in advance. This procedure is called a “disposition to fix the amount of court costs”.

A person may request the court to grant a grace period for expenses and costs to be paid to the court (judicial aid) when he/she lacks the financial resources to pay the expenses necessary to prepare for and conduct a suit or suffers substantial detriment in his/her standard of living by paying such expenses. However, a grace of payment is not granted to parties unlikely to win the case. The expenses and costs for which a grace period for payment is given are collected directly from the opponent, if the party to whom grace of payment was granted wins the case.

There are also other systems to support payment of costs needed for court cases. For example, the Japan Legal Support Center lends money to people who need attorneys to resolve issues in legal proceedings, but do not have the financial ability to pay the attorneys' fees and the court costs themselves after investigating all the circumstances, including the likelihood of winning the case.

## **II. Other proceedings**

There are many types of civil proceedings in Japan other than civil suits. They are outlined as follows.

### **A. Civil execution**

Civil execution is a procedure whereby an obligee may request national agencies to satisfy his/her claim by the exercise of state power when the obligor does not voluntarily perform his/her obligation.

There are several types of civil execution, and, among them, compulsory execution and auction for exercise of a security interest are the most frequently petitioned for.

1. Compulsory execution can be separated into two types; namely, compulsory execution of a pecuniary claim and compulsory execution of a non-pecuniary claim.

Compulsory execution of a pecuniary claim is a proceeding to forcibly collect a claim by seizing and selling, among other things, real property, movables, and claims, owned by the obligor, and paying the proceeds of the sales to the obligee. Compulsory execution against real property and that against claims are handled by the court, while compulsory execution against movables is handled by court execution officers. However, regarding compulsory execution against real property, the current condition of concerned real property is investigated before its sale, and the investigation is handled by court execution officers. Compulsory execution of delivery of real property is an example of compulsory execution of a non-pecuniary claim. Delivery of real property can be executed by two different ways; direct and indirect compulsory execution. In the case of direct compulsory execution, a court execution officer physically evicts an obligor from the real property concerned. Indirect compulsory execution is a proceeding whereby a court urges an obligor to perform his/her obligation by putting psychological pressure on him/her with the threat of monetary sanctions.

2. Auction for exercise of a security interest is a proceeding to auction the assets of an obligor, such as real property, that has been kept by the obligee as security in case the obligor does not perform his/her obligation. The procedure of auction for exercise of a security interest is the same as for compulsory execution of a pecuniary claim.

**Table 6. Changes in the number of civil execution cases against real property (PDF: 138KB)**

**Table 7. Changes in the number of civil execution cases against movables (PDF: 119KB)**

**Table 8. Changes in the number of civil execution cases against claims (PDF: 118KB)**

## **B. Civil provisional remedies**

Civil provisional remedies are proceedings to temporarily prohibit the disposal of assets, and determine the tentative position of the parties with regard to the rights to be disputed in a civil suit in order to preserve its possibility to be enforced or materialized.

Without such proceedings, the defendant may dispose of assets while the civil suit is in progress, in which case, even though the plaintiff wins the case, he/she would not be able to enforce his/her judgment. For example, the plaintiff cannot enforce a monetary judgment if the defendant disposes of all his/her assets before the court renders the judgment. Similarly, a plaintiff cannot implement compulsory execution for delivery of real property if the defendant disposes of the real property concerned before the court renders the judgment for delivery of the real property. In another case, the obligee may suffer significant detriment while a civil suit is pending. For example, the victim of a traffic accident may have difficulty going about his/her daily life without receiving compensation for damages quickly while the suit seeking compensation is pending.

In order to avoid such consequences, the court is able to provisionally seize the obligor's assets to enable potential compulsory execution against the assets in the future, provisionally prohibit the obligor from transferring possession of an object to a third party to enable court enforcement of delivery of the object in the future, and decide to order the obligor to make a provisional monetary payment to the obligee based on the petition of the obligee.

## **C. Bankruptcy**

Bankruptcy proceedings are designed to liquidate the debtor's assets and fairly distribute their proceeds among creditors when a debtor is no longer able to pay his/her debts with all his/her assets. Bankruptcy proceedings can apply to any individual or juridical person.

When a creditor or debtor files a petition, a district court reviews whether the

requirements stipulated by law are met or not; for example, whether the debtor is generally continuously unable to pay his/her debts, or is insolvent or not. If these requirements are met, bankruptcy proceedings are commenced. Once bankruptcy proceedings are commenced, the debtor loses the power to control and dispose of his/her assets, and such power is transferred to a bankruptcy trustee appointed by the court. The bankruptcy trustee administers and liquidates the debtor's assets under the court's supervision. Parties claiming that the debtor owes a debt to them must notify the amount of the claim to the court, and the court then investigates the legitimacy of the claim. After liquidating all of the debtor's assets, the bankruptcy trustee distributes the liquidation proceeds (liquidation distribution) among the creditors, and the court terminates the bankruptcy proceeding after the distribution is complete. However, if the debtor's assets are insufficient to make a liquidation distribution to the creditors, the bankruptcy shall be closed without a liquidation distribution.

Discharge proceedings are held to support a debtor to recover financially by discharging his/her debts. A debtor is not automatically discharged from the debts even once the bankruptcy proceedings are terminated, but he/she needs to obtain a grant of discharge from the court. The court reviews whether or not certain grounds stipulated by law apply to the debtor denying a discharge after hearing the opinions of creditors and the bankruptcy trustee when the debtor files a petition for grant of discharge. In the absence of any reasons to deny discharge, the court shall make an order of grant of discharge. The court may deny the petition for grant a discharge if there are such grounds, but may, at its discretion, make an order of grant of discharge, when it finds it appropriate to do so while taking into consideration all circumstances, including the reasons the debtor became insolvent. Once an order of grant of discharge becomes final and binding, the debtor is discharged from the debts as of when the bankruptcy proceeding was commenced except to the extent paid by liquidation distributions.

#### **D. Civil rehabilitation and corporate reorganization**

1. Civil rehabilitation proceedings aim to restore the debtor's business or financial situation by reducing the amount of debts or amending the repayment schedule for them. Any individual or judicial person may use civil rehabilitation proceedings.

After a petition is filed by a creditor or the debtor, a district court reviews whether requirements stipulated by law are met or not; for example, whether the debtor is at risk of bankruptcy or the debtor's business has difficulty in continuing if paying off its debts; and if these requirements are met, rehabilitation proceedings are commenced. The court appoints a supervisor as necessary. A supervisor supervises the business operations and asset administration of the debtor. The court may appoint a trustee who carries out the debtor's business on behalf of the debtor, and administers and disposes of the debtor's assets.

Until a trustee is appointed, the debtor retains the power to carry out its business and to

administer and dispose of its assets. The debtor shall prepare a proposal for a rehabilitation plan within a specified period, and submit it to the court. Details concerning reduction in the amount of debts and modification to the payment schedule for debts shall be described in this plan. Once the proposed rehabilitation plan is approved at a creditors meeting and confirmed by the court, the creditor's rights are modified in accordance with the plan, and the debtor is discharged from the debts except for those specified to be paid under the rehabilitation plan. When a supervisor is appointed, the supervisor oversees execution of the rehabilitation plan by the debtor for three years.

2. Corporate reorganization proceedings are intended to maintain and reorganize the business of stock companies by reducing the amount of debts and amending their repayment schedules. Only stock companies can use corporate reorganization proceedings.

A district court reviews whether the requirements stipulated by law are met or not; for example, whether or not the stock company concerned is at risk of bankruptcy, or whether the stock company concerned has difficulty in remaining in business or not after paying off its debts, when a petition is filed by a stock company, creditor, or stockholder. The court makes an order of commencement of reorganization proceedings if these requirements are met.

Once reorganization proceedings commence, the stock company loses the power to carry out its business and to administer and dispose of its assets, and such power is transferred to a trustee appointed by the court. The trustee prepares a proposal for a reorganization plan within a specified period under the supervision of the court. Details concerning reduction in the amount of debts, modification to the payment schedule for debts, and modification to stockholders' rights shall be described in the proposed reorganization plan. Once the proposed reorganization plan is approved at a meeting of the relevant persons, including creditors, stockholders and those who have newly invested to implement the reorganization plan, and is confirmed by the court, the rights of the creditors, security interest holders, and stockholders are modified in accordance with the provisions of the reorganization plan, and the stock company is discharged from debts except for those specified to be paid under the reorganization plan.

### **[Comparison of Insolvency Proceedings \(PDF: 97.6KB\)](#)**

#### **E. Civil conciliation**

Civil conciliation is a means of judicial Alternative Dispute Resolution (ADR) that functions alongside suits in Japan. Civil conciliation is applied to general disputes in civil affairs. Civil conciliation can also be attempted prior to filing of action. Civil conciliation can be handled in a district or high court, but most cases are handled in summary courts.

Civil conciliation is handled by a conciliation committee comprised of a judge as the legal

expert and two or more conciliation commissioners selected from the general public, with the judge presiding over proceedings. In some cases, the proceedings are presided over by a civil conciliator, who is selected from attorneys with not less than five years experience instead of a judge. Conciliation commissioners are selected from individuals with extensive experience who are well versed in the norms of society.

The conciliation committee encourages the parties to discuss the issues, and supports the parties in finding an agreement by proposing possible solutions that the committee has prepared. Once the parties reach an agreement, and the details are described on the record, the conciliation is concluded, and the proceedings are closed. In this case, the agreement described in the records is binding on both parties, and the parties can execute the agreement accordingly.

In Japan, the law requires the conciliation committee to perform evaluative conciliation based on legal judgment. For example, the conciliation committee can determine the facts by its own means of investigation, and so on, to offer a rational solution. If the parties reach an agreement that the conciliation committee deems is not appropriate, the committee may decline to conclude the conciliation.

If the parties fail to reach an agreement, the conciliation committee may make a necessary order for resolution of the case (Order in lieu of conciliation). The conciliation committee also has the power to order a monetary payment or delivery of objects to either party based on its order in lieu of conciliation. Either party can raise an objection to an order in lieu of conciliation only within a certain period. In the absence of any objection within such period, the order in lieu of conciliation becomes binding on all parties.

#### **Table 9. Changes in the number of civil conciliation cases (all cases) (PDF: 116KB)**

Also, there are special conciliations as a special case for civil conciliation. This is used with the intent of helping parties to rebuild a life or business when they have difficulties in meeting their loan payments by discussing the repayment method with the creditor. Both individuals and companies can use this proceeding.

#### **Table 10. Changes in the number of special conciliation cases (PDF: 111KB)**

### **F. Protection order**

Protection order proceedings are designed to prevent violence inflicted by a spouse or a person who is in a de facto state of marriage and to protect the victims as stipulated in the “Act on the Prevention of Spousal Violence and the Protection of Victims, etc.”

In cases where a victim suffers violence tantamount to criminal assault or injury as stipulated in the Penal Code from their spouse or de facto partner, or is subject to threats on their life or body, and there is a high risk that such harm could be inflicted, the victim may file a petition to a district court for a protection order. In order to file a petition for a

protection order, the victim in principle needs to have consulted with the Spousal Violence Counseling and Support Centers established by the local government or police in advance. If those institutions have not been consulted, a document must be prepared and attached to the written petition order. In this document, the facts of the situation regarding the violence must be described. Also, the victim must affix their signature and seal to the document concerned after swearing on oath that the details as described are true and certified by a notary. The court generally issues a protection order when it decides that there are valid grounds for the petition after providing an opportunity to the opposite party to state their case in court.

The court may prohibit the opposite party from coming within a fixed distance of the petitioner, or may order the opposite party to leave the domicile that the petitioner shares as the main house as part of the protection order.

#### **G. Labor tribunal proceedings**

The purpose of the labor tribunal proceedings is to quickly, appropriately, and effectively resolve a dispute concerning civil affairs arising between an individual employee and their employer about whether or not a labor contract exists or any other matters on labor relations. The Labor Tribunal Act was established as part of the Justice System Reform and has been enforced since April 1, 2006 in the context of an increased number of disputes related to changes in the economic situation.

Proceedings are handled by a Labor Tribunal Committee composed of a judge and two labor tribunal commissioners. The labor tribunal commissioners are appointed from individuals with expert knowledge and experience in labor relations.

Usually, a Labor Tribunal Committee concludes by the end of the third date for proceedings. The Labor Tribunal Committee works to reconcile the parties, and if the parties do not reach an agreement, labor dispute adjudication is conducted with due reference given to the rights granted to both parties and any progress in the labor dispute adjudication proceedings.

A party may file an objection against a labor tribunal decision within two weeks from the day on which he/she received a service of the written tribunal decision or the labor tribunal decision is rendered. If an objection is filed, the labor tribunal decision shall cease to be effective, and it shall be deemed that a complaint has been filed to the court, at the time of filing of the petition for labor tribunal proceedings. Labor tribunal decisions that have become final and binding in the absence of any objection and the details of the agreed settlement have the same effect as judicial settlements.