



# ICLG

The International Comparative Legal Guide to:

## **Class & Group Actions 2015**

**7th Edition**

A practical cross-border insight into class and group actions work

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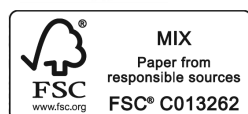
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# Japan



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### 1 Class/Group Actions

#### 1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

In Japan, a group of related claims are usually brought to the court by way of a “Joint Suit” (“Joint Proceeding”). The Code of Civil Procedure of Japan (“CCP”) also allows a number of persons who share a common interest to appoint a representative (“Appointed Party”) who will then act on their behalf in conducting a civil procedure (“Appointed Party Proceeding”). Further, in certain areas of law, a “Qualified Consumer Organisation” (“QCO”) can file a lawsuit to seek an injunction against a business operator for the benefit of consumers (“Consumer Organisation Proceeding”). Additionally, the Japanese government recently enacted a new statute and created a new class action system (“New System”) for collective recovery of monetary claims held by consumers. Joint Proceedings and Consumer Organisation Proceedings follow the principal rule that court decisions generally bind only parties to a suit. Conversely, under the New System and the Appointed Party Proceedings, the binding effect of court decisions extends to consumers who opted in.

#### Joint Proceedings

The CCP allows more than one plaintiff to participate in a civil procedure, and allows a court to hear more than one claim. In a joint suit, a party can apply for any remedy under the CCP, including but not limited to monetary compensation, injunctive relief, specific performance or declaratory relief. A decision of the court is only, in principle, binding on the parties to the litigation. For several parties to file a joint suit, the parties’ claims must satisfy the general requirements to consolidate a number of claims into one court proceeding (CCP, Article 135). Further, a joint suit must satisfy one of the following requirements: (i) the rights and obligations which the claimants seek to enforce are common; (ii) the claims are based on the same cause of fact or law; or (iii) the rights and obligations which the claimants seek to enforce are of the same kind and arise from the same kind of cause of fact or law (CCP, Article 38). In Japan, most group disputes are resolved by way of joint suit. Joint parties generally appoint the same attorneys as their counsel.

#### Appointed Party Proceedings

The CCP allows a number of persons who share a common interest to nominate an Appointed Party who will then file a lawsuit on their behalf (CCP, Article 30). All remedies under the CCP, such as monetary compensation, injunctive relief, specific performance and declaratory relief, are available in proceedings conducted by the Appointed Party.

A decision of the court, in principle, is only binding on the Appointed Party, the defendant and the appointers who authorised the Appointed Party. A decision will not bind persons who share a common interest but did not authorise the Appointed Party to act on their behalf.

To file an Appointed Party Proceeding, the following requirements must be met:

- (i) a group of persons who share the same interest must exist (specifically, those persons must satisfy the requirements for a Joint Suit and their main allegations must have commonality);
- (ii) the Appointed Party must be selected from the said group; and
- (iii) if the said group is well organised such that it is qualified to file a lawsuit under the name of the group itself (CCP, Article 29), the litigation cannot be conducted by the Appointed Party (CCP, Article 30).

#### Consumer Organisation Proceedings

In certain circumstances, a QCO certified by the Prime Minister may file a lawsuit to seek an injunction against a business operator. Specifically, in cases where a business operator has committed or is likely to commit certain acts (for details, *see* question 1.2 *infra*) against a number of unspecified persons, the QCO may file a lawsuit for injunctive relief (Consumer Contract Act (“CCA”), Article 12; the Act against Unjustifiable Premiums and Misleading Representations (“AUPMR”), Article 10; and the Specified Commercial Transactions Act (“SCTA”), Articles 58-18 through 58-24).

A QCO is not exercising the claims of consumers, but rather, exercising its own claim given by law. The QCO can only apply for injunctive relief and not monetary compensation or other types of relief. A court decision will only, in principle, be binding on the QCO that brought the claim and the defendant. Nevertheless, when a court renders an injunction, all consumers will benefit because it is likely to suspend unlawful conduct.

#### New System

For details, *see* question 9.2 *infra*.

#### 1.2 Do these rules apply to all areas of law or to certain sectors only e.g. competition law, security/financial services? Please outline any rules relating to specific areas of law.

Joint Proceedings and Appointed Party Proceedings apply to all areas of civil law. A party can apply for any remedy under the CCP, including but not limited to monetary compensation, injunctive relief, specific performance and declaratory relief.



Consumer Organisation Proceedings are only applicable to the following areas which relate to consumer disputes, and only injunctive relief is available: (i) false representations, provision of conclusive evaluations on uncertain matters or wilful omissions of disadvantageous facts; (ii) solicitation using unlawful measures (e.g. not allowing a consumer to leave a location where they have been solicited); (iii) agreements containing provisions which are not permitted by the CCA (for (i)-(iii), please refer to the CCA, Article 12); (iv) advertisements and other representations which may cause a misunderstanding regarding the quality or trade terms of goods or services (AUPMR, Article 10); and (v) acts specified in articles 58-18 through 58-24 of the SCTA. The SCTA only applies to the following types of transactions: door-to-door sales or purchasing; mail-order sales; telemarketing sales; multilevel marketing transactions; specified continuous service offers; and business opportunity-related sales transactions. The conduct subject to Consumer Organisation Proceedings varies depending on transaction types, but in general, the SCTA allows injunctions for: (i) false representations, provision of conclusive evaluations on uncertain matters or wilful omission of important facts; (ii) solicitation or interference of withdrawal or rescission using unlawful measures (e.g. intimidation and disturbance); (iii) agreements containing provisions that are not permitted by the SCTA; and (iv) false or misleading advertising.

New System is applicable only to monetary claims that arise in connection with consumer contracts. For details, *see* question 9.2 *infra*.

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**1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim leads to the determination of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?**

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For Joint Proceedings and Consumer Organisation Proceedings, a court decision generally binds only litigants of the procedure. However, in Consumer Organisation Proceedings, if a QCO receives a final judgment or enters into a settlement, other QCOs, in principle, cannot file a lawsuit against the same defendant to seek an injunction for the same acts that were disputed in the previous lawsuit (CCA, Article 12-2).

In Appointed Party Proceedings a court decision binds not only the Appointed Party and the defendant but also group members who appointed the Appointed Party. Likewise, under New System, the binding effect of court decisions with regard to the defendant's common obligation extends to non-party consumers who opted in. For details of New System, *see* question 9.2 *infra*.

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**1.4 Is the procedure 'opt-in' or 'opt-out'?**

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In Joint Proceedings and Appointed Party Proceedings, potential claimants will, in principle, be bound by court decisions only when they file a lawsuit as a plaintiff or when they authorise an Appointed Party to act on their behalf. In New System, aggrieved consumers can choose to opt-in after existence of the defendant's common obligation is affirmed, *see* question 9.2 *infra*. These procedures have an "opt-in" nature.

Consumer Organisation Proceedings do not require an "opt-in" or "opt-out". QCOs are generally considered to be exercising their own claim and a court decision will, in principle, only bind the QCO which filed the lawsuit and the defendant.

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**1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?**

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For Joint Proceedings and Appointed Party Proceedings, there is no minimum. For Consumer Organisation Proceedings, a lawsuit will not be filed unless there are a number of unspecified persons who are, or are likely to be, affected by the defendant's conduct, but there is no clear-cut criterion for determining how many victims are required. Likewise, New System requires numerosity of aggrieved consumers, but there is no clear-cut minimum threshold, *see* question 9.2 *infra*.

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**1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?**

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For Joint Proceedings and Appointed Party Proceedings, *see* question 1.1 *supra*. For Consumer Organisation Proceedings, there is no special requirement for similarity of claims because the QCO is not considered to be filing a collective lawsuit on behalf of consumers. Under New System, the defendant's obligation must arise from cause of fact or law that is common among aggrieved consumers, *see* question 9.2 *infra*.

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**1.7 Who can bring the class/group proceedings e.g. individuals, group(s) and/or representative bodies?**

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In Joint Proceedings, aggrieved individuals and entities jointly file a lawsuit. In Appointed Party Proceedings, the Appointed Party will file a lawsuit on behalf of itself and the appointers. In Consumer Organisation Proceedings, a lawsuit can only be filed by a QCO certified by the Prime Minister. Currently, there are 11 certified QCOs. Likewise, under New System, actions can be brought only by Specified Qualified Consumer Organisations ("SQCO") certified by the Prime Minister, *see* question 9.2 *infra*. Once QCOs or SQCOs have this certification, no additional permission or certification is required for them to file a lawsuit.

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**1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?**

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In Joint Proceedings and Appointed Party Proceedings, there is no need to notify potential claimants. In Consumer Organisation Proceedings, a QCO must notify other QCOs and report to the Secretary General of the Consumer Affairs Agency ("CAA") when certain events occur, such as when the QCO files a suit, receives a judgment or enters into a settlement (CCA, Article 23, Paragraph 4). Further, a QCO must make efforts to provide consumers with necessary information (CCA, Article 27). As a matter of practice, a QCO will state on its website when it files a Consumer Organisation Proceeding lawsuit. In New System, the plaintiff SQCOs must make individual notices to known aggrieved consumers and public notices if, and after, existence of the defendant's common obligation is affirmed, *see* question 9.2 *infra*.

**1.9 How many group/class actions are commonly brought each year and in what areas of law, e.g. have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law?**

For Joint Proceedings and Appointed Party Proceedings, there are no comprehensive statistics. However, according to the Supreme Court of Japan, of the civil cases of first instance which ended in 2012, there were 1,524 cases that had 10 or more plaintiffs. Six of such cases involved environmental pollution, three cases involved defective construction, two cases involved intellectual property and 40 cases involved labour disputes. It appears that there are few cases where Appointed Party Proceedings have been used.

For Consumer Organisation Proceedings, from June 2007 to April 2014, 33 Consumer Organisation Proceeding lawsuits were filed. It should be noted, however, that QCOs are required to send a written request to suspend unlawful conduct prior to filing a Consumer Organisation Proceeding (CCA, Article 41), and that the number of written requests made is significantly larger than that of lawsuits filed.

New System has not taken effect yet and will take effect within three years, *see* question 9.2 *infra*.

**1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?**

In Joint Proceedings and Appointed Party Proceedings, all remedies under the CCP, such as monetary compensation, injunctive relief, specific performance and declaratory relief, are available. In Consumer Organisation Proceedings only injunctive relief is available. In New System only monetary relief is available, *see* question 9.2 *infra*.

## 2 Actions by Representative Bodies

**2.1 Do you have a procedure permitting collective actions by representative bodies e.g. consumer organisations or interest groups?**

New System is similar to collective actions, in the sense that a consumer organisation first seeks resolution of common issues and subsequently seeks payment for individual consumers who opted in, *see* question 9.2 *infra*. Consumer Organisation Proceedings may also be similar to such actions in that a consumer organisation seeks an injunction which will ultimately benefit consumers, *see* questions 1.1 and 1.2 *supra*.

**2.2 Who is permitted to bring such claims e.g. public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?**

Only consumer organisations certified by the Prime Minister. For details, *see* question 1.7 *supra*.

**2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law, e.g. consumer disputes?**

For Consumer Organisation Proceeding, *see* questions 1.1 and 1.2 *supra*. For New System, *see* question 9.2 *infra*.

**2.4 What remedies are available where such claims are brought, e.g. injunctive/declaratory relief and/or monetary compensation?**

In Consumer Organisation Proceedings only injunctive relief is available. In New System only monetary relief is available. *See* also question 1.10 *supra*.

## 3 Court Procedures

**3.1 Is the trial by a judge or a jury?**

Civil procedures are heard by judges.

**3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?**

Joint Proceedings, Appointed Party Proceedings, Consumer Organisation Proceedings and New System are all handled by a civil court. There are no special judges to manage these cases. However, for Consumer Organisation Proceedings and New System, there are some special rules which apply; for example, when the same claims are brought to the same court against the same business operator by different QCOs, the court has an obligation, in principle, to consolidate the proceedings (CCA, Article 45; the Act on Special Rules of Civil Procedure for Collective Recovery of Consumers' Property Damage, Article 7).

**3.3 How is the group or class of claims defined e.g. by certification of a class? Can the court impose a 'cut-off date by which claimants must join the litigation?**

There is no special procedure for certifying a class or group. However, if a Joint Proceeding is filed by plaintiffs who lack the requirements under Article 38 of the CCP and the defendant makes an objection without delay, the court will separate the proceedings to hear each claim individually. An Appointed Party Proceeding will be dismissed if the requirements under Article 30 of the CCP (*see* question 1.1 *supra*) are not met. In New System, plaintiff SQCOs must adequately specify the scope of claims and aggrieved consumers that should be remedied; if a plaintiff fails to specify, the court will dismiss the case, *see* question 9.2 *infra*.

For Joint Proceeding or Appointed Party Proceeding, there is no provision in the CCP which states that the court can impose a cut-off date by which potential claimants must join the litigation. However, if the existing lawsuit has proceeded to a certain extent, participation may be denied by the court. For New System, aggrieved consumers, within a period determined by the court, must authorise plaintiff SQCOs to submit their claims, and the SQCOs accordingly submit individual claims with the court, *see* question 9.2 *infra*. In Consumer Organisation Proceedings, group or class does not exist, because plaintiff QCOs are exercising their own claims given by law.

**3.4 Do the courts commonly select ‘test’ or ‘model’ cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can order preliminary issues do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?**

In Joint Proceedings or Appointed Party Proceedings, a court can separate one claim from others (CCP, Article 243, Paragraphs 2 and 3) or request parties to concentrate their arguments on one claim before examining others. However, generally, a court handles all claims concurrently and does not try “test” or “model” cases. Further, a court must determine each of the claims based on respective evidence and cannot automatically apply a decision for one claim to others. A court can render an intermediate judgment for an issue of fact or law (CCP, Article 245); for example, in a case where liability and computation of damages are both disputed, the court can make a decision regarding liability and then consider the amount of damages later. Intermediate judgments are rendered by judges.

Under New System, a court must first determine the generic “common obligation” of the defendants and then proceed to decide on existence and amount of individual claims. A court cannot try “test” cases for the purpose of determining the common obligation because no individual claims have been brought at that stage.

**3.5 Are any other case management procedures typically used in the context of class/group litigation?**

There is no special case management procedure for Joint Proceedings, Appointed Party Proceedings, Consumer Organisation Proceedings and New System. However, for Joint Proceedings, the court often holds a scheduling conference where the court and the parties discuss issues concerning the processes of the lawsuit.

**3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?**

The court can appoint an expert witness to provide expert evidence and/or a technical advisor to assist it with procedural matters such as settlement negotiations. Further, the court can request a professional institution to provide information on technical issues. At the same time, the parties can present expert evidence; for example, by engaging a private expert witness or filing an opinion of an expert. Private expert witnesses are commonly used in litigation in Japan. In civil proceedings, in principle, there are no limitations on the nature or extent of expert evidence. A court has discretion on whether to allow expert evidence.

**3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?**

The submission of written statements or expert opinions is not a legal requirement for witness examination. However, judges usually request the parties to submit these documents before a witness examination.

**3.8 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?**

There is no obligation under the CCP to generally disclose documentary evidence. However, during civil procedure (and before commencement of civil procedure in case of emergency (CCP, Article 234)), the parties can file a petition for a document production order. The party that receives the order must produce documents specified by the court but still owes no general obligation of disclosure. The petitioner owes the burden to demonstrate that the document they requested is necessary for the resolution of the case.

Certain documents are excluded from orders to produce, such as documents containing facts that have come to the attention of medical doctors or attorneys in the course of their duties or documents that were prepared solely for the use of the person who holds the document.

In New System, if the common obligation of a defendant is affirmed by the court decision or a settlement, the defendant, at the request of the plaintiff SQCO, must disclose documents that are necessary to identify aggrieved consumers. *See* question 9.2 *infra*.

**3.9 How long does it normally take to get to trial?**

The length of a court proceeding depends on the particular circumstances of the case. According to the Supreme Court of Japan, in cases of first instance which ended in 2012, the average period of time between filing and the first oral hearing was 2.3 months. Please note that the CCP does not make a distinction between pre-trial proceedings and trial.

In civil proceedings, the parties generally make allegations on the merits of the case, allegations on procedural matters and submissions of evidence concurrently in oral hearings and further preparatory proceedings. Generally, the court will hold witness examinations at the final stage of civil proceedings (if the court thinks it necessary), and render a judgment after that.

**3.10 What appeal options are available?**

Generally, parties can appeal by right to a court of second instance. Parties can also file a petition for discretionary review by the Supreme Court, or make final appeal by right to the Supreme Court if the court of second instance violated the Constitution or made material errors listed in the CCP.

## 4 Time Limits

**4.1 Are there any time limits on bringing or issuing court proceedings?**

In the CCP there is no time limit to when a proceeding can be filed. However, the substantive law of Japan specifies that rights and obligations will lapse after a certain period of time.

**4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?**

The length of time varies depending on the type of claim, but in general, the following rules apply: (i) claims subject to the Civil



Code will extinguish ten (10) years after the time that the claims became exercisable (the Civil Code, Articles 166 and 167); (ii) claims subject to the Commercial Code will extinguish five (5) years after the time that the claims became exercisable (the Commercial Code, Article 522); and (iii) claims for compensation arising from tort will extinguish when three (3) years have passed from the time that the victim discovers the damage and the identity of the tortfeasor or when twenty (20) years have passed from the time of the tortious act (the Civil Code, Article 724).

The circumstances of the claimant will affect the time limit; for example, the rights of a minor without any statutory agent will not be extinguished until after the minor becomes an adult or obtains a statutory agent (the Civil Code, Article 158). Also, if the claimant is in circumstances under which he/she cannot be expected to exercise his/her rights in light of the nature of the rights, the rights are deemed not to have been exercisable (the Supreme Court decision of 15 July 1970 (24-7 Minshu 771)).

If the passage of time is apparent from the briefs and evidence filed, and a party invokes the time limit, the court does not have any discretion but to apply the time limit.

#### 4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Concealment or fraud may prevent the claimant from discovering damage and the identity of the tortfeasor, and may also hinder the claimant from exercising his/her rights. As such, these issues may affect the commencement of the time limit. *See* also question 4.2 *supra*.

## 5 Remedies

#### 5.1 What types of damage are recoverable e.g. bodily injury, mental damage, damage to property, economic loss?

In Joint Proceedings and Appointed Party Proceedings, all types of damage that may be compensated under the CCP, such as bodily injury, mental harm, damage to property and economic loss, are subject to compensation. For Consumer Organisation Proceedings, monetary compensation is not available. Under New System, only monetary damage can be recovered, and secondary losses, lost earnings, bodily injury, and pain and suffering are excluded from the scope of recovery. If consumers intend to recover those excluded damages, they need to file suits on their own behalf. *See* question 9.2 *infra*.

#### 5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

Under Japanese law, the claimant, in principle, has the obligation to prove that it incurred damage and that the damage has a reasonable causal relationship to the defendant's conduct. If the claimant seeks compensation of the cost of medical treatment, he/she must demonstrate these facts.

#### 5.3 Are punitive damages recoverable? If so, are there any restrictions?

In Japan, recovery of punitive damages is not allowed. A decision

of a foreign court ordering punitive damages will not be enforceable in Japan so far as it relates to punitive damages (the Supreme Court decision of 11 July 1997 (51-6 Minshu 2573)). In contrast, penalty clause for breach of contract is enforceable so long as it does not violate public policy.

#### 5.4 Is there a maximum limit on the damages recoverable from one defendant, e.g. for a series of claims arising from one product/incident or accident?

For Joint Proceedings, Appointed Party Proceedings and New System, there is no maximum limit for recoverable damages. If the damages reasonably arise from a tort, they are recoverable. For Consumer Organisation Proceedings monetary compensation is not available.

#### 5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

Under Japanese law, a claimant seeking compensation must prove the amount of damage he/she incurred. How damages are calculated depends on the method of proof used by the claimant. In cases where it is clear that damages were incurred but the demonstration of their amount is very difficult, the court can award the amount of damages which it considers appropriate (CCP, Article 248). Quantification of damages will be done separately for each victim. As a matter of law, the court will not calculate damages as a group then distribute compensation to the group's members. The amount of each claim is determined by respective evidence, not by dividing the aggregate damage of a group.

#### 5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?

There are no special rules that apply to settlements for Joint Proceedings and Appointed Party Proceedings. In Consumer Organisation Proceedings, the approval of the court or the competent authorities is not required for a settlement. However, if a QCO reaches a settlement with one business operator, other QCOs will not, in principle, be able to make the same claim against the same business operator (CCA, Article 12-2). In New System special rules apply to the settlement. *See* question 9.2 *infra*.

## 6 Costs

#### 6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

Litigation costs will be borne by the losing party in principle unless otherwise allocated by the court (CCP, Article 61). Litigation costs under the CCP are limited to matters such as payments to witnesses, fees arising from service of court documents and fees for filing a lawsuit.

Other litigation-related expenses, such as attorneys' fees, will in principle be borne by both parties. However, in claims for damages arising from tort, the successful party may be able to request the payment of attorneys' fees to a reasonable level.

In New System special rules apply to costs which arise at the second stage of the procedure. *See* question 9.2 *infra*.

**6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?**

In Joint Proceedings, joint parties, in principle, pay litigation costs in equal amounts but the court can set a different allocation or order the parties to pay the costs jointly and severally (CCP, Article 65). The distribution of other expenses such as attorneys' fees will be decided by an arrangement between the parties. In Appointed Party Proceedings, the distribution of litigation expenses will be decided by the arrangements between the appointing parties. In Consumer Organisation Proceedings, the QCO will pay the litigation expenses. In New System, the plaintiff SQCOs incur costs primarily as parties but can subsequently recover their costs, pursuant to agreements, from consumers who opted in.

**6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?**

Generally speaking, if a party withdraws a lawsuit or abandons its claim, that party will pay the litigation costs relating to its own claim. The distribution of other litigation expenses among members of a group will be decided by arrangements (e.g., between the said person and the attorney or between the parties who retained the same attorney).

**6.4 Do the courts manage the costs incurred by the parties e.g. by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?**

There is no provision in the CCP that specifically requires the court to impose a cap on litigation costs. The court manages the amount of costs through its discretion on distribution; for example, if a party engages in unnecessary conduct or causes delay in the court proceedings, the court may allocate the costs arising from such conduct to that party (CCP, Articles 62, 63 and 65).

Assessment of litigation costs will be done as follows: first, the court determines the party that shall pay the litigation costs and its allotment; and then the court clerk determines the specific amount after that.

## 7 Funding

**7.1 Is public funding, e.g. legal aid, available?**

A person who lacks financial capacity may request the court to postpone the payment of litigation costs (CCP, Article 82). A person can also request legal aid from the Japan Legal Support Centre, such as an advance for the payment of attorneys' fees. Also, some local governments have implemented consumer protection ordinances which provide aid for consumer-related disputes.

**7.2 If so, are there any restrictions on the availability of public funding?**

The criteria for receiving aid vary depending on the entity which provides it. However, in general, if the party has financial capacity or there is no possibility of winning the case, the party cannot receive aid from any entity.

**7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?**

The Japan Federation of Bar Associations stipulates that attorneys' fees must always be appropriate. Conditional or contingency fees might become inappropriate if they make the amount of the attorneys' fees extremely high.

**7.4 Is third party funding of claims permitted and, if so, on what basis may funding be provided?**

In general, provision of financial aid by a third party is not in itself prohibited. However, the act of continuously taking over claims from a third party for the purposes of enforcing claims may be contrary to the laws of Japan (the Lawyers Act, Article 73). Furthermore, attorneys are not allowed to lend money to their client except under certain special circumstances, such as an emergency which requires the advance payment of litigation costs.

## 8 Other Mechanisms

**8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.**

In general, the assignment of consumer claims to a third party is not in itself prohibited. However, the act of continuously taking over claims from a third party for the purposes of enforcing claims may violate the laws of Japan (the Lawyers Act, Article 73).

**8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.**

If a professional claimant or other person/entity takes over consumers' claims for the purposes of enforcing claims on a continuous basis, it may violate the Lawyers Act of Japan.

**8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?**

Victims of criminal cases can use criminal procedures as a means of recovering damages. More specifically, the following procedures may be used:

- (i) Settlement using criminal procedures: where a victim of crime reaches an out-of-court settlement with a criminal defendant, the victim may request the court to record this in the court record. If the criminal defendant fails to pay the settlement amount, the criminal victim can enforce the settlement without filing a civil lawsuit.
- (ii) Order for compensation: in certain types of crime (e.g. murder, rape, false imprisonment, and kidnapping) the victim or their heirs can file a petition to the court hearing the criminal case, and obtain an order for compensation of damage.
- (iii) Recovery payment: for certain types of crime, such as fraud, the assets acquired by a criminal defendant through their unlawful acts will be confiscated by the government, and the government will make payments to the criminal defendant's victims from those assets.



#### 8.4 Are alternative methods of dispute resolution available e.g. can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

Mediation and arbitration can both be used as a means of dispute resolution.

#### 8.5 Are statutory compensation schemes available, e.g. for small claims?

There is no general statutory compensation scheme. However, there are compensation schemes for certain areas of law; for example, the scheme mentioned in part (iii) of question 8.3 *supra*.

#### 8.6 What remedies are available where such alternative mechanisms are pursued, e.g. injunctive/declaratory relief and/or monetary compensation?

A variety of remedies, including but not limited to monetary compensation, injunctive relief, specific performance and declaratory relief, are available in arbitration, provided that they are derived from the applicable substantive law. A variety of remedies are also available in mediation but mediation requires the consent of both parties to be effective.

## 9 Other Matters

#### 9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict 'forum shopping'?

Joint Proceedings and Appointed Party Proceedings may be brought by residents from other jurisdictions. However, Japanese courts must have jurisdiction over the claims brought against them. Consumer Organisation Proceedings may only be brought by QCOs and cannot be brought directly by residents of other jurisdictions. Under New System, actions can only be brought by SQCOs. *See* question 9.2 *infra*.

There is no provision in the CCP which specifically prohibits forum shopping. However, the court will deny jurisdiction if there are special circumstances where the handling of the proceedings in Japan is contrary to the ideas of fairness of the parties and ensuring just and speedy adjudication (the Supreme Court decision of 11 November 1997 (51-10 Minshu 4055) and Article 3-9 of the CCP).

#### 9.2 Are there any changes in the law proposed to promote class/group actions in Japan?

On December 4, 2013, the Japanese government enacted the Act on Special Rules of Civil Procedure for Collective Recovery of Consumers' Property Damage ("New Act") and thereby introduced a new class action system (New System). The aim of the New Act is to facilitate simple and prompt recovery of small diffused claims of consumers. The New Act will take effect within three years from December 11, 2013, the exact date of which will be determined by a cabinet order. The New Act applies only to claims that arise from agreements which are entered into, or tortious acts which take place, after the New Act takes effect.

##### First Stage

New System consists of two stages. The first stage ("First Stage") is a procedure which determines the existence or non-existence of a business operator's obligation ("Common Obligation") which arises from common cause of fact or law. The First Stage can be

commenced only by a SQCO and only against business operators. Among QCOs (as defined in question 1.1 *supra*), only those certified by the Prime Minister as fulfilling the requirements of New System will be entitled to attain SQCO status. Plaintiff SQCOs must specify the scope of claims and aggrieved consumers that should be remedied; if the SQCO fails to specify, the court will dismiss the case. The court of the First Stage must dismiss the case if it lacks either numerosity of aggrieved consumers or predominance of common questions over individual questions. At the First Stage, parties can appeal by right and also seek review by the Supreme Court. *See* question 3.10 *supra*.

##### Second Stage

The second stage ("Second Stage") is a simplified civil procedure where the court determines the amount to be paid to each aggrieved consumer. The Second Stage commences only if the First Stage court rules in favour of the plaintiff SQCO or the parties affirm Common Obligation in their settlement. When the Second Stage commences, the SQCO must make individual notices to known aggrieved consumers and public notice. The defendant must make public notice and/or disclose documents that include information on aggrieved consumers upon request from the plaintiff SQCOs. After individual and public notice, aggrieved consumers, within a period determined by the court, authorise the plaintiff SQCO to submit their claims, and the SQCO accordingly submits individual claims with the court. Due to the simplified nature of the Second Stage, the amount of each claim is generally determined based on admissions/denials of parties and documentary evidence, not witness testimony. Only consumers whose claims are submitted in the Second Stage (i.e. who opted in) will be bound by the decision of the First Stage and get paid. Consumers whose claims are not submitted in the Second Stage are not bound by the decision of the First Stage and retain the option of filing a lawsuit on their own behalf.

At the second stage, litigation costs are allocated to each party under special standard (as opposed to the general principle stated in question 6.1 *supra*). Generally speaking, costs which arise for individual claims (e.g. fee for submission of individual claims) are borne by the losing party. Other litigation costs (e.g. cost of public notice) are borne by both parties. Expenses that do not fall within the scope of litigation costs under the CCP, such as attorneys' fees, are generally borne by both parties.

##### Transition to Regular Civil Procedure

If nobody objects to the amount decided by the court, the court decision becomes final and binding. If one of the parties or a consumer whose claim is submitted objects, the existence or amount of that particular claim (to which objection is filed) will be determined in a regular civil procedure. In this regular civil procedure, parties can appeal by right and also seek review by the Supreme Court. For options of appeal, *see* question 3.10 *supra*.

##### Settlement

At the First Stage, plaintiff SQCOs may enter into settlement with the defendant in terms of existence of common obligation, but not with respect to the amount of payment. When aggrieved consumers authorise the plaintiff SQCOs to submit their claims at the Second Stage, the plaintiff SQCOs can thereafter enter into settlement with respect to the amount of payment to consumers who opted in.

##### Limitations

It is particularly worth noting that the scope of New System is limited in terms of (i) claims that can be brought, (ii) remedies that can be sought, and (iii) standing. First, only monetary claims relating to a consumer contract (i.e. an agreement between a consumer and a business operator ("Consumer Contract")) can be brought under New System. Specifically, the SQCO can bring

claims for performance or compensation which arise from a breach of contract or defective product. The SQCO can also bring claims for restitution or compensation arising from negligent tort so long as the claims arise in connection with a Consumer Contract. According to the CAA, damage caused by false statements in annual securities report, non-property damage caused by leakage of personal information, or bodily injury caused by defective products will generally be excluded from the scope of New System. Conversely, damage caused by false statements in initial disclosure documents might become recoverable under New System.

Secondly, remedies that can be sought under New System are limited. Only monetary claims can be brought under New System. The New Act explicitly excludes secondary losses, lost earnings, bodily injury, and pain and suffering. If consumers intend to recover those excluded damages, they need to file suits on their own behalf.

Third, as mentioned above, only SQCOs can become plaintiffs, and only business operators can become defendants in New System. Additionally, a defendant, in general, must be party to the Consumer Contract which constitutes the basis of consumers' claims.

Due to these limitations, the scope and impact of New System will be limited compared with American class actions.



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