

JAPAN

Global litigation guide



About

Welcome to The Global Litigation Guide (the **“Guide”**) which has been prepared by DLA Piper’s civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper’s guide to [Legal Professional Privilege](#) and (coming soon) DLA Piper’s guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

Key contacts



Ewald Netten

Partner
DLA Piper Nederland N.V.
ewald.netten@dlapiper.com
T: +31 20 5419 865



Japan

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Overview of court system

Japan is primarily a civil law country, where codified laws predominate. However, case law offers non-binding guidance that may, in some cases, be persuasive, and may be relied upon providing it does not conflict with the codified laws.

The Supreme Court, the highest court in Japan, exercises final appellate jurisdiction within Japan's judicial system. The Supreme Court has jurisdiction to hear cases involving:

- violations of the Constitution;
- serious procedural breaches by the lower courts; and
- important issues concerning the construction of laws and regulations.

Decisions in the Supreme Court are made either by the grand bench, composed of the entire body of 15 justices sitting together, or by one of the three petty benches, composed of five justices each.

Japan has eight high courts, each with corresponding regional jurisdiction. The eight high courts are located in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu. High courts generally have appellate jurisdiction over judgments rendered by district courts and family courts, as well as original jurisdiction for certain criminal matters. Typically, a case heard by the high court will be adjudicated by a panel of three judges.

The Intellectual Property High Court in Tokyo is the only specific high court. It was established in April 2005 to handle cases relating to intellectual property, such as appeals from district courts in civil cases relating to patent rights and actions against decisions made by the Japan Patent Office.

There are 50 district courts in Japan, each with territorial jurisdiction over a single *prefecture* - with the noted exception of Hokkaido Prefecture, which is divided into four districts. The 49 district courts are separated into branches; there are 203 branches in total. The district court will generally be the court of first instance for civil and criminal matters, and also serves as the appellate court for judgments arising from summary courts. Cases heard in the first instance in district courts are adjudicated by either one or three judges, and appeals from summary courts are heard by three-judge panels.

There are 438 summary courts throughout Japan. The summary courts have jurisdiction over civil cases involving claims for amounts of up to JPY1.4 million (c. EUR11,000) and certain criminal cases. Summary court cases are adjudicated by a single summary court judge.

There are 203 branches and 77 local family courts throughout Japan. The family court has jurisdiction over divorce and ancillary child custody where the child is domiciled in Japan.

Litigation is only conducted in the local official language in Japan (i.e., Japanese).

Limitation

Under Japanese law, the general statute of limitations period for civil claims (excluding tort) is five years from when the claiming party

recognizes grounds of claims (e.g., due and payable, defect, default, breach, etc.) or ten years from the moment the grounds occur, whichever is earlier. For tort claims the limitation period is three years from when the claiming party discovers they have suffered damage and knows the identity of the tortfeasor, or twenty (20) years from the moment the tortious act was made.

Procedural steps and timing

A civil claim is commenced by a plaintiff filing a petition together with supporting evidence. A petition must specify the parties and contain particulars of the claim, as well as a statement specifying the relief sought. *Revenue stamps* of a certain value must be affixed to the petition as a filing fee. Once a petition and a writ of summons are served on the defendant by the court via Japan Post's special service delivery, the defendant is required to file a written answer within the period stipulated by the court, which is commonly 40 to 50 days. A party is not obliged to be represented by an attorney. In other words, a party is allowed to initiate or respond to a claim without appointing an attorney.

Thereafter, several preparatory proceedings will be held in order to clarify core issues in the case and both parties will submit documentary evidence to the court and make oral arguments. Court hearings in a case are usually held every one or two months. Witnesses are generally examined after the parties have submitted documentary evidence and made oral arguments. Once all of the evidence has been examined, a judgment will generally be rendered within two months. In first instance cases, judgment is typically given within less than twelve months from the petition being filed.

The court also offers online document submission through the court's own cloud service, often referred to as "mints", and online conferencing through Microsoft Teams. The "mints" submission system is still being implemented and is expected to be available in all district courts by approximately November 2023.

Labor, or employment, cases are another important type of legal dispute. There are two basic types: individual employment cases, which are between an employer and an employee, and collective employment cases, which are between an employer and a union. In April 2006, Japan introduced the Labor Adjudication System for individual employment cases. Under this system, three adjudicators (one serving as judge, one representing the interests of the employer and one representing the employee respectively) form a Labor Adjudication Committee that endeavours to resolve the dispute by mediation or adjudication in no more than three sessions. The objective of this system is to resolve cases quickly, appropriately and effectively. Cases which are not resolved under this system are referred to ordinary judicial proceedings.

Disclosure and discovery

In Japan, the parties are free to determine which evidence they want to rely on in proceedings. In limited cases, Japanese courts have authority to order parties to disclose documents based on their relevance to the case. Parties seeking an order for disclosure must specify:

- the description of the documents;
- the name of the individual believed to hold relevant documents;
- the summary of the documents;
- the assertions to be proved by such documents; and
- the legal basis to request the disclosure.

US-style discovery proceedings do not exist in Japan. Therefore, the ability to obtain potentially beneficial evidence from an uncooperative opposing party is generally limited.

Discovery claims can be filed before and/or after the commencement of proceedings. However, the procedure before commencement of the litigation cannot force the party having the documents to submit it, and the scope is limited. Therefore requests must be made as orders are not available.

However, after the litigation has commenced, evidence can be obtained *ex parte* if the court issue the disclosing-order to the party following a request for the order; the court has no independent authority to issue a disclosing-order. However, the ability to obtain potentially beneficial evidence from an uncooperative opposing party is limited other than the disclosing-order.

Lastly, certain documents excluded from discovery claims for example, matters relating to the professional secrecy of public officials,

matters relating to the professional secrecy of doctors and lawyers, and matters relating to technical secrecy may be excluded.

Default judgment

Where the defendant does not clearly state whether they dispute the facts stated by the plaintiff in their complaint by a court set due date, the facts submitted by the plaintiff are deemed as accepted by the defendant, which is commonly called “Constructive Admission” under Code of Civil Procedure Art. 159. Although courts are still granted discretion in statutory interpretation, other than fact-finding in the case of Constructive Admission, the court mostly issues a judgment granting all of the plaintiff’s claims. This rule applies to both parties, not just the defendant, and the applicable documents are not limited to the complaint.

The court may render a final judgment if the plaintiff who has appeared requests a conclusion of the case and the court deems it appropriate, taking into consideration the current status of the case and the status of the parties’ pursuit of the case. Even if the defendant does not appear and does not clarify their argument, the court has to examine the merits of plaintiff’s claim when rendering a default judgment.

If a default judgment is rendered in the first instance, the appeal period is two weeks from the day following the day on which an authenticated copy of the judgment of the first instance is served.

Appeals

A party dissatisfied with a judgment at first instance may file an appeal by submitting a petition of appeal within two weeks of receipt of the judgment from the court of first instance. An appellant is required to file detailed grounds of the appeal within 50 days after filing a petition of appeal if such grounds are not provided in the petition. The respondent must file an answer by the date stipulated by the court, which is usually one to two weeks before the court hearing. Although there is no statutory limit on the number of court hearings that may be held on appeal, usually only one or two hearings are held. A party may be allowed to submit supplemental written submissions. It typically takes between 6 and 12 months from submitting the petition of appeal to a final decision on appeal, but the process may take longer in complex cases.

A party dissatisfied with a judgment of a court of second instance may file an appeal to the Supreme Court, but only if: (i) it is alleged that the second instance judgment violates the Constitution; or (ii) even where no violation of the Constitution is alleged, the judgment involves material matters concerning the interpretation of laws and regulations. In these cases, a party may file a petition for leave to appeal to the Supreme Court within two weeks of the second instance judgment being handed down. This petition for leave to appeal invites the Supreme Court to exercise its discretion to accept the final appeal. In the event that the Supreme Court agrees to hear the appeal, it typically takes between four and six months for the final judgment to be given. It tends to take longer when the Supreme Court overturns decisions by the lower courts.

A judgment becomes final and binding once it cannot be further appealed. Parties may not dispute the contents of final and binding judgments unless certain exceptional circumstances exist.

An appeal does not automatically suspend the enforceability of the original judgment. A separate petition to suspend/stay enforcement must be filed.

While the purpose of the appeal court is to review the judgment of the first instance, the appeal court will include newly collected evidence and materials in addition to the evidence and materials of the first instance (System of Continuative Instance). Therefore, the merits and facts should be reconsidered in the appealing court. The appellate court (i.e., the third/last instance) conducts hearings only on legal issues, and the appellate court is, in principle, bound by the facts found in the original judgment.

Interim relief proceedings

Japanese courts can grant interim relief to protect property and secure the enforceability of the judgment. The following forms of interim relief are available in Japan:

- an order of provisional attachment available to potential plaintiffs (creditors) who wish to freeze the potential defendant’s (debtor’s) assets to secure collection of their monetary claims;
- a provisional order (referred to in Japan as provisional disposition), which is used to preserve disputed property in certain types of non-monetary claims; and

- a provisional disposition to establish an interim legal relationship between the parties to avoid substantial detriment or imminent danger caused by the disputed relationship.

Further detail on the first two types of interim relief can be found in the paragraph on Prejudgment attachments and freezing orders.

In relation to the provisional disposition to establish an interim legal relationship, an *obligee* can file a petition with the district court to prove a legal relationship with *obligor*. The petition must have either (a) jurisdiction over the merits of the case; or (b) jurisdiction over the location of the disputed subject matter. An *obligee* can request this measure until a judgment on the merits has become final and binding (i.e. an *obligee* is able to request provisional relief even in second instance). A party is not obliged to be represented by an attorney. In other words, a party is allowed to initiate or respond to a petition for provisional relief without appointing an attorney.

As to the criteria to obtain such provisional disposition, in order to be successful, the applicant must establish that there is a prima facie case that (i) the disputed legal relationship exists; and (ii) an order is required to avoid substantial detriment or imminent danger to the petitioner. Before granting this type of relief, the court will usually convene a hearing to hear both parties' positions.

The timeframe to resolve applications to determine a provisional legal status is generally between one and four weeks from the application being filed to the remedy being awarded. An *obligee* may file an appeal against a judicial decision to dismiss a petition for an order for a provisional relief within an unextendable period of two weeks from the day on which the *obligee* was notified of such decision. Where the court dismisses the appeal for provisional relief, no further appeal may be filed against such judicial decision. On the other hand, where the court issues an order for provisional relief, the obligor may (at any time) file an objection to the order with the court which issued the order.

In addition to the above interim relief measures, in some cases, it is also possible to obtain an interim judgment, which will settle certain matters that are ripe for determination before the final judgment. An interim judgment will be binding on the court that issued it, but it cannot be appealed or enforced by the parties. Japanese law does not establish a procedure for obtaining such judgment. Japanese courts can, in their discretion, issue an interim judgment on part of the dispute before rendering a final judgment providing both of the following conditions are satisfied: (i) the element of the dispute subject to the interim judgment is independent from the main matter in dispute, and (ii) it is feasible to give judgment on that element. In addition, the interim judgment is also available when issues of liability and quantum can be determined separately, and the court considers that liability should be determined first. An interim judgment can be useful, particularly in large or complex disputes, to reduce the number of disputed issues in subsequent proceedings. However, interim judgments are rare in practice.

Interim relief may be granted ex parte in some instances. For example, the court need not hear the opposing party in a proceeding that requires secrecy, as in an asset freeze case. However, in a provisional disposition to establish an interim legal relationship between the parties to avoid substantial detriment or imminent danger caused by the disputed relationship, the court must hold a hearing and grant the opposing party an opportunity to submit their arguments.

Interim relief measures should be obtained before, during and/or after proceedings on the merits of the main proceedings. Interim relief measures must be filed by the creditor as a plaintiff within a certain period of time (specified by the court, not less than two weeks) after the interim relief measures have been issued. If the creditor does not file the main action, the court may withdraw the interim relief measures upon motion of the debtor.

The creditor can appeal to a higher court if its request for interim relief measures was declined. The creditor has to submit an appeal within 2 weeks after being notified that the court declined its original request for interim relief measures.

The debtor has an opportunity to challenge the order of the interim relief measures. The court that ordered the interim relief measures will examine the challenge and hold a hearing with both parties. It may take over one month until the court delivers a decision. Both parties can appeal to a higher court on the court's decision of the challenge. The party has to submit an appeal within 2 weeks after receiving service of declining its challenge for interim relief measures. A challenge/appeal does not automatically suspend the enforceability of the interim relief measures. A separate petition to suspend enforcement must be filed.

Prejudgment attachments and freezing orders

As noted in the paragraph on Interim relief proceedings, plaintiffs wishing to secure assets may apply for the following types of provisional remedies by filing a petition at the district court:

- in respect of monetary claims, a provisional attachment order, which will freeze the debtor's assets including immovable and movable assets, bank accounts, shares and monetary claims to third parties in order to secure collection of the monetary claim; or

- in respect of non-monetary claims, a provisional disposition order to prevent a debtor from disposing of a property the subject of the dispute to any third party.

The procedure for these civil provisional remedies is generally ex parte.

The courts will only award these provisional remedies where the creditor can substantiate an underlying claim and demonstrate that there is an imminent risk that an eventual judgment would become impossible to enforce without provisional protection. It takes only a few days from the application being filed to the remedy being awarded. The provisional remedy is revocable by the court if: (a) the creditor does not file a substantive claim within the period stipulated in the court order made in response to the provisional remedy application (the minimum period which will be stipulated is two weeks); or (b) a creditor's claim is rejected in the final judgment by the courts. A creditor may be liable for damages suffered by an obligor as a result of the application of provisional remedies.

Civil execution is a procedure by which an obligee may compel an obligor's payment of a debt by seizure and sale of the obligor's property. For instance, if a debtor fails to make a monetary payment due under a contract, the creditor (based upon a claim that has been affirmed by a judgment or a judicial settlement) may be granted the right to seize the debtor's property, sell it by auction, and distribute the proceeds in satisfaction of the claim.

If the plaintiff who froze the defendant's bank account loses the lawsuit, the plaintiff may be liable for damages suffered by the defendant caused by the freezing order. Therefore, when issuing a freezing order, the court requires the plaintiff to make a deposit of 20-30% of the amount claimed.

Prejudgment attachments, such as freezing bank accounts, are taken before a claim on the merits. However, the main proceedings (litigation) must be filed by the creditor as a plaintiff within a certain period of time (specified by the court, not less than two weeks) after issuing of the interim relief measures. If the creditor does not file the main action, the court may withdraw the interim relief measures (prejudgment attachments) upon motion of the debtor.

Costs

In litigation, court costs comprise:

- court fees (calculated by reference to the sums claimed and paid by the plaintiff at the time of filing, e.g. the fee payable in a claim worth JPY10 million (c. EUR79,000) would be JPY50,000 (c. EUR400));
- experts' fees; and
- costs of other services required for the court proceedings.

As a general rule, the losing party will be ordered to bear these court costs at the time of judgment. However, in cases where the plaintiff is successful on only part of its claim, costs will be apportioned between the parties by reference to the outcome. A court may order all successful parties to pay a certain portion of the costs in the interests of fairness. Moreover, lawyers' fees are not included in court costs; legal fees are merely regarded as one element of the damages to be claimed. In most cases, the amount of legal fees that can be claimed is limited to a maximum of 10% of the total damages awarded and is payable in addition to those damages.

Class actions

There is no litigation structure similar to a class action in Japan.

However, the Act on Special Provisions of Civil Court Procedures for Collective Recovery of Property Damage of Consumers enables consumers to recover damages collectively in a simple and prompt manner. Claims brought under this Act must arise out of a contract concluded between a consumer and a business operator. In such claims, consumers are not able to claim certain losses, such as secondary losses, losses arising out of lost earnings, damages for personal injury/death, or damages for pain and suffering.

Key contacts



Kevin Chan

Partner, Head of Litigation and
Regulatory, Asia
DLA Piper Hong Kong
kevin.chan@dlapiper.com
T: +852 2103 0823



Tony Andriotis

Partner
DLA Piper Tokyo Partnership Gaikokuho
tony.andriotis@dlapiper.com
T: +81 3 4550 0122

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