



The Legal 500 Country Comparative Guides

Japan

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Japan.

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JAPAN LITIGATION



1. What are the main methods of resolving disputes in your jurisdiction?

Litigation is the predominant method of resolving disputes in Japan. Based on the latest statistics, district courts in Japan received 130,860 new civil litigation cases in 2021. International arbitration is also promoted as a method resolving cross-border disputes. In 2020, Japanese parties were involved in 16 international arbitration cases filed with the International Chamber of Commerce and 7 cases in the Singapore International Arbitration Centre, either as claimants or respondents. The Japan Commercial Arbitration Association, a major arbitral institution in Japan, received 19 new cases in 2022.

2. What are the main procedural rules governing litigation in your jurisdiction?

Litigation in Japan is primarily governed by the Code of Civil Procedure (the "CCP"). Specifics not provided in the CCP are regulated by the Rules of Civil Procedure issued by the Supreme Court. Rules to obtain interim remedies are governed by the Civil Provisional Remedies Act.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Japan's judicial system consists of five distinct types of court: the Supreme Court, eight high courts (including the Intellectual Property High Court which is a special branch of the Tokyo High Court), 50 district courts, 50 family courts and 438 summary courts. Japan's court system has three instances. The court of first instance is determined based on the amount of controversy involved in the case. Summary courts adjudicate civil cases whose amount of controversy falls below 1.4 million JPY. District courts adjudicate civil cases whose amount of controversy exceeds that threshold. In major cities such as Tokyo and Osaka, district courts have

specialized divisions dedicated to matters related to corporate, intellectual property, labour, and bankruptcy. District court judgments may be appealed to a high court. The Supreme Court is the final court of appeal and adjudicates only on the question of law.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

In 2020, the average duration for the conclusion of all civil litigation proceedings at the district court level was 9.9 months. Excluding default judgment cases, it was 13.9 months. For cases that involved a witness hearing, the average time from the filing of a complaint to the hearing was 18.4 months. Recently, the average length of the proceedings has gradually increased mainly because cases require longer time to sort issues and evidence before reaching a hearing. However, COVID-19 may have also had an impact on the duration of proceedings.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

In principle, oral arguments and witness hearings are conducted in public. However, preparatory proceedings, which involve sorting out issues and evidence, are closed to the public. Unless the proceedings have been closed to the public, anyone may view the case record. A third party who has an interest in the case may also request a copy of the case record. However, the court has the authority to prohibit anyone other than the parties from viewing or copying parts of the case record that contain a party's privacy or trade secrets.

6. What, if any, are the relevant limitation periods in your jurisdiction?

The statute of limitations for contract claims is five years, which begins to run from the time the rights holder becomes aware that the right can be exercised. After ten years from the time when the right could have been exercised, the claim will be extinguished. For tort claims, the statute of limitations is three years, starting from the time the victim becomes aware of the damage and the identity of the perpetrator. The claim will be time-barred after 20 years from the time of the tort. For any claims arising from harm to a person's life or body, regardless of whether it is based on a contract or a tort, the statute of limitations is five years from the time when the victim becomes aware of the damage and the identity of the perpetrator. It will be time-barred after 20 years.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In general, parties are not required to take any specific action, such as engaging in alternative dispute resolution, before initiating litigation. Only limited types of disputes (such as rent review cases) require the plaintiff to file for conciliation before commencing litigation. The CCP provides for an advance notice of filing, which allows a prospective plaintiff to question a prospective defendant on certain matters and seek the court's assistance to collect certain evidence. However, this provision is rarely used as there are no means to compel such requests. It is common practice for a potential plaintiff to send a demand letter to the opposing party that outlines the issues and the claims, before initiating litigation. Such letter is sent to initiate potential settlement discussions. It could also be used to gauge the opposing party's likely counterarguments and assess the strength of the case.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

To initiate litigation proceedings, a plaintiff must file a complaint with the court accompanied by material documentary evidence. The complaint must be served on the defendant along with a summons issued by the court. Under Japan's CCP, the court is given the authority to effectuate service of process, not the parties. To serve a foreign party, the court needs to commission the foreign government or a Japanese ambassador, minister or consul stationed in that state to handle the service through formal diplomatic channels. The service is

executed in accordance with applicable treaties, such as the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Convention on Civil Procedure.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Since jurisdiction is one of the requirements for action, a court is obliged to examine whether it has jurisdiction over a claim, even if the parties do not raise any jurisdictional defense. A court may also examine evidence necessary for determining its jurisdiction on its own (*sua sponte*). In principle, an action is subject to the jurisdiction of the court in the locality that constitutes the general venue for an action against the defendant, which is the domicile (in case of a natural person) or the location of the principal office or business office (in case of a corporation). However, the CCP provides special jurisdiction for certain types of claims. For example, a court presiding over a place of tort has jurisdiction with respect to the tort claim. A claim related to real property may be filed with a court of jurisdiction where the real property is located. Even if a court has jurisdiction over a claim, the court may transfer the case to another court of jurisdiction if it finds it necessary to avoid any substantial delay in litigation or to ensure equity between the parties. If a defendant appears before a court and argues on the merits without asserting lack of jurisdiction, the court has jurisdiction.

10. How does the court determine which law governs the claims in your jurisdiction?

Governing law over the claims is determined by applying the General Rules for the Application of Law (the "General Rules Act") which is private international law in Japan. For example, the General Rules Act allows the parties to choose the governing law regarding the formation and the effect of a juridical act (such as a contract). In the absence of such choice of law, it is governed by the law of the place with which the act is most closely associated at the time of the act.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

A court may decide on the case without examining witnesses, depending on nature of the case and usually upon consultation with the parties. A court may encourage the parties to consider a settlement anytime

during the proceedings. It sometimes discloses its views on the merits of the case to induce a settlement. Settlement can be reached out of court as well. If a settlement is reached, the litigation is usually disposed by the plaintiff's withdrawal.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

There are three categories of interim measures in Japan: provisional seizure, provisional disposition regarding a disputed subject matter, and provisional disposition establishing a provisional status. Provisional seizure is an interim remedy designed to prevent debtors from disposing their assets, ensuring the future compulsory execution of a monetary claim. A provisional disposition regarding a disputed subject matter preserves the status quo of the subject matter, such as prohibiting the transfer of the possession of real property. Provisional disposition establishing a provisional status is an interim remedy that establishes a temporarily relationship of rights in dispute to avoid substantial harm or imminent danger to the party seeking relief.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

After commencement of the litigation, the defendant is required to submit an answer, accompanied by a copy of material documentary evidence. Subsequently, both parties submit, in turn, written briefs and documentary evidence to present their respective arguments. Once the court determines that both parties have submitted their claims and the issues in dispute have been adequately identified, the examination of witnesses and the parties usually ensues. Prior to the examination, the party requesting such an examination must submit written statements of the individuals to be examined. Following the witness and party examination, the parties typically submit their final briefs. The timetable varies depending on the complexity and nature of the case. However, one hearing date is normally scheduled every one or two months, and the court generally instructs the parties to make their submissions one week before each hearing date.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g.

on grounds of privilege, confidentiality or public interest)?

Although the court may order a holder of document to submit that document based on a petition of a party, the petitioner must specify the document in the petition and shows the court that the disclosure of the document is necessary to the case. The CCP provides that a document holder is obligated to produce documents in certain circumstances, such as when a party possesses documents cited in the submissions. Although the legal concept of attorney-client privilege does not exist in Japan, the CCP allows the holder of documents to refuse their submission on grounds such as privilege to refuse self-incrimination, public secret, and duty of confidentiality for professionals such as doctors and lawyers. Unlike the legal system in the United States, Japan does not have a discovery system that enables extensive disclosure of documentary evidence, so the scope of document disclosure is relatively limited.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witnesses and the parties may be examined, although depositions are not permitted under the CCP. The court usually requests those providing their testimony to submit their written statements before they are examined. Both written statements and oral statements during an examination are taken on record and treated as evidence. A Cross-examination is conducted after a direct examination. Questions that may be asked during a cross-examination are limited to matters that are relevant to those questioned in a direct-examination as well as matters concerning the credibility of the testimony. Leading questions are permitted during a cross-examination. However, questions which overlap with any previous questions, are unrelated to the issues, seeks statement of an opinion, and seeks statements on facts which the witness has not experienced directly are prohibited unless there are justifiable grounds. Questions that insult or confuse the witness are prohibited regardless of presence or absence of the justifiable grounds.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the

court or the parties, and what duties do they owe)?

At the request of parties, a court may appoint an expert to provide expert evidence, which could be made orally or in writing. A court-appointed expert is obliged to swear under oath and give expert testimony. Once the expert testimony is provided, the court and the parties have an opportunity ask questions. Additionally, it is also permissible for the parties to retain an expert on their own and submit a report of the findings based on her expertise, which is treated as documentary evidence. Experts retained by the parties may be subject to witness examinations.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

A final decision from a district court can be appealed to a High Court. Such appeal must be filed within two weeks from the day on receipt of service of the written judgment. The High court may dismiss an appeal without oral hearings if the appeal is unlawful and the defect cannot be corrected. If the High Court finds that the judgment below is appropriate, it will dismiss the appeal with prejudice. The High Court shall reverse the judgment below if it is unjustified or if there was a procedural violation of law in the district court proceedings.

There are two ways to appeal to the Supreme Court against the final judgment of from a High Court: a final appeal (which is an appeal as a right) and a petition for acceptance of a final appeal (which is a discretionary appeal). Both must be filed within two weeks after the date of service of the judgment from the High Court. Grounds for filing a final appeal are limited to a constitutional violation and certain designated grounds considered as a serious violation of procedural law. A petition for acceptance of a final appeal may be filed on the grounds that the judgment conflicts with a Supreme Court precedent, or that it involves materially important issues in the interpretation of laws and regulations. However, the Supreme Court has the discretion whether or not to accept the petition for acceptance of a final appeal.

A court may render an interim decision on an interlocutory dispute that is ripe for the court to render a judgment. Once an interim judgment has been rendered, the court will render a final judgment based on the interim decision. No independent appeal against the interim judgment is allowed, but if an appeal is filed against a final judgment premised on the interim

decision, the findings of the interim decision are also subject to the appellate review. In practice, courts render an interim decision on very limited issues, such as whether a Japanese court has jurisdiction over a certain cross-border dispute.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

In order to enforce foreign judgments, all of the following requirements must be fulfilled: (i) the jurisdiction of the foreign court must be recognized according to applicable laws and regulations, conventions, or treaties, (ii) the defendant who has been defeated has been served with the requisite summons or commencement order for litigation (excluding service by publication or any other similar service), or the defendant has appeared without being so served, (iii) the judgment's content and the litigation proceedings are not contrary to Japan's public policy, (iv) there is a guarantee of reciprocity regarding enforcement of the foreign judgements between Japan and the foreign country.

In addition, foreign judgments can only be executed after obtaining an execution judgment. It is important to note that the execution judgment is made without scrutinizing the appropriateness of the judicial decision.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

According to the CCP, the losing party bears the court costs. These costs include filing fees, postage, travel expenses for witnesses, and the cost of court-appointed experts. On the other hand, fees paid to lawyers retained by the parties are not considered as court costs. Generally, each party is responsible for their lawyer's fees in commercial litigations. However, in certain cases such as tort cases, some of the fees may be recoverable based on a court judgment.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

The CCP does not provide for a class action system. However, for certain types of contracts between a consumer and a company, the Act on Special Measures Concerning Civil Court Proceedings for the Collective

Redress for Property Damage Incurred by Consumers introduced a Consumer Organization Collective Litigation System provides a mechanism for recovery for certain damages. This is sometimes dubbed as Japan's version of a class action system.

The System consists of two steps for collective redress. The first step is litigation by a Specified Qualified Consumer Organization ("SQCO") which is a lawsuit seeking a declaratory judgement on common obligations related to monetary payment obligations that a company bears against a consumer. The second step is a procedure to determine the individual claims of each consumer. Since SQCO actions adopt an opt-in process, target consumers must delegate powers to the SQCO for filing of proofs of claims and conducting simple determination proceedings in order to receive monetary payment.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Generally, under certain conditions such as having an interest in the outcome of litigation, a third party may intervene in ongoing proceedings to assist either party or as an independent party (CCP, Articles 42 and 47). Under the Companies Act, a shareholder or a company may intervene in a suit relating to a case such as an action to enforce liability of officers. Consolidating two sets of proceedings is left to the court's discretion, and the parties may only petition the court to exercise its authority.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

In theory, third party funding should be available for any type of lawsuit, as there is nothing specifically prohibiting it. However, engaging in a scheme where fees are shared with a third party funder could potentially be deemed illegal. The Basic Rules on the Duties of Practising Attorneys prohibit attorneys from sharing fees for their services with anyone other than practising attorneys or legal profession corporations, unless permitted by law, regulations, rules of the bar association to which the attorney belongs, or unless there is a justifiable cause. Third party funders are not liable for the cost incurred by the other side.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

During the state of emergency declaration in April and May 2020, most scheduled hearings for civil litigation were cancelled across the country, and court operations were limited to essential functions. Consequently, courts in major cities such as the Tokyo District Court had to reduce the number of trial dates. This caused delays in civil cases, leading to a slight prolongation of average trial periods. On the other hand, the implementation of hearings via web conferencing was accelerated, although it was already planned before the pandemic. Currently, hearings via web conferencing are available in all district courts and high courts nationwide.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The advantage lies in the relatively high quality of judges. Judges in Japan enjoy a significant level of public trust, and judicial corruption is virtually unheard of. The majority of judges are career judges coming from the top tier of those who have passed a rigorous bar exam. The Supreme Court also provides various training programs to enhance their capabilities.

The disadvantage is the cost associated with translation. Litigation in Japanese courts must be conducted in Japanese. If a document is not originally written in Japanese, the party introducing it as evidence must provide its translation. This requirement adds an extra expense in cross-border cases. In addition, a plaintiff must pay a filing fee calculated based on the claimed amount, which could be a discouraging factor for a plaintiff seeking substantial damages.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Despite the widespread uncertainty and economic impact caused by the COVID-19 pandemic, it appears, based on statistical data and our own experience, that the number of the cases related to the pandemic, such as bankruptcy, breach of contractual obligations (e.g., issue of force majeure) and labour disputes (e.g., wrongful termination), has not been significantly affected. On the other hand, the amendment of the CCP related to digitalisation may have an impact on the handling of commercial disputes. In particular, the

amendment introduces a procedure for hearings to conclude within a statutory time limit (six month), upon request and with the consent of both parties. This new procedure is set to be enforced by May 2026. It aims to promote a more efficient and expeditious resolution of disputes. If businesses recognise the advantage of such an expeditious process, it may lead to an increase in the number of commercial litigations.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Under the previous CCP, the procedure heavily relied on paper. Complaints and other motions had to be

submitted in hard copy, and briefs were submitted either in paper form or by facsimile. Court case records were not electronically accessible. To transition the system towards digitalisation, the amendment to the CCP was promulgated in May 2022. The amendment mainly introduces three changes: (i) online submission of documents, (ii) digitalisation of case records which parties can access through the internet and (iii) web participation in the proceedings. While online submission of certain briefs and web participation in some proceedings other oral arguments have already been implemented, the full-scale enforcement of the amendment is set to be taken place by May 2026. This amendment may increase the speed and efficiency of civil litigation.

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